

CASE STUDY

Value of Celebrity Name and Likeness



THE ISSUE

Nevium debunks inflated right of publicity damages claim

ISSUES ADDRESSED

Right of Publicity

Unjust Enrichment

Name and Likeness Damages

False Endorsement

THE CHALLENGE

A renowned kitchen appliance brand was feeling the heat when it was hit with a multi-million dollar false endorsement suit over the use of stock photographs of a well-known culinary personality in one of their marketing campaigns. The classic chef had famously used the company's appliances in the past, and the independent advertising company hired to design the campaign had sought to remind consumers of that relationship by including several photographs on related pages within the brand's website. Despite the limited use of the celebrity's name and likeness, the plaintiff's damages expert asserted that the infringement was comparable to a highly compensated spokesperson transaction and claimed a large amount of damages. Nevium was engaged to refute these half-baked claims with an independent analysis to determine a fair and reasonable value for use of celebrity's name and photograph.

As soon as Nevium's experts reviewed the actual use of the images at issue, they recognized some important differences from typical endorsement campaigns that would have a huge impact on the reasonableness of the damages claims. Traditionally, celebrity spokespersons are able to demand such astronomical fees because the marketing activities involve a significant amount of their personal time. Photo shoots, TV spots, and appearances at live events are the meat and potatoes of a spokesperson's role. Yet in this case, the celebrity IP consisted of a few uses of publicly available stock photographs on the company's website and social media page. There was no actual celebrity involvement, no

focused endorsement campaign, no branded products, and no presence of the IP at the point of sale. Nevium concluded that the nature of the use of the subject IP was not comparable to usage in a multi-platform spokesperson arrangement or marketing campaign, and thus could not command the same level of compensation.

NEVIUM'S SOLUTIONS

“... Nevium concluded that the nature of the use of the celebrity name and likeness was not comparable to usage in a multi-platform spokesperson campaign ...”

To determine the actual impact from use of the Celebrity IP, Nevium analyzed the brand's website traffic and sales during the time of use, uncovering some surprising findings. Despite the past relationship between the celebrity and the brand, Nevium found no indication that the images of the celebrity had any positive effect as an element of the marketing campaign. In fact, traffic to the website actually declined during the infringement period. Further, a Q Score analysis, a survey-based measurement of a celebrity's familiarity and appeal amongst consumers, indicated that while the chef was certainly recognizable, he was not well liked within the target demographic. The celebrity chef had essentially no social media presence and his name commanded a lower than average pay-per-click (PPC) rate in Internet search advertising and social media advertising (PPC Rates). These factors, made this celebrity a poor candidate to act as a spokesperson to the company's typical customer base.

OUTCOME

In the absence of data supporting the claim that an implied celebrity endorsement had led to unjust enrichment for the appliance brand, Nevium turned to existing market data to determine a fair and reasonable value for use of the Celebrity's IP. Nevium considered the costs to obtain the stock photos and the cost to achieve a comparable number of customer impressions to calculate the price the advertising company would have expected to pay in an arm's-length, market-based transaction.

Using a Relief-from-Pay-Per-Click analysis, the Celebrity's low PPC Rates indicated the cost to an advertiser to obtain

an equivalent amount of online exposure would be a small amount rather than the large amount claimed by the Celebrity and his damages expert. With a thorough explanation of difference between a full-blown celebrity endorsement campaign and the limited use of name and likeness online; Nevium's data-driven analysis, report and presentation contributed to the appliance brand and its advertising agency arriving at a favorable settlement out of court.

CONTACT NEVIUM

For more information regarding Nevium Intellectual Property Solutions, please contact Nevium at -

Nevium Intellectual Property Solutions

858 255 4361 www.nevium.com

Doug Bania, CLP: dougbania@nevium.com

Brian Buss, CFA: brianbuss@nevium.com