

ONLINE BUSINESS, CELEBRITY & INTELLECTUAL PROPERTY LAW

From a legal standpoint, what should you do if your business has an online presence and is generating revenue online and/or you have become somewhat of a social media star/influencer/celebrity?

Social media use raises legal issues, including those governed by Trademark & Unfair Competition law, Copyright law, Privacy & Publicity laws, Defamation, as well as Advertising and Marketing laws.

The identity of celebrities has changed of late to include a new category: the social media influencer. Such celebrities have large online followings and use this reach to generate advertising revenue. However, where such new avenues blossom, new and unique legal and business issues also rise.

Endorsements require disclosure. If you are a social media influencer/celebrity and are being paid to endorse a product or service, the government, through the Federal Trade Commission, mandates that you disclose when you are paid to make such endorsements. This thirst for transparency extends to even when the influencer receives a free product (e.g. hand cream, tea etc...) or service (facial, haircut, hotel stay) and then positively mentions it to their followers. You need not worry if you have a small following, as the FTC does not typically pursue individual influencers. However, if you are a more prominent social media influencer/celebrity, it is best you keep abreast of such requirements. Additionally, as the companies you seek to work with have their own requirements for monitoring endorsements, learning how to comply with FTC guidelines will be important for maintaining positive relationships with these brands.

Unauthorized uploading of certain videos or photos are prohibited under Unfair Competition & Trademark Laws, as well as Copyright Law. Social media posts can sometimes infringe on a copyright, a trademark, or other IP rights of others. Trademarks protect the name and logo associated with a company and its products and services. They act as the face of the business or product or service and are integral in brand development and marketing. Since they are ubiquitous in society, uploading videos or a photo, whether intentional or not, can expose the social media influencer/celebrity to significant liability for trademark infringement. Since social media influencers/celebrities are exclusively dependent on their online presence, even inadvertent trademark infringement is risky, as it can also result in the user's Facebook or YouTube account being suspended, a situation that we successfully managed for such a client recently. Copyright law protects the *expression* of ideas. Similar to Trademark law violations, even nonintentional infringement of another's copyright (e.g. by posting photos or videos online) can expose the poster to significant liability.

Avoid violating Privacy and Publicity laws. The rights of publicity and privacy are separate rights to those granted under Copyright Law. In general terms, one can think of the right-of-publicity as being the right individuals have to control the commercial use of their identities, including their name, image, likeness and voice. This "right-of-publicity" is an increasingly important area of Intellectual Property Law as advertising strategies include more sponsorships and endorsements and as damages have risen substantially in such cases. This right of publicity extends to publicly known figures, however, courts will typically also

allow such claims by non-public figures if their image is used for commercial purposes without consent.¹ As one example, when the drugstore Duane Reade posted a paparazzi photo online of Katherine Heigl leaving their store and carrying their shopping bags and tagged her in their post, she sued and it turned into a \$6 million lawsuit based on false advertising and related claims. Privacy laws give you the right to control information about you, or as a Supreme Court justice summed up in 1890 as “the right to be left alone.” For example, this law can allow you to seek redress if someone secretly takes a picture of you in your house, or appropriates your name or likeness, or gives publicity to your private life, or does something to give publicity that unreasonably puts you in a false light before your community.

Becoming a celebrity/star is not easy, lest it be so online in this new category of fame associated near exclusively to online activity. Navigating an online business successfully to generate significant revenue should include a dose of legal counseling from lawyers with significant experience in areas of law, including Trademark & Unfair Competition law, Copyright law, Privacy & Publicity law, as well as Advertising and Marketing law. IP attorneys can assist online business owners and celebrities who use trademarks, logos, and copyrighted materials, as well as those who own the IP that may be improperly used on social media.

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Should you have questions related to the above or seek legal assistance on a patent, trademark, copyright or related matter, please email us at Mail@Falati.com. Your email must only be two sentences:² one to state your name, company’s name and contact info. and the second sentence to very generally describe the type of assistance you need.² We will follow-up with you thereafter.



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¹ This area of law is State driven, and levels of protection vary greatly between different U.S. States.

² Please note we are not your attorneys unless we converse with you and explain what needs to happen before we can become your attorneys.