

BZ/Brief

ARTS AND SPORTS

Admakers love famous images. That's what makes both fine art and sports images – utterly different kinds – equally and very similarly advantageous to advertisers. Using either Da Vinci's "Mona Lisa" or Michael Jordan's photo will bring a host of immediate responses and rich connotations to an ad campaign. Obtaining permissions to use both kinds of images is also oddly similar.

When using fine arts or sports images, at least two (and often more) different levels of clearance must always be dealt with.

AND

Using fine arts or sports images in commercials can be troublesome, although usually in different ways.

Using Fine Art Images

The first level of clearance to be considered is whether the painting, sculpture, tapestry—the work itself—is under copyright (clearance needed), or is in the public domain (no clearance needed). Of two frequently used paintings, the "Mona Lisa" is obviously PD; Grant Wood's "American Gothic," showing two farm folks with pitchfork standing side by side (not so obviously) is still copyrighted and its use must be cleared and paid for. Much of the world's great art is ancient and part of the public domain, but the copyright status of more modern work must be checked, even though the artist may have been dead for years.

Caution—the creator of a painting (or other art work), or his heirs, usually owns its copyright, no matter who owns the painting. At least that is the position taken by most lawyers in the fine arts field. But – more caution – many museums take the stance that they actually own copyright in all their paintings, however old, and put fear into potential users by being very didactic and insistent about that claim.

The second level of clearance arises because you need to use a photograph or color transparency of the work, not the work itself. Whoever photographed the art to create the transparency/photo you are using owns its separate copyright and that person's clearance must be obtained, whatever the copyright status of the work. For example, museums typically own the photos of great art works in their collections and thus effectively control their use, whatever the copyright status of the work. Smart would-be-users might try and find another legal source for a transparency of the work they want.

Museums, artists and artists' estates can be very cautious and/or suspicious about commercial uses of fine art. Just about every cosmetic, perfume and fashion company has tried to obtain clearance to use many of the famous works in the collections of the Metropolitan Museum of Art in New York, and failed. The Met, which often owns the only photographs, generally permits no advertising use of the works it owns at all.

Often, the people who control fine art say yes to some uses and no to others. Grant Woods' estate and the Chicago Museum of Art have allowed the many humorous uses made of "American Gothic", but recently ruled out a use involving obesity. In similar fashion, a pharmaceutical company was denied permission to use some Da Vinci drawings of human grotesques, now believed to have had the disease for which a drug had been invented. The curator of the Queen of England's Collection, which owns the Da Vinci drawings and, more significantly, the photos needed to reproduce them, said no, as he believed such use was "too commercial".

Using Sports Images and Events

Star athletes show up in advertising of all kinds these days—so much so that one would think agencies had the clearance routine for their use down pat by now. And certainly everyone knows that athletes have to be paid for appearing in an ad. They may not be so aware that clearances have to be obtained from the estates of dead athletes for use of their names, photos, signatures or voices. But, **there may well be other levels of clearances required.** If the athlete is shown wearing an official or team uniform, use of the uniform must be cleared by the central office of the organized sport involved—the National Football League, Major League Baseball, the National Basketball Association, the National Hockey League (to name a few). Some league offices handle clearances better than others. This requirement can often be avoided by dressing the athlete generically, or by using a photo in which any indication of a uniform or team name has been taken out. For example, you could use a baseball cap without any names or logos on it, or airbrush out all indications of a baseball uniform—team names, numbers, logos or stripes.

If the athlete is shown at an actual sports event, a clearance may be needed from the organizer of the event—the Super Bowl or the U.S. Open, for instance. If you are using a photo or videotape of an athlete, you have to obtain separate rights from the photographer or the owner of the copyright in the videotape.

The Olympics present a special case. In 1978, the U.S. Congress passed the Amateur Sports Act of 1978, which granted the United States Olympic Committee the exclusive right to use, and by extension license, Olympic symbols, trademarks and names. The USOC has decided that only Olympic sponsors will be allowed to make commercial use of any official Olympic symbol, including medals. Thus, Mark Spitz, appearing in a commercial for a client of ours who was not an Olympic sponsor, could not wear any of his medals in an ad making use of his still considerable post-Olympic fame.

This world-class exclusivity derives from the fact that absolutely everyone in sports is supremely aware that advertisers pay big bucks for sports fame, and **everyone wants a piece of the action.** The sporting world's hyper-sensitivity to potential cash has reached such a point that recently the organizers of an auction of combined airline tickets, hotel accommodations and event tickets were not allowed to mention in promoting the auction that some of the event tickets were to the Super Bowl and the U.S. Open singles finals. The organizers, including the famous auction house involved, couldn't believe the sports people were serious. They were. Plus, teams and national sports associations may be involved in yet other ways. Always think about whether you will need this level of clearance when working with athletes. Creative admakers need to keep firmly in mind that, with famous images from sports or the arts, any little thing can turn their great idea into a turkey. Think about clearances first, before committing your agency's time and money to an idea that might not be allowed to fly.

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