

GUEST COMMENTARY

Legal landmines in a digital world



Grace Johnson

Through technology advancements, the marketing world has adapted to the way consumers communicate, shop and spend. Marketers find ways to grab the attention of audiences and stand out in the barrage of information, images, sounds and opinions

constantly pummeling consumers through social media, streaming music, podcasts and blogs. Hand-in-hand with the advance of technology and new ways to inform and attract consumers comes new risks of legal liabilities.

Celebrity endorsements are popular in advertising. Shaquille O'Neal promotes insurance, and Jennifer Garner pushes credit cards. As celebrities are on social media all the time, it is tempting for a marketer to use the digital presence of a celebrity to promote their product or service.

For example, when Kim Kardashian used vampire facials on her family's reality TV show, an Alabama doctor used her name and image to promote his practice. However, the doctor didn't have permission, and Kardashian sued him for violation of copyright, trademark and publicity rights, and false endorsement. While celebrity images are available online, they are not free for marketers to use for their own commercial purposes.

On the other hand, while a person has a right to control their own publicity, they don't necessarily have a right to use a photo of themselves taken and owned by someone else. In an interesting twist, photos of Liam Hemsworth taken while on location for a film, were licensed exclusively to the Daily Mail. Yet, one of these photos appeared (without its copyright information) on one of Hemsworth's social media accounts. The Daily Mail sued Hemsworth for copyright infringement. Other celebrities are facing similar issues with paparazzi photos reposted on their own social media accounts.

With technology advancements, infringement opportunities abound. It is easy to obtain, edit and convert images, videos and music found in the digital world, and since social media is so informal, there's plenty of content from which to choose. Often people using social media are not up-to-date on intellectual property (IP) laws and don't realize they are infringing on others' rights. Further, drafting of IP laws has not caught up with current technology, so many of these disputes have uncertain legal outcomes.

Even a big company such as MillerCoors (now Molson Coors Beverage Company) is not exempt from falling into the IP law maze. MillerCoors sponsored a festival at which Jason Mraz performed. After the festival, MillerCoors posted a portion of Mraz's performance in an Instagram ad. Mraz

sued MillerCoors for copyright, Lanham Act and publicity rights violations. MillerCoors defended stating it had obtained rights to the festival and video assets from the festival promoter. This case points out an important issue for event advertisers/sponsors. When contracting for rights in works arising from an event, the sponsor should confirm all additional rights of the artists/performers are cleared, beyond the rights owned by the festival organization.

Social media influencers are also a digital age marketing tool, and they provide a cost-effective way to get publicity of products to a large audience. While the influencer ad has been subject to false and deceptive advertising laws, the FTC has recently released new rules regarding disclosures the influencer is required to make. Similarly client testimonials are obligated to disclose their payment arrangements as well as make sure the testimonial reflects the typical consumer experience.

As technology advances present new ways to interact with each other and experience art, the law must evolve to address the new situations created by changing technology. Those involved in marketing should be diligent in investigating the rights of the works they use to present their products and services to their target audience. ▶

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