

# DOWNLOAD PDF CHARACTER MERCHANDISING AND PUBLICITY RIGHTS

## Chapter 1 : Image Rights, Publicity Rights, Character Merchandising in Malaysia

*Image rights (not to be confused with copyright for an image in the form of a picture or illustration) is a relatively new area of law recently developed in the interest of safeguarding the publicity value of a person (be it an actual person or a fictional character).*

Classification[ edit ] Personality rights are generally considered to consist of two types of rights: In common law jurisdictions, publicity rights fall into the realm of the tort of passing off. United States jurisprudence has substantially extended this right. A commonly cited justification for this doctrine, from a policy standpoint, is the notion of natural rights and the idea that every individual should have a right to control how, if at all, his or her "persona" is commercialized by third parties. Usually, the motivation to engage in such commercialization is to help propel sales or visibility for a product or service, which usually amounts to some form of commercial speech which in turn receives the lowest level of judicial scrutiny. If an individual violates this right they will have to go through a lawsuit. Exceptions have been carved out of these general, broad privacy rights when dealing with news and public figures. Unlike most common law jurisdictions the personality rights in civil law are generally inheritable, thus one can make a claim against someone who invades the privacy of a deceased relative if the memory of their character is besmirched by such publication. Thus personality rights are, generally speaking, judge-made law, though there are jurisdictions where some aspects of personality rights are statutory. In some jurisdictions, publicity rights and privacy rights are not clearly distinguished, and the term publicity right is generally used. In a publicity rights case the issue to decide is whether a significant section of the public would be misled into believing incorrectly that a commercial arrangement had been concluded between a plaintiff and a defendant under which the plaintiff agreed to the advertising involving the image or reputation of a famous person. This is done by way of the tort of passing off. The meaning of the law is best illustrated by principal cases on the subject. Australia[ edit ] In Australia, false association or endorsement is actionable via the law of passing off , not a separate law of "right of personality". The Henderson case [1] was a decision of the Supreme Court of New South Wales both the first instance and appellate jurisdiction. The plaintiffs were ballroom dancers and they sued the defendant in passing off alleging it wrongfully published their photograph on the cover of a gramophone record entitled Strictly for Dancing: However, in the case of Honey v Australian Airlines, [2] Gary Honey, a well known Australian athlete failed in his attempt to get a damages award after Australian Airlines used a photograph of him in action on a poster without his permission. The judge held, in essence, that the poster depicted excellence in general rather than a particular person. Statutory protection[ edit ] The provinces of British Columbia , Manitoba , Newfoundland and Labrador , and Saskatchewan have enacted privacy legislation dealing with personality rights, which have the following traits: The plaintiff must be identified or identifiable by the use made of his persona. An action for the appropriation of personality can only succeed where the defendant intended to commit the wrong but British Columbia has no "intention" requirement. An appropriation of personality is actionable without proof of damages. The right of action for appropriation of personality is extinguished upon the death of the person whose privacy was violated. The following constitute statutory defences in all four provinces: The Manitoba Act provides additional defences. Common law provinces[ edit ] Canadian common law recognizes a limited right to personality. It was first acknowledged in the Ontario decision of Krouse v. This right was later expanded upon in Athans v. Canadian Adventure Camps where the Court held that the personality right included both image and name. In Gould Estate v. The general tort of appropriation of personality is still in development, but it is currently[ when? An action for appropriation of personality will have to be intentional for a plaintiff to recover at common law. There is a requirement that the defendant must have acted for the purpose of commercial gain, but Gould suggests that this may be restricted to "endorsement-type situations". It is a matter of uncertainty whether the common law tort of appropriation of personality is actionable per se or whether damages must be shown. Privacy rights are

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extinguished upon death, but personality rights are inheritable. A defendant will not be liable for an appropriation of personality at common law where: Quebec[ edit ] In , the new Civil Code of Quebec introduced new provisions that enshrine the right to privacy as an attribute of personality: Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy. These rights are inalienable. The following acts, in particular, may be considered as invasions of the privacy of a person: Every person has a right to the safeguard of his dignity, honour and reputation. Every person has a right to respect for his private life. The plaintiff must be recognizable in order an appropriation of personality to be actionable. There is no need for the courts to look for an element of intent. Distinctions based on commercial purposes are irrelevant, and inconsistent with s 9. The plaintiff is required to show that she suffered damage through the appropriation of her personality rights. Quebec law may allow an action to be taken by the estate of a deceased person, provided that it can be proved that there is a patrimonial aspect at stake. A defendant will not be liable for an appropriation of personality under Quebec law where: Cyprus[ edit ] In Cyprus , people depicted in photographs can oppose their use in advertisements and their publication in magazines, even if it was taken in a public place. The governmental Danish Data Protection Agency, has made a declaration regarding publication on the Internet of pictures taken of persons in a public area: The reasoning for this, is that such a publication might provide the depicted person with discomfort, possibly with other information such as name, of the publication for all with access to the internet, and the considerations of this discomfort is judged as more important than a possible interest in publication. A portrait photograph is defined as a photograph, with the purpose of depicting one or more specific person s. The personality rights however may be contracted for persons who are generally accepted as public persons. France[ edit ] In France personality rights are protected under article 9 of the French civil code. Germany[ edit ] In Germany personality rights are protected under the German civil code, where the concept of an "absolute person of contemporary history" allows the depiction of individuals who are part of history but still gives them some protection of their rights of privacy outside the public sphere. A succinct statement of the German law can be found in the following judicial statement from the Marlene Dietrich case: It guarantees as against all the world the protection of human dignity and the right to free development of the personality. They guarantee protection of the personality for the sphere regulated by them reference omitted. Taking a picture of a person in a public space: The law assumes that consent has been provided silently if the depicted person has been paid for the photography session. The law also provides some exceptions for persons of contemporary history. Images are widely defined and can be any number of personal attributes, such as likeness, mannerisms, gestures, voice, nickname etc. Personalities able to register fall into 5 categories, namely sole, joint, group, legal and fictional character. In addition, humans can be registered up to years after the date of death, making the law very favourable for estate managers and trustees. Hong Kong[ edit ] In Hong Kong , as in most other common law jurisdictions, there is no separate "personality right", and false association or endorsement is actionable under the law of passing off. In the new[ when? South Africa[ edit ] In South Africa personality rights are protected under the South African law of delict and the Bill of Rights , which also provides for freedom of expression and freedom of association. Secondly, the right to identity is violated if the attributes of a person is used without authorization by another person for commercial gain. According to El Mundo Data Protection Agency decided to investigate ex officio by the mere distribution of the image of a person on the Internet without their consent. Typically, but by no means exclusively, the right of publicity is manifest in advertising or merchandise. In states without a specific right of publicity statute, the right of publicity may still be recognized via common law. The right of publicity has evolved rapidly, with a history of reported cases in the United States and worldwide. The right of publicity can be referred to as publicity rights or even personality rights. The term "right of publicity" was coined by Judge Jerome Frank in Because the right of publicity is primarily governed by state as opposed to federal law, the degree of recognition of the right of publicity varies significantly from one state to the next. The Lanham Act governs federal protection of personality rights, and the doctrine has much in common with the laws

