

## The Artist's Team in the U.S.

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It's not easy to become a rock star these days -- if it ever was. Long gone are the days when a small group of self-contained musicians could productively tour the world, accompanied only by a friend serving as the band's roadie and manager. In a time when major label rosters are diminished and more and more people aspire to be professional musicians, artists are increasingly conscious of their identity as "brands". In the U.S., building awareness of their brands, including through means such as corporate sponsorships, endorsement deals, and sales of merchandise, is now less likely to be seen as "selling out", and more likely to be seen as acceptable, desirable, and even necessary.

There are really two aspects of the subject of branding in music – first, the notion of the “band as a brand,” that is, the artist's own brand identity; and second, the artist's interaction with other providers of goods and services (also brands) such as beverages, cars and cosmetics that may sponsor, endorse, or otherwise complement the artist's endeavors. The former, developing artists' own brand identity, may involve artists “licensing [their] music and image as an integral part of brand-building” which, one reporter contended, “largely has usurped selling music and concert tickets as many musicians' professional end goal.”<sup>1</sup> Examples of the latter – liaisons between artists and consumer brands – are legion: Justin Bieber with WalMart; Britney Spears with Pepsi; Lady Gaga with Virgin Mobile, Gilt Groupe, Zynga, and Polaroid; Eminem with Lipton, Chrysler, the National Hockey League, ESPN television, and Activision; Rihanna with Nivea; Carrie Underwood with Olay; various artists with Old Navy; T.I. with AXE Body Spray; Sick of Sarah with Dress Barn's Maurices chain; Train with Coca-Cola; OK Go with Samsung; Bob Dylan with Victoria's Secret; Jay-Z with the New York Yankees baseball team; various artists with MTV and Subway Restaurants; various artists with Mountain Dew; Santigold, Pharrell Williams and Julian Casablancas of the Strokes with Converse; Fergie with Dr. Pepper; Kiss with Dr. Pepper; T-Pain with Bud Light beer and Toshiba; Blur with Michelob Light beer; will.i.am and Slash with FloTV; Grizzly Bear with Volkswagen; The Heavy with Kia; Arcade Fire with the National Football League; various artists with Toyota Scion; various artists with Qdoba Mexican Grill; Chris Brown with Wrigley; Justin Timberlake with MySpace, Sony, Givenchy, Audi and Callaway Golf; Miranda Lambert with Cotton Incorporated; and Beyonce with Tommy Hilfiger, General Mills, DirecTV, Vizio, Nintendo, and L'Oreal. Although artists may do endorsement deals, magazine ads, etc. for consumer brands partly as a way of building their own brands (as well as a way to generate income, as mentioned below), in any discussion of artists and branding it is important to keep in mind whose brand we are talking about.

The public perception of what is acceptable commercial activity by artists has changed in the last couple of decades. Regarding the relationship between artists and consumer brands, producer/recording artist Pharrell Williams opined at the 2011 Cannes Lions media conference

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<sup>1</sup> Chris Lee, Don't call these artists sellouts, Chicago Tribune, Mar. 7, 2011, available at <[http://articles.chicagotribune.com/2010-03-07/entertainment/sc-ent-0303-commercials-music-20100307\\_1\\_product-placement-gum-lady-gaga](http://articles.chicagotribune.com/2010-03-07/entertainment/sc-ent-0303-commercials-music-20100307_1_product-placement-gum-lady-gaga)>.

that “brands are necessary for today’s acts.” Speaking on the same panel, Digitas executive Laura Lang projected that, in a few years, half of the music industry’s revenue could come from brands. While it may be largely true that “[s]purning brands has become a luxury restricted to artists (such as Radiohead or [...] Adele) whose profile and record sales are in rude health,”<sup>2</sup> it is worth noting that there are still artists who decline to enter into liaisons with consumer brands. Adele famously declared that it was “shameful when you sell out” in an interview with Q magazine: “It depends what kind of artist you wanna be but I don’t want my name anywhere near another brand. I don’t wanna be tainted or haunted.”<sup>3</sup> Other artists have turned down or backed out of specific branding deals for politically or socially-motivated reasons. However, whether they view the prospect of corporate branding deals as a golden opportunity or a necessary evil, for many current U.S. artists the question may be which types of corporate branding deals to do, rather than whether to do them at all.

Artists – as well as labels and consumer brands – should be careful when contemplating such partnerships. Entering into too many or the wrong type of collaborations can backfire for the artist, the consumer brand, or both. Christophe Caurret, music supervisor for the Paris-based agency BETC EURO RSCG, observes that successful music/brand collaborations require the creation of value for both the artist and the brand; sufficient time; and the building of a musical identity which gives a brand’s marketing campaign relevance and legitimacy.<sup>4</sup> Understanding the consumer is critical to connecting artists with consumer brands.

