



Local hero Joseph Schooling is the newest ambassador for German luxury label Hugo Boss. PHOTO: HUGO BOSS

# Schooling's fame now comes at a price – for advertisers

The star power of athletes is a promotional dream. But a Michael Jordan lawsuit is a game-changer in terms of a free ride

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For The Straits Times

Celebrity sells. We see famous faces everywhere – on billboards, on television, on public transport, on social media, in the newspapers and magazines. But do we ever wonder why a particular individual whose achievements in film, music or sports that have no relevance to the endorsed product would be attractive to consumers?

Why would Jura appoint Roger Federer to be its global brand ambassador for coffee machines? Why would Novita engage singer Kit Chan to endorse air sterilisers? Would fans of Cristiano Ronaldo and Beyonce eat KFC or drink Pepsi because their idols are the spokesmen for these brands?

And, of course, would Singapore sports hero Joseph Schooling boost sales at Hugo Boss and DBS Bank?

The answer is that using a celebrity in advertising, product merchandising and other commercial contexts is likely to have a positive effect on consumers' brand perceptions and purchasing decisions. This is referred to as the "positive halo effect" within branding and marketing research.

In buying a product associated with a celebrity, the consumer can buy into some of the glamour, self-indulgence and decadence of the charmed life of a movie star or into the athleticism and success of a sporting icon.

The concept of celebrity – with its attendant notions of adulation and popularity – is signified through, for example, an entertainer or athlete, and the resulting product is a cultural symbol replete with widely identifiable meanings.

Contemporary celebrities function as shortcuts for the firms to give their products distinctive identities and to create an association between the products offered and such ideologically desirable traits embodied by the particular individual.

While movie stars are represented as objects of aspiration and



From left: Tennis icon Roger Federer, singer Kit Chan, soccer stars present and past Cristiano Ronaldo and David Beckham are all brand ambassadors. Sporting celebrities, in particular, can wield huge power in influencing people's attitudes, choices and behaviours. PHOTOS: AGENCE FRANCE-PRESSE, REUTERS, BANSHEE EMPIRE



desire, the celebrity athlete signifies human transcendence and a love for the pure authentic game.

Sporting celebrities can wield immense power in influencing people's attitudes, choices and behaviours. According to Forbes, track star Usain Bolt earned US\$32 million (\$42 million) from sponsors last year, accounting for 94 per cent of his income. Federer's five-year endorsement of pasta brand Barilla is expected to net him about US\$40 million.

The top athletes have a sense of heightened ubiquity as global ambassadors and iconic representations of their sport. For example, Michael Jordan, Michael Phelps and David Beckham are not only top athletes, but are also emblematic of the sports of basketball, swimming and soccer, respectively. International athletes often earn more from endorsing products than from competing.

#### COMMERCIAL APPROPRIATION OF FAME

The right of publicity, broadly defined as the inherent right of every human being to control the commercial use of his or her identity, has been well established in the United States for more than 60 years under various state laws. It ensures that the right to control the commercial exploitation of an

individual's fame belongs to the individual with whom it is identified.

It has been invoked mainly by celebrities in the US to monetise their identity and to prevent unauthorised commercial uses of various aspects of their persona.

Outside the US, the "passing-off" action is the claim relied on by celebrities in common law jurisdictions, such as Australia, Britain, Hong Kong and Singapore, which do not recognise a right of publicity. Over the last decade, there have been relatively few passing-off claims by celebrities in Australia or Britain, compared to the flourish of right of publicity litigation in the US. There were none in Singapore.

The passing-off action protects goodwill as the attractive force that brings in custom by preventing a trader from gaining an unfair competitive advantage through associating itself with a well-known personality.

Courts have increasingly recognised that it is a prevalent commercial practice where, to gain a competitive advantage, goods and services are marketed to the public by associating them with a well-known personality who has developed an identifiable reputation among potential purchasers, thus appearing more desirable to consumers.

The typical celebrity claims made in passing-off actions are that the

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unauthorised use of name or image will mislead a significant proportion of consumers by implying that the celebrity approved of the advertiser/trader or its product; that the celebrity consented to the use of his identity by the advertiser/trader; or that there is some connection or association between the celebrity and the advertiser/trader.

In the form of "enhancement advertising" frequently employed in print advertisements where a celebrity is juxtaposed with a brand or product, there may be no explicit indication of endorsement.

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#### NO MORE FREE RIDES

Back in Singapore, on Aug 12, 2016, Schooling became a national hero when he won the country's first Olympic gold medal, in the 100m butterfly swimming event.

Overnight, corporations rushed to place congratulatory ads in the major print newspapers. Also,

many businesses capitalised on Schooling's victory to offer special promotions that would inevitably lead to an increase in sales – ranging from KFC promotions to Grab ride discounts.

In 2014, celebrity basketball player Michael Jordan successfully sued Jewel Food Stores in the US when the grocery store chain published a full-page image in a special commemorative edition of Sports Illustrated magazine, congratulating Jordan on being inducted into the Hall of Fame.

Jewel Food Stores agreed to offer the magazine for sale in its stores in the Chicago area, in exchange for a full-page of advertising space in the magazine. The ad featured a pair of Jordan's distinctive sneakers, congratulated a "fellow Chicagoan", and indicated that Jordan was "a shoe-in" for the Hall of Fame. The defendant's logo was featured prominently below the congratulatory message.

The court found a direct and substantial connection in this form of "image advertising", which was "aimed at promoting goodwill for the Jewel-Osco brand by exploiting public affection for Jordan at an auspicious moment in his career" and "implicitly encourages readers to patronise their local Jewel-Osco store".

Fast forward to 2016. Some of the advertisements after Schooling's Olympic victory featured the corporate logos prominently alongside his name or achievement in a manner not different from Jewel-Osco's Jordan congratulatory ad.

Although Guideline 13.1 of the Singapore Code of Advertising Practice states that "advertisements should not explicitly portray or refer to any person or his property unless his prior permission has been obtained", such a code is not legally enforceable and might not be sufficiently probative as proof of misrepresentation in a passing-off claim.

Considering the fact that Schooling was then an amateur athlete and yet to exploit the commercial value of his newfound fame, companies might have just a brief respite.

Ever the fine young gentleman, Schooling was then quoted as saying: "I saw some deals and a tea place offering free tea for me and my family... This is all still fresh to me, I'm trying to soak up the moment, trying to celebrate this with everyone, let it sink (in). Those endorsement deals and stuff, I'll think about them after this, not now."

Now that Schooling has turned professional and has deservedly begun to leverage his star status at home for commercial gain, there is no more free riding.

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