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defining federal protection of trademarks. In addition, both trademark and publicity rights appear to be designed somewhat to combat infringement for the sake of consumers, granting a cause of action for false descriptions, false representations, and false endorsement claims. Courts will typically consider eight factors when weighing a false endorsement claim, in order to determine the likelihood of consumer confusion: These eight factors have their origins in the case *Polaroid Corp.* There are other notable characteristics of the Indiana law, though most of the major movement in right of publicity emanates from New York and California, with a significant body of case law which suggest two potentially contradictory positions with respect to recognition of the right of publicity. Some states recognize the right through statute and some others through common law. California has both statutory and common-law strains of authority protecting slightly different forms of the right. The Celebrities Rights Act was passed in California in and it extended the personality rights for a celebrity to 70 years after their death. Previously, the *Lugosi v. This was the first, and so far the only, U. Supreme Court ruling on rights of publicity. After a motion to dismiss was overruled, the case was settled for an undisclosed amount. Scalf, a Indiana Court of Appeals case. In a later case, a U. Similarly in the July case of Johnny and Edgar Winter v. DC Comics*, a depiction of blues music duo the Winter brothers in a comic book as worms called the Autumn Brothers obtained First Amendment protection from publicity rights suit. In May, *Toney v. DiCorcia*, after dismissing the complaint on statute of limitations grounds, held in the alternative that personality rights are limited by First Amendment rights of artistic freedom of expression. Applying this test, the court found a lack of implied endorsement and held that the First Amendment protected Electronic Arts in its use of a virtual football player that resembled Mr.

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## Chapter 2 : Character Merchandising In Intellectual Property Rights-Jus Dicere

*Yen May discusses the protection afforded by intellectual property laws over "publicity rights" Beyond the paparazzi intrusions into the private lives of celebrities, the recent case involving Rihanna and Topshop (Fenty and others v Arcadia Group Brands Ltd and another [ ] EWCA Civ 3) highlighted other problems that come with the celebrity life.*

This is known in legal jargon as merchandising of intellectual property IP rights. However, this article deals only with the merchandising of IP rights. The merchandising of IP rights can be a lucrative addition to a business strategy. It is an important way to improve the visibility and appeal of products on display in retail outlets. However, successful merchandising attracts copiers and imitators, who produce counterfeit products. Skillful use of the tools of the IP system helps businesses relying on merchandising to prevent or deal effectively with such violations of IP rights. For enterprises that own IP assets, licensing out to potential merchandisers may provide them the following benefits: First of all, licensing out IP rights such as brands, designs, or artworks to other companies can generate lucrative license fees and royalties. It also allows a business to enter new product categories in a relatively risk-free and cost-effective way. Cadillac cars, for example, licensed its name for use on leather goods. Similarly, an artist could license the copyright in an artistic work to others to reproduce, sell and distribute his work on merchandised products. It is common for organizers of football matches, art exhibitions, music concerts, benefit dinners, etc. Products developed include a watch produced by Swatch, an official sticker album and stickers by Panini, ceramics and porcelain from Vista Alegre, and a diverse range of footballs, fan articles, apparel and footwear, as well as stationery, player CD cards and bags. Companies that manufacture low-priced mass goods, such as coffee mugs, candies or t-shirts, may make their products more eye-catching, glamorous, fun and attractive by using a well-known brand, famous character, artistic work, or other appealing element on them. Truly, breakfast cereals that feature Harry Potter have more purchasing power than those without any image. Companies that launch a new product on the market may advertise their product by associating it with a personality or fictional character in whose reflected light it will appear more attractive. What is character and personality merchandising? Personality merchandising is the term used when real persons or characters are involved. Character and personality merchandising is one of the most modern means of increasing the appeal of products or services to potential customers who have an affinity with that character or personality. In fact, character and personality merchandisers believe that the main reason for a consumer to buy low-priced mass goods is not because of the product itself but because of the name or image of the celebrity or fictional character that is reproduced on the product. Examples of character or personality merchandising include: The hero is a young reporter, who lands in fascinating adventures while traveling the world. The first strip appeared in in a Belgian newspaper. Tintin went on to feature in a number of animated films for television and cinema, and had an influence on the art world through the work of Andy Warhol and Roy Lichtenstein. Tintin has appeared on a Belgian postage stamp and on Euro coins. There is also a tremendous merchandising empire surrounding Tintin: The relentless marketing of Tintin has become the center of a multi-million Euro industry and has made him a symbol of value. Real persons or characters used for merchandising are usually famous actors, musicians and singers Rolling Stones, Britney Spears , sports celebrities David Beckham, Tiger Woods , and potentially any person with a marketing potential. He is so popular in Japan that his name is on Meiji candies and a line of health and beauty salons. If it comes to merchandising personalities, a distinction should be made between the use of the celebrity image to merchandise a product, and the use of it to endorse a product. Personality merchandising involves merely the use of the name or image of the person to adorn a product e. Merchandising strategy A company wishing to earn additional income by making its IP assets available to manufacturers for the merchandising of their products should develop a proper merchandising strategy. Here follow some basic rules: Protect your IP rights. Make sure that you own property rights in the trademarks, logos, designs or characters that you want to license out for merchandising. Search for potential licensees. Look actively for

