



Company Buys Marilyn Monroe's Image Rights - But For How Long?

January 17, 2011 by Bob Tarantino

It reads like a bit of a stretch to find some "Canadian content", but when CBC News reported late last week that a company had purchased the "image rights" to Marilyn Monroe (the CEO of the company is evidently based in Toronto, and the company appears to have an office in Canada but otherwise appears, from the info on their website, to be primarily a US company) it actually raised some interesting issues about post-mortem publicity rights held by the estates of deceased celebrities.

As has been previously discussed on the Signal, rights in a celebrity's image, particularly for purposes of endorsements and use of the image in connection with merchandise or services, are an element of what in the United States are called "publicity rights" and which in Canada would be covered by the tort of "appropriation of personality" or, in certain provinces, accorded protection by a provincial Privacy Act (British Columbia, Manitoba, Saskatchewan and Newfoundland and Labrador). Protection for publicity rights in the United States is similarly jurisdiction-dependent: different states offer protection of different forms and duration. The critical question for purposes of considering rights in Marilyn Monroe's image is the extent to which publicity rights extend to deceased celebrities.

In the United States, different states offer differing degrees of protection: for example, California protects the publicity rights of deceased celebrities (for a period of 70 years following death), whereas New York does not recognize such rights. In Canada, a similar jurisdiction-specific analysis must be undertaken: the Privacy Acts in BC, Saskatchewan and Newfoundland expressly exclude deceased individuals from the protection offered by the Act. Manitoba's legislation is silent on the matter. There is common law protection for what we can loosely call "publicity rights" (under the guise of the tort of appropriation of personality), but we don't know for how long such a right persists after a celebrity passes away. The Ontario Supreme Court in Gould Estate v. Stoddart Publishing Co., 1996 CanLII 8209 (ON S.C.) stated that

The right of publicity, being a form of intangible property under Ontario law akin to copyright, should descend to the celebrity's heirs. Reputation and fame can be a capital asset that one nurtures and may choose to exploit and it may have a value much greater than any tangible property. There is no reason why such an asset should not be devisable to heirs ... and it seems reasonable to conclude that whatever the durational limit, if any, it is unlikely to be less than 14 years.



So, with respect to deceased celebrities in Canada, the most we can conclude is that their heirs do have a protectible interest at common law, and that such right likely lasts for at least 14 years. Beyond that, we're into the realm of speculation. Absent a trade-mark registration, the rights which have been purchased in the image of Marilyn Monroe (who died in 1962, almost 50 years ago) may not be enforceable in Canada (at least by means of the common law tort - and certainly are not enforceable in BC, Saskatchewan and Newfoundland and Labrador under their respective Privacy Acts). For a detailed analysis of these issues, see David Collins' "Age of the Living Dead: Personality Rights of Deceased Celebrities" (39 Alta Law Rev 914 (2001-02)).

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