



Product Endorsements

By Simone Bowie

Jamaica has produced no shortage of celebrities, from the iconic Bob Marley to more recently, the record-breaking Usain Bolt. Companies offering goods or services are well aware that one of the best ways to promote a product is to have a celebrity recommend the product and have his name or likeness associated with it. This relationship between the company, the product and the celebrity is usually cemented by entering into a product endorsement agreement.

A product endorsement agreement will at minimum:

- describe the product that will be endorsed by the celebrity;
- the services expected of the celebrity, which may range from simple voice-overs (the use of the celebrity's voice in radio or television advertisements without his physical appearance) to requirements that the celebrity conduct publicity tours for the product inclusive of public performances;
- determine the ownership of any intellectual property created pursuant to the agreement; and
- the form, manner and method of compensation that the celebrity will receive.

The Product

Every product endorsement agreement should clearly describe the product the celebrity will be endorsing. From the point of the view of the celebrity, this description should be as restrictive as possible. Most companies will want to prevent the celebrity from giving endorsements for similar products or acting for competitors. If a celebrity agrees to do an endorsement where the product is an alcoholic beverage but is described in the endorsement agreement simply as a "beverage", he may find himself unable to do other endorsements for sports drinks, sodas, juices or water. Had the product been specifically described as an "alcoholic beverage", the rest of the beverage world would still be his oyster.

Reasonable expenses and the entourage

Where a product endorsement agreement requires the celebrity to travel, whether on a promotional tour, to a film studio, or in the case of a singer to perform at a concert, the agreement will usually make provision for the company to cover the reasonable travel expenses of the celebrity. It is essential to consider the question of what constitutes a "reasonable" travel expense. A celebrity may be of the view that accommodation at five-star hotels and flying first class are appropriately described as "reasonable" travel expenses.

No matter what incidentals are agreed as recoverable, another important issue to be addressed in the agreement is the identification of the persons to whom these benefits extend. In other words, what of the entourage? Celebrities are known to travel with a team: managers, agents, hairstylists, makeup artistes etc. Musicians will for example request that they be reimbursed for the travel expenses of their band. In this case the definition of the word "band" must be carefully set out, as a company may find itself footing the bill of up to three "flag bearers", who play no instrument, but keep the flag bearing the image of, say Haile Selassie, prominently displayed throughout the performance, and without whom the celebrity may be unwilling to perform.

A number of approaches may be taken to dealing with the issue of recoverable travel expenses. The company may impose a cap on travel expenses, which the celebrity may not exceed, or alternatively, cap the number of persons entitled to incur expenses on its tab.

Competing endorsements

It is usually of fundamental importance to the company that the product endorsement agreement contain an exclusivity clause, restricting the celebrity from offering similar services to a competitor. For example, if LIME were to pay an entertainer in Jamaica to appear in its advertisements, it would receive little value from the endorsement if the entertainer appeared in similar advertisements for its competitors.

Such restrictions often go further, and prevent the celebrity from directly or indirectly doing anything which may cause the public to believe that he is associated with a competitor. Were a celebrity that is presently endorsing Gatorade to appear on a TV show sponsored by Lucozade wearing clothes branded by Lucozade, the celebrity may find himself in breach of his product endorsement agreement. More so, the provisions of the agreement may be so far-reaching, that the celebrity simply putting a bottle of Lucozade in his supermarket cart could constitute a breach. The agreement may also prevent the celebrity from endorsing competing products for a specified period after the product endorsement agreement has expired, since the public could continue to associate the celebrity with the company's brand.

Restrictions on the activities of the celebrity

Factors such as the duration of the agreement, the scope of the services to be provided, and the money paid usually determine the level of restrictions imposed on the activities of the celebrity. For instance, product endorsement agreements may require the celebrity to refrain from taking part in high risk activities, such as sky diving, car racing or mountain climbing so as to ensure (1) that the celebrity is able to perform the requested services and (2) that he does nothing which may invalidate any insurance policy taken out by the company. The agreement may even go as far as requiring that the celebrity warrant that he is in good health, and that he will take all necessary steps to ensure that he remains in good health.

Not all publicity is good publicity

The aim of all of these restrictions is to protect the product/brand and the investment which may be made in the celebrity endorsement. Thus, if the celebrity does something which may negatively impact upon his image, this may negatively impact upon the image of the product/brand, and be a basis on which the product endorsement agreement could be terminated. It is common for these agreements to contain a clause which allows the company to terminate the agreement where the celebrity in anyway "prejudices" the product, or the reputation of the company. This could cover situations such as convictions for any offence involving dishonesty, violence or illegal narcotics, or the use of lyrics, performances or public utterances to incite violence, demean or discriminate against any person or group of persons. A well-publicized example of this was the decision taken by Kellogg's not to renew its endorsement deal with US Olympian Michael Phelps, after photos surfaced of him smoking marijuana.

The Falling Star

Sometimes, a celebrity need not garner negative publicity to bring his product endorsement agreement to an end. The celebrity may simply fail to garner enough positive publicity. In determining the duration of a product endorsement agreement, the parties may opt to have a fixed contract for a stated period, or it may state that the agreement shall be "for x years or so long as the celebrity remains pre-eminent in the professional sport of basketball, whichever period shall be shorter".

Life after death

A properly drafted product endorsement agreement will take into account every foreseeable circumstance which may affect the celebrity, including death. Having paid millions of dollars for the celebrity endorsement of a product, the untimely death of the celebrity may not necessarily bring his endorsement to an end. For instance, the agreement may provide that if the celebrity dies during the term of the agreement that any product manufactured to the agreed specifications which existed at the time of death is considered authorised and the company may continue to make the product branded in his image until the time when the agreement would have naturally terminated. Further, if the agreement simply gave the company full ownership of any materials produced as a result of the services rendered by the celebrity, then the celebrity's death may have little or no impact on the agreement if all the services have already been performed, unless the circumstances of the death may negatively impact upon the brand.

These issues are the tip of the iceberg as far as product endorsement agreements go. Serious thought must go into the wording of the agreement, and it is important that both parties have a full understanding of the terms being negotiated and that what is ultimately agreed, is clearly reflected in the agreement. It will usually be advisable for celebrities, particularly those who are "up and coming", to obtain advice from professionals experienced in this field.

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