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potential users of your IP assets e. The Internet is a good source to find possible licensees. The licensee who will manufacture and sell the merchandise goods should be a trustworthy and diligent partner. This may be a specialized merchandising company, a professional designer, or a simple student of an arts college. Merchandising may be used to gain access to new markets. Usually, the licensee will be fully responsible for local manufacture, localization, logistics and distribution. Choose the right way to represent your company. Do some market research, check out how competitors are representing themselves, and study the tastes of their consumers. Choose the right type of products. Jointly promote the business and the merchandise. For example, print your company website on the merchandised products, promote the merchandised products on your website, enclose mail order forms with the merchandised products and with your company newsletters, etc. Consider also merchandising online. Clearly define the right relationship and terms for the licensing of your IP in a licensing agreement. The license agreement that covers the merchandising activity should include at least the following: Protecting IP rights The following key points will help you protect your IP rights for merchandising purposes. Registration of a trademark gives the owner an exclusive right to use the mark for certain goods and services. Be sure that you have adequately protected your trademark for the relevant goods or services. For example, a bike store may have registered its trademark for bikes and other vehicles, but if it wants to merchandise its brand on t-shirts and hats, then it is well advised to register the trademark also for clothing and headgear in the countries where it plans to sell the merchandise. Note that the essential personality features of a fictional character may, under certain conditions, also be regarded as trademarks. Industrial designs are relevant to protect the ornamental or aesthetic aspect of useful merchandising articles. For example, a cartoon character may be represented in the form of aesthetic designs for toys, jewelry, dolls, brooches, pins, etc. The relevance of design protection will be important notably when copyright protection is excluded or reduced mainly when an artistic work has been created with the intention of being industrially exploited. Copyright itself does not depend on official procedures. Nevertheless, it is strongly advisable to deposit and register works with the copyright office, in countries where such office exists, and to place a copyright notice on the works. If a copyrighted work is licensed out for merchandising purposes, the license agreement should clearly indicate that the licensee must place a copyright notice each time the work is reproduced on the merchandising goods. IP rights are territorial, so it is necessary to obtain protection in all potential export markets in due time. Choose the type of IP that provides you with the best protection. Some elements used in merchandising may be protectable through different types of IP. For example, a cartoon character may be considered an artistic creation and therefore be protected under copyright, but it may also be protectable as a trademark. In some countries, certain types of IP may not apply to merchandising. Thus, for example, a fictional character used in merchandising may be barred from copyright protection when it is used as an industrial design or as a trademark, or in advertising. You will need to verify carefully which types of IP qualify for your merchandising purposes. Preserve control over the commercial use of your IP. Require that the licensee furnishes preliminary samples of the products on which the IP will be used. Monitor also the use of your trademark, so that licensees do not utilize the mark in a manner that goes beyond the terms of the license agreement. They may create a different consumer opinion of your mark that can have a devastating effect on its overall reputation. Limit, as much as possible, the scope of the license. When granting a license, you give the licensee permission to do things that it otherwise would not be allowed to do. It is important to construe that permission as narrowly as possible. Generally, it is better to grant non-exclusive licenses, limited in their scope to the specific needs and interests of the licensee. The licensee should not be allowed to get the ownership of your IP rights used for the merchandising. The advantage is that in this case you can grant further licenses to other interested users. For example, a photographer could grant a license to merchandise a specific photograph on a specific product only; or for a specific event only; or in a specific country only. Still, some persons may have a real need to be in complete control of your IP, and demand for an exclusive license or an assignment of all your rights for merchandising purposes. You should consider such negotiations carefully and make sure you are well paid if you choose to do so. Remember that once you assign your IP

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rights you lose all its future income earning potential. Register the license agreement, if needed. Many countries require that a license be recorded with the national IP office or other government agency. Take action against infringement. It is up to you, as the IP right holder, to identify any infringement or counterfeiting on your IP rights and to decide what measures should be taken. Conclusion Businesses, universities, sport teams, artists, and non-profit organizations should be aware of the commercial value of their IP, and generate revenues from the secondary exploitation of their brands, designs, artworks or any other merchandisable element. For successful merchandising, businesses will need a mix of IP-related legal knowledge, commercial contract drafting and negotiation skills, and plain good sense. Comments, suggestions or any other feedback concerning this article may be sent to [lien.press@world.com](mailto:lien.press@world.com). Press-World, 23 March , <http://www.press-world.com>: They include the right to use a fictional character or more precisely his name, image, appearance, etc. Those rights include the right to control the commercial use of the essential personality features and to receive the benefits resulting from such use. In some countries, however, the person may obtain the registration of his name or appearance as a mark. Generally, a valid notice should contain:

## Chapter 3 : Right Of Publicity » merchandising

*Character Merchandising and Personality Endorsements.* Character merchandising is the secondary exploitation of the essential features of a popular fictional character or a real person in respect of commercial articles, so that prospective customers are ultimately led into buying such products due to their penchant for the character or fictional person.

