

All for Charity

By Reg P. Wydeven
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A few weeks ago I wrote about my favorite musical duo, Hall and Oates, suing Early Bird Foods for selling a line of granola products dubbed 'Haulin' Oats.' Daryl and John created their own company, Whole Oats Enterprises, to hold federal trademarks for their works, including the name 'Haulin' Oats.' In their suit, the pair alleged Early Bird was attempting to "trade off of the fame and notoriety associated with the artists."

A celebrity's image can be a very lucrative thing – even after death. I mentioned that Jerry Garcia's family also created a company to manage his image, licensing it for products like a Chia Garcia pet or Cherry Garcia ice cream. The family wants to control the use of Garcia's image to ensure it wouldn't be used for products he wouldn't have endorsed and prevent it from being used in bad taste.

Reasonable people can disagree on what constitutes bad taste, however. I'll never forget watching the Packers win Super Bowl XXXI when Fred Astaire came onscreen, revived from the dead and dancing with a cordless Dirt Devil vacuum cleaner. While some people loved the ad, I found it cheesy and a little unsettling.

Robyn Astaire, Fred's 46 year younger widow, inherited the rights to his film clips when he died in 1987. She was stingy with the rights, however, and refused to lend clips to the Kennedy Center for the Performing Arts for a tribute to Ginger Rogers in 1992. That's why it was surprising when she sold the rights to Dirt Devil, claiming "Fred would have wanted me to do these commercials," because she purportedly depleted "much of my financial security over the years to prosecute infringers" of his image.

Robin Williams, however, found a unique way to deal with his likeness. Because his family is fighting over his personal belongings, such as jewelry and memorabilia, Williams' trust was filed with the court as an exhibit. In it, the late comedian bequeathed the rights to his name, signature, photograph and likeness to the Windfall Foundation, a charity set up by Williams' attorneys.

The catch, however, is that the foundation cannot license right of publicity until 25 years have passed since his death, or August 11, 2039. Needless to say, we won't be seeing Mork from Ork in a vacuum cleaner commercial for quite some time. In addition, if the Windfall Foundation no longer exists, the trust dictates that his rights shall be distributed to other tax-exempt charities that support similar causes, such as Doctors Without Borders, AIDS, and Make-a-Wish.

Because of Williams' success and popularity, the rights to his likeness could be extremely valuable and sustain a charity perpetually. That's why it's shocking that Michael Jackson's family is arguing that the King of Pop's image is not worth much. Of course, the family is arguing with the IRS in U.S. Tax Court.

The IRS claims Jackson's estate owes more than \$500 million in death taxes from his publicity rights plus almost \$200 million more in penalties. Because Williams left the rights to his likeness to charity, it will pass tax-free.

I've offered the rights to my likeness to a few local charities. They all politely declined, claiming they were already not-for-profit without my help.

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