



Celebrity endorsements on social media: 7 tips for navigating the right of publicity

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Social media makes building a brand easy: the tools are laid out in front of you, ready to launch your company to worldwide fame with a click of the mouse. Craft a few irreverent tweets, refresh the company Facebook page and voilà: you instantly have the power to engage consumers on a level never before possible, without the constraints of old-line paradigms.

In the real world, it's not that simple. As with any emerging medium, the always-on world of social media generates risks for brand owners every minute. While these risks are not always predictable, experience provides guidance on some issues brands may face. Among these questions: how far can you leverage the names and images of celebrities when promoting your brand online?

The allure of celebrity endorsement is clear. Celebrities have captivated the public for decades. Savvy businesses understand that this cultural fascination affects consumer choices. But, absent an explicit endorsement arrangement, leveraging the power of celebrity to shape consumer perception in a brand's favor has always required a careful balancing act, particularly because of "right of publicity" statutes passed by a number of US states.

The right of publicity, which originated during the 20th century, protects individuals against unauthorized commercial exploitation of their image in commerce. This differs from the traditional right of privacy in that it protects commercial interests rather than personal interests. While this right theoretically protects all persons, in practice only celebrities have accrued sufficient commercial value in their identity to support material right of publicity claims.

Early right of publicity cases focused on celebrity names and likenesses – elements that could easily be reproduced in print. As technology and popular culture have advanced, courts have expanded the scope of protectable rights. Today, the right of publicity is a personal property right which prevents unauthorized use of the full celebrity persona: names, likenesses, voices or other identifying features.

This area of the law is constantly evolving, while the market for celebrity endorsements is growing. This means **the financial stakes are high**, and even one misstep can be costly and embarrassing. Companies wishing to use celebrity names and images online need to get in front of the known risks.

As you look at your social media presence, keep these seven points in mind:

1. You can (almost) never get something for nothing. Social media may present you with opportunities that appear to be amazing values at little or no cost. Be wary. Although agility is part of the beauty of social media, be

sure you have strict procedures in place that require time for ample legal review.

2. Tread carefully with unauthorized celebrity photographs. A celebrity is photographed using your product. Is it a “free” endorsement? Using such photos without approval can be problematic. It may be permissible to link to the original source, but take great care not to create the impression an endorsement has occurred. For example, directly reposting such material outside its original context could give rise to a right of publicity claim; unauthorized republication of the image could also lead to copyright infringement liability.

3. Celebrities can be contentious. Celebrities’ livelihoods are inextricably tied to their personal brands. The value of top-tier celebrities can be substantial. When celebrities perceive their personal brands are being threatened or exploited, the response can be harsh. Be prepared for the worst if you elect to tread too close to the line.

4. Capitalize on celebrity outreach to your brand. Monitor social networks for references to your brand and flag any celebrity interactions. These unsolicited endorsements can be exciting for the brand and its consumers. But while a response or retweet is likely appropriate, take care not to use the celebrity’s mention of your brand in a way that could be considered overly exploitative.

5. Carefully consider requests from celebrities to remove content. If a celebrity, or member of the celebrity’s team, requests removal of social media content that mentions the celebrity, consider doing so even if you feel your use is permissible. Sometimes expeditious removal can be the best way to avoid an ugly dispute; it also shows your good faith, which may pay great dividends later – perhaps leading to an authorized endorsement.

6. Your brand isn’t the only one monitoring social media . Many celebrities have staff whose job is to monitor Internet coverage of the celebrity’s brand. No matter how modest you perceive your unauthorized use of the celebrity persona to be, you should assume it will be seen by the celebrity, potentially exposing your brand to liability.

7. When in doubt, get permission. While this point may run counter to one of the core elements of social media – timeliness – there is simply no other way to truly eliminate risk. That being said, consider using social media to expedite the approval process. Sometimes a private message to a celebrity’s social media account is the fastest way to get his or her attention.

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