There has not been a consensus on its definition, subject, object, nature, category or protection mode around the world so far. In China, merchandising rights are not yet accepted at the legislative level and for the time being other areas of law offer no comprehensive legal protection either. Rochester Folding Box Co. New England Life Ins. Though merchandising rights were not protected as a kind of right by law at that time, it develops continuously in commercial activities. Disney Company had a lot of character merchandising activities in s, characters like Mickey Mouse, Donald Duck and Snow White being all household names. It established a department specialized in the secondary commercial exploitation of those characters. By the s, such celebrities as politicians and movie stars began to authorize use of their names and likeness for commercial purposes. Topps Chewing Gum, Inc. The next year, Professor Melville B. Nimmer, a famous intellectual property expert in the US, published an article The Right of Publicity. From this time on, independent from the traditional privacy right, the right of publicity finally became a new type of intellectual property. At the same time, the commercial exploitation activities among publics were also developed greatly. Alongside the identification and development of the right of publicity of real figures, the commercialization process and the merchandising rights of the fictional characters were also greatly promoted. In , the sales of commodities with Disney cartoon names and images reached million US dollars; and the sales of commodities related to characters of Star Wars in reached 1 billion US dollars. China borrowed the concept of merchandising rights from Japan in s. Concepts like fictional characters, the right of publicity and merchandising rights are typical views in China. Nature and types of merchandising rights Since merchandising rights are new emerging rights in the theoretical study of laws, there is no unified conclusion on its legal nature. People hold different opinions on it. Some scholars consider it as a new type of personality rights, they believe that the merchandising rights belong to personality rights, and it is equally important to special personality rights and general personality rights in logic. Some people believe that merchandising rights are on the boundary of traditional personality rights and the intellectual property rights, but cannot be simply put into any of them, the special nature of the merchandising rights determines that i t is more appropriate to protect the rights by Anti-Unfair Competition Law. People who hold that merchandising rights are a new type of intellectual property rights believe that the characters and the images which is protected by the merchandising rights are closely related to intellectual activities, they have recognition function during commercial activities, therefore should belong to the intellectual property scope. There is another view that merchandising rights should be considered as intangible property, as Professor Wu Handong believes, it is similar to goodwill rights, credit rights and franchising, which have nonphysical character but cannot be classified into the intangible property of intellectual property. Liu Shijie believed that merchandising rights can be divided into two categories in terms of objects: Fictional character merchandising rights are the other type of character merchandising rights. The fictional character merchandising means the fictional character created in audiovisual works, artistic works or literary works. Legal entities and other organizations are civil subjects, which have no right to reputation according to the civil law, the rights formed due to external factors are more commonly called character merchandising rights of the entities and other organizations. Another type of merchandising rights is virtual character merchandising right. The name of a place mentioned in literary works and allusions belongs to the scope of virtual character merchandising. Shangri-La hotels in cities reflect the excising of merchandising rights. The commercial value of the fictional character Attention economy is the social root of the emerging of merchandising. Since images are the essential elements of attention, attention economy is also referred as image economy. The market exploitation of fictional character is a prominent

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issue of the above economy. Compared with real person characters, the commercialization of fictional characters is more common, because it is more likely to use the fictional characters of movies and entertainment programs in business. The fictional characters which have great commercial value after commercialization need more protection. For a well-known cartoon work is no longer only a cultural product, it can be an entire industry chain comprising of audiovisual works, magazines, tolls, stationery, food packagings, exhibitions or even theme parks, and merchandising rights are the core factor of the chain. Translated by Emily Tan.

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## Chapter 4 : Merchandise Licensing Basics | calendrierdelascience.com

â€¢ Personality rights or publicity rights -- With respect to real persons, the rights attached to the name, image or appearance of a real person is referred to as "Personality Rights" or "publicity rights".

The reader should also read "Legal Protection for Games" on my site. Characters can form the basis for motion pictures, television productions, video games, web sites, merchandising rights and other such forms of exploitation that can make the income received from the ownership of rights in characters dwarf the income from the text in which the characters appear. These laws fall generally within the scope of trademark and copyright laws, although in a given instance the protection of characters can also be the subject of contract law if there is some license or other agreement dealing with the licensing or other use of characters, as well as right of publicity laws and perhaps other laws as well, both federal and state. Trademark Rights to characters may exist under federal trademark law as well as under state laws dealing with unfair competition and passing off. Thus it is not merely having a description or depiction of a character, whether in text or graphic format, that matters. Of course the best example would be Mickey Mouse. Everyone on the planet knows that that character stems from a particular sourceâ€”Disney. To the same extent would be Bugs Bunny, the source being Warner Bros. This secondary meaning then allows the consumer to know that when he or she sees or relates to that character, that the particular source is behind it, either directly or through some quality-controlled licensing arrangement. For those characters, the law requires the trademark applicant to show that, through extensive use and marketing and other evidence, that the public identifies that public domain character with a particular source. For example, Pinocchio in its literary form, is in the public domain. However, the widespread and worldwide popularity of Pinocchio the cartoon embodiment by the Disney company would qualify as such a secondary meaning. In other words, when we see or relate to the said character today, we universally relate it to the Disney cartoons. However, there are cases in which the public domain characters such as Little Miss Muffet, Little Red Riding Hood and similar characters were denied trademark protection because, as public domain characters, the public does not identify those characters with a particular source but instead merely as literary characters. To the extent that such rights exist, the rights of the owner of trademark are to prevent the use of a mark as a trademark in a manner that is likely to cause confusion in the minds of the public as to the source. However as well, under the federal anti-dilution statute, even if a use were to be deemed to be a fair use and thus not an infringement of a mark, the use might also be enjoined as subjecting the famous mark to dilution, meaning that such use tends to dilute the value of the mark even if not creating confusion in the minds of the public. Copyright As indicated above, a character can exist merely by its textual description of that character. Who he or she is, what he or she looks like, the manner of behavior and other such characteristics can all be described, in writing, by the author. As such, the character may be protected under copyright law as part of the text of that work see discussion below. Since one of the rights of copyright is the right to make derivative works based on the work, if there is such protection, the author or whoever is the proprietor of the rights in and to the text including the character retains the right to make further use of that character in such derivative works. However, the character as described textually has to be protectable by copyright, meaning that it must have sufficient originality to satisfy the requirements of the statute. The defendant McFarlane was a writer and illustrator and publisher of comic books. Plaintiff was a writer and was engaged by the defendant to write the scripts for some of the comic books that McFarlane then illustrated and had illustrated. There was no written agreement between the parties for the services of Gaiman. A suit followed in which Gaiman claimed he was a joint author of the characters he wrote the scripts for and among the defenses raised by McFarlane was a defense that the characters as written by Gaiman were not protectable by copyright. McFarlane contended that the characters became copyrightable only after McFarlane worked on them doing his illustrations but that as submitted by Gaiman, they were not copyrightable. It is true that people who contribute merely nonexpressive elements to a work are not copyright owners. As we said in *Seshadri v.*

