



**2008 BUSINESS REFORM COMMITTEES
MEETING OF THE TRADEMARKS
COMMITTEE**

**JULY 8, 2008
11:00 A.M.**

**Secretary of State's Office
700 North Street
Jackson, Mississippi**



700 NORTH STREET
POST OFFICE BOX 136
JACKSON, MISSISSIPPI 39205-1036

STATE OF MISSISSIPPI
SECRETARY OF STATE
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AGENDA

1. Welcome – Cheryn Baker
2. Roll Call of Persons Attending by Teleconference – Cheryn Baker
3. Introduction of Issues – Dan Hise
 - a. Adoption of revised Model State Trademark Bill (MSTB)
 - i. Should the Act be adopted?
 - ii. Possible additions to the Act
 1. “Shield” concept – immunity from infringement liability if diligent search does not uncover the allegedly similar mark
 2. Provisions providing protection of registered Mississippi marks on the Internet
 3. Other proposed additions
 4. Interaction of these additions with federal law
 - iii. Uniformity vs. making changes to the MSTB – which is more business-friendly?
 - iv. Adoption of updated classification of goods and services
 - b. Right of publicity statutes

- i. Introduction and summary of Mississippi law
 - ii. Discussion of right of publicity statutes in other states
4. Reminder of Upcoming Meetings: Dates and Future Programs – Cheryn Baker
5. Other Business
6. Adjourn 1:00 P.M.

Upcoming Meeting Dates

July 29

August 19

September 8 – No Meeting; Recommendations Due



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Conference Call Number: 1-866-212-0875

Conference Passcode: 553955#

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Replay Instructions

Conference Call Number: 1-866-212-0875

Replay Passcode: 169178#

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Ex. May 20, 2008 = record number is 052008

Call the conference call number as though you were joining a conference. Enter the replay passcode followed by the pound key. After logging on, press *3 and you will be prompted to enter the record number which is always the date of the meeting.

The system will prompt you to enter the number of minutes you wish to skip from the beginning of the recording, followed by the # key. (If you do not wish to skip any minutes then press 0 followed by the # key.)

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TRADEMARKS

Notes to consider when discussing possible additions to the Model State Trademark Bill (MSTB)

Relationship between federal and state trademark law

Unlike copyright and patent law, federal law in the realm of trademarks does not “occupy the field”; therefore, states are free to regulate the registration and infringement of trademarks within their borders.¹ However, when state law attempts to eliminate or narrow federal rights, the conflicting state law will be preempted by federal law.²

Common-law trademarks

Federal law provides that anyone appropriating and using a trademark in commerce (even purely intrastate commerce) has a common-law right in that mark.³ These rights exist independently of statutory provisions for registration. The federal Lanham Act does not *create* the right to a mark; it only recognizes rights acquired through use.⁴ Via section 43(a) of the Lanham Act (15 U.S.C. § 1125), the owner of a common-law trademark can enforce his or her rights in the mark against users of confusingly similar marks, just as the owner of a federally registered trademark can.⁵

As noted by several members of the Committee at the June 17 meeting, because federal common-law rights to a trademark are established solely by use (as opposed to registration), this can create difficulty for business owners attempting to determine if a desired mark is “clear” for use.

¹ See 3 MCCARTHY ON UNFAIR COMPETITION § 22:2 (4th Ed.).

² Id.

³ The extent of the right is limited by geography. That is, it is limited to those regions in which the mark has been used and those areas into which use of the mark is likely to expand.

⁴ *Common-law Trademarks or Trade-name Rights in Geographical Areas of Prior Use*, 22 Am. Jur. Proof of Facts 3d 623.

⁵ See 5 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 27:14 (4th ed.).

Mississippi Secretary of State, Policy & Research Division
July 8, 2008

State trademark laws, generally

Because federal common-law rights in a mark are based on use rather than on registration, State trademark registration is largely nonsubstantive.⁶ While the existence of a state registration may help a trademark owner prove that he or she was using a mark on a certain date, it carries few other benefits in the context of an infringement suit governed by federal law. The geographical effect of a state registration is defined by the state's boundaries.⁷

⁶ 4A CALLMANN ON UNFAIR COMP., TR. & MONO. § 26:58 (4th Ed.); *see also* 3 MCCARTHY ON UNFAIR COMPETITION § 22:2 (4th Ed.).

⁷ *Id.*

Differences Between Mississippi Trademark Law and the 2007 Model State Trademark Bill (MSTB)

Provisions Regarding Trademark Dilution (see attached “Guide to Understanding the Model State Trademark Bill” for comments regarding differences between the current and 1997 versions of the MSTB)

Areas of Difference	MISSISSIPPI (based on 1997 Model State Trademark Bill)	MODEL STATE TRADEMARK BILL (2007)	Significance
Definitions regarding trademark dilution	<p>§ 75-25-1(k)</p> <p>(k) The term “dilution” as used herein means the lessening of the capacity of registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of (a) competition between the parties, or (b) likelihood of confusion, mistake, or deception.</p>	<p>§ 1(k)</p> <p>(k) The term “dilution” as used herein means dilution by blurring or dilution by tarnishment, regardless of the presence or absence of</p> <p>(1) competition between the owner of the famous mark and other parties, or</p> <p>(2) actual or likely confusion, mistake, or deception, or</p> <p>(3) actual economic injury.</p> <p>(l) The term “dilution by blurring” as used herein means association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.</p> <p>(m) The term “dilution by tarnishment” as used herein means association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.</p>	<p>The MSTB’s definition adopts the two types of trademark dilution recognized by the Federal Trademark Dilution Revision Act of 2006 (FTDRA). These two forms of dilution had been recognized by federal courts prior to the adoption of the Act, but the FTDRA formalized this distinction.</p> <p>Staff recommendation: ADOPT</p>
Trademark dilution	<p>§ 75-25-25</p> <p>The owner of a mark which is famous in this state shall be entitled, subject to the principles of equity, to an injunction against another’s use of a mark, commencing after the owner’s mark becomes famous, which causes dilution of the distinctive quality of the owner's mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous, a court may consider factors such as, but not limited to:</p>	<p>§ 13</p> <p>(a) Subject to the principles of equity, the owner of a mark which is famous and distinctive, inherently or through acquired distinctiveness, in this state shall be entitled to an injunction against another person’s commercial use of a mark or trade name, if such use begins after the mark has become famous and is likely to cause dilution of the famous mark, and to obtain such other relief as is provided in this section.</p>	<p>Prior to the adoption of the FTDRA, there had been some controversy as to whether the 1996 Federal Trademark Dilution Act imposed an “actual dilution” or “likelihood of dilution” standard. In <i>Moseley v. V Secret Catalogue, Inc.</i>, 537 U.S. 418 (2003), the United States Supreme Court held that a plaintiff had to prove actual dilution in order to prevail under the then-current federal dilution statute. The FTDRA effectively overturned the <i>Moseley</i> decision, instead imposing a “likelihood of</p>

