

AUTHORS

William J. Briggs, II

RELATED INDUSTRIES

Nonprofit Organizations
and Associations

ARCHIVES

2014 2010 2006
2013 2009 2005
2012 2008 2004
2011 2007

Articles

May 2014

Nonprofits and Celebrity Endorsements: Common Legal Pitfalls and Practical Tips

What Is a Celebrity Endorsement?

For a nonprofit organization, increasing awareness and support is often difficult because of the sheer number of nonprofits competing for funding, often many in the same space. Securing a celebrity endorsement is one powerful tactic nonprofits can use to differentiate and draw attention to their organization. Often, the mass appeal of celebrities can help motivate the public to identify with and respond favorably to an organization. Nonprofits who have secured a celebrity spokesperson or a celebrity endorsement count on a positive response to their name or image to drive people to support their cause and make donations. Extremely popular celebrities who champion a particular nonprofit provide that organization with greater visibility and inspire more members of the public to take action. When a celebrity appears at a charity event, favorable news coverage depicting the celebrity and the charity usually follows. The organization receives much-needed attention, which often translates into an increased ability to meet and sustain financial goals.

What Must a Nonprofit Do to Obtain a Celebrity Endorsement?

In order to use a celebrity's name or likeness to advertise, promote, or endorse a nonprofit organization, it is imperative that the nonprofit obtain the celebrity's permission and authorization. Absent permission and authorization, a nonprofit organization can be held liable for its use of a celebrity's name or likeness. A celebrity has, in most instances, a statutory right of publicity to control and profit from the use of his or her identity. In the context of a nonprofit organization, the right to control the use of the celebrity's identity is a critical factor, because the celebrity may not support the nonprofit's particular cause. An unauthorized use of the celebrity's identity may falsely imply that the celebrity endorses the organization.

An example of a nonprofit's unauthorized use of a celebrity's identity involved an organization producing and hosting a benefit concert to raise funds. The organization heavily promoted the concert on television, radio, and in print ads. However, it failed to take the most critical step of all before promoting the event: securing the celebrity entertainer's agreement to perform and endorse the organization. In fact, the celebrity had never heard of the organization and, after learning of the organization's cause, declined to perform even for compensation. The nonprofit was forced to cancel the event and return all proceeds received from ticket sales. Fortunately for the organization, the celebrity took no legal action against it for its unauthorized use of the celebrity's identity, which had given the false impression that the celebrity endorsed the organization and its cause.

Savvy nonprofits seek out celebrities to get involved with their organization's cause or mission. Many such organizations approach a celebrity's manager, agent, or publicist to identify a celebrity's passions or interests, such as advocacy for animals, the homeless, those afflicted with a disease, or educational causes, to name a few. Once a nonprofit has zeroed in on a celebrity who appears to be the right fit, it then seeks to educate the celebrity about the organization's mission and goals. In many cases, if the celebrity has expressed an interest in the organization, then it can be relatively easy to ask that the celebrity promote the nonprofit and its mission through an event appearance or public campaign. The key to a successful nonprofit/celebrity partnership is to ensure that the celebrity is sufficiently comfortable with the organization's mission to endorse it across a wide range of platforms. If so, the organization should always secure the celebrity's written consent to use his or her name, image, and likeness for promotional purposes. It is far better for a nonprofit to ask for permission rather than forgiveness when using a celebrity's identity to promote its cause.

Can a Nonprofit Use the Photograph of a Celebrity who Attended Its Event?

There are very few exceptions to the use of a celebrity's name and likeness without their authorization.

Most states recognize that one cannot use a celebrity's name or likeness without permission if the use is for an exploitative purpose. Organizations can face substantial liability if they use a celebrity's name or photograph without permission in an advertisement or for other promotional purposes.

In *Abdul-Jabbar v. General Motors Corp.*, Kareem Abdul-Jabbar, the retired basketball star, sued for violation of his right of publicity when an automobile manufacturer used his former name, Lew Alcindor, without permission in a television commercial for a car. The court awarded damages, not only for economic loss but also for humiliation, embarrassment, and mental distress. In addition to those damages, damages may be awarded for the "fair market value of services," goodwill, professional standing, future publicity value, and injury to "peace, happiness, and feelings."

As a general rule, a nonprofit organization should never use a celebrity's name or photograph to advertise or promote the organization without the express permission of the celebrity. However, there may be instances in which the nonprofit is merely reporting on the success of its gala or fundraising event and publishes a photograph of a celebrity posing with other event attendees. In such an instance, the law does not provide the celebrity the right to stop the reporting of the event or their attendance. Many states recognize an exception to liability for news reports and commentary about matters of public interest. In some states, statutes provide a specific exemption for news reporting. While this narrow protection exists for news reporting, it is nonetheless a good idea to obtain consent of the celebrity in the photograph before it is published, particularly if it can be argued that the nonprofit's use is an advertisement or promotion. A nonprofit can be liable for creating the false sense that the celebrity endorses the organization. It is therefore important to refrain from using a celebrity's name or likeness to drive interest and support for the organization without that celebrity's permission.

Issues of Concern

There are a number of concerns that nonprofits should keep in mind when deciding to use a celebrity's name or likeness for endorsement purposes. While these issues do not necessarily mean a nonprofit will face liability in every instance, they do give rise to areas of concern that should be examined closely.

- Use of a celebrity's name or photograph in a promotional circular or advertisement about an upcoming fundraising event.
- Use of the name and likeness of a celebrity who has a negative reputation or is too controversial.
- Engagement of celebrities who demand extravagant gifts for their endorsements, e.g., limousine service to the event, stays at five-star hotels, free tables at the event for family and friends.
- Use of a celebrity's comments about a particular cause or organization.
- Use of a celebrity impersonator for purposes of drawing attention to the nonprofit.
- Use of a celebrity interview to promote the nonprofit.

What Steps Should You Take to Protect Your Organization?

Adopt a clear and comprehensive policy about use of celebrity endorsements. A nonprofit can be liable for substantial damage as well as significant adverse publicity and ill will for the unauthorized use of a celebrity endorsement. It is therefore incumbent on the organization to establish a clear policy as to who in the organization will approach a celebrity or their representative(s) about an endorsement and obtain the necessary written authorization and release for use of the celebrity's name, image, likeness, or voice. No celebrity photograph should be used by the organization absent a written authorization on file, except where the use of the photograph can be clearly tied to a news report of a recent event and is not intended for promotional purposes. The desire to raise needed funds should not preempt the common-sense approach of asking the celebrity for permission to use his name or likeness to promote the organization.

What to Do if a Misappropriation of Name or Likeness Claim Is Made against Your Organization

A nonprofit should immediately respond to a claim of wrongful misappropriation of name or likeness of a celebrity. Even if the nonprofit thought that its use of the celebrity's name and likeness was permissible, it should retain legal counsel and preserve all evidence of documents and information that show the alleged misappropriation. The nonprofit also should immediately notify its applicable insurance carrier(s) in writing about the claim. Before attempting to negotiate with the celebrity's representative, it is critical that the nonprofit obtain the advice of an attorney concerning the right of publicity and misappropriation of name or likeness.