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Kasraian, supra, F. Lee, supra, F. Patry, Copyright Law and Practice Otherwise almost every expressive work would be a jointly authored work, and copyright would explode. That would be peeling the onion until it disappeared. The Court went on: The contents of a comic book are typically the joint work of four artists—the writer, the penciler who creates the art work McFarlane, the inker also McFarlane, in the case of Spawn No. The finished product is copyrightable, yet one can imagine cases in which none of the separate contributions of the four collaborating artists would be. If standard features could be used to prove infringement, not only would there be great confusion because it would be hard to know whether the alleged infringer had copied the feature from a copyrighted work or from the public domain, but the net of liability would be cast too wide; authors would find it impossible to write without obtaining a myriad of copyright permissions. McFarlane argues that even as dolled up by the penciler, the inker, and the colorist, Cogliostro is too commonplace to be copyrightable. Gaiman could not copyright a character described merely as an unexpectedly knowledgeable old wino, that is true; but that is not his claim. He claims to be the joint owner of the copyright on a character that has a specific name and a specific appearance. No more is required for a character copyright. Air Pirates, F. Bruns Publications, F. As long as the character is distinctive, other authors can use the stock character out of which it may have been built without fear well, without too much fear of being accused as infringers. The expressive work that is the comic-book character Count Nicholas Cogliostro was the joint work of Gaiman and McFarlane—their contributions strike us as quite equal—and both are entitled to ownership of the copyright. However, characters can also exist graphically. Some but certainly not all of the legal problems with the copyright protection of characters come when those characters are taken from one medium to another. For instance, a character created in a book whether just textually described or depicted is owned, at least presumptively, by the author or other copyright proprietor of such rights in the book. If the book is then licensed for motion picture use, for example, then the rights of copyright in the motion picture are likely to be owned the production company, distributor or some other party but in any instance, generally not the author or copyright proprietor of the source book. Thus, even though the motion picture features and may be very successful in marketing the character, the underlying rights to the character generally belong to the original author or other copyright proprietor in the book. However, because the motion picture in this example was an authorized, licensed derivative work, then the owner of the rights of copyright in and to the motion picture would, at least absent any contractual provisions, also own the rights of copyright in and to the character as depicted in the motion picture. In a Ninth Circuit federal case, *Danjaq et. In* very brief summary form, the character that appeared in the early Bond movies was significantly different than the character as written by Ian Fleming. But then, after the initial success of the films, Fleming wrote another novel with the character which, he admitted, contained elements based on the character as developed in the movies. This was followed by further movies based on further versions of the character and the litigations multiplied. Because, McClory argued, he possessed the rights to both the novel *Thunderball* and the materials developed during the writing of the initial *Thunderball* script, he also possessed the rights to certain plot elements that first appeared in those works: The case, unfortunately, dealt with the issues about rights to characters only peripherally since the issue was really one of delay in bringing the litigation. However, the lesson in the case and in all the myriad litigation that involved this character is: Thus, while it is possible that a third party may use a public domain version of a character, they may not be able to use the still-protected version. Further still, even characters that remain under copyright protection can be used in other works to the extent that such other use falls within the scope of the fair use provisions of United States copyright law. But such a defense was not successful in a case involving the characters from the *Seinfeld* television series. *Studies In Fair Use*. The written agreement between the actor and the party engaging the services of the actor to portray such character should deal with these issues with specificity. In addition, there may be statutes in effect dealing with such issues. California for example as a specific statute Civil Code section and These statutes may touch on issues related to fictional characters since even if the character being portrayed by the user is of a fictional character, by definition it includes the likeness of the celebrity. There may be different

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laws in your state. Conclusion There may be other forms of legal protection available in given instances including patent laws but in an effort to keep this difficult subject matter somewhat simple, I have not discussed these other areas. And of course there are many other legal issues presented by characters and this article is certainly not intended to be exhaustive of all those issues. In all instances however, the creator or other proprietor of rights to a fictional character should seek the advice of an attorney experienced in these areas of the law. The important point is to recognize the potential value in your creations or in the creations as to which you are acquiring rights and to see with long term vision. This article is intended to provide only general, non-specific legal information. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. This article is based on United States law. You should consult with an attorney familiar with the issues and the laws of your country. This article does not create any attorney client relationship.

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## Chapter 5 : Personality rights - Wikipedia

*"Personality rights" or "publicity rights" are the rights attached to, inter alia, the name, voice, signature, image or appearance of a real person. Those rights include the right to control the commercial use of the essential personality features and to receive the benefits resulting from such use.*

