

Brands that are a law unto themselves

Brand Beckham – as Posh and Becks are known – reveals the extent to which celebrities have become corporate brands in their own right. But advertisers need to tread carefully, says William Mulholland.



What do Elle MacPherson, Kylie Minogue, Mel Gibson and Jamie Oliver have in common? They all have registered trademarks in Australia.

Over the past few years we have seen the continued rise of the phenomenon now recognised as ‘celebrity branding’. The appeal factor that a celebrity can bring to a marketing and advertising campaign underpins a multi-million dollar industry around the globe. As a result, celebrities are keen to control the use of their personality and their image.

The line between person and brand has steadily blurred as celebrities have begun applying techniques from the corporate world to their individual careers. For the marketing and protection of their brand entity they are primarily using the means of trademarking. Registering a trademark enables celebrities to develop a ‘celebrity branding’ strategy that can help them commercially exploit their identity.

While there remains discussion as to the benefits of a person becoming a brand, it is clear that the threshold is met when they

appeals to those outside their original target audience.

In the US, Oprah Winfrey and Jennifer Lopez (the ‘J Lo’ brand) have been identified as two of the most successful celebrity brands. Common law and legislation in the US recognises ‘personality rights’ and incorporates publicity and privacy rights. The right of publicity means the celebrity’s right to the commercial value of their fame. It is considered ‘additional to and independent

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of their right of privacy’.

Under US law a person’s name, image or other aspects of personality cannot be used on merchandise without their consent.

HOMEOWN CELEBRITIES

While no formal ‘personality rights’ exist in Australia, there are options available to protect or exploit personality. A defamation suit may be available to a celebrity if an image was regarded as derogatory. In addition, an action for ‘passing off’, or

misleading or deceptive conduct under the *Trade Practices Act*, may also be available on a case-by-case basis. The test for such actions depends on whether or not the individual has a reputation and whether or not consumers would be confused or misled into thinking there was endorsement or connection to a product or service.

Paul Hogan provided Australian law with some useful test cases involving the successful protection of ‘personality’. In the well publicised case against Pacific

Dunlop, Hogan used the law of passing off to successfully stop an advertisement for Grosby shoes parodying a scene from *Crocodile Dundee*. He also stopped a trader from using ‘Koala Dundee’ to promote its goods and services.

ADVERTISERS BEWARE

For advertisers and marketers the use of celebrity branding is one of the most used and featured tools in the marketing armoury. However, care is needed to ensure

the client or the agency has obtained all the necessary consents and approvals. While Australian law has yet to follow the American lead, a celebrity can still take legal action to protect their brand.

A recent case in the Federal Court of Australia involved Leo Barry of the Sydney Swans. He sued Tabcorp and the AFL for the unauthorised use of his image in a Tabcorp campaign featuring the famous, game-stopping mark of the 2005 AFL Grand Final. That case is still before the court and at the time of writing was set down for mediation.

While Australian courts are yet to see a test case in relation to an infringement of a registered celebrity trademark, it is clear there is a growing trend among celebrities to register their personality as a trademark. The jury may still be out on how much of a deterrent a celebrity-registered trademark is but it does offer a protection above and beyond those whose image remains unregistered.

Everyone in the advertising and marketing industry needs to take extra care when dealing with celebrity branding. ■

William Mulholland is special counsel at McMahons National Lawyers.

Shoot for the stars and watch the dollars reign down

Enlisting a hot new celebrity for your latest campaign or product launch might break your budget but, used strategically, it could be the best investment you make. Maria Ngyren reports.

PR is as old as advertising and ‘buying’ a celebrity to endorse your product is a no-brainer, according to publicists. Celebrity equals media attention. Celebrity plus your product equals media attention for your product, which some argue amounts to free advertising.

“Why bang your head against the wall for the sake of \$100,000? Buy a celebrity to endorse your product and make it work for you,” PR industry veteran Max Markson implies.

In Markson’s world, there is a celebrity for every product and a product that is just

screaming out for celebrity support. He argues celebrity-driven PR campaigns have proven themselves against more traditional advertising and provide that much sought after ‘cut through’.

“Let’s look at the equivalent value of PR coverage versus the cost to buy column centimetres or seconds on TV or time on



Appealing: Jennifer Hawkins

Communications Prime MacSween, who’s worked with Elle MacPherson, Paloma Picasso and Donna Hay, says never “underestimate the pulling power of a celebrity”.

“People are so mesmerised by them and want to emulate their looks and behaviour:

radio... if we can get a four-minute story for a product or event on *A Current Affair* because there’s a celebrity angle, nationally that’s worth about \$400,000, whereas it’s about \$50,000 for a 30-second ad during the break so it’s definitely worth it if you can get a superstar. And you can get a superstar for about \$250,000 depending on who they are, and sometimes for a lot cheaper.” Markson explains.

“If you are the product manager for your brand and you ring the media and say ‘can I talk to you about this’, they’ll say ‘no, get lost’. But if you give the media a celebrity they’ll say yes.”

Director of Verve

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If a celebrity says they use a product, there’s a strong chance their fans will adopt that product too.”

RISKS AND RETURN ON INVESTMENT

Launch Group director Antonia O’Neill also believes in the power of celebrities and says the return on investment can be “eye watering”. She cites Launch Group’s work for John and Jack Singleton who paid for Paris Hilton’s trip to Australia and her association with their ‘raptor beer’ brand Bondi Blonde.

“Consumers are becoming immune to run-of-the-mill advertising. To do clever PR is riskier but it can work better. If it works, the return on investment is so extraordinary and the coverage you get is editorial, not advertising, so it has more impact,” O’Neill says.

“The PR campaign and editorial we got from Paris Hilton is translating into immediate sales, whereas with advertising, you’re guaranteed your message is communicated as you want it and you can control it, but whether it has any impact is another question.”

O’Neill believes any marketer would be

remiss in leaving the often-maligned discipline out of the marketing mix.

“Gone are the days you can target 18-24 year olds just via advertising alone... if they are your target market, PR has to be part of the marketing strategy.”

THAT WORD AGAIN, INTEGRATION

Ad man John Singleton knows how celebrity-driven PR can deliver instant brand awareness and cut through, but he says it must be within a broader brand-building marketing campaign.

“There is a communications supermarket out there and advertising is only sometimes the answer,” Singleton tells B&T. “It’s always been about integrated campaigns and PR is an important part of that.”

According to MacSween: “If you make a decision to build brand recognition or credibility by using a celebrity, it would be wise to use them in traditional advertising as well as in PR stunts, trade or business business campaigns to leverage their association further.”

And she says that any PR campaign should be complemented by other marketing initiatives.