

Just a few years ago, entertainment and media was America's second biggest industry. Today, it is the biggest.

The entertainment industry's core segments, (including newspapers, book publishing, recording, music, periodicals, motion pictures, radio and television broadcasting) account for an estimated 12 percent of the United States Gross Domestic Product at \$1.25 trillion annually. Additionally, the entertainment industry achieved foreign sales and exports estimated at over \$90 billion last year, making entertainment the United States' leading export.

The United States Constitution has played a key role in creative development and the industries that come about from the fruits of intellectual property. In the formative stages of this country, the framers of our Constitution included language mandating the development of science and the useful arts. This helped to lay the groundwork for copyright and patents—both forms of limited monopolies—in order to encourage creative development.

The strength of the entertainment industry rests in its ability to continue to create and foster imaginative products. That cultivation of creativity and products, in turn, has its foundation based on intellectual property rights.

The motion picture industry is now a century old. But in its formative years, Hollywood had no intention of creating or promoting “stars!” That concept happened almost by accident. The burgeoning movie industry did not want, or need, any so-called “movie stars.” By definition, a “star” would come to mean someone whose name appears on screen ahead of the film title.

Players who performed in early, silent motion pictures, were not given screen credit and were not even identified by name. Audiences came to see “the picture show,” but not any particular performers in the movie. Financial backers and movie producers saw no need to publicize the unknown people who were in plentiful supply to perform as actors in the silent movies they were making. Their fear was that publicity might lead to performers wanting additional compensation for their work.

They were right!

Let me tell you about the person who changed all that—the first bona fide movie celebrity, and indeed, the first celebrity “brand”: Mary Pickford.

Her dimpled face was surrounded by distinctive golden curls and she always played an innocent child woman. She had a trademark image even if she didn't know it or understand it at the time.

The publicity that accrued to Mary Pickford because of her trademark image made her a valuable commodity that was quickly in high demand. For years this

silent movie star, who was internationally acclaimed as "America's Sweetheart, was the world's greatest box office draw, even above her contemporary Charlie Chaplin." At a time before women could vote in this country, she had parlayed her intellectual property rights into financial freedom and almost total control over the films she appeared in.

Others came along and followed suit. Charlie Chaplin was one, and Douglas Fairbanks was another. Then Pickford married Fairbanks and together with Chaplin and D.W. Griffith, they formed their own motion picture production company which was called United Artists. This prompted at least one observer to comment, "The lunatics have taken over the asylum."

In their wake came Clara Bow, Gary Cooper, Jean Harlow, Humphrey Bogart, Marilyn Monroe, James Dean and the world has been star struck by Hollywood Royalty ever since. All the while, through the years, the public continues to value the magic of these Hollywood stars.

Even in the greatest movies of all time, it's the stars that people come to see. It's the star's names that matter to the public. They are what attract us. They are what we value. They are compensated, therefore, accordingly. Everything they do interests us. We value the iconic images that they offer. The consuming public is ceaselessly fascinated with celebrities, their possessions, fashions, relationships and lifestyle.

The media meets such consumer demand by providing an ever-increasing number of reality shows, magazines and celebrity-themed news shows, among other offerings, directed at these interests. It is this fascination with celebrities that consciously and subconsciously affects public perception of desired styles, coveted attributes, and appealing trends, and that therefore drives consumer fashion, products, lifestyle and even social attitudes and values.

Given the consumer influence many celebrities wield, it is logical for companies to align themselves with a particular celebrity in order to associate their products or services with that celebrity's goodwill. The value of a celebrity endorsement or license is typically based on the emotional response and immediate recognition that the public has for a celebrity.

In the world of endorsements and licensing such goodwill, emotional response, and recognition is commonly known as "brand equity." It is this amorphous notion of brand equity that taps into the motivations for companies to dedicate substantial resources and revenue to align themselves with a particular celebrity.

Beyond an isolated endorsement or license, over the last 25 years, there have been certain celebrities with such a high brand equity that they have evolved from being merely famous individuals at a particular moment in time, into compelling and powerful brands in their own right. It is even possible for

celebrities like Marilyn Monroe or James Dean, who passed away decades ago, to remain successful brands, generating millions of dollars annually.