Connections at Firm Character Merchandising and Personality Endorsements Character merchandising is the secondary exploitation of the essential features of a popular fictional character or a real person in respect of commercial articles, so that prospective customers are ultimately led into buying such products due to their penchant for the character or fictional person. Simply put, it is commercially using the wide appeal of a popular character for merchandising of products and services. A personality endorsement on the other hand is the term used when real persons are involved in the commercialisation. Character and personality merchandising is a modern means of increasing the appeal of products or services to potential customers who have an affinity with that character or personality. In fact, character and personality merchandisers believe that the main reason for a consumer to buy low-priced mass goods is not because of the product itself but because of the name or image of the celebrity or fictional character that is reproduced on the product. Real persons or characters used for merchandising are usually famous actors, musicians and singers Rolling Stones, Britney Spears , sports celebrities David Beckham, Tiger Woods, Virat Kohli , and potentially any person with a marketing potential. Personality merchandising involves merely the use of the name or image of the person to adorn a product. It is quite common for celebrities to allow their names to be associated with specific product. Character Merchandising under IP Law The rights of ownership in respect of the subject matter of character merchandising do not belong to one single person or party when real or fictional characters are used for merchandising. For this reason, a single law does not provide protection or deal with legal issues faced in character merchandising. It is a group of laws that affords protection to different aspects of character merchandising and is used for enforcement of a multitude of rights in case of misuse or violations. Copyrights When a fictional character is introduced in a literary work or as an artistic work, it is governed by the principles of copyright law. Typically, authors of the works hold copyright over the fictional characters. However, if the character is a work for hire, the party commissioning the creation of the character holds copyrights. Further, when a fictional character is a part of a movie or a teleseries, the producer of the series has copyrights over the character. In such case, personality rights of the actor also apply in addition to copyrights of the producer. This, at times, gives rise to conflict between the two kinds of rights. Trademarks Since the essential personality features of fictional and real persons are used in relation to articles of commerce, trademark law principles also come in picture in cases of character merchandising. Owing to the wide explanation of a trademark under the Trademarks Act, it becomes possible to have the essential personality features of any fictional or real person protected as trademarks. While in case of a celebrity or an artist, one has to consider the most distinctive personality attributes that are famous and worthy of trademark protection, for any fictional character originating from a literary source or a cinematograph film or as artistic work, like a cartoon, it is simply treating such fictional character as a trade indication and using the same in respect of articles of commerce. Character merchandising is the first step for treating famous fictional characters or real personalities as trade indications. This was pointed out by Hegel and is commonly known as the Hegelian justification of intellectual property rights. The elements typically comprising the Right of Publicity are referred to as "name, image and likeness. This right has largely been enforced in India under the common law tort of passing off, to establish that i the disputed mark possessed goodwill and reputation, ii there was misrepresentation of the mark creating likelihood of confusion and iii there was actual damage or likelihood of damage. Today, the boundaries of "likeness" are wide. The expanding right of publicity provides celebrities with the opportunity to use their names for great profits. Hence, they stimulate sales of the products and services endorsed. Conclusion Character Merchandising has become immensely popular given the sort of

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business advantage it entails. At the same time, the law has not managed to catch up with this fast-paced business practice. The legal uncertainties not only prove to be a hindrance to the business interests but also result in unanticipated losses to the rightful copyright owners. The need of the hour is to use the existing laws with a new perspective and evolve a mean path where the celebrity can reap the benefit of fame without obstruction, while at the same time the copyright owners can utilize their content to the maximum. Notwithstanding the availability and extent of existing forms of legal protection, the practice of merchandising the essential personality features mainly the name and the image of a fictional character or of a real person has rapidly evolved in some countries from a subordinate activity into an important independent source of revenue and even, in some cases, into a civilizing force if one considers its impact on the public at large mainly on the younger generations. Specialist advice should be sought about your specific circumstances.

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## Chapter 6 : Savvy Marketing: Merchandising of Intellectual Property Rights

*Rights and ownership of characters* ≠ *Rights attached to the character* ≠ *Ownership of the rights attached to a character* ≠ *Means of lawful merchandising of the characters. the rights attached to the name.*

Career Image Rights Image rights not to be confused with copyright for an image in the form of a picture or illustration is a relatively new area of law recently developed in the interest of safeguarding the publicity value of a person be it an actual person or a fictional character. Until about 60 years ago, the courts were not keen to recognize publicity or popularity as an intangible asset. However, the rise of the celebrity culture means the courts are slowly coming to recognize the need to protect the publicity value of media personalities, celebrities and famous fictional characters. Nevertheless, progress has thus far been sluggish, and even to this day, apart from a handful of jurisdictions, most countries do not have a specific piece of legislation to protect this valuable asset. Instead, the courts would rely on a ragtag collection of existing laws to enforce publicity rights against a third party. And unlike the other Intellectual Property rights, there is also no cohesive international effort to recognize and harmonize the law relating to image rights. Consequently this area of law is also known as Publicity Rights, Character Merchandising and Personality Rights in various jurisdictions. What are Image Rights? How are Image Rights protected? In most countries, Image Rights are not recognized as a distinct area of law. As such, registration of Image Rights is almost unheard of and only available in a handful of countries. To enforce their Publicity Rights, a person would have to resort to the law of Industrial Design , Copyright, Trademark, and most often the tort of Passing Off. Your registered trademarks may be relied upon to protect names, logos and slogans. If you have Registered Industrial Designs on your models or figurines, you may take infringement action against another party for re-producing those designs without your consent. Likewise, to protect pictures, photos and illustrations, you may rely on your copyright. However, the protection provided by these IPRs may be inadequate, as it prevents only identical or near identical copying of the registered material. How does Passing Off work in these situations? The tort of Passing off is usually the preferred legal recourse in the enforcement of Image Rights. One of the advantages in claiming Passing Off is that the action need not be based on any registered IPRs. This also gives the court more elbow room to maneuver. How long does Image Rights last for? In most countries, Image Rights are not provided by any specific legislation, so the duration of protection will depend on the duration of the IP laws relied upon by the owner. For Passing Off, generally the Courts have yet to accept that the Image Rights will survive beyond the lifetime of a person. Are Image Rights recognized in Malaysia? The Courts in Malaysia have not been asked to decide on the existence of Image Rights. However, the Malaysian Court would normally look to the decisions of the UK case laws as persuasive precedents. This website was developed by cloudrock Menu.

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## Chapter 7 : What are merchandising rights?

