Time to Revisit Morals Clauses

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Over the past few months, we've witnessed a steady stream of sexual harassment scandals in Hollywood. Many companies are taking proactive approaches and

cutting ties with the men who have been accused of wrongdoing. Our colleagues at Labor Days recently discussed that issue from an employment law perspective. But it's also worth considering how this type of issue can play out it in the context of a celebrity or influencer agreement.

Morals clauses generally give companies the right to terminate an endorsement agreement, if an 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.) This type of clause, though, won't necessarily help if a celebrity is only *accused of* sexual misconduct. Thus, companies 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.)

Keep in mind that the effectiveness of your clause depends not only on its scope, but also on how it works in conjunction with other provisions in your agreement. Consider, for example, how things work if your payments are stacked towards the front of the term. You may be able to terminate for a breach later in the term, but you may not be able to recoup the money you've already invested. (That said, our friends at Drye Wit wrote about a type of insurance that could help.)

There isn't a one-size-fits-all approach here. A lot depends on the person with whom you are negotiating, the amount of money involved, and the nature and length of the campaign. However, the wave of recent scandals demonstrates that companies should give serious thought to these issues whenever they negotiate with a celebrity or influencer.