Artist representatives who are engaged in the delicate process of building their artist’s brand as a business would be well-advised to think of themselves as members of the executive team of a modern-day corporation. Recently it has been said that for aspiring musicians “the consensus is that serious success requires a serious team”.<sup>5</sup> The insight that success requires a team may be as useful to the artist’s advisors as it is to the artist. Much like a large corporation, the artist’s executive team can function smoothly and profitably if the work necessary to promote the artist is divided into areas of responsibility.

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<sup>2</sup> Dorian Lynskey, The great rock’n’roll sellout, The Guardian, June 30, 2011, available at <<http://www.guardian.co.uk/music/2011/jun/30/rocknroll-sellout>>.

<sup>3</sup> Quoted in Adam Sherwin, The secret of Adele’s success? No festivals, tweeting – or selling out, The Independent, May 24, 2011, available at <<http://www.independent.co.uk/arts-entertainment/music/news/the-secret-of-adeles-success-no-festivals-tweeting-ndash-or-selling-out-2288168.html>>.

<sup>4</sup> Christophe Caurret: Value, Time & Legitimacy: the 3 keys to brand-music partnerships (June 17, 2011) <<http://blog.midem.com/2011/06/christophe-caurret-value-time-legitimacy-the-3-keys-to-brand-music-partnerships/>>.

<sup>5</sup> Paul Resnickoff (paraphrasing panelists at the 2010 New Music Seminar), Live@NMS: Everything You Know Is Wrong..., Digital Music News (February 2, 2010) <<http://digitalmusicnews.com/stories/020210nms2>>.

A typical U.S. corporation's executive team would include a Chief Executive Officer or President, a Chief Financial Officer, a General Counsel, and perhaps from one to a dozen other executives with responsibility in the areas of strategy, sales and marketing, business development, product development, information technology, and/or communications, and perhaps also public affairs, human resources, and supply chain. Many corporations have a Chief Operating Officer in addition to a CEO. The positions will vary depending on the size of the company and the nature of its products or services, among other things.

Similarly, once they've reached a certain level of success, most artists in the U.S. will work with a professional team that may include a personal manager, an agent, an entertainment lawyer, a business manager or accountant, a marketing/public relations specialist, and others. These professional representatives and advisors take care of the myriad tasks necessary to manage the artist's career in an industry which continues to grow increasingly complex. Many top echelon recording artists have advisors, assistants and employees numbering in the dozens, some even in the hundreds. Of course, it is difficult for an artist to attract members to his team before he is generating enough income to pay them, and certain prospective team members – such as a head of security to ensure that the artist is protected from eager fans and paparazzi while on tour – may not be needed unless the artist wins wide popularity. The exact number and types of people on any artist's executive team may depend on several variables, such as how lucrative and complicated the artist's business activities are, whether or not she is signed to a label and/or a multiple rights deal, and how interested in and suitable she is for various sponsorship and endorsement opportunities.

Following is a closer examination of the parallels between a typical U.S. corporate executive team and the artist's executive team:

**Chief Executive Officer, Chief Operating Officer/Manager:** Most large corporations have a Chief Executive Officer who serves as the face of the organization. Sometimes the CEO may be referred to as President or by a similar title. While some CEOs are merely figureheads, most are the founder, the driving force, and/or the creative wizard who controls the internal direction of the company and motivates the company workforce. The Chief Operating Officer is charged with carrying out the general business direction as set by the CEO, and runs the day-to-day operations of the business. While the CEO acts as the “ideas” person, the COO is all business, and works to turn the CEO's concepts into the reality of profit.

In our analogy, the artist's manager functions as the CEO, and depending on the size of the management company, the COO as well. In a large management company, the manager may have an able second-in-command (or perhaps more than one) who carries out many of the daily tasks of the enterprise; this “day-to-day” manager then functions as the COO.

Most artist management contracts define the manager's role as one of guidance, advice and counsel to the artist in furtherance of the artist's career. The manager helps the artist select artistic and musical material and artistic collaborators; helps the artist create and manage her public image by coordinating public relations efforts; solicits, selects and supervises professional personnel such as accountants, lawyers, and insurance agents; and advises the artist on general practices in the entertainment business and the terms upon which the artist will render services to

third parties. Where there is a “day-to-day” manager, he will be tasked with accompanying the artist on tour, to interviews, recording sessions, rehearsals, etc., leaving the boss to concentrate on making big deals, creating opportunities and establishing the grand vision.