*The right of publicity originates in the right of privacy and is broadly described as the "right of individuals, most often celebrities, to protect, control, and profit from his or her name or likeness." 1 The Right of publicity was created in response to the growing inadequacy of privacy.*

Well in the legal field it is known as character merchandising and is covered under IPR. The character merchandising can be a source of additional income for a company or for an individual. It also increases the market standing of a product in the retail outlet; also this is a well-known business strategy. This type of a business attracts copiers who by producing fake products can hinder the business. To deal with this type of a problem and to protect the marketable interest of the proprietor this type of merchandising is been added to IPR. What is character merchandising? Character merchandising is the commercial exploitation of a famous character or personality. It was Walt Disney that conceptualized the idea of character merchandise and began selling t-shirts, mugs, badges and other products with Mickey Mouse, Minnie Mouse and Donald Duck in the s. Ever since creators of such fictional characters and even personalities have tapped into the popularity and goodwill of the character and made the most of it. Merchandising strategy A company wishing to earn additional income by making its IP assets available to manufacturers for the merchandising of their products should develop a proper merchandising strategy. Here follow some basic rules: Protect your IP rightsâ€” before starting the merchandising of such products a person shall make sure that he owns property rights for such character merchandising. These rights can be saved by getting license to trademarks, logos, designs, and characters. Search for potential licenseesâ€” Look actively for potential users of your IP assets e. The Internet is a good source to find possible licensees. Select the right licenseeâ€” by searching for potential licensees we can make a list of how many users are there for a particular trademark or artwork. But choosing a licensee who is trustworthy and diligent can be a dicey job. Assess foreign markets-Merchandising may be used to gain access to new markets. Usually, the licensee will be fully responsible for the local manufacture, localization, logistics, and distribution. Does some market research, check out how competitors are representing themselves, and study the tastes of their consumers. Jointly promote the business and the merchandiseâ€” For example, print your company website on the merchandised products, promote the merchandised products on your website, enclose mail order forms with the merchandised products and with your company newsletters, etc. Protecting IP rights The following key points will help you protect your IP rights for merchandising purposes- Protect your trademarks-registration of a trademark gives the owner an exclusive right to use the mark for certain goods and services. For example, a bike store may have registered its trademark for bikes and other vehicles, but if it wants to merchandise its brand on t-shirts and hats, then it is well advised to register the trademark also for clothing and headgear in the countries where it plans to sell the merchandise. Protect your original designs-industrial designs are relevant to protect the ornamental or aesthetic aspect of useful merchandising articles. For example, a cartoon character may be represented in the form of aesthetic designs for toys, jewelry, dolls, brooches, pins, etc. Protect your copyright-copyright itself does not depend on official procedures. Protect your IP in all relevant marketsâ€” IP rights are territorial, so it is necessary to obtain protection in all potential export markets in due time. Choose the type of IP that provides you with the best protectionâ€” some elements used in merchandising may be protectable through different types of IP. For example, a cartoon character may be considered an artistic creation and therefore be protected under copyright, but it may also be protectable as a trademark. In some countries, certain types of IP may not apply to merchandise. Preserve control over the commercial use of your IPâ€” require that the licensee furnishes preliminary samples of the products on which the IP will be used. Monitor also the use of your trademark, so that licensees do not utilize the mark in a manner that goes beyond the terms of the license agreement. Limit the scope of the license-when granting a license, you give the licensee permission to do things that it otherwise would not be allowed to do. It is important to construe that permission as narrowly as possible. Register the

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license agreement, if needed-many countries require that a license is recorded with the national IP office or other government agency. Take action against infringement-it is up to you, as the IP right holder, to identify any infringement or counterfeiting on your IP rights and to decide what measures should be taken. How can such fictional characters be protected? Trademark law Since the fictional character is being represented in a three dimensional or pictorial form on goods and services, such character can be protected under the trademark law. The next step is to be able to determine the types of goods and services that are likely to be provided under the brand, both now and in the near future to ascertain the classes under which registration can be sought. Class 3 " Soaps, cosmetics etc. Class 16 " Stationery and paper related goods Class 24 " Bedcovers Class 25 " Clothing, headgear, and footwear Class 28 " Games and playthings Class 41 " Entertainment services Given that counterfeit products are available in the mark by the dozen, such registration not only gives the owner the right to use the trademark but also prevents others from infringing it. However, on conducting a search on the Indian cartoons or fictional characters that have trademark applications or registrations, I found that the number is abysmal. A copyright comes into existence the moment the work is created, so one does not necessarily need to register a copyright. Taking the same example, Bumble Mumble being a cinematographic work, the copyright will vest with the producer of the show. By this, every single frame is the copyright of the producer and therefore the exclusive rights vest with that person. Further, " poster, advertisement or pictorial representation can be protected as an artistic work under the copyright law in India. So if any person uses an image from the show itself without the consent of the producer, it will amount to copyright infringement. By Jus Dicere Team.

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## Chapter 8 : The Protection of Fictional Characters

*paper is on character merchandising, particularly the protection of intellectual property rights surrounding fictional characters under trademark and unfair competition laws.*

