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In Perspective Series

The Glitter and Glamour of Celebrity Endorsements

By Douglas J. Wood

While much of the Hollywood and Madison Avenue buzz these days swirls around product placement in motion pictures and television programming, the tried and true celebrity endorsement continues to be the marriage of preference between the two coasts. This article reviews the strategies and pitfalls for advertisers and advertising agencies when dealing with celebrities and their agents and managers.

Negotiations of celebrity endorsement contracts is not for the inexperienced. All too often, corporate executives, caught up in the glitter and glamour of potential hobnobbing with stars, become too starry-eyed to deal with the many important deal points essential in any negotiation. In addition, while talent agents and managers will generally not intentionally take advantage of those who are naïve in negotiations, they've got a job to do and they do it well. So make sure the star-struck do not venture onto the stage until after the deal is done. Once the appropriate cast of characters has been assembled, there are many points to be considered. For ease of presentation, these points are presented in numerical order, with no particular one being more important than the others.

1. <u>Identifying the Deal Maker</u>. Who you deal with is important. Do not let yourself be whipsawed between the agent, the manager, the celebrity's attorney and whoever else may be in the cotillion of advisors to the celebrity. Insist on dealing with one person and put upon them the responsibility for coordination with any other advisors to whom the celebrity may turn. But make sure that person has the authority to make commitments.

And if it's not already obvious, never negotiate directly with the celebrity. It will undoubtedly give you a false sense of security and will not remotely resemble what you're likely to get or pay. It's not the celebrity's job to negotiate endorsements. Nor is it wise to put them in an awkward position in that regard. If key executives need to meet with the celebrity to provide information about what the advertiser hopes to accomplish or to show the celebrity creative, that's fine. In fact, it's generally a good idea to get the celebrity excited about what the campaign will look like and its creativity. But don't negotiate the deal.

2. <u>Be Ready to Say No.</u> Never enter into negotiations with a celebrity unless you are ready to walk away from the deal. While that's an old adage in business, it's particularly appropriate in negotiating with celebrities. All too often the aura of Hollywood, show business, and a host of other emotional and irrational motives blind an advertiser or advertising agency and they fail to

see when negotiations have reached a point of diminishing returns. Before you start, be ready to walk. Too often creative people or a client fall in love with the idea of working with a particular celebrity. If a negotiator's hands are tied and the talent's agent suspects or knows that the negotiator cannot walk away from a deal, a shrewd agent will extract a monopoly price.

- 3. Making an Offer. There is nothing more disconcerting than sending a celebrity an offer letter only to find that the advertiser has changed its mind. Why? Because all too often those who make such offers do so without any caveats regarding the contingent nature of an offer. If an offer is unconditional, it can become a binding obligation of an advertiser with nothing more than a simple "yes" from the celebrity. The rules is simple. All offers should be in writing. Never make an unconditional offer. Make the offer contingent upon the negotiation and execution of a full written agreement. But when you decide to violate those rules, make sure you have an offer letter that contains every essential term. Hopefully, you'll see why such unconditional offers pose risks too great to take such an approach.
- 4. Term, Option Periods, and Run-Off. Most celebrity endorsements are for an initial term of one year followed by one or two successive options for additional periods, usually one year each. At times, the first "year" of a term may have some additional months to allow for production of materials and use of such materials for a full year. Options should be the advertiser's to exercise, not the talent's. Avoid having options that are mutual, i.e., both sides must agree to move into a new period. Legally, mutual options are meaningless and you can be virtually assured the celebrity will want more money when the time to exercise the mutual option arrives. Be certain to also ask for a run-off period in the event an option is not exercised. A run-off period allows the advertiser to continue to use the materials produced for a short period of time during which the transition to new creative is completed. Run-off periods typically cover three to six months and may require additional compensation. During the run-off period, the celebrity is usually free to work for anyone, even a competitor (unless the celebrity agrees to continued exclusivity -- at a price).
- 5. <u>Scope of Services</u>. The scope of services provided by a celebrity falls into two categories -- the kind of services the celebrity will provide and the breadth of media in which those services may be broadcast or published.

With regard to the kind of services that will be provided, they generally fall within predictable categories in which the performance of the celebrity is required -- video (including commercials, infomericals and point of sale video), radio commercials, print photography, and personal appearances. In turn, potential media use of the product produced by those services is also generally predictable -- broadcast, consumer print, trade print, point of sale, outdoor, direct mail, packaging, video (tape and DVD), cinema, transport (buses, taxi's, etc.), annual reports, flyers, collateral, Internet, dealer materials, sales sheets, etc.

The lists need to be carefully considered and tailored to the advertiser's needs. And while that all may sound simple, it's not. Celebrities often recoil from certain services or uses, in particular personal appearances, outdoor, cinema and point of sale. Celebrities rarely agree to packaging except where the product is named after them, e.g., a fragrance, and where they receive royalties on sales. In response to celebrity concerns, however, advertisers often concede too much too soon and find themselves with inconsistent creative. In such circumstances, going back to the

celebrity to obtain additional rights is far more expensive than what they might have cost had they been insisted upon in the first round of negotiations (for the appropriate price, either up front or as an option).

Agents prefer to limit the number of commercials that can be produced. Sometimes that is not a problem. If the commercials are for a product sold at retail or if the broadcast schedule requires a variety of edited versions, a limitation on the number of commercials can be impossibly burdensome. To avoid such hindrances, negotiate a limitation on production days or voice-over sessions with the right to use the results in an unlimited number of commercials.