In a book entitled *The Law of Merchandise and Character Licensing*, Gregory Battersby and his coauthored, Charles Grimes, stated that, “celebrity properties are beginning to take traction in the licensing community with such celebrities as Jessica Simpson, Cindy Crawford, Britney Spears and Jennifer Lopez all inking multi-million dollar deals.”

The author’s further state, “Celebrity licensing continues to grow by leaps and bounds. Jessica Simpson entered into a master license for her name and brand for a wide array of licensed products.”

Attaching a celebrity to a brand literally gives that brand a face, name and personality that immediately project an image of a living, breathing, credible person as opposed to a faceless corporate entity.

For example, industry experts estimate that sales of Jennifer Lopez’ “Glow by J.Lo” perfume totaled \$44 million in the first four months of its release in 2002. The Britney Spears doll broke all records for an individual personality doll, selling six million units at \$10 to \$15 retail price.

Musicians and celebrities like Britney Spears (fragrance, dolls), Sean Combs (fragrance, fashion) and Jennifer Lopez (fragrance) have significant incremental revenue streams from licensing. Elizabeth Arden announced in a May 8, 2006 press release that Spears just celebrated the success of her three fragrances – Curious, Fantasy, and In Control – selling over 10 million bottles in more than 80 countries.

It is important to distinguish between the various legal forms that endorsement deals, merchandise and product lines can take. These forms include one-off license agreements, long-term licenses that apply to various products, and even master licenses which then typically allow the licensee to engage in various activities beyond one isolated transaction and usually for an extended period of time in exchange for substantial up-front guarantees. Master licenses also typically allow the licensee to sublicense the rights contained in the license to be able to fully exploit the different rights allocated.

Occasionally, celebrities build a brand themselves, investing their own revenue, thereby owning the brand. Such is the case with Sean Combs’ approach to exploiting his celebrity value. In still other instances, the form of these agreements involves partial or outright transfers of ownership, as explored in the following section.

George Foreman was a heavyweight boxer who enjoyed a successful career. After he retired, his continuing popularity made him a desirable, effective

spokesperson for various products. In 1995 George Foreman entered into a licensing deal with Salton Maxim, a leading home product company.

Initially, Foreman had a license agreement that gave him 60 percent of the profits from the “home appliances” that utilized his intellectual property rights. Foreman and Salton began their relationship in 1994 and for the next six years, Salton paid royalties to Foreman that were dramatically increasing each year. In the year prior to the purchase in its quarterly filing with the SEC Salton paid royalties to Foreman of \$35.8 million.

The sale of the intellectual property rights of Elvis Presley represent an indicator of how a celebrity’s intellectual property rights have significant value even after death.

On February 7, 2005, CKX, a publicly traded company, acquired an 85 percent interest in the intellectual property rights owned by the Presley Estate. These included all of the copyrights owned by the estate, all of the trademark rights associated with Elvis Presley and all of the Right of publicity associated with Elvis Presley.

The transaction also included the tour business, retail operations and hotel operation at Graceland, but collectively all of those have been a break even business historically.

Including the prepaid rent, the total value received for 85 percent of the intellectual property rights of Elvis Presley owned by the Estate was \$111.3 Million, meaning that the total valuation for all of the rights were \$130.9 million.

Let me briefly give an overview of two main legal doctrines that form the foundation of celebrity licensing, branding, and management.

I’m sure, given this audience, that the majority of you are well-versed in trademark law, but it is interesting to note the fundamental differences between the components of Right of Publicity and Trademarks.

Right of Publicity, stated simply, is the right of every individual to control how his or her name, image, likeness or other distinct aspect of identity is commercialized, if at all. In the United States, the right of publicity was born out of the right of privacy. Privacy protects dignitary interests and hurt feelings.

In contrast, the right of publicity protects the financial interests of an individual--typically celebrities--to control how and when their name, image, likeness or some aspect of identity will be used in commercial ways, such as on merchandise or in advertisements.

Trademark, conversely, has its origins in protecting the consuming public, serving as an identifying source of goods or services, and in avoiding confusion and passing off. The Right of Publicity serves a role very distinct from trademark. Furthermore, the standard for proving trademark infringement is typically the likelihood of confusion. With Right of Publicity, the standard is much lower, and is generally simply one of identification measured by a de minimis standard.

But, even given these differences, a worldwide celebrity branding campaign must employ a combination of trademark and Right of Publicity, because these doctrines are recognized in very different ways throughout the world.