PERSONALITY RIGHTS PROTECTION IN THE UK

In a society obsessed with fame and celebrity, the commercial exploitation of a famous person’s personality for advertising and/or merchandising activities is a largely valuable commodity providing famous persons with a means to capitalize on their fame.

In markets where several products and services are similar in price and quality, advertising bearing personality features of celebrities does make a difference. This is mainly due to the attention and glamour factor appropriated to products that would otherwise remain unknown. Attracting consumers’ attention to sell a product or service is vital, and ‘exploiting’ the link to a celebrity by way of sponsorship deals, merchandising and endorsements could enhance earnings in a substantial manner. The usage of famous personalities in commercials and other advertising vehicles is regarded to be a method of enhancing the appeal of the particular product or service to which the celebrity ‘magic’ has been attached.

In fact, it is argued that advertisers turn to celebrities to gain a commercial advantage over competitors as they are considered to be products of the mass media, a logical target for advertisers. Furthermore, their relationship with the media is different to that of the general public. As propounded by Lord Hoffman in a case featuring Naomi Campbell (Campbell v MGN Limited) ‘[w]hat she has to sell is herself: her personal appearance and her personality’, highlighting the importance of a celebrity having a good reputation to his image.

In order for any celebrity to be in a position to control the use and commercial exploitation of his image (or another personality features), legal remedies must be available in cases where producers of different types of goods and services do jump onto the ‘celebrity bandwagon’ generally resulting in the appearance of the celebrity’s image on cheap products, damage to the reputation and image strength of the celebrity, and a lower financial income from potential licensing or endorsement agreements.

While the right of personality has been afforded protection in the United States for well over 50 years under the Right of Publicity, the United Kingdom remains sceptical about creating monopoly rights in one’s personality. Such personality rights allow for the protection and commercial exploitation of what is often referred to as ‘indicia of identity’, which includes names, likeness and voice of a natural person. Notwithstanding the widespread practice of personality licensing in the UK, the courts have repeatedly refused to recognise personality rights, and as a result celebrities are forced to seek alternative routes originally intended for other purposes to legally protect their image and personality.

It is clear that English law in this sector is detached from commercial reality, even due to the fact that the public at large would normally consider the unauthorised use of personalities’ personality indicia as being both morally wrong and resulting into financial damage from loss of income derived from advertising and endorsement activities. Many continental systems such as France and Germany grant celebrities a much more extensive legal protection that is normally derived from the constitutional protection of human rights endorsed in such jurisdictions.

At present, celebrities in the UK enjoy very little protection and many grey areas leave celebrities resorting to different causes of action. No matter how unfair the unauthorised exploitation of the celebrity persona may be, English law did not develop a way to afford protection in such circumstances. Having said that, the absence of a holistic personality right regime in the UK must not be equated to an absence of protection because effectively, case law has shown that the unauthorised exploitation of personality features has been to some extent restricted in English law as well. The expansion of trade mark law, passing off and breach of confidence in particular are proving to be insufficient to protect celebrity interests.
There is no single jurisdiction that has successfully developed an entirely successful method affording adequate protection to celebrities. Celebrities employ a great deal of effort and investment to achieve popularity amongst the general public, and it is the exploitation of such fame that gives them a financial return from merchandising, endorsement or licensing activities.

The UK must embark on an exercise seeking to grant celebrities adequate protection with regards to their image and other personality indicia. While it has recently acknowledged the commercial value of such practices, I do not believe this to be satisfactory. In the event that the UK opts to ignore current impasse in this area of law, we might witness another instance of buck-passing between the courts and the government, leaving the industry in question guessing on what is and what is not lawful. The method adopted by the UK to tackle this matter is also interesting, especially if such response takes the form of a registered personality right similar to what the State of Guernsey introduced in 2012.

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