

## Advertising + Marketing

# See You at the #Oscars: Social Media Guidance for Brands and Advertisers

### The Bottom Line

- Permission to use #Oscars this season is, no doubt, a win for brands and an exciting opportunity to join a highly watched event and social media conversation.
- But savvy advertisers know that posting about awards shows on social media can be a legal minefield and raises copyright, right of publicity and trademark issues.
- If you have questions about your upcoming social rollout, a best practice is to consult legal counsel to analyze the level of risk ahead of implementation.

### Update

Excited for the 95th Academy Awards? We are too! The Academy released updated brand guidelines with the same rules and restrictions as last year, except that brands are also permitted to use #Oscars95 in their social rollouts. Once again, brands do not need to be affiliated with or official sponsors of the Oscars to reference the Academy's accounts (@TheAcademy and @Oscars) or to use official hashtags (#Oscars or #Oscars95) in their social posts. Be sure to follow the "Do's" and "Don'ts" guidance below, which still applies. Now finish your campaigns and enjoy the show!

The 2022 awards season is upon us, and the savvy advertiser knows that a variety of intellectual property issues come into play when brands post about awards shows on social media. We all want to root for our favorite actor, film or director – but when do social posts cross the line and turn into legal trouble? *Can my brand account show support for a particular nominee or film? Which hashtags can my brand use in posts? Can my brand repost a celebrity meme?*

Answers to these questions will depend not only on the rules of the organization that administers the awards show, but also on laws governing trademarks, copyrights and rights of publicity.

If a brand wants to post or tweet about an awards show from its social account, it should contact the relevant academy or professional organization to get a copy of its social media and branding guidelines. Not all organizations have such guidelines, but if they exist, they can usually be obtained from the organization's publicity department. Social rollouts will differ depending on the rights and permissions granted by the various organizations. But even strict adherence to an organization's guidelines doesn't guarantee that your brand is within the bounds of copyright, trademark and right of publicity laws. Some of these guidelines are more permissive than the law may allow, as we discuss below.

### GRAMMYS vs. Oscars

Consider, for example, the approaches taken by the Recording Academy, which administers the GRAMMY Awards (the Recording Academy), and the Academy of Motion Picture Arts and Sciences, which hosts the Oscars (the Academy). The Recording Academy has indicated that use of GRAMMY trademarks will be considered on a case-by-case basis, and any such use requires its review and consent. To avoid any potential trademark issue with the Recording Academy, the wisest course is to avoid using the GRAMMY mark (including hashtags like #GRAMMY, #GRAMMYS, and #GRAMMYAwards) in posts, unless you have permission. Use of other content from the Recording Academy's social accounts (e.g., photos, videos) is likewise discouraged because it may raise copyright and right of publicity issues.

The Academy, on the other hand, has released more permissive Brand Guidelines with "Do's" and "Don'ts" for the 2022 Oscars Awards. We've excerpted some of the key takeaways and provide some additional GRAMMY's guidance below.

#### Do's:

- For brands, a good rule of thumb is to avoid using another brand's trademark in posts and as a hashtag. But this year, the Academy has made a special exception and is allowing brands to reference its social accounts and use its "Oscars" trademark in hashtags: So a brand can refer to @TheAcademy on Twitter and Instagram, @Oscars on TikTok, YouTube.com/Oscars on YouTube, and #Oscars across platforms.
- The Academy is also allowing brands to share content posted to the official Academy accounts. But think twice before sharing any content that shows talent or other individuals (e.g., photographs of celebrities or folks attending the awards) or elements that could otherwise be subject to IP protection (e.g., music, film snippets or artwork). Posting images of celebrities without consent poses a particularly high risk and may violate a celebrity's right of publicity and/or falsely suggest that the celebrity endorses the brand, and the use of film snippets or music may violate copyright laws. So this allowance by the Academy is not one many brands will be able to take advantage of.

- Name particular films and albums, rather than people, in your posts. For example, “Congratulations to Nomadland for winning Best Picture” is acceptable, but using the name of the Nomadland director is probably not, from a right of publicity perspective. So it’s advisable not to post “Congratulations to Chloe Zhao for winning Best Director.”
- Referencing an awards show category is ok. For example, “Can’t wait to see who will win Best Actress, Best Director, or Album of the Year” is acceptable, but specifically calling out the winner of these awards presents a risk.
- Brands should like this one: Be prepared for your Oscars-related posts to be shared on the Academy’s social accounts. The Academy has said it may share posts tagging the Oscars with its followers.

#### Don’ts:

- **Do not** mash up a brand name with the Oscars in one hashtag, e.g. #OscarsYourBrand, #YourBrandGoesToTheOscars. (But using #YourBrand and #Oscars in the same social media post is OK.)
- **Do not** use the names of any actors, actresses, producers, musicians, directors, or anyone associated with the awards show unless you have permission. Note that even using the first names of actors or musicians may raise intellectual property issues (e.g., Leo, Brad, Taylor, George).
- **Do not** use the Oscars’ name or hashtag in a way that implies affiliation, endorsement or sponsorship of your brand, e.g. #OscarsxYourBrand, #OscarsLovesYourBrand.
- **Do not** identify your brand as an “Official Oscars” provider of goods or services, unless cleared with the ABC Ad Sales team.
- **Do not** create any images, including memes, using Oscars’ trademarks, unless approved by the Oscars’ Marketing Team prior to distribution.
- As stated above, **do not** reference the Recording Academy’s official accounts or use the GRAMMY mark in posts without the prior review and consent of the Recording Academy.

### What About Memes?

Memes are the cultural currency of the digital age. Imagine that an iconic awards show moment is captured in the size of an Instagram square and spreads like wildfire on social, like Ellen DeGeneres and Bradley Cooper’s legendary Oscars selfie back in 2014. It may be tempting to join in a meme frenzy, particularly if it seems like countless other players are doing it, but it

would be wise to resist the urge to jump on the meme bandwagon. Using photographs without permission raises copyright issues, and using images of celebrities without their consent raises false endorsement and right of publicity issues.

---

### For More Information

Please contact the attorneys listed below or the Davis+Gilbert attorney with whom you have regular contact.

**Sara Edelman**

**Partner**

212 468 4897

[sedelman@dglaw.com](mailto:sedelman@dglaw.com)

**Gia Wakil**

**Associate**

212 237 1464

[gwakil@dglaw.com](mailto:gwakil@dglaw.com)