Product Endorsements
Beware of New FTC Guides

BY PAMELA M. DEESE

The opportunity to endorse a product means many things to an athlete or celebrity. Most often it suggests that you have arrived at a status where someone is willing to pay you because they believe that consumers will be motivated to act based on your recommendation. In fact, there is more to simply saying a product changed your life than an unwary endorser might recognize. The U.S. Federal Trade Commission (“FTC”) actually developed policies known as “Guides” that provide the template for appropriate participation in the business of product endorsements.

The Guides Concerning the Use of Endorsements and Testimonials in Advertising as revised contain two key aspects that advertisers and endorsers should take note of: First, there are changes pertaining to consumer endorsements, which eliminate the “results

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The Robot’s Record
Protecting the Value of Intellectual Property in Music When Automation Drives the Marginal Cost of Music Production to Zero

BY WILLIAM JACOBSON

The following essay is the overall winner of the GRAMMY Foundation®’s 13th annual Entertainment Law Initiative (“ELI”) writing competition, open to students of all ABA-accredited law schools. The competition invites students to research, analyze, and submit essays regarding a compelling issue facing the music industry and propose a solution. It promotes future careers in entertainment law by seeking out the nation’s top law students and giving them invaluable networking and educational opportunities. A national panel of legal experts judges the papers in a blind process and selects five finalists, including an overall winner. The ELI writing competition awards over $20,000 in scholarships, including all-expense-paid trips for the contest winners to

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PROFILE
Stephanie Vardavas

BY MATTHEW KIMMEL

Stephanie Vardavas wakes up in the morning facing a decision most would find daunting: What shall I do next? In depth and breadth, Vardavas’ career is enviable of sports law practitioners many years her senior and now, after nearly 14 years working in the general counsel’s office at Nike, after corporate and departmental reorganizations, it is once again time to find a new challenge. For her, though, the proposition is an opportunity. She credits her successes not to her sterling academic credentials or creative legal mind, but to her willingness to tackle new challenges: “Every professional job that I’ve ever had has exposed me to more, not fewer, possibilities. If I hadn’t left Major League Baseball (“MLB”) when I did and gone to work at ProServ, I would never have been exposed to tennis, golf, basketball, or football. And, in leaving ProServ and coming to Nike, I have just amped up the types of work and issues I’ve been exposed to. Most lawyers become more specialized as they practice longer. For me, happily, it has been exactly the opposite.” At this writing, Vardavas is preparing to leave Nike for her next opportunity. Her next stop, no doubt, will utilize the skills that she has developed throughout a robust

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and varied career, marked by one constant: change.

Vardavas’ willingness to embrace life’s unpredictability developed as a child growing up with the Baltimore Orioles, as the team evolved from a division doormat into a true powerhouse in the late ’60s and early ’70s. Their rise, like Vardavas’, was not without setbacks: “When I was 13, Dave McNally, a left-handed pitcher, won his first 15 decisions of the 1969 season, and as it happens, he had also won his last two decisions of 1968, so he had 17 consecutive victories. He took the mound on my 13th birthday and gave up a pinch-hit grand-slam home run to Rich Reese of the Minnesota Twins and managed to lose his first decision of 1969. I cried for 30 minutes. I hope part of that was hormones.”

Her love of baseball endured. With dreams of becoming commissioner of Major League Baseball (“MLB”), she attended Yale University, and soon became one of the first two trainees hired into the MLB’s Executive Development Program. Working with MLB’s labor division, the Baseball Player Relations Committee, Vardavas performed a guaranteed salary risk analysis for all the major league clubs. Just a year later, she became the American League’s Manager of Waivers and Player Records, overseeing contract signings and roster transactions such as waiver requests, assignments, and disabled list placements. Soon she enrolled in Fordham Law School, training in baseball by day and law by night before earning her Juris Doctorate in 1985.

One of very few women working at a high level in baseball, Vardavas caught one of her first big breaks when, impressed by her work, then-MLB Commissioner Peter Ueberroth created a second assistant general counsel position for her when she graduated. Of Ueberroth’s support, Vardavas recalls: “It launched my legal career in a way I’ll always be grateful for and I feel I’ve benefited from for the whole 25 years I’ve been practicing.” After passing the New York bar exam, she joined the Commissioner’s Office legal department, working on sponsorship, television, and licensing agreements for the league and advising individual clubs on player transactions and other matters. After several years in the Commissioner’s Office, Vardavas was ready for a change, and her next move would prove just as fortuitous.

At Yale, Vardavas wrote her senior essay on the Black Sox scandal and its relation to the creation of the Office of the Commissioner of Baseball. Her senior essay advisor was Yale’s president and, later, commissioner of baseball: Bart Giamatti (father of Hollywood actors Paul and Marcus Giamatti). As Vardavas contemplated her next move in 1989, she consulted her mentor, who was then serving as president of the National League. True to form, Giamatti advised her with his signature blend of wisdom and wit, urging her to: “Go, leave! You’re too young to suffer for this place.” He then connected her with his Yale classmate Donald Dell, the founder of ProServ, a seminal sports management company that had started out representing Dell’s Davis Cup teammates Arthur Ashe and Stan Smith, and then branched out into basketball, football, golf, cycling, and other sports. Vardavas impressed Dell, joined ProServ in 1989, and was soon overseeing the contracting process for ProServ’s athlete and event clientele and dealing with issues relating to endorsement, sponsorship, and television rights. With hard work and dedication, she would later rise to the level of vice president for Legal and Business Affairs. Vardavas found herself handling some unique properties, including the national merchandise licensing rights for Nelson Mandela’s first U.S. tour following his release from prison.

