

## CELEBRITY WANTED

The use of celebrities to endorse products is widespread across the globe. Images of famous people using or consuming a company's products is thought to stimulate consumer sales. Research from America shows that people who follow a celebrity also follow brands associated with that celebrity. Think of a brand and invariably a celebrity comes to mind; Nike – Tiger Woods, Walkers Crisps – Gary Linekar, Swift Insurance – Iggy Pop and so on.

Having Cheryl Cole or Victoria Beckham seen promoting your handbag or gliding through the VIP area of an international airport with your company's trolley case is highly desirable. However the cost of retaining a celebrity to promote your brand can be very expensive indeed, so companies look to find other ways to get a product associated with the right sort of celebrity without having to pay high endorsement fees. This must be achieved lawfully of course and with the Courts now recognising image rights the consequences for a company can be significant if it seeks to use a celebrity to promote its business without that celebrity's consent.

In *Irvine v Talk Sport Limited* the former F1 racing driver, Eddie Irvine sued the radio station Talk Sport for using a promotional campaign featuring a picture of Mr Irvine appearing to listen to Talk Sport immediately before the British GP. Talk Sport had legitimately purchased the photograph, so there was no copyright issue, however they manipulated it so that Mr Irvine's mobile phone was replaced by a radio tuned to Talk Sport. They did not seek his authority. The Judge found in favour of Mr Irvine and said, "*It is common for famous people to exploit their names and images by way of endorsement [and that] the lustre of a famous personality, if attached to their goods or services will enhance the attractiveness of those goods or services.*"

Would it be ok then to use lookalikes? An attempt to bypass the ruling in the Irvine case was perhaps made by the directory enquiries company 118 118. Their adverts featured two runners whose appearance was similar to that of the 10,000 metres 1973 world record holder David Bedford. OFCOM upheld his complaint that the adverts caricature him without his permission and were in breach of the ITC advertising code.

So, if one cannot use celebrities or lookalikes without permission, what about dead celebrities? Can a deceased have any image rights? The logical answer is that he cannot. Image rights may be defined as the term given for all those legal rights that enable a celebrity to capitalise on the commercial value derived from controlling the use of and exploitation of his name, fame and image. If he is dead then his ability to exploit his image must surely have ended? That is not necessarily so since copyright survives the author's death and goodwill in a celebrity's name under which or through which a business trades may very well continue and so be protectable. Any goodwill that survives the deceased will be owned by his estate and therefore permission is required by a third party to use it.

As recently as March 2011 an appeal from the Trade Marks Registry held that an attempt to register a dead famous person's name by someone other than the estate was made in bad faith, and so it was disallowed. Not all such applications will necessarily be objectionable, it will depend on the facts of each case.

Product endorsement by a famous person can only be achieved therefore with the celebrity's consent. A connection with the goods can still be made however and be of commercial benefit without contravening the celebrity's rights if for example the famous person is photographed wearing the product. Intelligent use of such an image is essential so that the correct message is conveyed. The brand owner is saying to consumers, "*Look X has this product so it must be good.*"

Permission must be obtained to use the photograph as copyright will subsist in it separate to the image rights (if any) of the featured celebrity. Making a gift of your product to a celebrity who then wears it can bring about an indirect endorsement.

Celebrity endorsements can be a valuable thing to have and help drive up sales in the particular product as well as promote awareness of the brand. Choose your celebrity wisely however, since bad behaviour by a celebrity can create entirely the wrong association with your brand, and always ensure that whatever use is made of a celebrity endorsement, whether dead or alive, it is legal.

It might be said in showbiz that there is no such thing as bad publicity, but in the commercial world publicity that proves to be unlawful can be a bad thing!

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