

MODEL MATERIAL WHEN IT'S NOT JUST ABOUT LOOKS

Last issue, Melbourne-based fashion lawyer Sharon Givoni navigated the legal minefield of celebrity endorsements in the fashion industry. This issue she explores model releases, focusing on the dos and don'ts for labels wishing to use 'ordinary' models and revealing that even if the 'face' in question isn't famous, it's best not to take short cuts.



THE MODEL ON THE LEFT, RENEE SLANSKY,
MODELS FOR JEWELLERY LABEL UBERKATE
PHOTO CREDIT: HENRYK LOBACZEWSKI



IMAGE KINDLY SUPPLIED BY POLLI



/THE RISKS

The importance of getting signed consent from a model when you use his or her image for your fashion label cannot be understated.

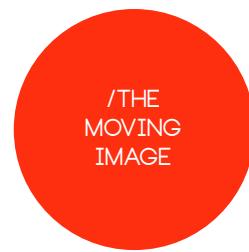
Should a dispute arise at a later date, this signed piece of paper, also known as a model release, becomes all-important. Without it, your ability to use some or even all of your promotional material can be jeopardised.



/EXAMPLES AND CASE STUDIES

For evidence of how lack of proper documentation can cause a campaign to unravel, read on.

The following instances exemplify how signed and written consent from the outset can avoid headaches at a later date.



/THE MOVING IMAGE

Imagine that a model initially agrees for you to use her image to promote your products in all formats.

However, when she sees a blown up image of her face passing by on a tram, she is mortified and insists that she never envisaged this. Ouch!



/SOCIAL MEDIA CAT-FIGHT

You invest in a professional fashion shoot of a young model showcasing your jewellery range. You then give her permission to use the images featured for her own modelling portfolio, a move that comes back to bite you when that same image is featured prominently on her personal social media page in association with a scandalous dispute within her private circle of friends. Reow!



/RIGHT FACE, WRONG LABEL

You pay a modelling agency to provide you with "talent" for your new label. You love her look and use the model regularly so that her face almost becomes synonymous with your business. Months later, you see the model's face boldly featured on promotional material for a competing fashion label. Yikes!



/I NEVER AGREED TO THAT!

You pay a professional model to smile for the camera. Post-shot, you have a conversation with her, making it clear that the pictures will be used on your website and for other business purposes. However, when you go on to use the image on your swing tags and social media pages, the model kicks up a fuss and demands extra fees. You didn't budget for that!

/ONE MAN'S TRASH IS ANOTHER MAN'S TREASURE

After a model shoot, the model demands that she approve which images you use for your business, even though you paid her generously to model for you. It turns out that your tastes and preferences vary on which pictures to choose. The model then insists on a reshoot with another professional photographer, all of course at your expense. Not thrilled!

/TICKING OFF THE BOXES

Model releases vary in length and detail. This will depend on factors such as, but not limited to, how much the model is to be paid, how important the images are to the business or how and where the images will be used.

IMPORTANT CONSIDERATIONS:

- *The purpose for the image and how it can be used;*
- *The media and manner in which it can be used (e.g. on corporate vehicles, websites, promotional brochures, in the context of YouTube videos etc.);*
- *The circumstances, if any, in which the model can use the images for his or her own portfolio, personal or social media purposes; and*
- *Whether the model:*
 - *Has a say in which images you choose to use;*
 - *Can demand additional money for future uses outside the terms originally agreed upon;*
 - *Permits you to use his/her name in marketing material;*
- *Can agree:*

Not to model for competitors (at least for a fixed period of time);

That you can modify the images in any way; and

That you can use images of him/her for the period of time you need to.

This list is not exhaustive and additional terms may be relevant.

/CLARITY AND CONSENT

All these scenarios, and more, can easily arise. Some are, in fact, based on real life examples that this writer has experienced while acting for clients. Whether they are professional models or not, people can become sensitive about how their image is used. So when there is some ambiguity as to what was agreed to, they may see it as an opportunity to hold your business to ransom, knowing that their image has become valuable to your business in some way.

The trick is to get their consent to use their image from the very outset, leaving no room for ambiguity. Australian design label, Polli, engages a number of models each year to feature in its collection for web and print. When engaging models, Polli is careful to obtain written consent confirming usage rights for both itself and the models.

/WHAT FORM SHOULD THE DOCUMENT TAKE?

These are a number of forms that a model release can take, two of the most obvious being a deed or an agreement.

Your lawyer can advise you on which is most appropriate in your circumstances.

If an agency already has something in place, remember the terms may often not be fixed in stone.

Therefore, you may attempt to negotiate the terms before you get the model in.

/CHILDREN AND MINORS

If using a person's image carries a value to your business, consent should be sought and the details of that consent should be put in writing and signed by the model.

/TIPS TO TAKE AWAY

Even if your 'model' is a good friend, always get a model release before using their image for your business.

- *If you regularly use a modelling agency to supply talent, ensure that the agreement is reviewed by a lawyer and covers everything you need.*
- *Plan for the future. When creating a model release, consider not only short-term but long-term uses of the image.*
- *If the model is under 18, their parent or guardian should sign the consent form.*
- *So... once you have considered all these issues, and a consent has been signed, the camera can zoom in and the film can roll.*

Say cheese!

UNAUTHORISED USES OF PEOPLE'S IMAGES THAT HAVE MADE THE HEADLINES:

In 2003, an airline came under media spotlight and was apparently asked to donate \$25,000 to charity after using the image of celebrity David Beckham without permission.

In 2009, the media reported that J-Lo and her husband took legal action against an upmarket pram manufacturer after a photo of the couple strolling with their twins in public appeared in the company's advertising.

In 2013, model and actress Kate Upton came across pictures of herself wearing Victoria's Secret lingerie from an old photo-shoot being reused without permission. She was, as the media headline, proclaimed, "Furious"!

In 2013, a woman in New York apparently took legal action against a stock photography service after her image was used without her permission as part of, out of all things, an HIV awareness campaign. The ad was published in the city she lived in, and featured her face alongside the words "I am Positive", naturally, it caused a media furore.

In 2013, there were reports that a social media site faced action after using photos of its users' children in its advertising on behalf of clothing companies, all done without the parents' consent.

/ABOUT THE WRITER



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