

Scandal Serves as a Reminder of the Importance of Morals Clauses

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This week, long-time Subway spokesperson Jared Fogle reached a plea agreement on charges of child pornography and having sex with minors. Although the sandwich shop noted that it no longer has a relationship with Fogle, that relationship will remain etched in the minds of consumers for years to come. Many marketers are saying silent prayers for the victims, while hoping that their celebrity spokespeople stay on the right side of the law. And that brings to mind the topic of morals clauses.

Morals clauses generally give companies the right to terminate an endorsement agreement or obtain a reduction in fees, if the endorser commits an act that falls within the scope of the clause. Given what's at stake, the scope of that clause is often one of the most-negotiated provisions in these agreements. Endorsers naturally want the clauses to be as narrow and specific as possible. (For example, a clause might only kick in if an endorser is convicted of, or pleads guilty to, a felony.) Companies, on the other hand, want more flexibility. (For example, they may push for a clause that allows termination if the endorser's actions would subject the company to ridicule, contempt, controversy, embarrassment, or scandal.) There isn't a one-size-fits-all approach, but recent events demonstrate that companies should give serious thought to this provision whenever they negotiate with an endorser.

Although termination rights in morals clauses can help curtail future losses, they won't help the companies recoup the money they've already invested in the relationship. To help companies deal with those losses, at least one insurance company has offered a product "designed to help customers respond to risks from a celebrity endorser's public fall from grace, scandal, or unexpected death." Our friends at Drye Wit [wrote about this in January](#), but the post is worth revising now.