	<p>(a) The degree of inherent or acquired distinctiveness of the mark in this state;</p> <p>(b) The duration and extent of use of the mark in connection with the goods and services;</p> <p>(c) The duration and extent of advertising and publicity of the mark in this state;</p> <p>(d) The geographical extent of the trading area in which the mark is used;</p> <p>(e) The channels of trade for the goods or services with which the owner's mark is used;</p> <p>(f) The degree of recognition of the owner's mark in its and in the other's trading areas and channels of trade in this state; and</p> <p>(g) The nature and extent of use of the same or similar mark by third parties.</p> <p>The owner shall be entitled only to injunctive relief in this state in an action brought under this section, unless the subsequent user willfully intended to trade on the owner's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.</p>	<p>(b) A mark is famous if it is widely recognized by the general consuming public of this State or a geographic area in this State as a designation of source of the goods or services of the mark's owner. In determining whether a mark is famous, a court may consider factors such as, but not limited to:</p> <ol style="list-style-type: none"> (1) The duration, extent, and geographic reach of advertising and publicity of the mark in this state, whether advertised or publicized by the owner or third parties; (2) The amount, volume, and geographic extent of sales of goods or services offered under the mark in this state; (3) The extent of actual recognition of the mark in this state; and (4) Whether the mark is the subject of a state registration in this state, or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the principal register under the Trademark Act of 1946, as amended. <p>(c) In an action brought under this section, the owner of a famous mark shall be entitled to injunctive relief throughout the geographic area in which the mark is found to have become famous prior to commencement of the junior use, but not beyond the borders of this state. If the person against whom the injunctive relief is sought willfully intended to cause dilution of the famous mark, then the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.</p>	<p>dilution" standard. The current version of the MSTB reflects this.</p> <p>Additionally, the new revision to the MSTB incorporates the FTDR's elimination of so-called "niche fame" as a basis for a trademark dilution suit. The current version defines a mark as "famous" only if it is "widely recognized by the <i>general consuming public</i> of this State" (emphasis added). This definition prevents a plaintiff from claiming that his or her mark is "famous" because it is well-known within a specific industry or demographic.</p> <p>Staff recommendation: ADOPT</p>
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Other Provisions

Areas of Difference	MISSISSIPPI	MSTB	Significance
Fair use	<p>NO FAIR USE PROVISIONS</p>	<p>§ 13(d)</p> <p>(d) The following shall not be actionable under this section:</p> <p>(1) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with</p> <p style="padding-left: 40px;">(A) Advertising or promotion that permits consumers to compare goods or services; or</p> <p style="padding-left: 40px;">(B) Identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner;</p> <p>(2) Noncommercial use of the mark; and</p> <p>(3) All forms of news reporting and news commentary.</p>	<p>While the 1996 revision of the MSTB contained fair use provisions as formulated under the Federal Trademark Dilution Act, Mississippi apparently did not adopt these provisions.</p> <p>The current revision to the MSTB mirrors the fair use provisions implemented into federal law by the FTDR.</p> <p>Staff recommendation: ADOPT</p>
Appealing refusal of registration	<p>§ 75-25-7(6)</p> <p>(6) If the Secretary finally refuses registration of the mark, the applicant may appeal such refusal to the First Judicial District of the Hinds County Chancery Court. The secretary's refusal may be reversed, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.</p>	<p>§ 4(f)</p> <p>(f) If the Secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the Secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.</p>	<p>Though the language differs between the provisions, the effect is the same: they both provide an aggrieved applicant a route of appeal.</p> <p>While the MSTB allows the applicant to “seek a writ” of mandamus to compel registration, it is not clear from whom the applicant would receive such writ. The Mississippi Act directs an aggrieved applicant to a specific court, i.e., the Hinds County Chancery Court.</p> <p>Staff recommendation: ADOPT</p>

	MISSISSIPPI	MSTB	Significance
Classification of goods and services	<p>§75-25-19</p> <p>The secretary shall by regulation establish a classification of goods and services for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the secretary may require payment of a fee for each class.</p>	<p>§ 10</p> <p>The Secretary shall by regulation establish a classification of goods and services for convenience of administration of this Act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the Secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.</p>	<p>This addition to the MSTB (see highlighted text) encourages the adoption of the classification scheme adopted by the United States Patent and Trademark Office (USPTO).</p> <p>Mississippi's current classification scheme largely mirrors that used by the USPTO; however, Mississippi has not yet adopted classes 42-45.</p> <p>Staff recommendation: ADOPT</p>
Severability	<p>No severability provision</p>	<p>§ 18</p> <p>If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act shall not be affected thereby.</p>	<p>Mississippi's Act does not currently contain a severability provision.</p> <p>Staff recommendation: ADOPT</p>
Time of taking effect – repeal of prior acts; intent of act	<p>No such provision</p>	<p>§ 19</p> <p>(a) This Act shall be in force and take effect after its enactment but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this Act, provided that as to any application, suit, proceeding or appeal, and for that purpose only, pending at the time this Act takes effect such repeal shall be deemed not to be effective until final determination of said pending application, suit, proceeding or appeal.</p>	<p>Were Mississippi to adopt the current version of the MSTB, the provisions in subsection (a) would most likely need to be included in order to protect parties to suits which are pending under current Mississippi trademark law.</p> <p>Subsection (b) directs state courts to look to interpretation of the federal Trademark Act as persuasive authority for interpreting state trademark laws.</p> <p>Staff recommendation: ADOPT</p>

		(b) The intent of this Act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal Act should be examined as persuasive authority for interpreting and construing the Act.	



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Model State Trademark Bill



An Act to Provide for the Registration and Protection of Trademarks

(Be it enacted, etc.)

Section 1: Definitions

(a) The term "trademark" as used herein means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured or sold by others, and to indicate the source of the goods, even if that source is unknown.

(b) The term "service mark" as used herein means any word, name, symbol, or device or any combination thereof used by a person, to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(c) The term "mark" as used herein includes any trademark or service mark, entitled to registration under this Act whether registered or not.

(d) The term "trade name" means any name used by a person to identify a business or vocation of such person.

(e) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this Act includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership, corporation, union, association, or other organization capable of suing and being sued in a court of law.

(f) The term "applicant" as used herein embraces the person filing an application for registration of a mark under this Act, and the legal representatives, successors, or assigns of such person.

(g) The term "registrant" as used herein embraces the person to whom the registration of a mark under this Act is issued, and the legal representatives, successors, or assigns of such person.

(h) The term "use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this Act, a mark shall be deemed to be in use

(1) on goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state, and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(i) A mark shall be deemed to be "abandoned" when either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment; or

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(j) The term "Secretary" as used herein means the secretary of the state or the designee of the secretary charged with the administration of this Act.

(k) The term "dilution" as used herein means dilution by blurring or dilution by tarnishment, regardless of the presence or absence of

(1) competition between the owner of the famous mark and other parties, or

(2) actual or likely confusion, mistake, or deception, or

(3) actual economic injury.

(l) The term "dilution by blurring" as used herein means association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.

(m) The term "dilution by tarnishment" as used herein means association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

Section 2: Registrability

A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

(a) consists of or comprises immoral, deceptive or scandalous matter; or

(b) consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's written consent; or

(e) consists of a mark which,

(1) when used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or

(2) when used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

(3) is primarily merely a surname;

provided, however, that nothing in this subsection (e) shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods or services. The Secretary may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state for the five years before the date on which the claim of distinctiveness is made; or

(f) consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

Section 3: Application for Registration

(a) Subject to the limitations set forth in this Act, any person who uses a mark may file in the office of the Secretary, in a manner complying with the requirements of the Secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) the name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the Secretary,

(2) the goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall,

(3) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest, and

(4) a statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The Secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefore.