Rich Stim , Attorney [Click here to buy an eGuide containing merchandise agreements and explanations] Acquiring a license to sell merchandise that incorporates copyrighted material is similar to other licensing arrangements--you need to locate the copyright owner, negotiate an agreement, and sign it. However, the agreement used in merchandise licensing is usually complex than and contains additional responsibilities for the parties. Basic Terms Under the terms of a merchandise license, the owner of the image or text the licensor is usually paid an advance and a royalty based on a percentage of income from sales. The company selling the merchandise the licensee must meet certain obligations including payments, quality control and enforcement of rights. If the licensee fails to do so, the license can be terminated. Termination can cause great expense for both parties including the loss of income for the licensor and the loss of a substantial investment for the licensee. Alternatives to Licensing There are alternatives to licensing rights under a merchandise agreement. One alternative is to purchase the copyright in the artwork known as an assignment. The other choice is to hire an artist; photographer or musician to create the material and acquire ownership under a work made for hire agreement. Licensable merchandise is any consumer product on which an image or text can be affixed. In general, merchandise has some utility or function, for example a T-shirt or ceramic cup. Below is a list of products that are commonly the subject of merchandise licenses. However, there are no limitations on what can be merchandise; artwork can be placed on anything that can be reproduced. Different Types of Copyrighted Materials Used on Merchandise Most merchandise licenses are for artwork or photographs. However, text and music are also licensed in connection with merchandise. In general, the rules are the same. However, when it comes to licensing music there are some additional issues that arise depending on whether you are licensing a recorded composition or whether you will be re-recording a previously written compositions. Using Art on Merchandise Using art on merchandise generally consists of using an artistic image such as a drawing or painting on items you plan to sell. Of course, if the image is in the public domain, such as the Mona Lisa, no permission is required. Agreements for the use of art on merchandise are sometimes called "art licenses" or "design licenses. You may occasionally find unique provisions in some art licenses for the use of fine art worksâ€”for example, a clause permitting the artist to enter and inspect a poster-making facility to ensure a quality production process. Using Music On Merchandise The ability to place music onto computer chips has made it possible to include music in merchandise such as greeting cards, watches, toys, musical equipment, music boxes and even clothing. Most songs used on merchandise are not copied directly from an existing recording; instead, they are re-recorded in order to be embedded on a computer chip. Similarly, if lyrics will be reprinted on merchandise but no recording will be reproduced, permission is required from the music publisher, not the record company. Fictional characters include characters from books, television or movies such as Mickey Mouse, Sabrina the Witch, or Daffy Duck. The rules for licensing characters may change if a real person has portrayed the character John Goodman as Fred Flintstone. In that case, additional permission is required. Most of the provisions contained in a merchandise agreement are also used in trademark, character and celebrity licenses. However, there are some unique aspects to these agreements, some of which require knowledge of trademark law or the right of publicity. For example, character licensing involves overlapping trademark, copyright and design patent laws. These types of licenses are often handled by special licensing agencies that represent trademark owners, fictional characters and celebrities. Using Short Phrases On Merchandise Merchandise, by its nature, can generally only accommodate small amounts of text. However, in the following situations, permission should be obtained to use a short phrase. The phrase is associated with a fictional character. Universal City Studios, Inc. In this case, the outcome was directly related to use of E. The phrase is a trademark. The phrase is extremely inventive.

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Royalty rates for merchandise licensing vary depending on the merchandise involved. Below are some royalty estimates: However, most of the time, the licensee is the company that is manufacturing and selling the merchandise, furnishes the merchandise license agreement. Usually, prior to furnishing the agreement, the licensee and the licensor have worked out all of the business terms. For example, they have determined the royalty rate, the rights being transferred, the length of time for the agreement and other financial terms. If you would like to purchase a sample Merchandise License, [click here](#). This article is provided for informational purposes only. If you need legal advice or representation,.

## Chapter 9 : PERSONALITY PROTECTION AND PUBLICITY RIGHTS

*Concepts like fictional characters, the right of publicity and merchandising rights are typical views in China. Fictional character merchandising rights are the other type of character.*

The case involved the sale of a fashion T-shirt by Topshop with a well-known image of Rihanna. This case raises the question of what control people, in particular celebrities, have over their image. For many famous people, their fame provides a substantial source of income. Celebrities often endorse products and brands through advertising campaigns or release their own line of products. Fans buy these products thinking that it is endorsed by their idols. The recent trend of celebrities such as Jennifer Lopez, Britney Spears, Kim Kardashian, the Beckhams and Paris Hilton, releasing their own branded fragrances illustrates the great demand for such celebrity-branded products. In addition, the House of Lords has recognised "the right of a celebrity to make money out of publicizing private information about himself, including his photographs on a private occasion" in *Douglas v Hello!* This was confirmed in *Fenty*, where Kitchin LJ stated that "there is in English law no "image right" or "character right" which allows a celebrity to control the use of his name or image". It was also said in *Douglas* that "under English law it is not possible for a celebrity to claim a monopoly in his or her image, as if it were a trademark or brand. Here, Laddie J said that "When someone endorses a product or service he tells the relevant public that he approves of the product or service or is happy to be associated with it Merchandising is rather different. It involves exploiting images, themes or articles which have become famous The purpose of merchandising is to make available a large number of products which could be bought by members of the public who The tort of passing off perhaps provides the strongest protection for celebrities to control the way their image is used. The lie must also have been material. It is more than merely creating a false suggestion that the goods have been licensed or endorsed by her. As such, she would have lost out on fees she could have charged for the endorsement plus the loss of revenue to her merchandising business. The contentious matter of her case was whether or not Topshop had indeed committed a misrepresentation by selling the T-shirt with her image on it. Factors such as the fact that Rihanna had previously been legitimately associated with Topshop e. The broad scope and protection offered by passing off was noted in *Irvine* by Laddie J who said that "if someone acquires a valuable reputation or goodwill, the law of passing off will protect it from unlicensed use by other parties". Laddie J also noted that "the law of passing off has expanded over the years. For example, copyright did not provide Rihanna a cause of action as the photograph which was used on the garment was taken by an independent photographer who had granted Topshop a licence to use the image; thus there was no copyright infringement. However, copyright does offer limited protection for character merchandising by providing a cause of action if an image is reproduced without permission from the copyright holder. Presley", "Elvis" and "Elvis Presley" as trade marks. However, the marks were rejected for not being sufficiently distinctive to act as a badge of origin, i. Laddie J observed that although "Elvis" was undoubtedly famous, his fame would in fact make the mark less rather than more distinctive. The judge compared it to Tarzan Trade Mark where it was held that "Tarzan" could not be registered for films and other merchandise as it had become a household and descriptive word. Further, the main reason why Rihanna and Eddie Irvine were successful in their respective cases was because they could demonstrate that they were in the business of endorsing products for significant amounts of money. Some may argue that the current laws on publicity are insufficient to protect the image of celebrities who have invested a great deal of time and effort into building their images. On the other hand, others argue that publicity rights should not be heavily guarded as it is the public and society who made them famous, thus, celebrities should not be the only ones who are able to profit from their fame. This e-mail address is being protected from spambots. In addition, 10 of our lawyers were listed among the leading lawyers. Some of our partners were also listed in the rankings.