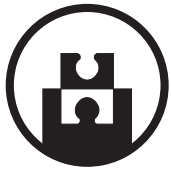


THE *Licensing* Journal

VOLUME 23 NUMBER 3

Edited by the Law Firm of Grimes & Battersby



Toy Licensing **Frederick Cohen**

Hitching Your Wagon to a Star

When consumers hear a familiar voice on a television commercial or see a recognizable face in an advertisement, they perk up and notice the product being promoted (at least that is what the manufacturers and retailers hope). Celebrity endorsements in the toy industry can create excitement for parents, children, and the industry. Potential risks exist, however, when marketing a toy through a famous spokesperson, and a contract with the celebrity should be used to minimize and allocate those risks.

Celebrity toy endorsements can generate great benefits by catching the attention of media-saturated consumers and by lending the celebrity's aura to the toy. Toy companies and retailers are typically enthusiastic about anything that helps a toy stand out in the crowded marketplace and may therefore be enthusiastic about a celebrity spokesperson. In some cases, a toy company may be more likely to succeed with a celebrity endorsement when children *and* parents respond well to the celebrity. Parents and their children sometimes watch television together, and parents are often the

toy purchasers, so a celebrity toy endorser who is attractive to parents as well as children can be all the more beneficial. Indeed, the combination of a toy that appeals to children and a celebrity endorser who appeals to parents might be the perfect mix. A television commercial for the Little Tykes toy cook set, for example, features a voiceover done by Wolfgang Puck, and the commercial for a toy post office set by the same company uses a voiceover by John Cleese. Children may not recognize the names or voices, but their parents will.

Why would a celebrity want to endorse a toy, aside from the financial benefit of an endorsement fee? Some celebrities might try to enhance their own images by being perceived as fun, child-friendly, or light-hearted.

Of course, if the celebrity's star falls, his or her endorsement of the toy might lose value or even become detrimental to toy sales. The celebrity might become the subject of scandal or might simply turn out to be a "flash in the pan," fading into obscurity after a brief moment of fame.

Similarly, the toy company generally accepts the risk that the celebrity's fees might cut into the

amount it would otherwise receive in profits. On the other hand, if the celebrity endorsement causes a toy's sales to skyrocket, the toy company (and the inventor who receives royalties based on profits) might end up doing quite well.

The celebrity endorsement agreement clarifies the rights and roles of the parties and can aid in minimizing the risks involved. The celebrity endorser usually receives a lump sum for his or her services; half may be paid on signing, with the other half payable after the advertisement is created. The sponsor may have the option of extending the agreement, in which case the celebrity is paid additional amounts. In some instances, the endorser receives a percentage of sales or profits.

The toy company typically retains the rights in commercials or other promotional materials or advertisements. Toward that end, the celebrity's services can be deemed a work for hire, meaning that the toy company will own the copyrights in the celebrity's work. The parties must also decide whether the celebrity has the right of approval of the commercial's script and other promotional materials. The toy company usually prefers to retain complete control over how the toy is presented, and the celebrity often retains various approval rights to ensure that his or her image is not harmed.

What if the commercial for the toy infringes someone else's copyright or the toy itself is defective?

The toy company should usually be willing to include an indemnity clause to protect the celebrity from liability arising from the advertisements or from the product advertised. The celebrity might be called on in the contract to indemnify the toy company in the event of claims arising in connection with the celebrity's personal opinion of the toy that deviate from that of the toy company.

Furthermore, the endorsement agreement could include language to the effect that if the celebrity becomes the subject of scandal or does anything to bring ridicule on

the toy company or the toy, the company can immediately terminate the contract. The celebrity is typically prevented from endorsing any competing product during the term of the agreement and sometimes for a period thereafter.

Marketing a toy through a celebrity spokesperson can involve benefits and risks, and the endorsement contract can enhance the benefits and minimize the risks. A toy might garner more attention from parents and grow in popularity through a celebrity endorsement; the magic that the celebrity lends to the toy might be

just the ploy to capture the eye and pocketbook of a consumer population overwhelmed with options. If, however, the celebrity loses his or her allure through scandal or otherwise, the toy sales could suffer as a result. The contract with the celebrity should clarify the rights and obligations of the parties in order to increase the benefits and decrease the risks.

Frederick Cohen is a partner with Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd., in Chicago, IL.

Reprinted from *The Licensing Journal*, Volume 23, Number 3, March 2003, pages 25-26, with permission from Aspen Publishers Inc., A WoltersKluwer Company, New York, NY 1-800-638-8437, www.aspenpublishers.com