

## Updates

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'Tis the Season to Plan Ahead for Celebrity Endorsement Campaigns



The holiday season is around the corner, and retailers are planning their holiday

marketing campaigns. Celebrity endorsements continue to be a popular way to bolster brand recognition and goodwill during the holidays and beyond, and brands routinely partner with celebrities to develop ad campaigns for TV, print and social media. However, there are certain legal obligations and strategic pitfalls that marketers should keep in mind when working with celebrities. The top five tips to help create legally compliant celebrity marketing campaigns follow.

1. **Do Your Homework:** Although the prospect of a celebrity campaign can be very exciting, it is important to confirm that the celebrity is the right fit for the brand. In particular, explore whether the celebrity has any obligations, business plans or relationships with other brands that could harm the effectiveness of your campaign. Also, ensure that the celebrity's values and audience are consistent with and appropriate for the brand's identity.
2. **Communicate Expectations and Mind the Details:** Successful marketers set expectations early in negotiations to avoid surprises for either party. Discuss the goals and planned campaign with the celebrity, and carefully structure the contract to spell out key details of the relationship, including photo shoots, video shoots, social media posts, travel expenses and compensation. Avoid vague or ambiguous contract terms and obligations.
3. **Establish Disclosure Obligations:** The Federal Trade Commission (FTC) requires that advertisers and celebrity endorsers disclose "material connections," such as payment or receipt of free products, when the relationship between the parties is not clear. While the paid relationship is typically obvious in traditional advertising such as a TV ad, social media can make it harder for consumers to know if a celebrity has a paid relationship with a brand or, alternatively, is an unpaid fan. The contract should state that the celebrity will comply with applicable laws and the FTC Endorsement Guidelines, including by clearly and conspicuously disclosing the paid connection in endorsement messages (e.g., in social media posts using #Ad or #PaidAd). If possible, the brand should draft the social media posts itself or require pre-approval of all celebrity-created posts related to the brand to help avoid posts that are misleading or inconsistent with brand values.
4. **Give Your Brand a Way Out:** It is not possible to plan for *all* business possibilities or publicity—good or bad—that a celebrity will encounter during the relationship. Therefore, contracts should allow the brand to exit the relationship if needed. For example, brands often incorporate a "morals clause" that gives them a way to terminate a contract immediately if a celebrity engages in illegal or offensive conduct, is arrested or damages his or her (and by association the brand's) reputation.
5. **Include Other Brand Protections:** Celebrity agreements should include a representation that the celebrity will not endorse competing brands during the relationship. Finally, make sure the contract clearly states who will own any creative content (e.g., photos, videos, etc.) generated during the campaign.

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