

Picture Perfect?

In today's "celebrity culture", images of famous people are inescapable, staring back at us from the covers of glossy magazines to the clothes we wear. In a country where there is no such concept as image rights, is it possible to run foul of the law when using famous faces to endorse your products? Alan Ma investigates with reference to a recent High Court case.

Under English law there is no such thing as a specific right to your own image. Does it follow, then, that retailers, merchandisers and the like can use photographs of celebrities indiscriminately? Not necessarily. Famous individuals are increasingly turning to the law of "passing off" as an alternative means of protecting their image in the UK. Popstar Rihanna's recent courtroom victory over high street giant Topshop demonstrates the importance of taking care when printing images of the rich and famous on your goods.

Passing Off

In order for Miss Robyn Rihanna Fenty, better known by her stage name Rihanna, to successfully claim "passing off" against high street giant Topshop, her case had to meet three very specific criteria. Firstly, the popstar had to convince the judge of her "goodwill", or reputation in the UK, next that Topshop had confused customers through misrepresentation and finally that her goodwill had suffered damage as a result. The singer brought the claim against the fashion retailer after discovering their unauthorized sale of a T-shirt bearing her image in stores and on the internet. Rihanna's lawyers argued that Topshop was deceiving customers by passing off the garment as endorsed merchandise and that this would inevitably be damaging to the star's goodwill. In

giving his judgment, Mr Justice Birss made it clear that there is nothing unlawful in selling clothing bearing the images of celebrities without their approval; "The mere sale by a trader of a T-shirt bearing an image of a famous person is not, without more, an act of passing off." It was several particular circumstances, including the nature of the photograph in question, that led the judge to determine that Topshop had committed a passing off on this occasion. He found that fans would be likely to associate the unauthorized image with the video shoot for Rihanna's 2011 single "We Found Love" and assume it to be part of the song's marketing campaign. This misrepresentation, he found, would be damaging to her goodwill as both an artist and a style icon in the UK.

Dr Ma's Remarks

The High Court's decision is significant not only because it confirms that the English legal system does not recognise the concept of image rights but also because it reveals that in many cases, passing off claims can be used in place of copyright claims to protect the interests of official licensees. Mr Justice Birss' ruling also emphasises the importance of thinking carefully before using photographs of celebrities and of always doing so in accordance with a license obtained from the relevant

third party. In particular, the verdict stresses the need to take particular care with images taken from films or publicity shoots, which may well be perceived as authorized promotional merchandise. In such instances, evidence of actual confusion may not be necessary in order for a passing off claim to be won.

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