(c) The Secretary may also require that a drawing of the mark, complying with such requirements as the Secretary may specify, accompany the application.

(d) The application shall be signed and verified (by oath, affirmation or declaration subject to perjury laws) by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by three specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the Secretary of state.

Section 4: Filing of Applications

(a) Upon the filing of an application for registration and payment of the application fee, the Secretary may cause the application to be examined for conformity with this Act.

(b) The applicant shall provide any additional pertinent information requested by the Secretary including a description of a design mark and may make, or authorize the Secretary to make, such amendments to the application as may be reasonably requested by the Secretary or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The Secretary may require the applicant to disclaim an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the Secretary upon the application submitted by the applicant upon applicant's agreement; or a fresh application may be required to be submitted.

(e) If the applicant is found not to be entitled to registration, the Secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the Secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until

(1) the Secretary finally refuses registration of the mark; or

(2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the Secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the Secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

(g) In the instance of applications concurrently being processed by the Secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the Secretary shall grant priority to the applications in order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of Section 9 of this Act.

Section 5: Certificate of Registration

(a) Upon compliance by the applicant with the requirements of this Act, the Secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the Secretary and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the Secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(b) Any certificate of registration issued by the Secretary under the provisions hereof or a copy thereof duly certified by the Secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any court of this state.

Section 6: Duration and Renewal

(a) A registration of mark hereunder shall be effective for a term of five years from the date of registration and, upon application filed within six months prior to the expiration of such term, in a manner complying with the requirements of the Secretary, the registration may be renewed for a like term from the end of the expiring term. A renewal fee, payable to the Secretary, shall accompany the application for renewal of the registration.

(b) A registration may be renewed for successive periods of five years in like manner.

(c) Any registration in force on the date on which this Act shall become effective shall continue in full force and effect for the unexpired term thereof and may be renewed by filing an application for renewal with the Secretary complying with the requirements of the Secretary and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

(d) All applications for renewal under this Act, whether of registrations made under this Act or of registrations effected under any prior act, shall include a verified statement that the mark has been and is still in use and include a specimen showing actual use of the mark on or in connection with the goods or services.

Section 7: Assignments, Changes of Name and Other Instruments

(a) Any mark and its registration hereunder shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the Secretary upon the payment of the recording fee payable to the Secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this Act shall be void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary within three months after the date thereof or prior to such subsequent purchase.

(b) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed may record a certificate of change of name of the registrant or applicant with the Secretary upon the payment of the recording fee. The Secretary may issue in the name of the assignee a certificate of registration of an assigned application. The Secretary may issue in the name of the assignee, a new certificate or registration for the remainder of the term of the registration or last renewal thereof.

(c) Other instruments which relate to a mark registered or application pending pursuant to this Act, such as, by way of example, licenses, security interests or mortgages, may be recorded in the discretion of the Secretary, provided that such instrument is in writing and duly executed.

(d) Acknowledgement shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the Secretary, the record shall be prima facie evidence of execution.

(e) A photocopy of any instrument referred to in subsections (a), (b) or (c), above, shall be accepted for recording if it is certified by any of the parties thereto, or their successors, to be a true and correct copy of the original.

Section 8: Records

The Secretary shall keep for public examination a record of all marks registered or renewed under this Act, as well as a record of all documents recorded pursuant to Section 7.

Section 9: Cancellation

The Secretary shall cancel from the register, in whole or in part:

(a) any registration concerning which the Secretary shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

(b) all registrations granted under this Act and not renewed in accordance with the provisions hereof;

(c) any registration concerning which a court of competent jurisdiction shall find

(1) that the registered mark has been abandoned,

(2) that the registrant is not the owner of the mark,

(3) that the registration was granted improperly,

(4) that the registration was obtained fraudulently,

(5) that the mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered,

(6) that the registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that, should the registrant prove that the registrant is the owner of a concurrent registration of a mark in the United States Patent and Trademark Office covering an area including this state, the registration hereunder shall not be cancelled for such area of the state; or

(d) when a court of competent jurisdiction shall order cancellation of a registration on any ground.

Section 10: Classification

The Secretary shall by regulation establish a classification of goods and services for convenience of administration of this Act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the Secretary may require payment of a fee for each class. To the extent practical, the classification of goods and services should conform to the classification adopted by the United States Patent and Trademark Office.

Section 11: Fraudulent Registration

Any person who shall for himself or herself, or on behalf of any other person, procure the filing or registration of any mark in the office of the Secretary under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

Section 12: Infringement

Subject to the provisions of Section 16 hereof, any person who shall

(a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a mark registered under this Act in connection with the sale, distribution, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) reproduce, counterfeit, copy or colorably imitate any such mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services;

shall be liable in a civil action by the registrant for any and all of the remedies provided in Section 14 hereof, except that under subsection (b) hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with the intent to cause confusion or mistake or to deceive.

Section 13: Injury to Business Reputation; Dilution

(a) Subject to the principles of equity, the owner of a mark which is famous and distinctive, inherently or through acquired distinctiveness, in this state shall be entitled to an injunction against another person's commercial use of a mark or trade name, if such use begins after the mark has become famous and is likely to cause dilution of the famous mark, and to obtain such other relief as is provided in this section.

(b) A mark is famous if it is widely recognized by the general consuming public of this State or a geographic area in this State as a designation of source of the goods or services of the mark's owner. In determining whether a mark is famous, a court may consider factors such as, but not limited to:

(1) The duration, extent, and geographic reach of advertising and publicity of the mark in this state, whether advertised or publicized by the owner or third parties;

(2) The amount, volume, and geographic extent of sales of goods or services offered under the mark in this state;

(3) The extent of actual recognition of the mark in this state; and

(4) Whether the mark is the subject of a state registration in this state, or a federal registration under the Act of March 3, 1881, or under the Act of February 20, 1905, or on the principal register under the Trademark Act of 1946, as amended.

(c) In an action brought under this section, the owner of a famous mark shall be entitled to injunctive relief throughout the geographic area in which the mark is found to have become famous prior to commencement of the junior use, but not beyond the borders of this state. If the person against whom the injunctive relief is sought willfully intended to cause dilution of the famous mark, then the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity.

(d) The following shall not be actionable under this section:

(1) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with

(A) Advertising or promotion that permits consumers to compare goods or services; or

(B) Identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner;

(2) Noncommercial use of the mark; and

(3) All forms of news reporting and news commentary.

Section 14: Remedies

(a) Any owner of a mark registered under this Act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the complainant, to be destroyed. The court, in its discretion, may enter judgment for an amount not to exceed three times such profits and damages and/or reasonable attorneys' fees of the prevailing party in such cases where the court finds the other party committed such wrongful acts with knowledge or in bad faith or otherwise as according to the circumstances of the case.

(b) The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

Section 15: Forum for Actions Regarding Registration; Service On Out of State Registrants

(a) Actions to require cancellation of a mark registered pursuant to this Act or in mandamus to compel registration of a mark pursuant to this Act shall be brought in the [name of court]. In an action in mandamus, the proceeding shall be based solely upon the record before the Secretary. In an action for cancellation, the Secretary shall not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall be given the right to intervene in the action.