An important part of the manager’s job is to ensure that all the members of the team are pulling for the same goal – the success of the artist. This involves both finding team members who have “the right chemistry,” as Philadelphia-based attorney Lloyd Z. Remick describes it,<sup>6</sup> and avoiding decisions that benefit the team members rather than the artist. Conflicts may arise, for example, when a booking agent – who only makes money by booking appearances by the artist – wants to make a booking that is not in the best interest of the artist, or when a lawyer pushes for the artist to take a deal that he has found rather than a better deal that the manager has found. One factor which might add to the challenge of leading the artist’s team is that, unlike the corporate executive team, which generally consists of all company employees, the artist’s executive team is likely to consist at least partly of people who work for entities other than the artist or manager. When suitable, agreements between artists and such independent team members can be written to require the team member to achieve specified goals within a reasonable amount of time in order for the contract to continue. Successful managers, attorney Remick points out, “know how to use the best talents of the people around them,” and they advise the artist to do what’s designed to build her career as opposed to what provides the best short term financial reward.

**Chief Financial Officer/Business Manager:** The business manager is a role which is more substantial in the U.S. than in other countries. This role is similar to a Chief Financial Officer at a large corporation. The CFO is responsible for financial planning, record-keeping, and reporting, as well as for managing the financial risks of the corporation.

Normally trained in accounting, the business manager customarily receives all money due to the artist from all endeavors, including concert tour and live performance receipts; record company advances and royalties; music publishing company advances and royalties; endorsement, sponsorship, merchandising and fan club revenue; and other licensing income. The business manager also makes all necessary payments on behalf of the artist, such as taxes, insurance premiums, retirement plan contributions, commissions to management and other professionals, and salaries and other fees to those who have provided services to or on behalf of the artist.

Pam Malek, CPA, a partner at Glass Jacobsen Group in Los Angeles, has served as business manager for artists as diverse as Mötley Crüe, Blondie and Pimp C. Malek describes herself as “the artist’s personal CFO.”<sup>7</sup> According to Malek, “historically, accountants just paid their clients’ taxes, insurance and retirement plan premiums, but business managers of today do much more. Business managers assist their clients with estate planning, royalty reviews, tracking income sources, and they look for additional streams of income that can be created for their clients.” Like many business managers, Malek works closely with managers, attorneys, and agents to expand and streamline her clients’ income streams. For example, Malek provides her

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<sup>6</sup> Telephone Interview by Priscilla Mattison with Lloyd Z. Remick, Esq., (May 24, 2011).

<sup>7</sup> Telephone interview by Bernard Resnick with Pam Malek, Partner, Glass Jacobsen Group (July 7, 2011).

clients with detailed budgeting and financial forecasting, especially for concert tours. Much like a CFO, business managers work with concert production managers and tour personnel on the road to review contracts and budget future revenue and expenses, so that the artist can get an early picture of how much she can expect to earn on tour.

**General Counsel/Entertainment Lawyer:** Today's entertainment attorney is similar to a corporation's General Counsel. The General Counsel is the head lawyer of the corporation's legal department. The General Counsel often performs the role of supervising specialized attorneys (some within the company and some outside at private law firms) who deal with matters regarding particular legal expertise. In addition, the General Counsel attends board of directors meetings and other executive-level corporate meetings, where she contributes to the company's overall strategy.

Some entertainment attorneys work in boutique firms which focus strictly on transactional entertainment-related matters, while others work in firms which provides services in numerous practice areas. Like the General Counsel, for matters outside the entertainment attorney's area of personal expertise, such as divorce, immigration, real estate, sophisticated tax matters, or litigation, she will likely seek to refer the artist to other competent counsel. The entertainment attorney will then provide necessary input to, and may oversee these other attorneys in connection with the matters they are handling. The entertainment attorney acts as the liaison between the artist and the artist's executive team, on the one hand, and the other lawyers working on specific matters, on the other hand.

Also, similar to the General Counsel, the entertainment attorney consults with and advises other members of the artist's team, such as the manager, the business manager, and the agent. For example, the attorney may meet with the band and other members of the team before a big tour or an important television performance.

The entertainment attorney may review, draft and negotiate contracts; set up artist-owned entities; provide help and advice with matters pertaining to copyright, trademark, image rights, and other intellectual property matters; and attempt to settle or litigate disputes, among other tasks. She may be in charge of making sure that all of the artist's staff and outside vendors such as housekeepers and gardeners sign confidentiality agreements. The attorney may also solicit potential deals on behalf of the artist; however, she must be careful not to run afoul of state laws, such as the "Talent Agencies Act," California Labor Code §§ 1700 et seq., and the New York General Business Law §§ 170 et seq., which restrict who may procure employment for artists.

Ideally, observes attorney Remick, an entertainment lawyer has contacts and a feel for the business – and expertise not only regarding the "i's and t's of the contract" but also "what's left out or should be put in."<sup>8</sup>

**Vice President of Business Development/Agent(s):** Collectively, all the various agents who are working for a given artist function like a Vice President of Business Development.

