

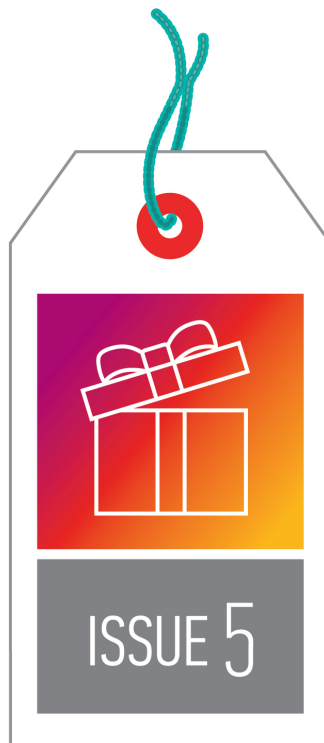
## Updates

January 05, 2023

New Year's Resolutions for Successful Brand Partnerships in 2023



As a society, we tend to admire celebrities, which can greatly influence our desire to purchase the products they promote. [A single celebrity endorsement](#) products have resulted from celebrity collaborations between Nike and then-rising sneaker brands today. Recent success stories (if not more). Many popular consumer products like Air Jordan was created in 1984 from a collaboration and has since become one of the most iconic sneaker brands like [SKIMS](#), among others, also



underscore that "celebrity" status sells.

While celebrity-brand partnerships can have huge upsides for companies and influencers alike, not all collaborations result in happy endings. On the brand side, celebrity partnerships are particularly powerful when they involve trustworthy celebrities. Generally, [an endorsement by an admired individual can make a product appear high quality or desirable to consumers](#). On the other hand, partnering with controversial or "loose cannon" stars can risk harm to brand value. This risk is especially evident given the current social climate in which celebrities are more likely to be called out for controversial words and actions on social media. For example, while Kanye West was once hailed as a creative genius, his recent antisemitic and racist comments have caused several prominent brands to sever ties with the rapper. Companies have also faced backlash over partnering with celebrities who were the subject of domestic abuse or sexual assault allegations. A celebrity can similarly harm their public image and "brand value" by partnering with mismanaged brands.

These issues illustrate the importance of conducting due diligence and securing reasonable contractual protections to help protect brand value and reputation before entering a business relationship. Below are key steps to help avoid potential public relations woes associated with co-branding and endorsement arrangements.

- **Do the homework.** Before diving into a partnership, brands and personalities alike should conduct reasonable due diligence on their prospective collaborators. For brands, this includes investigating a personality's online presence, background, and litigation history to identify prior indiscretions or activities that might conflict with or harm the brand's image or credibility. For personalities, this includes evaluating whether a brand's products and values align with their own. For both brands and personalities, it is also important to know well in advance whether one or both parties are operating under the terms of collective bargaining agreements because such agreements may add another layer of complexity. Reasonable due diligence can help brands and celebrities issue-spot potential problems down the line.
- **Secure contractual terms.** Brands and personalities should also negotiate contractual arrangements to protect their interests in case there is a falling out. These can include, for example:
  - Morals clauses, or morality clauses, to allow for the termination of a partnership if either partner acts or has acted in an illegal or highly morally offensive way that may harm a brand or personality's reputation.
  - Representations and warranties, including compliance with all applicable laws, rules, and regulations—such as Federal Trade Commission (FTC) *Guides Concerning the Use of Endorsements and Testimonials in Advertising* (Endorsement Guides) and related FTC guidance—and that any contributions will not infringe applicable laws or third-party rights.
  - Indemnification for violation of representations and warranties.
  - Terms governing what happens with the co-branded product upon termination or expiration of the agreement.
  - Designation of ownership of intellectual property (IP) derived from the partnership (including names, brands, logos, designs, and other materials).
- **Establish clear lines of communication.** Brands and celebrities should stay in close communication throughout the term of their partnerships. Ideally, brands working with celebrities will have programs in place to train them on their responsibilities and explain the types of statements they can make (and also which to avoid). Brands should establish open lines of communication to ensure quick resolution of potential violations of FTC rules and guidance, third-party IP rights, and applicable laws.
- **Monitor content, postings, and applicable news.** Each party should keep an eye on the other's public behavior to evaluate whether a potential issue (legal or otherwise) might be just around the corner. For example, a celebrity's failure to adhere to the Endorsement Guides' requirement of clear and conspicuous disclosure of all material connections—such as payment and gifts—could lead to liability not just for the celebrity but also for the brands they are promoting. In addition to legal issues, PR issues could also be preempted. Close monitoring of a partner's actions and the public's reaction to those actions can allow for early intervention and/or termination, which can help avoid legal issues and PR blowback—and, as a

result, preserve brand value.

## Takeaway

Co-branding and collaborations can benefit both brands and celebrities, but they can create significant reputational risk without protective measures. Brands and celebrities should therefore leverage trusted counsel to guide them through the partnership process—including through due diligence, IP clearance and protection, negotiating partnership agreements, FTC compliance, and ongoing collaboration and monitoring—to help protect brand and reputation value and assets.

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