

Secondary brand associations: purveyor beware

[Business](#), [Marketing](#)



There are vague areas in the law and the requirements can vary widely, especially when marketing in other countries. To further complicate the process, states may have state laws that may restrict certain brand names. Petty points this out by noting that "[] roughly half the U. S. states" recognize the right of a celebrity to control their name and likeness when used in product promotion (47).

The legal requirements for branding and promoting a product often lie in the ability of the consumer to discern fact from fiction. The example of Bermuda shorts is an instance where no reasonable consumer would believe they are actually from Bermuda (46). However, the term Idaho potato may have a less legal foundation as consumers may reasonably assume they are from Idaho. Processes that have become more generically accepted into the market, such as Swiss cheese, may be allowed by the courts.

Adding to the complicated process of using endorsements is the legal requirement that any claims by a celebrity or expert must be factual. The expert must have the credentials to make the claim and the celebrity can only testify to their actual experience. This places the marketer in a position where they must carefully weigh what a court might consider truthful. If a celebrity says they use a hand lotion, but has only used it once to satisfy the marketer's requirements, the court may not uphold this as truthful. These gray areas of the law's attitude toward truth extend to the credibility of certifying organizations. They must be impartial and not established for the sole purpose of endorsements. This would imply that they must have reasonable standards that need to be met to acquire the organization's endorsement.

When planning a brand name and an advertising campaign, care must be taken to assure that it will not be held liable in future lawsuits. There are many gray areas and caveats that need to be explored before embarking on a product's promotion. What may play in Peoria, may not be acceptable in Denver. While an advertiser may benefit from celebrity endorsements, it demands that they adhere to truthfulness beyond the mere technical requirements. Courts may set a standard that is higher than the legal definition for the purposes of product promotion. Carefully analyzing all aspects of a campaign from brand name to advertising language can help a product successfully use secondary branding without incurring legal liabilities.