

Insight: A Moral Compass - A Guide to Celebrity-Focused Morals Clauses

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Steven S. Sidman

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Celebrities sometimes fall from grace and their endorsements can fall with them. Corporate contracts with "morals" clauses are common and important, but need to be extremely clear on certain points, like what constitutes a violation, warns Steve Sidman with Carlton Fields in Atlanta.

Lance Armstrong. Mario Batali. Paula Deen. Olivia Jade Giannulli. Matt Lauer. Lori Loughlin. Ray Rice. Jussie Smollett. Kevin Spacey. Harvey Weinstein. Tiger Woods.

Some of these names belong to cultural touchstones; others to those who derive their fame from a narrower demographic. However, all of them belong to celebrities who experienced the proverbial "fall from grace," in which their own words and deeds have caused their careers and the lives to take truly dramatic (if sometimes temporary) turns for the worse.

Consumer brands, studios, networks, streaming services, teams and leagues all make massive investments (not only in form of cash, but also via the allocation of human capital and other resources) in their star performers' names, likenesses and personal services.

The use of so-called "morals" clauses in services agreements, licenses, and other contracts is one of the primary means by which corporations that do business with high-profile performers seek to protect their investments against the talent's appetites, foibles, weaknesses and, in certain cases, criminal impulses.

Morals Clauses Aren't New

Morals clauses for talent have been around in one form or another since prior to the Great Depression, and were even used (successfully) as a means of political retribution during the McCarthy Era. As social norms became less stringent in the 1960s and '70s, and as opportunities for media exposure grew, opportunities for stars to earn tons of money shilling for brands similarly increased. Consumer brands and service providers were happy to oblige, and the agreements that were struck often included morals clauses that were, at least in theory, heavily negotiated.

A typical morals clause goes a little something like this:

"Company shall have the right to terminate this Agreement if Artist knowingly and publicly disparages the products or services of Company or is charged with a crime **involving moral turpitude**, notwithstanding any subsequent dropping of such charges, and such charges become known to the public, or if Artist is otherwise involved in activities that subject Artist to widespread public contempt and/or which materially tarnishes Company's image. In the event of such termination, no further compensation shall be due you or Artist, other than that theretofore earned and due and then unpaid. Furthermore, Company shall be entitled to a refund of any Fee unearned as of the date of termination."

For both brand and talent, clearly defining the offenses that invoke the morals clause (and the attendant remedies for breach) is crucial. The provision above, from a massive product endorsement deal with a major female recording artist, proves that

clarity is not easily achieved. [What constitutes "public" disparagement? What's the moral turpitude standard? What does "materially tarnishes Company's image" even mean?]

Litigating a client's way to answering such reasonable questions would be time-consuming, expensive, fraught with uncertainty and potentially counter-productive. Moreover, legal precedent varies by jurisdiction.

Violations Must Be Clearly Stated, Understood

Therefore, for all interested parties, Benjamin Franklin's maxim that an ounce of prevention is worth a pound of cure applies in drafting these provisions. Because it's all about the projected image, isn't it?

Goods and services providers seek stewards for the image they want to project to the pool of potential customers. Talent wants associations with the providers of goods and services that (at least appear to) enhance their performance, or align with their values. And, today, the potential for adverse impact in the broader marketplace is limitless, due not only to the nature of the 24-hour news cycle, but also to the almost instantaneous, global nature of news dissemination.

Therefore, the parties should prepare agreements that not only clearly state what constitutes a violation (accusation of a crime versus actual conviction; what constitutes actionable public contempt or image tarnishing, and can it be measured objectively?), but also the remedies available to an aggrieved party.

Clearly, in the latter category, the right to suspend the agreement's term and/or to terminate the agreement (and end payment obligations) is crucial. More strident remedies include a so-called "claw-back" right, whereby the party making the payments would have the right to recover those previously made.

Further care must be taken in those situations in which the talent is also an owner of the business, such as the cases of studio mogul Harvey Weinstein and chef-restaurateur Mario Batali.

In such instances, it has become *de rigueur* for the company to announce that the accused is "stepping away" from the business. But what does it mean to "step away"? Not being involved in day-to-day operations, or not being physically present at a business, may be insufficient in a volatile marketplace. It took more than a year for Batali to actually be extricated from his venture with Joe Bastianich. Therefore, it is critical to include a mechanism for the removal of the bad actor, which may incorporate some or many of the concepts that apply in the case of independent contractors.

Finally, talent with significant leverage also should consider whether they should require reciprocal obligations from their corporate partners. If a brand takes a position or commits an act that could damage the talent's image and the value thereof, the individual may want to disassociate herself with that brand, not only by ending the term, but also by terminating the rights to use her name and likeness.

Now, more than ever, morals clauses should be drafted for clarity and in a manner reflecting the market realities of the day.

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Author Information

Steven S. Sidman, of counsel in Carlton Fields' Atlanta office, has practiced law for more than two decades in the business of pop culture. He represents creative talent and entrepreneurial ventures, including multi-Platinum® selling recording artists, songwriters, producers and mixers, Michelin®-starred chefs and restaurateurs, and film and TV producers.

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