The advertiser must specify clearly what it wants the celebrity to do at personal appearances (speak, perform, sign autographs, etc.), and whether personal appearances are public (often not a favored idea by celebrities and fraught with security issues depending upon the celebrity's notoriety).

Depending upon the nature of the product or services sold by the advertiser and its marketing objectives, the list of issues under the broad umbrella of "scope of services" can become quite lengthy. Great care must be taken to understand all of the advertiser's needs.

- 6. <u>Availability</u>. A high priced celebrity has a busy schedule. Their first priority is generally their acting or performing career. Advertising endorsements come in a distant second and are almost always subject to the celebrity's commitments in their primary entertainment field. On the other hand, production costs for advertising materials and the logistics of planning can be very time sensitive and expensive. The key to negotiations in this respect is to identify critical dates as soon as possible and make them firm commitments in the contract. Beyond those dates, notice regarding availability should be carefully drafted. Once a deal is signed, it is critical that someone be appointed the liaison with the celebrity's agent or other appropriate representative to keep tabs on the other commitments being made by the celebrity and the coordination of schedules.
- 7. <u>Territory</u>. The territory in which the advertising may be used can be quite complicated. Obviously, if the deal is for worldwide use, the area of usage is clear. But it the territory is geographically limited, problems can arise. For example, does the "United States" include its territories and possessions? If use is limited to a specific area, what about advertising in magazines that are distributed globally or in flight? What about the Internet? Obviously the Internet cannot have a geographical limitation. The key is to carefully consider the uses that will be made and be certain that the geographic territory does not conflict with those uses.
- 8. Exclusivity. While celebrities understand that an advertiser will most likely demand that the celebrity be exclusive to the advertiser with regard to directly competitive products, many deals seek exclusivity that goes beyond direct competition. Naturally, the expansion of exclusivity has a direct relationship with what an advertiser can expect to pay. If complete exclusivity is desired, i.e., the celebrity will not provide any services for any other advertiser, the price can get quite high. The alternative is to carve our specific business sectors not necessarily directly competitive. For example, an airline might not want a celebrity to endorse a hotel chain affiliated with another airline or travel company. Alternatively, a restaurant might not want their endorser to provide services to a company that markets dietary supplements, particularly related

to weight loss. In negotiating exclusivity, make certain that both sides of the deal agree on what is competitive to the advertiser. If the advertiser sells carbonated soda, is beer competitive? Does the exclusivity extend to all beverages? Would a fast food advertiser consider table service restaurants competitive? What about antithetical products or categories? For example, would a meat producer be upset if it saw its celebrity attending a vegetarian health food convention?

9. Morals. The morals clause can be one of the most sensitive provisions in a celebrity contract. Celebrities hate them. Advertisers must have them. Certainly, a celebrity should agree that he or she has not and will not commit any felonies or offenses involving immoral actions. But what about tax fraud? Or a bar room brawl? Or minor offenses? Or charges for serious offenses that are later dropped? This list can go on and on. In negotiating a morals clause, the advertiser must first understand and accept the existing reputation of the celebrity and the nature of the "venue" in which the celebrity enjoys and exploits their celebrity. Don't expect angel-like behavior from an edgy actor or controversial musician.

Never, never agree to conviction as a trigger to exercise a morals clause. The length of time between a criminal charge and a conviction can be longer than the term of a contract. A celebrity will most likely carve out any behavior restriction insofar as it relates to a specific role they play in a film, television show or on stage. If nudity, depiction of unsavory characters, profanity, or the like are a concern for the advertiser, then certain celebrities just won't work regardless of a morals clause.

- 10. The Unions. Any celebrity of note is a member of the Screen Actors Guild and/or the American Federation of Radio and Television Artists. SAG and AFTRA have very strict rules that require their members to only work for companies that have agreed to comply with the terms and conditions of the collective bargaining agreements negotiated between the unions and the advertising industry-- the so-called Commercial Codes. These Codes contain very specific requirements relating to working conditions, compensation, and reporting. Most importantly, the Codes require that contributions be made to the union's pension and health fund. The amount of the contribution is a percentage of the total compensation paid to the performer that is allocated to the services provided for television or radio production and use. This can get quite complicated. It is important, however, to make sure the allocation is carefully considered in light of the media plan. Union rules require that the allocation be specifically covered in the agreement. More often than not, the advertising agency, and not its advertiser client, is the signatory to the Commercial Codes. As such, the advertising agency guarantees that the celebrity will be paid in accordance with the Commercial Codes. On occasion, this can become a problem if an agency is fired and the advertiser continues to use a commercial. These contingencies must also be covered in the contract with the celebrity and in the contract between he agency and the advertiser.
- 11. <u>Producing without a Signed Agreement</u>. Negotiations with celebrities take time, often weeks or months depending upon the complexity of the deal. On occasion, negotiations may not be completed when production must begin. Proceeding to production without a signed agreement is very risky, but not uncommon. In such instances, it is advisable to either sit behind closed doors until a deal is signed or, at a minimum, execute a short form agreement that insures that the advertiser will be able to use the materials produced even if a full agreement is not completed.

There's a lot more to such negotiations, but this hopefully gives the reader a better understanding of some of the more complicated aspects. At the end of the day, the best lesson to learn from all of this is that those who get star struck should be left in the ticket lines and not at the negotiation table.

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