(b) In any action brought against a non-resident registrant, service may be effected upon the Secretary as agent for service of the registrant in accordance with the procedures established for service upon non-resident corporations and business entities under sections < > of the <general statutes>.

Section 16: Common Law Rights

Nothing herein shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

Section 17: Fees

The Secretary shall by regulation prescribe the fees payable for the various applications and recording fees and for related services. Unless specified by the Secretary, the fees payable herein are not refundable.

Section 18: Severability

If any provision hereof, or the application of such provision to any person or circumstance is held invalid, the remainder

of this Act shall not be affected thereby.

Section 19: Time of Taking Effect - Repeal of Prior Acts; Intent of Act

(a) This Act shall be in force and take effect after its enactment but shall not affect any suit, proceeding or appeal then pending. All acts relating to marks and parts of any other acts inconsistent herewith are hereby repealed on the effective date of this Act, provided that as to any application, suit, proceeding or appeal, and for that purpose only, pending at the time this Act takes effect such repeal shall be deemed not to be effective until final determination of said pending application, suit, proceeding or appeal.

(b) The intent of this Act is to provide a system of state trademark registration and protection substantially consistent with the federal system of trademark registration and protection under the Trademark Act of 1946, as amended. To that end, the construction given the federal Act should be examined as persuasive authority for interpreting and construing the Act.

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C

Effective: October 30, 2006

Massachusetts General Laws Annotated [Currentness](#)

Part I. Administration of the Government (Ch. 1-182)

Title XV. Regulation of Trade (Ch. 93-110H)

▢ [Chapter 110H. Registration and Protection of Trademarks \(Refs & Annos\)](#)

→ [§ 5. Certificate of registration; issuance; admissibility in evidence](#)

(a) Upon compliance by the applicant with the requirements of this chapter, the secretary shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the commonwealth, and it shall show the name and business address and, if a corporation, the state of incorporation, or if a partnership, the commonwealth in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in the commonwealth, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date and the term of the registration.

(b) A certificate of registration issued by the secretary under this chapter or a copy thereof duly certified by the secretary shall be admissible in evidence as competent and sufficient proof of the registration of the mark in any actions or judicial proceedings in any court of the commonwealth. Registration of or renewal of a mark provided by this chapter shall be **constructive** notice of the registrant's claim of ownership thereof and shall, when introduced in any action, be prima facie evidence of the registrant's exclusive right to use the registered mark in this commonwealth on goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if the mark had not been registered.

CREDIT(S)

Added by [St.2006, c. 195, § 2, eff. Oct. 30, 2006](#).

HISTORICAL AND STATUTORY NOTES

2006 Legislation

2008 Electronic Update

Prior Laws:

[G.L. c. 110B, § 4](#), as added by [St.1973, c. 897, § 5](#).

RESEARCH REFERENCES

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated [Currentness](#)

Business and Commerce Code ([Refs & Annos](#))

Title 2. Competition and Trade Practices

▣ [Chapter 16. Trademarks \(Refs & Annos\)](#)

▣ [Subchapter B. Registration of Mark \(Refs & Annos\)](#)

→ [§ 16.15. Record, Notice, and Proof of Registration](#)

(a) The secretary of state shall keep for public examination a record of all:

- (1) marks registered, reregistered, or renewed under this chapter;
- (2) assignments recorded under [Section 16.18](#) of this code; and
- (3) other instruments recorded under [Section 16.19](#) of this code.

(b) Registration of a mark under this chapter is constructive notice throughout this state of the registrant's claim of ownership of the mark throughout this state.

(c) A certificate of registration issued by the secretary of state under this chapter, or a copy of it certified by the secretary of state, is admissible in evidence as prima facie proof of

- (1) the validity of the registration;
- (2) the registrant's ownership of the mark; and
- (3) the registrant's exclusive right to use the mark in commerce in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

CREDIT(S)

Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by [Acts 1997, 75th Leg., ch. 248, § 5, eff. Sept. 1, 1997](#).

HISTORICAL AND STATUTORY NOTES

2002 Main Volume

Acts 1997, 75th Leg., ch. 248, in subsec. (a), added subd. (3) and made other nonsubstantive changes.

Prior Laws:

Acts 1962, 57th Leg., 3rd C.S., p. 62, ch. 24, §§ 4, 5, 9.
[Vernon's Ann.Civ.St. art. 851-C, § 4, 5, 9.](#)

International Classifications of Goods and Services

Class Goods

- 1 Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
- 2 Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
- 3 Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
- 4 Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.
- 5 Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
- 6 Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
- 7 Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements; incubators for eggs.
- 8 Hand tools and implements (hand operated); cutlery; side arms; razors.
- 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus.
- 10 Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials.
- 11 Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
- 12 Vehicles; apparatus for locomotion by land, air or water.
- 13 Firearms; ammunition and projectiles; explosives; fireworks.
- 14 Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

Class Goods

- 15** Musical instruments.
- 16** Paper, card board and goods made from these materials, not included in other classes; printed matter; book binding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.
- 17** Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.
- 18** Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
- 19** Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.
- 20** Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
- 21** Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.
- 22** Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
- 23** Yarns and threads, for textile use.
- 24** Textiles and textile goods, not included in other classes; bed and table covers.
- 25** Clothing, footwear, headgear.
- 26** Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
- 27** Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
- 28** Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
- 29** Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and milk products; edible oils and fats.
- 30** Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

Class Goods

- 31** Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.
- 32** Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
- 33** Alcoholic beverages (except beers).
- 34** Tobacco; smokers' articles; matches.

Class Services

- 35** Advertising; business management; business administration; office functions.
- 36** Insurance; financial affairs; monetary affairs; real estate affairs.
- 37** Building construction; repair; installation services.
- 38** Telecommunications.
- 39** Transport; packaging and storage of goods; travel arrangement.
- 40** Treatment of materials.
- 41** Education; providing of training; entertainment; sporting and cultural activities.
- 42** Scientific and technological services; research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.
- 43** Services for providing food and drink; temporary accommodation.
- 44** Medical services; veterinary services; hygienic and beauty care for humans or animals; agriculture, horticulture and forestry services.
- 45** Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

Additional U.S. Classifications

Class

- A** Certification marks for goods.
- B** Certification marks for services.
- 200** Collective membership marks.

For the complete, current list, refer to the USPTO's Trademark Acceptable Identification of Goods and Services Manual, available on the Internet at www.uspto.gov, or call the USPTO at (202) 512-1800 to order a copy of the manual.

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RIGHT OF PUBLICITY

The Right of Publicity

What is the right of publicity?

The right of publicity is “the inherent right of every human being to control the commercial use of his or her identity.”¹ This right is infringed by unpermitted use which will likely damage the commercial value of the person’s identity. The right to publicity is categorized as a form of intellectual property, and is distinguishable from the right to privacy.² Like other forms of intellectual property, the right may be assigned.

Elements of infringement

Generally, a claim of infringement of the right of publicity requires that a plaintiff prove (1) that he or she owns an enforceable right in the identity of a human being; (2) that the defendant, without permission, has used some aspect of that identity in such a way that the plaintiff is identifiable; and (3) that the defendant’s use is likely to cause damage to the commercial value of the plaintiff’s identity.³

The right of privacy vs. the right of publicity

Whereas the right to privacy protects against intrusion upon an individual’s private self-esteem and dignity, the right to publicity protects against *commercial loss* caused by unauthorized commercial exploitation of a person’s identity.⁴ Whereas damages in invasion of privacy cases are centered on emotional distress, damages in publicity cases are based on commercial loss.