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<sup>8</sup> Remick, supra, note 6.

Many states in the U.S. require that agents – broadly speaking, those who solicit employment for others – be licensed. Traditionally, the agent’s primary role in the music industry has been to contact venues, concert promoters and corporations looking for entertainers, in order to arrange for live performances by the artist. Agents are paid on a commission basis, collecting a percentage of the deals and bookings they solicit for their clients. The past few years have been a time of economic downturn not only in the general economy, but particularly in the entertainment industry. Live concert ticket sales and revenues have suffered declines. Accordingly, agents’ commissions from live concert bookings have correspondingly been reduced. Likewise, corporate branding opportunities have become more important to artists, both as a form of marketing support (since labels no longer spend what they used to), and as a way to replace revenue lost due to the erosion of the market for recorded music. Agencies have therefore altered their sales strategies to solicit other opportunities for their clients outside of traditional concert bookings, and have become active in the solicitation of merchandise, endorsement and sponsorship opportunities, as well as book deals, synchronization license deals, and other opportunities such as in fashion, television and film which help their clients expand the market penetration of their brands. Although there is usually one “designated” agent for each client, most large U.S.-based talent agencies now employ agents that focus specifically on the solicitation of brand sponsorships and endorsements, which are then presented to the designated agent for discussion with the “go to” person on the artist’s team for review and approval.

Some U.S. corporations also have non-executive marketing and public relations specialists who support the Vice President of Business Development. For recording artists, a similar person needs to be responsible for getting the artist’s music and name out to the public via a digital platform. Some artists have multiple people working on marketing and public relations (“PR”) matters. Marketing executive Jaunique Sealey observes that the available budget dictates the size of the team.<sup>9</sup> For example, if the artist is signed to a major label, there might be a brand partnership person at the management company, and also one at the label. Such redundancy, says Sealey, is not a problem if the various individuals can work seamlessly together. If the artist is independent, she points out, it’s “extraordinarily critical to know what components you need and what’s important resource-wise – what to supplement, how to make sure that function is being performed.”

**Brand and Enterprise/Artist:** What role does the artist himself play in this analogy to the corporate executive team? If the manager is the CEO, then the artist is both the owner of the enterprise, and the product itself. Although some artists are business-savvy and confident of their intended artistic and business direction, others are young, inexperienced, or otherwise unable to contribute much to the running of their business affairs. However, in an era when most artists have to be largely self-motivated to get any traction, the days of the passive artist are probably largely behind us. To reach the upper echelons of success, comments marketing executive Sealey, “you have to be the person that’s driving your creative vision.”<sup>10</sup> Consumers, she believes, are increasingly discerning, so it’s increasingly important for the artist to be “invested” and to have an “authentic connection and voice in the industry.”

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<sup>9</sup> Telephone interview by Priscilla Mattison with Jaunique Sealey, Executive Vice President – Business Development, Atom Factory, Inc. (May 27, 2011).

<sup>10</sup> Id.

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Any business requires cultivation. With rapid technological development, and continuing change in the structure of the music industry, it is of paramount importance that the artist conducts operations in a businesslike fashion. This includes hiring competent and reliable experts to assist in building and maintaining the brand, giving these advisors the resources to do their jobs well, motivating them properly, and where appropriate, keeping them employed long enough to have institutional memory. A team member may leave of his own volition, or may no longer be needed if, for example, the artist decides not to go on the road for a period of years. Award winning recording artist/guitarist/singer Parthenon Huxley observes that sometimes the artist wears more hats than at other times, and that “the team changes; you have to be flexible, and your goals change.”<sup>11</sup> However, artists need to be cautious about replacing their top advisors on a whim, perhaps blaming the advisors for their own failures. A sudden and complete overhaul of senior management would pose a significant challenge for any corporation. Replacing the artist’s professional team too frequently can send a confusing message about the brand, and it poses a threat to the artist’s long term viability.

Artists who recognize that their career is a business, and who nurture that business, tend to have a better sense of their audience, a closer connection with their fans, and better brand identity. This in turn helps such artists enjoy longer and more profitable careers. Just as having a well-functioning executive team can provide stability and institutional history to a corporation and free up the energy of the CEO to focus on long-range thinking, having a competent and motivated executive team can provide necessary expertise and assistance to the artist and her manager, enabling them both to direct their energies in the most productive manner.

In today’s music business environment, artist advisors face a variety of new challenges and opportunities as they seek to help their clients survive and thrive. Thinking of themselves as the executive team of a modern-day corporation may be helpful to members of the artist’s team as they work to identify and exploit all appropriate ways to *build their artist’s brand as a business*.

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<sup>11</sup> Telephone interview by Priscilla Mattison with Parthenon Huxley (May 27, 2011).