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The How-To Resource for Communicators

## How to Make Sure Visual Storytelling Stays Within the Law

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Visual content marketing has been hailed as the future of PR. By many accounts, however, the future is here already: cartoons, memes, infographics, photos and videos are an increasingly large part of public relations and marketing communications, especially within social media. It is no wonder. Countless reports say tweets with images receive are retweeted more than those without, branded **Facebook** posts receive significantly more engagement when they contain photos and press releases with photographic and video content result in significantly increased page views.

Yet it is important to know that visual content marketing is like any other marketing or public relations platforms in that the same legal issues apply to all of these types of communications, regardless of format or distribution channel. [For a related story, please see page 1.] Below are some major legal issues PR execs need to be wary of when crafting visual communications:

▶ **Be sure to license your visual content.** Remember that all visual content is protected by copyright law. Copyright protects “original works of authorship,” which include, among other things, photos, video, cartoons, art and visual graphics. Failure to obtain consent of the copyright owner could lead to a costly copyright infringement lawsuit.

▶ **Be sure you have permission from any identifiable people who appear in your visual content,** especially celebrities. State and federal law protect commercial exploitation of a person’s name, voice, likeness and other elements of their persona. In many instances you can’t use such elements without written consent of the person appearing in the visual communications. Again, failing to obtain appropriate permission could spell legal disaster.

You might remember the image tweeted and posted on **Duane Reade’s** Facebook wall showing Katherine Heigl walking out of a New York City Duane Reade outlet, with the following caption: “Love a quick #DuaneReade run? Even @KatieHeigl can’t resist shopping #NYC’s favorite drugstore.” Heigl sued for \$6 million. The parties settled the matter with an undisclosed contribution by Duane Reade to the **Jason Debus Heigl Foundation**, which promotes animal welfare.

▶ **Be careful about showing other brands or logos in your visual communications.** While less of an issue for most visual communications, trademark law still may come into play. Trademark law protects names, titles, short phrases and other symbols that distinguish the source of one product from another.

In order for there to be trademark infringement, there has to be a likelihood of consumer confusion as to the affiliation, connection or association of one party with another. This is unlikely to happen in most visual content, but could still be a potential issue.

▶ **Be sure to disclose compensation paid to endorsers who appear in your visual content.** The Federal Trade Commission’s Guides Concerning the Use of Endorsements and Testimonials in Advertising require that any connection between the endorser and the seller of the advertised product that might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience) be fully disclosed. The FTC has been aggressive in enforcing the Endorsement Guides.

If your content includes a paid endorser (whether it’s a social media influencer or celebrity) and the payment is not reasonably expected by consumers, be sure to disclose that fact. The disclosure can be as simple as #ad or #sponsored.

▶ **Make sure you have a reasonable basis for any claims made in your visual content relating to the goods or services being sold.** A long-standing principal of FTC law is that marketers

must have a reasonable basis for all claims made in the marketing materials.

In other words, you need to be able to prove that your goods or services do what you say they do. The FTC looks at several factors to determine the level of support needed for any claim, including: (1) the type of claim made; (2) the type of product; (3) the consequences of a false claim; (4) the degree of reliance by consumers on the claims; and (5) the ability to obtain evidence adequate to form a reasonable basis for making the claim.

Fairly recent cases against **Sketchers, Reebok, POM** and other brands have shown that the FTC can be aggressive in enforcing this principal and that making unsupported claims can be costly.

While visual content will continue to grow as consumers become more and more inundated with data, such growth underscores the need for vigilant review of all of your marketing communications materials to ensure legal compliance. ■

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