¹ 5 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 28:1 (4th Ed.).

² Id.

³ Id. at § 28:7.

⁴ Id. at § 28:6.

**Mississippi Secretary of State, Division of Policy & Research
July 8, 2008**

Trademarks vs. the right of publicity

A trademark identifies and distinguishes a commercial source, while what is identified by the publicity right is one person's *identity*.⁵

Differences between trademarks and the right of publicity:⁶

	Trademarks	Right of publicity
What is identified?	"Good will" of seller	"Persona" of a human being
Prior exploitation needed?	Yes – used to identify and distinguish goods and services	No – prior exploitation not required
Test of infringement?	Likelihood of confusion, mistake, or deception	Identifies the "persona" of the plaintiff
Transferable?	Yes, but must assign with "good will" and license with "quality control"	Can assign without "good will" and license without "quality control"

The right of publicity under state statutes and common law

The right of publicity has been recognized in 28 states, either by statute or common law.⁷ In most of these states, the common law and statutory schemes coexist; however, in New York, the state courts have held that the right of publicity stems only from statute, and not from common law. In contrast, the right to publicity in California is both a statutory and a common law right.⁸ This coexistence is best explained by illustration:

⁵ Id. at § 28:8.

⁶ Id. at § 29:9.

⁷ Id. at § 28:16. Eighteen states have recognized the right by statute; ten have recognized it under state common law.

⁸ Id. at § 28:18.

Mississippi Secretary of State, Division of Policy & Research
July 8, 2008

In the 1992 *Vanna White* case, White sued Samsung Electronics for running a print advertisement which showed a female robot character posed next to what looked like a “Wheel of Fortune” board. The court held that White’s *statutory* rights were not infringed, because under the California statute, a robot did not qualify as a “likeness.” However, the court held that the common law of publicity was not so limited, and that it was possible that under the common law such a depiction could qualify as a likeness.⁹

Descendibility

The “overwhelming majority” of courts that have considered the question have held that the right of publicity is descendible and has an unconditional postmortem duration.¹⁰ Fourteen states have addressed the question of descendibility by statute, providing terms from anywhere from ten years to 100 years (Indiana).¹¹ New York is a notable exception – its statute extends the right only to living persons.

Mississippi law

While Mississippi has recognized the right of publicity under common law, it has not done so by statute. In *Candebat v. Flanagan*, 487 So. 2d 207 (Miss. 1986), the court first recognized that “the use of one’s name or likeness shares certain characteristics of property.” Though the courts do not refer to the right explicitly as the “right of publicity,” the subsequent decisions of *Harbin v. Jennings*, 734 So. 2d 269 (Miss. Ct. App. 1999) and *Brasel v. Hair Co.*, 976 So. 2d 390 (Miss. Ct. App. 2008), have reaffirmed the existence of the right.

⁹ Id.

¹⁰ Id. at § 28:45.

¹¹ Id.



State Right to Publicity Laws

Last update: January 20, 2006

Intertwined within privacy law, the **Right to Publicity** might be described as the flip-side of that coin. Many states have long recognized the value and importance of an individual's "15 minutes of fame" and have explicitly codified a property right in an individual's identity. As digital recording and distribution becomes more widely available and the public's desire for "reality TV" grows, these rights will likely play an important and continuing role in the commercialization of not only celebrities, but also regular Joes and Janes.

At least 19 states currently recognize the right to publicity to some degree in their laws. Many of these states explicitly recognize a right to publicity, while others have enacted broad privacy statutes that encompass unauthorized commercial exploitation of an individual. Most states continue to recognize these publicity rights even after the individual's death and allow them to be transferred to others, just like real property. However, because significant variability exists in the scope and term of the rights, conflicts are likely to arise, as different jurisdictions offer varying degrees of protection. For example, some states offer no protection after death, others offer 10, 20, 50, 75 and even up to 100 years of protection. Some states will protect the name and picture, while others protect "persona," gestures, voice, signature, and so forth. States that provide exemptions in their laws for certain activities, such as news reporting, are less likely to run afoul of possible First Amendment issues. Eleven states have recognized the right to publicity in case law only.

State Statutes (19 states)

California

[Cal Civil Code § 3344-3344.1](#). Prohibits the unauthorized commercial use of name, voice, signature, photograph or likeness. The rights of a deceased personality (the Astaire Celebrity Image Protection Act) provides for a right that continues for 70 years after the death of the personality.

Florida

[Fla. Stat. § 540.08](#). Prohibits the unauthorized publication or use for commercial or advertising purposes, of the name or likeness of any person. This right continues for 40 years after death.

Illinois

[Ill. Rev. Stat. ch. 765 § 1075/1 et seq.](#) Each individual is recognized as having a right in controlling whether and how to use their identity for commercial purposes. The right continues for 50 years after death.

Indiana

[Ind. Code § 32-36](#). Prohibits the unauthorized "commercial use" of a personality's name, voice, signature, photograph, image, likeness, distinctive appearance, gestures or mannerisms. Several exceptions are listed, e.g. literary works, musical compositions, fine art. The right continues for 100 years after death.

Kentucky

[Ky. Rev. Stat. § 391.170](#) - Prohibits the unauthorized commercial use of the name or likeness of a "person who is a public figure." This right continues for 50 years after death.

Massachusetts

[Mass. Gen. Laws Ann. ch. 214, § 3A](#) - Prohibits the unauthorized use of name, portrait or picture of a person for advertising or trade purposes. The law does not appear to grant rights after death.

Nebraska

[Neb. Rev. Stat. § 20-202](#) - Prohibits the exploitation of a natural person's name, picture, portrait, or personality for advertising or commercial purposes, as an invasion of privacy. The law does not appear to grant rights after death.

Nevada

[Nev. Rev. Stat. § 597.770-597.810](#) - Prohibits the unauthorized commercial use of any person's name, voice, signature, photograph or likeness during life and continuing for 50 years after death.

New York

[N.Y. Civil Rights Law § 50, 51](#) - Prohibits the unauthorized use for advertising or trade purposes, of the name, portrait or picture of any living person. The law does not appear to grant rights after death.

Ohio

[Ohio Rev. Code Ann. § 2741.01 et seq.](#) Prohibits the unauthorized use of "any aspect of an individual's persona" for commercial purposes during life and 60 years after death.

Oklahoma

[Okla. Stat. tit 12, § 1448, 1449.](#) Prohibits the unauthorized use of another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods for the purposes of advertising or selling. This right continues for 100 years after death.

Pennsylvania

Pa. Cons. Stat. tit. 42, § 8316. Unauthorized use of name or likeness.

Rhode Island

[R.I. Gen. Laws § 9-1-28, 9-1-28.1\(a\)\(2\)](#) - Prohibits unauthorized use of any person's name, portrait, or picture for advertising or trade purposes. The law does not appear to grant rights after death.

Tennessee

Tenn. Code Ann. § [47-25-1102](#), [-1103](#), [-1104](#), [-1105](#), [-1106](#), [-1107](#) Prohibits the unauthorized use of an individual's name, photograph or likeness in any medium for the purposes of advertising, fund raising, or solicitation of donations or purchases. The right continues for 10 years after death.

