



CELEBRITY ENDORSEMENTS AND WHAT WE'VE LEARNED

By: Jim Astrachan

I don't follow sports, so until last month I thought Kobe was an expensive Japanese beef. I am sure Kobe wishes he could hide in the barn until his troubles blow over. I'm also sure that some of the companies he hawks goods for would like that. Those advertisers have been damaged, but they might have seen it coming and prepared.

A few years ago, an anxious ad agency account supervisor called to tell me he was negotiating with Dennis Rodman's agent and needed help with the process. Dennis, it seems, was intended by our client to star in an ad the agency was producing, and given Dennis' shenanigans, the executive wanted a strong morals clause added to the contract so if Dennis acted up, the agency could fire Dennis, recover its money and not use the ad.

After the exec explained to me who Dennis Rodman was, I asked sarcastically, "Cancel him if he acts up? Heck, the more he acts up the more valuable he becomes. You buy misbehaving when you hire Dennis."

Dennis Rodman is not the garden variety spokesperson, and it is fun to contemplate the identities of advertisers who would have hired him as yearlong spokesperson. Advertisers had better be darn careful whom they select to appear in their ads, especially when the celebrity becomes associated with the advertiser as a spokesperson over a long campaign. Kobe Bryant is a poster child for this point.

Until his recent troubles, Kobe's clean-cut image was what every big bucks advertiser wanted to be associated with. National advertisers like McDonalds, Nike, Sprite, Spalding and Nutella knocked down his door. They threw money at him. He had his choice among the nation's top advertisers and he could write his own ticket. But Kobe's future is quickly changing as the advertisers evaluate their options.

Nutella has already announced Kobe's endorsement contract won't be renewed. Executives at other companies with whom Kobe has endorsement contracts are tight-lipped on their future plans to dump or, not renew Kobe, or simply pull ads they have paid dearly for. They watch and wait, as these are very costly decisions. Some advertisers who will decide to dump Kobe may be able to run older ads; most, however, cannot. Because celebrities often pitch a company's current product or promotion, older ads simply won't do, and new production, turned around on a dime, can cost millions. Also, if the older ads featured celebrities passed over for Kobe, their cost for reuse of the old ads might be staggering.

Even if Kobe is found not guilty of criminal conduct, some, but not all, of his publicly traded clients will not relish the association with a person who has been tried for a heinous crime of violence. McDonald's was using Kobe to launch a new salad product aimed at moms.

Do moms and dads want to cart their children to McDonalds to sit under a life-sized point of purchase poster of a smiling and lionized Kobe? They shouldn't.

It is unlikely that Kobe's endorsement deals will be dropped like stones. Rather, his contracts will not be re-upped at renewal time. But what of the multiyear deals, such as the reported five-year \$40 million deal with Nike? Can Nike afford to bench Kobe for the next four years and pay his fee? If Nike decides to part ways there had better be a morals clause in its contract with Kobe or it will have to suck it up and pay.

A morals clause is a contract provision often included in an endorser's or spokesperson's contract to hawk an advertiser's products. It allows the advertiser to terminate the contract if the celebrity engages in conduct involving moral turpitude or conduct that would somehow disparage the advertiser by its association with the celebrity. For example, arrest or conviction for DUI, battery or carrying a concealed weapon sans permit. Talent agents try to keep these clauses out of their client's contracts. If their client has gobs of opportunities because he or she is today's new hot star property, they will succeed. Persons without opportunity, often former celebrities and local favorites, will sign almost anything. Watch late night TV and you can see their ads on local and regional programming. If the advertiser's agency is on the ball, the clause will require the celebrity to return all monies paid if cancellation occurs for moral reasons. An advertiser might even ask the celebrity to pay for lost profits if that happens, but any agent who recommends that her client accept such a clause should be fired. On the other hand, an agreement to pay lost profits and return payment does shift the behavioral burden to the talent.

Advertisers, like moviemakers, enter into multiyear deals so tomorrow they can employ talent at today's rates. A MVP award, nomination for an Oscar or entry into the Hall of Fame drives up yesterday's price. So it's crucial that an advertiser be able to kill a multiyear deal if it decides that the talent's conduct has made use of ads untenable.

There are also the inadvertent problems, like premature death of a spokesperson, that cause an advertiser to chug aspirin. When Natalie Wood drowned off Catalina Island, the advertisers for whom she pitched needed to decide if they would continue to run her ads after her highly publicized death. In good taste, they chose not to continue the campaign and had to quickly fill their can with new film.

There is little doubt that if Kobe's return to Los Angeles is not delayed by the verdict for twenty years, his face will continue to show up on late night TV as a spokesperson for restaurants and car dealers. He might even do some regional spots. But, his days as a national advertising talent are likely over. If he is asked to work as talent you can be sure that the fee for his damaged goods will be severely cut back.

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