Vardavas recalls resolving a particularly memorable problem for former pro football quarterback Boomer Esiason. A college acquaintance of Esiason proposed opening a sports bar called “Boomer’s” near their alma mater, the University of Maryland. Despite Esiason’s objections to using his name on a sports bar, the plans forged ahead. Though ProServ had obtained a federal trademark registration on his name, Esiason understandably wanted to avoid litigation. Vardavas soon found a creative solution, recalling in typical self-deprecating fashion: “The guy had ignored our cease and desist letter, basically called us up and told us to go to hell, though in somewhat ruder language. I needed a strategy. But here’s the thing: Once or twice a year, I get a really good idea, and on this occasion the light bulb went on and it dawned on me that in Maryland, as in many other states, in order to hold a liquor license you have to show that you are a person of good character. So I wrote a letter to the Prince George’s County liquor authority.” The letter described the adversarial situation, suggesting that perhaps an applicant who would trade on the name of a local celebrity despite the celebrity’s objections might not rise to the level of good character required by law. A hearing was scheduled, and literally in the lobby of the hearing room the parties settled. The bar was renamed Baby Boomers, and by agreement sports-related decor was to be severely restricted. The bar closed less than a year later. “I don’t enjoy telling you that the bar went out of business,” Vardavas explained, “but it’s wrong for someone to be allowed to open a sports bar with a famous person’s name on it in the city where that person began to earn his first major fame, contrary to that person’s wishes. And I’m very proud of the work my team at ProServ and I did to prevent that from happening and also to prevent it from happening in a relatively quick, efficient, and painless way for our client.”

After eight years with ProServ, opportunity knocked once again, this time in the form of a sports marketing counsel position at Nike. With a new job came new challenges, including having to live west of the Potomac River for the first time in her life. Nevertheless, in 1997, Vardavas moved to Portland, Oregon, to join Nike, a place she describes as “one of the best places, if not the best place in the world[,] to do sports marketing.” As assistant general counsel, Vardavas initially dealt with endorsements and sponsorships, negotiating and drafting agreements with many of Nike’s highest-profile athletes and properties in baseball, golf, tennis, basketball, track and field, and cycling. For more than 10 years, she also oversaw product safety and compliance issues for Nike’s apparel, footwear, and equipment product divisions, as well as Nike’s licensees and subsidiary brands, including Converse, Umbro, and Hurley. “I’ve spent years working on the actual physical attributes of the product as a product safety and compliance lawyer here, so I’ve spent a lot of time actually in factories watching products be made, talking to designers and developers, learning about the risks, the hazards, the pitfalls, and the processes that we can
improve to make products better, and being exposed to a huge body of law relating to regulation and best practices in product safety, mechanical safety, and chemical safety.”

On the product safety side, Vardavas is especially proud of the global cross-functional team that she built and its high level of efficiency and responsiveness continuing years after her departure from the product safety work. Vardavas’ crack team brought together Nike professionals from all over the world and across a wide array of disciplines, including risk management, product integrity, product development, and even chemists working on product safety issues. Together, Vardavas and her product safety team were able to address significant issues arising in manufacturing and shipping, as well as major regulatory challenges, quickly and effectively. Thus, when Congress enacted the Consumer Products Safety Improvement Act (the “CPSIA”) in 2008, leading to massive documentation and compliance requirements for a company of Nike’s size, Vardavas and her team were ready. Within a matter of months, they set up a transparent, robust Web-based system to facilitate documentation of compliance with all product safety laws enforced by the Consumer Products Safety Commission. Certificates of compliance as well as information regarding when, where, how, and with whom testing was performed can now be uploaded and downloaded in one simple, convenient system, greatly reducing costs across the board.

In May 2009, Vardavas began working with Nike’s unparalleled trademarks portfolio. In her role as assistant general counsel for Brand Communications, Advertising, and Intellectual Property, Vardavas has been responsible for hundreds of trademark registrations across most of the world’s countries. Given the crucial role that Nike’s trademarks play in its marketing and branding efforts (the company considers its NIKE® and Swoosh® design trademarks to be among its most valuable assets, according to its 1996 10K report), Vardavas’ role is essential to the company’s success. The sheer volume of trademarks, along with the endless complex and contentious legal issues they inevitably raise, would give most attorneys pause, even ones as seasoned as Vardavas, but, again, she thrives on challenge. Consequently, she takes particular pride in her trademark work, especially with regard to resolving potential trademark conflicts. Though confidentiality prevents her from sharing details, Vardavas believes that her approach to recurring issues fostered a relatively peaceful “coexistence with other entities that have similar trademarks while protecting the essentials of our value.”

Reflecting on her time with Nike, Vardavas says, “I’ll never be glad to have left Nike, but I’ll always be glad that I worked here and I’ll never be sorry for any bit of the work that I did here. Everything that I’ve ever done has qualified me for whatever the hell the next thing turned out to be, and now it’s just my job to find it.” Her career trajectory certainly embodies this theme. With each job, she gained valuable experiences, developed essential skills, and left a sizable and lasting impact. While accepting that it is now time to move on from Nike, Vardavas savored her time there. She also recognizes the value of her willingness to step into the unknown: “You know, it was hard to pick up and move so far away from pretty much everyone I know and anywhere I’ve ever lived, but it was the best thing I ever did.”

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