USING TWEETS AS ADS: LESSONS TO LEARN FROM THE “INSIDE LLEWYN DAVIS” CONTROVERSY

Category: Commercial Law,Media and OTT
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The promoters of the Oscar contender movie *Inside Llewyn Davis*, created controversy earlier this year. They used the tweet of well-known film critic AO Scott to promote the movie in a New York Times ad. They did this despite Scott refusing to give them permission. The controversy was fortunately amicably resolved.

If, as a minimum, you consider the following two issues, you will probably be going a long way to avoiding any trouble which may not be as easily resolved.

Twitter’s terms and conditions

Before using Twitter as part of a campaign, consider Twitter’s terms. Twitter makes three important points. These are that:

- The rights to any content submitted, uploaded or displayed on or through Twitter are retained by the person who posts the content;
- Because it respects the content (intellectual property) rights of such people, it will respond to any valid notices of alleged copyright infringement; and
- Importantly, you need to get “*the users’ permission before using their content on a commercial durable good or product or creating an advertisement that implies the sponsorship or endorsement on behalf of the user or…uses of Twitter Content that features the name, likeness, or identifying persona of a person.*

Twitter’s terms will not govern any use of Twitter content posted outside of the Twitter services, which makes the second point important.

Laws relating to intellectual property, dignity and

privacy

It may be tempting to think that no real harm could come of using tweets in a print, online of television campaign, where Twitter's terms would not apply.

We sometimes forget that celebrity figures take great pride in their image and for the most part, are obsessive compulsive about who may exploit their image (including their words or tweets in this case).

A celebrity whose tweets are used, without permission, to promote your client's brand, may argue that he or she should be compensated. Because the celebrity probably owns copyright in the tweets, he or she will argue that his copyright has been infringed. This may then result in a copyright infringement claim.

Another argument that a celebrity may raise is that his or her right to personality, dignity and privacy has been infringed. Examples of celebrities raising these arguments include:

- Vanna White, a well-known game show host who hosted "The Wheel of Fortune" in the 1980s. Vanna's outfit for the show was usually a long gown, blonde wig and ostentatious jewellery. Samsung ran a series of adverts, where it had a female shaped robot, dressed in a gown, wearing a blonde wig and large jewellery, to advertise its VCRs. Vanna successfully took action against Samsung claiming that the advert clearly referred to her and implied that she endorsed Samsung's product.
- Kim Kardashian, who took on clothing store – Old Navy. Old Navy ran an advertising campaign featuring a model who resembled Kim. Kim instituted a lawsuit claiming that the campaign was intended to mislead the public into believing that she was appearing in the campaign. The matter was eventually settled.
- Television personality Basetsana Kumalo, who instituted action against Cycle Lab, a cycling goods retailer. The action was based on Cycle Lab's use of a photograph of her in an advertisement, without her consent. Basetsana's action was successful.

So, very much like White's outfit, and Kim and Basetsana's images, celebrities could argue that their tweets could be regarded as an extension of their image or personality and that their right to protect these had been infringed.

There haven't been many cases similar to Scott's, so this area of the law still needs to be clarified. For now, we suggest that you read Twitter's terms and conditions (they're really not that complicated) and wherever possible, try to get the celebrity's consent before using his or her tweet.