



Celebrity Licensing

A. Rates and Trends

- Royalty Rates have stayed fairly constant in the Celebrity Arena over the past 3 years
- Corollary to royalty rates: guarantees have become a bit more negotiable, and whether the guarantee is paid as advance
- Perhaps a somewhat downward trend in the amount licensees are willing to pay as advance guarantees
- Sometimes Licensees will pay up to 20% royalties to clear the various rights holders
- Product Licensing: clear upward trend in celebrities engaging in licensing and developing their names and images into products, licensed goods and brands
- Advertising: old taboo against celebrities doing advertising almost completely gone. Used to be celebrities appearing in ads was a sign that that celebrity couldn't find work, or wasn't a true "artist." (Still see it with people like Tom Cruise, who refuses such opportunities.) But for most, is not the norm. Gene Hackman is voice of Lowes, Laurence Fishbourne and Joan Cusak do telephone ads, Keifer Sutherland is doing multiple ads, Jennifer Lopez is licensing extensively, Tiger Woods, on and on. CMG just put together a nice program for Chuck Berry to be the voice of Independence Airlines.
- Counterpoint: when celebrities get in trouble. Martha Stewart, Kobe Bryant
- Upward trend in celebrities litigating when unauthorized use occurs

B. The Intellectual Property Rights behind Celebrity Licensing

- The 3 main areas of Intellectual Property rights in Celebrity Licensing are:
 - **Copyrights:** protection provided to creators of both published and unpublished "original works of authorship." Can apply to photographs, artistic renderings, literary works, logos, architecture. Catch phrase is "Original work of authorship fixed in a tangible medium of expression"
 - **Trademarks:** Words, names, symbols or designs which indicate the source of a product and distinguish it from the products of others. For celebrities, trademarks can exist in their names, signatures, stylized logo, even select photographs, all

dependent on the extent that the “mark” is used consistently and in a true trademark sense, as an identifier of the source of origin and the brand manifest in the mark. Obviously, then, substantiating trademark relies on use, quality control, and other hallmarks of trademark. James Dean jackets; J-Lo perfume.

- **Right of Publicity:** Prevents the unauthorized commercial use of an individual’s name, likeness, or other recognizable aspects of one’s persona. It gives an individual the exclusive right to license the use of their identity for commercial promotion. Is a state based right, but one can discern a fairly consistent pattern of how the Right of Publicity is applied, both from state statutes, and courts interpreting the rights through case law.

C. Navigating these Intellectual Property rights / Applying above points

- Step one: identify the Intellectual property rights involved in a proposed use. If you are an advertiser or merchandiser, need to take an inventory of all Intellectual Property rights that can be implicated in a proposed use of a celebrity. Use of a photograph of a celebrity, for instance, typically requires clearance of the photo and the celebrity featured in the photo.
- Step two: clear all implicated rights from the owner/representative of those rights. If proposed ad has an image of famous musician, with excerpt of one of their songs, means have to clear through CMG or whoever manages the intellectual property rights of the celebrity, perhaps Corbis or whoever owns the image, and the music publisher of the song. So can easily have multiple rights holders in a single ad.
- Step three: define precisely the scope of the campaign or product—territory? Exclusivity? Use of one image of many? Product categories?
- Step four: negotiate a royalty rate that is fair to the various property right owners. May have a different rate for international, or different rates for different product categories even if all contained in one license
- Specific nuances can apply depending on what is being used:
 - NASCAR: Driver? Team? Car?
 - Major League Baseball: specific players? Active/retired? In uniform? MLB interests?
 - Entertainment: Marilyn Monroe: is it a use that will be approved? Is it a use that is consistent with our overall branding efforts? Is there a movie studio involved or a photographer or even a famous artist like Andy Warhol?