INTRODUCTION

Analysis and Valuation of Celebrity Licensing, Endorsements, and Promotions: Rights of Publicity

This is a unique book on a unique topic because it brings together two truly unique phenomena. The first phenomenon is based on a complex legal system—rights of publicity exploitation in a legal sense, which is being increasingly talked about, utilized, expanded and litigated.

The second phenomenon is cultural and business based—the growth of celebrity branding via licensing, promotion, merchandising and endorsement; and branding amongst celebrities, athletes and other persons of interest using their rights of publicity ("ROP"). These two phenomena come together here in this book. From both points of view, ROP fuels three fast growing areas of law, marketing and business:

- one of the fastest growing areas of Intellectual Property law,
- one of the fastest growing areas of marketing and branding in general, and,
- one of the fastest growing areas of licensing, merchandising, endorsements, and promotions.

As the subtitle says, in addition to summarizing the current legal statutes, this book’s focus is on the analysis and valuation of celebrity licensing, endorsements, and promotions. But this is not to say that it somehow excludes the core underlying concepts of branding and the growth of promotional marketing in our society. In this book, we believe the analysis and value of celebrity licensing/promotions/endorsements is best done via the discussion and analysis of actual cases. Therefore, in each of the chapters, you will find a discussion of at least one case.

In layman's terms, right of publicity is based upon using the intangible assets and intellectual property of a person in a promotional environment. Whether that promotional environment involves a five-year license, a single occurrence promotion, a short term advertising campaign, an endorsement, or other marketing effort, all of these are usages of a celebrity’s right of publicity. This is not substantially different than how other traditional brands are increasing the use of their intangible assets and intellectual property in licensing, merchandising, and promotional deals. Disney and General Motors, for example, each have scores of licensing and promotional deals in place—from Disney Toys to Goodwrench Tools.
Organization of Chapters

As the subtitle to this book implies, we’ve organized our material broadly into three areas. First is the historic foundation and current status of the laws affecting rights of publicity. It is a complex topic and we have tried to condense it such that not only do we provide a brief history of the origins of rights of privacy and rights of publicity, but also that we lay down some of the defining rights and protections under the law. As well in that first section, a number of landmark cases are summarized for the reader. Finally, we take some time in chapters 5 and 6 to detail the network of state statutes and state common laws of precedence that primarily govern rights of publicity along with federal trademark law. We refer to it—appropriately, I think—as a patchwork quilt of laws. I believe, therefore, that chapters 5 and 6 are a must read for any casual reader, student, legal advisor, talent or business advisor, or celebrity.

Part 2 is a short section with the title “Analysis of Your Client’s Worth, and to Whom.” It starts with a look at the similarities between traditional brands and celebrity brands based on the ROP controlled by a given celebrity. This is followed by an analysis of the various stakeholders who are interested in that value, why they are interested, and why value changes depending on their point of view. And finally, we deal with one of the key questions: Does celebrity endorsement work from a business point of view? The answer is yes, and we review the scientific literature as well as mini case studies to drive home that answer.

Part 3, which focuses exclusively on valuation of ROP, as well as what goes into the pricing of various deals, will be to many readers the most important section from a practical day-to-day point of view. There we begin by explaining how to value intellectual property of all types, and then focus on the challenges specific to rights of publicity valuation. The last three chapters then cover the influences on pricing of celebrity deals, the key factors that drive successful celebrity endorsements, and the data needed to make rational pricing decisions.

Current Legal Status

In Part 1, we look at a comparison of the legal basis for Rights of Publicity protection on a state-by-state basis. The analysis is done by statute and by common law. In that same chapter, Chapter 5, we also look at postmortem rights. In Chapter 6, the question of international protection is examined in various countries. We have chosen ten countries to review in brief detail for the variety of protections in those countries. It is also interesting to note that in at least in one of those jurisdictions, the Isle of Guernsey, there is now a law and an international registry where a person’s right of publicity can be registered and protected—this we see as an increasing international trend.

Analysis and Valuation of These Rights

Part 2 focuses on the analysis of what a celebrity’s right of publicity value may actually be, and depends heavily on case studies. We then carry on by looking at the key question, which is: Who cares how much your client is really worth, and why do they care?
Paying close attention to every stakeholder involved in the celebrity’s endorsement, the following chapters focus on the primary reasons for establishing a right of publicity value. Valuation is needed not only to measure comparative market value, but also for acquisitions, sales, transactions, and securitization, as well as for valuing estates and trusts.

One of the more important chapters from a valuation point of view answers the question: Does celebrity endorsement really work? The answer, of course, is yes, and we offer some compelling data that proves that. In Chapter 11, we also look at analyzing rights of publicity beyond the field of play while establishing value ceilings for major endorsement deals and looking at the stability of major endorsement values over time.

Part 3 of the book covers the discipline and methodologies that are needed to value a person’s right of publicity. Specifically in Chapter 12, we cover the methodologies that are used, in some detail, while illustrating with a case study on Woody Allen how different methodologies can be used to verify a value. The challenges in valuing rights of publicity are also looked at in some detail and the data required to perform accurate valuations is presented and analyzed in Chapter 13. We also take an actual right of publicity contract and analyze all the elements in some detail to illustrate that what may appear at first to be a $10 million one-day payoff in fact works out to a much less glamorous daily pay scale.

Summary

Because each of the three parts of the book has its own introduction and summary of the material in that section, it’s not necessary for me to repeat any of that here. Instead, it’s more important for me to alert the reader to the general tone of the book. This is a treatment of a topic that is as complex as any in the worlds of both intellectual property and marketing. Further, it is a most unusual mix of those two disciplines. Consequently, it takes a unique set of skills to operate successfully in this arena. Therefore, it takes a unique basic knowledge in both the legal side of rights of publicity and the marketing or endorsement side to ensure the best possible representation in deals, transactions, and negotiations that are undertaken on behalf of each party to a right of publicity project.

After 20 years of working with rights of publicity valuation, transactions, negotiations, litigation, and arbitration, this volume is, I feel, as complete a treatment of the practical, legal, and valuation aspects of the subject as can be found anywhere. Other than the occasional article, little has been written on the overall topic, and no thorough approach to the pragmatic issues of rights of publicity has been undertaken in a single volume. This, we hope, will fill that void, and answer the need for a balanced look at the topic from both the business/talent management and legal points of view.