
Use of Celebrity Images in Advertising Has Risks

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Clothing retailer American Apparel agreed to pay Actor/Director Woody Allen \$5 million to settle a lawsuit brought by Allen when he was featured in an American Apparel billboard campaign dressed as a Hasidic rabbi from his classic 1997 comedy, "Annie Hall." American Apparel defended the use of Allen's image as a satiric and social statement on a public figure, protected as free speech by the First Amendment to the U.S. Constitution. American Apparel said the billboards were designed to inspire dialogue, not to sell clothing.

Allen's attorneys disagreed, claiming there was no protected speech involved, but rather pure commercial advertisement rooted in the unauthorized use of Allen's image to promote American Apparel. Even though the American Apparel billboards came down within a week of Allen's initial complaint, Allen claimed that was long enough to falsely imply that Allen sponsored, endorsed, or was otherwise associated with American Apparel or its products.

The right of publicity is a person's exclusive right to use, and to prevent the unauthorized use of, his or her name, likeness, or other aspect of his or her persona for commercial gain. To use it without permission allows that celebrity (or any person) to file a claim against the business. The line between commercial speech and free speech may be fuzzy, but the American Apparel billboards seem to have been firmly planted on the commercial side of the line. If you would like to use celebrity images in your own advertising - even the images of deceased celebrities or celebrities lesser known than Woody Allen - it is best to obtain advance and unequivocal permission from the celebrity or the holder of his or her publicity rights. A business owner also would be wise to avoid using in advertisements words, logos, or designs that can be associated with other companies or products, which may raise claims under the federal Lanham Act.

Whether or not American Apparel would have succeeded with its defense will never be known. But we do know that American Apparel learned an expensive lesson: Using celebrities to endorse a product without their permission is going to get a business owner into trouble.

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