Texas

[Tex. Property Code Ann. § 26.001 et seq.](#) Prohibits the unauthorized use of a deceased individual's name, voice, signature, photograph, or likeness in any manner, including commercial and advertising uses. This right continues for 50 years after death. Strangely, the law is written to specifically address a deceased individual's rights, but does not apply to living individuals

Utah

[Utah Code Ann. § 45-3-1 et seq.](#) Prohibits unauthorized commercial use of an individual's personal identity in a way that expresses or implies approval or endorsement of a product or subject matter. The law does not appear to grant rights after death.

See also, [§ 76-9-407](#) (misdemeanor)

Virginia

[Va. Code § 8.01-40.](#) Prohibits the unauthorized use of a persons name, portrait or picture for advertising or trade purposes. The right continues for 20 years after death.

See also [Va. Code § 18.2-216.1](#) (misdemeanor);

Washington

[Wash. Rev. Code § 63.60.010 et seq.](#) Recognizes that every individual or personality has a property right in the use of their name, voice, signature, photograph or likeness. This law distinguishes between an *Individual*: a natural person; and a *Personality*: any individual whose "publicity" has commercial value. The rights of an Individual continue after death for 10 years, but the rights of a Personality continue for 75 years after death.

Wisconsin

[Wis. Stat. § 895.50\(2\)\(b\).](#) Prohibits the unauthorized use for advertising or trade purposes of the name, portrait or picture of any living person. The law does not appear to grant any rights after death.

States that Recognize the Right to Publicity in Common Law Only (11 states)

Alabama
Arizona
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Sources:

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J. Thomas McCarthy, *The Rights of Publicity and Privacy*, §§ 6.3, 6.8 (2d ed. 2001).

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Mississippi Focus

***331 THE LAW OF BUSINESS TORTS IN MISSISSIPPI**

[Note: This Article has been divided with the first half appearing in 15 Miss. C. L. Rev. Fall 1994, ed. [\[FNa1\]](#)

[James L. Robertson](#)[\[FNaa1\]](#)

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IX. THE RIGHT OF PUBLICITY

A. Origins in the Right of Privacy

In the last four sections [\[FN676\]](#) we have addressed instances of actionable interference with advantageous economic relations where our law's statutory species is prominent. In antitrust, federal statutory law reigns supreme, although subject to more than a few judicial glosses. In the areas of deceptive marketing and the law of trademarks, we have seen the interaction with both federal and state statutory law. When we turned to the appropriation of trade secrets, we saw state statutory law in the ascendancy. These do not exhaust the field. We next turn to an evolving body of law addressing another form of appropriation of trade values, a body of law where there are no statutes to speak of (at least, not in Mississippi).

Non-consensual appropriation and use of some of the incidents of one's identity and personality have been thought unfair for close to a century. The law's response has evolved along interesting paths; today much of such behavior is universally regarded as actionable. In 1976, the Supreme Court of Mississippi saw "the appropriation of another's identity for an unpermitted use" as one of four variants of the common law right of privacy. [\[FN677\]](#) A decade later the court was able to say that "t here is no dispute as to the existence of the cause in Mississippi," and turned thereafter to the different injuries so inflicted which had given rise to recoverable compensable damages. [\[FN678\]](#) Two later cases have recognized the tortious quality of such an appropriation. [\[FN679\]](#)

Mississippi's most prominent case in this corner of the field is *Candebat v. Flanagan*. [\[FN680\]](#) Irene and James Candebat paid a few dollars and joined a motorist association that offered various services and expense reimbursements to members who experienced highway emergencies. [\[FN681\]](#) The Candebats had such an emergency, *354 and it appears the association responded admirably. [\[FN682\]](#) The Candebats' satisfaction soured into suit when they learned that, without their consent or knowledge, the motorist association was telling their story, and the association's conceded quite satisfactory response, in promotional materials used for marketing its program to others. [\[FN683\]](#)

The court held that the Candebats could recover in tort. [\[FN684\]](#) The court focused upon the nature of the interests the law should protect. [\[FN685\]](#) Noting that a number of courts had characterized the plaintiff's interest as proprietary, if not pure property, the court correctly saw beyond this and found that injury to a person's feelings and

emotions was a reasonable and frequent expectancy stemming from such conduct. [\[FN686\]](#) The court recognized “that the use of one's name or likeness shares certain characteristics of property” and then added that this “does not prove that the law governing injuries to it must be governed solely by property related considerations.” [\[FN687\]](#) Recalling our discussion of a similar point regarding trade secrets, the interests at risk have a bit more of a personal flavor, at least with non-celebrities like the Candebats. The court explained:

The injury to the plaintiff's feelings may very well be the more serious of the two in many instances; often an intrusion which is of very little commercial consequence can nonetheless cause serious emotional distress. The law should protect both the proprietary and the emotional interests; it should not focus with tunnel vision on the property-related characteristics of the tort. [\[FN688\]](#)

Of importance, all of the Mississippi cases have cited with apparent approval the work of the late Dean William Prosser [\[FN689\]](#) and the expression and reformulation of that work in the Restatement (Second) of Torts. [\[FN690\]](#) This history surely presages Mississippi's recognition of the more mature expression of the actionability of non-consensual appropriation of a person's identity most often labeled today “the right of publicity.” A knowledgeable Mississippi lawyer, seeking to predict for a client's benefit and protection the likely incidence of the public force, would surely see it as such.

*355 B. Reemergence as the Right of Publicity

All trace the history of the right of publicity from the right to privacy. [\[FN691\]](#) The right of publicity was first weaned from its privacy forebears thirty years ago. [\[FN692\]](#) It has since attracted broad judicial and scholarly recognition, [\[FN693\]](#) so that-as in Candebat-the debate today accepts the separate existence of the tort and focuses upon its contours and remedies. [\[FN694\]](#)

Professor Hetherington substantially advances the ball when he explains the inadequacies of the copyright law fair use model and its present four-part balancing test. [\[FN695\]](#) Perceiving that such an approach allowed far too much ad hoc “Monday morning quarterbacking”, he sees the law as limiting its protection to the direct commercial exploitation of identity. [\[FN696\]](#) Professor Hetherington's reading requires “that the unauthorized usage be both direct in nature and primarily commercial in its motivation.” [\[FN697\]](#) By way of explanation, Hetherington adds:

[W]henver any attribute of celebrity identity is used to promote, endorse or sell a product or service, the usage [is] direct commercial exploitation. Likewise, when a celebrity identity is used without permission to generate good will or otherwise enhance the public perception of a business entity, charitable organization or other collective pursuit, a similar conclusion should be reached. [\[FN698\]](#)

By way of contrast, Hetherington explains that “[w]hen a user's primary motivation is to entertain, inform, analyze or draw inspiration for his own creative pursuits, however, the usage [is] indirect and incidental and therefore permitted, subject to appropriate safeguards.” [\[FN699\]](#) Professor Hetherington sees in the law a sharp-edge case decider test which proceeds from the premise that predictability is one of the most important ends to be sought “in the real world of celebrity exploitation, news and entertainment.” [\[FN700\]](#) Accepting arbitrariness at the edge, the law of celebrity identity has one ask and answer “a single, simplified question: Is the primary purpose to sell or promote a product, service or cause or otherwise gain an economic advantage in the marketplace for which the user should be expected to pay?” [\[FN701\]](#)

