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The Protection Of Personality And Image Rights In The Uk

Information Sheet

The UK has no law which specifically protects personality rights or image right, so how do we deal with problems which arise from unauthorised use of celebrity names or images?

There are various categories of celebrities or personalities who may consider that they have a reputation or goodwill to protect, but why do they need protection? The obvious categories are performers (singers, dancers, actors) and sportsmen and women, but there are all sorts of reasons why people become well known. Their renown provides them with an asset which can be commercially exploited. As well as being the catalyst for further bookings for entertainment services, public speaking, or recordings, this exploitation typically takes the form of paid endorsement or merchandising.

Endorsement signifies approval of the goods or services of others. Advertisers take the view that if the public knows that a particular celebrity uses a given product or says that it is good, this will increase sales.

Merchandising uses the celebrity's name, image or other distinctive features in connection with goods and/or services which don't necessarily have any connection with the celebrity him/herself. In this case, others are usually licensed to use the name, image etc, with royalties payable.

Both endorsement and merchandising can provide a significant proportion of the earnings of a celebrity. Because they are commercial activities they are subject to the usual laws which relate to commerce in the UK. They are not given any special protection under UK law, but common law rights have developed, are developing, and will continue to evolve as the nature of commerce changes over time.

In addition to a name or image, there may also be other material that the celebrity considers to be worth protecting, for example, a nickname, a catchphrase, a prop (eg a ventriloquist's doll), a pose, a particular form of dress, facial hair or hairstyle, even a tattoo – anything which is distinctive of the person concerned and which when seen in isolation is immediately connected with that person and no other.

In the past, actions for passing off have been the way in which celebrities have enforced their common law rights, and they still do. A recent case involved the singer Rihanna. In March 2012, Topshop started selling T-shirts with a picture of Rihanna on it. She hadn't authorised the use of this image and, based on the circumstances and evidence available she was able to stop these unauthorised sales.

So, how do celebrities protect their images and other elements associated with them in the UK, without having to rely on 'surrounding circumstances' to provide a cause of action? People in the public eye are increasingly turning to trade mark registration for this purpose – however this is not easy and there are limitations to the protection afforded by such registrations.

A typical problem with groups of musicians (eg bands) occurs when the line up changes or the band breaks up. Who has the right to the name of the band? If the name of the band and any associated logos or other distinguishing signs are registered as trade marks, the ownership is on public record, and is much less vulnerable to dispute.

Other problems arise when British bands seek to break into foreign markets. ONE DIRECTION ran into trouble when they toured the USA as a local band in California had already registered the name a trade mark. Following a request for an injunction against the UK band, brought in the California Central District Court, the parties settled. The UK band kept the name, and the US one changed its name – no details of the settlement have been disclosed but it would not be unreasonable to assume that the US band did rather well out of the dispute.

Trade mark registration is a powerful weapon to protect the names, images and other distinctive signs of celebrities and other well-known personalities in the UK. It can be used to resolve domain name disputes and company name disputes too.

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