*356 In form, the new Restatement (Third) of Unfair Competition provides a sharper test. Eschewing any direct/indirect dichotomy and qualifiers such as “primary” or any thought of the user's motivation or purpose, the new Restatement declares subject to liability “[o]ne who appropriates the commercial value of a person's identity by using without consent the person's name, likeness, or other indicia of identity for purposes of trade.” [\[FN702\]](#) The new Restatement makes clear that it displaces only so much of the accepted right of privacy as lay within the Restatement (Second) of Torts' appropriation prong of that right. [\[FN703\]](#) Indeed, Restatement commentary recognizes that appropriation of a person's name or likeness may amount to trademark infringement, deceptive marketing, and defamation as well as invasion of privacy, [\[FN704\]](#) though the present law protects only “the

commercial value of a person's identity.” [\[FN705\]](#)

Curiously, the new Restatement sees the reason for recognition of a right of publicity as “generally less compelling” than in other areas of the field, the thought being that “[t]he commercial value of a person's identity often results from success in endeavors such as entertainment or sports that afford their own substantial rewards.” [\[FN706\]](#) This makes about as much sense as saying the rationale for recognizing a right of property is less compelling in the case of the rich than the poor. [\[FN707\]](#)

The Restatement commentators make up for this lapse when they correctly recognize that no degree of public notoriety is a prerequisite to relief, for “the identity of even an unknown person may possess commercial value.” [\[FN708\]](#) The new Restatement makes clear “an intent to infringe another's right of publicity is not an element of liability.” [\[FN709\]](#) No proof of a defendant's primary motivation [\[FN710\]](#) must precede a judicial finding of liability. Consistent with and providing further support for the thesis explained in Part IV above, [\[FN711\]](#) the new Restatement offers an external standard that focuses upon the nature and quality of the defendant's conduct and its effects, and not the intent or purpose or motive behind. Still, as elsewhere, evidence of knowledge and intent is admissible on other material issues including identification.

***357** The right of publicity secures to each of us the commercial value of his identity and “prevents the unjust enrichment of others seeking to appropriate that value for themselves.” [\[FN712\]](#) Persons who have otherwise achieved public figure status are protected from dilution of the value of their identity. [\[FN713\]](#) The right also protects consumers by guarding against false suggestions of endorsement or sponsorship. [\[FN714\]](#) It protects competitors as well who would suffer unfair disadvantage if the public mistakenly came to believe a public personality endorsed a rival's wares.

The new Restatement declares the right of publicity infringed only when the defendant acts “for purposes of trade,” a term of art defined as including use in advertising, placement on merchandise marketed by the defendant, or in connection with services he renders, but “not ordinarily includ[ing] to the use of a person's identity in news reporting, commentary, entertainment, works of fiction or non-fiction.” [\[FN715\]](#) That such use is by or on behalf of charitable, educational, religious or other non-profit entities in no way precludes it from being considered for purposes of trade. [\[FN716\]](#)

There is more that may be said of the right of publicity, as of each of the torts in the field addressed. For the moment, it is a safe Holmesian positivist's prediction that the court that drew on Prosser and the Restatement (Second) of Torts to produce *Candebat* will almost surely learn from *Hetherington* and the Restatement (Third) of Unfair Competition as it makes its CLV-satisfying refinements in the right of publicity.

West's Tennessee Code Annotated Currentness

Title 47. Commercial Instruments and Transactions

▢ Chapter 25. Trade Practices (Refs & Annos)

→ Part 11. Protection of Personal Rights (Refs & Annos)

§ 47-25-1101. Short title

This part shall be known and may be cited as the "Personal Rights Protection Act of 1984."

§ 47-25-1102. Definitions

As used in this part, unless the context otherwise requires:

- (1) "Definable group" means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including, but not limited to, a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team;
- (2) "Individual" means human being, living or dead;
- (3) "Likeness" means the use of an image of an individual for commercial purposes;
- (4) "Person" means any firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, community, civic, or other organizations; and
- (5) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any individual, so that the individual is readily identifiable.

§ 47-25-1103. Property right in use of name, photograph or likeness

- (a) Every individual has a property right in the use of that person's name, photograph, or likeness in any medium in any manner.
- (b) The individual rights provided for in subsection (a) constitute property rights and are freely assignable and licensable, and do not expire upon the death of the individual so protected, whether or not such rights were commercially exploited by the individual during the individual's lifetime, but shall be descendible to the executors, assigns, heirs, or devisees of the individual so protected by this part.

§ 47-25-1104. Exclusive rights, commercial exploitation after death

- (a) The rights provided for in this part shall be deemed exclusive to the individual, subject to the assignment or licensing of such rights as provided in § 47-25-1103, during such individual's lifetime and to the executors, heirs, assigns, or devisees for a period of ten (10) years after the death of the individual.
- (b)(1) Commercial exploitation of the property right by any executor, assignee, heir, or devisee if the individual is deceased shall maintain the right as the exclusive property of the executor, assignee, heir, or devisee until

such right is terminated as provided in this subsection (b).

(2) The exclusive right to commercial exploitation of the property rights is terminated by proof of the non-use of the name, likeness, or image of any individual for commercial purposes by an executor, assignee, heir, or devisee to such use for a period of two (2) years subsequent to the initial ten (10) year period following the individual's death.

§ 47-25-1105. Unauthorized use

(a) Any person who knowingly uses or infringes upon the use of another individual's name, photograph, or likeness in any medium, in any manner directed to any person other than such individual, as an item of commerce for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising, solicitation of donations, purchases of products, merchandise, goods, or services, without such individual's prior consent, or, in the case of a minor, the prior consent of such minor's parent or legal guardian, or in the case of a deceased individual, the consent of the executor or administrator, heirs, or devisees of such deceased individual, shall be liable to a civil action.

(b) In addition to the civil action authorized by this section and the remedies set out in § 47-25-1106, any person who commits unauthorized use as defined in subsection (a) commits a Class A misdemeanor.

(c) It is no defense to the unauthorized use defined in subsection (a) that the photograph includes more than one (1) individual so identifiable; provided, that the individual or individuals complaining of the use shall be represented as individuals per se rather than solely as members of a definable group represented in the photograph.

(d) If an unauthorized use as defined in subsection (a) is by means of products, merchandise, goods or other tangible personal property, all such property, including all instrumentalities used in connection with the unauthorized use by the person violating this section, is declared contraband and subject to seizure by, and forfeiture to, the state in the same manner as is provided by law for the seizure and forfeiture of other contraband items.

§ 47-25-1106. Injunctions; impounding or destruction of materials; damages

(a) The chancery and circuit court having jurisdiction for any action arising pursuant to this part may grant injunctions on such terms as it may deem reasonable to prevent or restrain the unauthorized use of an individual's name, photograph, or likeness. As part of such injunction, the court may authorize the confiscation of all unauthorized items and seize all instrumentalities used in connection with the violation of the individual's rights. All instrumentalities seized pursuant to enforcing an injunction under this subsection (a) shall be liquidated and used to satisfy statutory damages, if damages are recovered by the rights holder.

(b) At any time while an action under this part is pending, the court may order the impounding, on such terms as it may deem reasonable, of all materials or any part thereof claimed to have been made or used in violation of the individual's rights, and such court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(c) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the individual's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(d) An individual is entitled to recover the actual damages suffered as a result of the knowing use or infringe-

ment of such individual's rights and any profits that are attributable to such use or infringement which are not taken into account in computing the actual damages. Profit or lack thereof by the unauthorized use or infringement of an individual's rights shall not be a criteria of determining liability.

(e) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

§ 47-25-1107. Fair use; commercial sponsorship

(a) It is deemed a fair use and no violation of an individual's rights shall be found, for purposes of this part, if the use of a name, photograph, or likeness is in connection with any news, public affairs, or sports broadcast or account.

(b) The use of a name, photograph, or likeness in a commercial medium does not constitute a use for purposes of advertising or solicitation solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the complainant individual's name, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for purposes of advertising or solicitation.

(c) Nothing in this section applies to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television stations, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this part, unless it is established that such owners or employees had knowledge of the unauthorized use of the individual's name, photograph, or likeness as prohibited by this section.

§ 47-25-1108. Application of law

This part applies to any individual otherwise entitled to the protection afforded under part 5 of this chapter.

Current with laws from the 2008 Second Reg. Sess., eff. through April 15, 2008

END OF DOCUMENT

**Effective:[See Text Amendments]**McKinney's Consolidated Laws of New York Annotated [Currentness](#)Civil Rights Law ([Refs & Annos](#))

Chapter 6. Of the Consolidated Laws

▢ [Article 5. Right of Privacy \(Refs & Annos\)](#)→ **§ 51. Action for injunction and for damages**

Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided [\[FN1\]](#) may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by [section fifty](#) of this article, the jury, in its discretion, may award exemplary damages. But nothing contained in this article shall be so construed as to prevent any person, firm or corporation from selling or otherwise transferring any material containing such name, portrait, picture or voice in whatever medium to any user of such name, portrait, picture or voice, or to any third party for sale or transfer directly or indirectly to such a user, for use in a manner lawful under this article; nothing contained in this article shall be so construed as to prevent any person, firm or corporation, practicing the profession of photography, from exhibiting in or about his or its establishment specimens of the work of such establishment, unless the same is continued by such person, firm or corporation after written notice objecting thereto has been given by the person portrayed; and nothing contained in this article shall be so construed as to prevent any person, firm or corporation from using the name, portrait, picture or voice of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by him which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith; or from using the name, portrait, picture or voice of any author, composer or artist in connection with his literary, musical or artistic productions which he has sold or disposed of with such name, portrait, picture or voice used in connection therewith. Nothing contained in this section shall be construed to prohibit the copyright owner of a sound recording from disposing of, dealing in, licensing or selling that sound recording to any party, if the right to dispose of, deal in, license or sell such sound recording has been conferred by contract or other written document by such living person or the holder of such right. Nothing contained in the foregoing sentence shall be deemed to abrogate or otherwise limit any rights or remedies otherwise conferred by federal law or state law.

CREDIT(S)

(L.1909, c. 14; amended L.1911, c. 226; L.1921, c. 501; L.1979, c. 656, § 2; L.1983, c. 280, § 1; [L.1995, c. 674, § 1.](#))

[\[FN1\]](#) See [§ 50.](#)

HISTORICAL AND STATUTORY NOTES



Effective:[See Text Amendments]

West's Annotated California Codes [Currentness](#)

Civil Code [\(Refs & Annos\)](#)

Division 4. General Provisions [\(Refs & Annos\)](#)

Part 1. Relief

Title 2. Compensatory Relief

[Chapter 2. Measure of Damages](#)

[Article 3. Penal Damages \(Refs & Annos\)](#)

→ [§ 3344. Use of another's name, voice, signature, photograph, or likeness for advertising or selling or soliciting purposes](#)

(a) Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof. In addition, in any action brought under this section, the person who violated the section shall be liable to the injured party or parties in an amount equal to the greater of seven hundred fifty dollars (\$750) or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages. In establishing such profits, the injured party or parties are required to present proof only of the gross revenue attributable to such use, and the person who violated this section is required to prove his or her deductible expenses. Punitive damages may also be awarded to the injured party or parties. The prevailing party in any action under this section shall also be entitled to attorney's fees and costs.

(b) As used in this section, "photograph" means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission, of any person, such that the person is readily identifiable.

(1) A person shall be deemed to be readily identifiable from a photograph when one who views the photograph with the naked eye can reasonably determine that the person depicted in the photograph is the same person who is complaining of its unauthorized use.

(2) If the photograph includes more than one person so identifiable, then the person or persons complaining of the use shall be represented as individuals rather than solely as members of a definable group represented in the photograph. A definable group includes, but is not limited to, the following examples: a crowd at any sporting event, a crowd in any street or public building, the audience at any theatrical or stage production, a glee club, or a baseball team.

(3) A person or persons shall be considered to be represented as members of a definable group if they are represented in the photograph solely as a result of being present at the time the photograph was taken and have not been singled out as individuals in any manner.

(c) Where a photograph or likeness of an employee of the person using the photograph or likeness appearing in the

advertisement or other publication prepared by or in behalf of the user is only incidental, and not essential, to the purpose of the publication in which it appears, there shall arise a rebuttable presumption affecting the burden of producing evidence that the failure to obtain the consent of the employee was not a knowing use of the employee's photograph or likeness.

(d) For purposes of this section, a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required under subdivision (a).

(e) The use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

(f) Nothing in this section shall apply to the owners or employees of any medium used for advertising, including, but not limited to, newspapers, magazines, radio and television networks and stations, cable television systems, billboards, and transit ads, by whom any advertisement or solicitation in violation of this section is published or disseminated, unless it is established that such owners or employees had knowledge of the unauthorized use of the person's name, voice, signature, photograph, or likeness as prohibited by this section.

(g) The remedies provided for in this section are cumulative and shall be in addition to any others provided for by law.

CREDIT(S)

(Added by Stats.1971, c. 1595, p. 3426, § 1. Amended by Stats.1984, c. 1704, § 2.)

VALIDITY

In the of case of [Laws v. Sony Music Entertainment, Inc., C.A.9 \(Cal.\)2006, 448 F.3d 1134, 78 U.S.P.Q.2d 1910, certiorari denied 127 S.Ct. 1371, 167 L.Ed.2d 159.](#), federal copyright law preempted the plaintiff's claim under this section.

HISTORICAL AND STATUTORY NOTES

1997 Main Volume

1984 amendment inserted "voice, signature", inserted "on or in products, merchandise, or goods, or", inserted "or selling, or soliciting purchases of," deleted "or for purposes of solicitation of purchases of products, merchandise, goods or services," following "goods or services" and preceding "without such person's prior consent", substituted "equal to the greater of seven hundred fifty dollars (\$750)" for "no less than three hundred dollars (\$300)", and inserted "or the actual damages suffered by him or her as a result of the unauthorized use, and any profits from the unauthorized use that are attributable to the use and are not taken into account in computing the actual damages", in the first sentence, and inserted the second, third and fourth sentences in subd. (a); inserted "voice, signature," inserted a comma following "photograph", substituted "which consent is required under subdivision (a)" for "purposes of advertising or solicitation" in subds. (d) and (e), and substituted "person's" for "complainant's" in subd. (e); and inserted "networks and", "cable television systems," and "voice, signature," in subd. (f).