

# Unauthorized Use of a Person's Name or Picture for Commercial Purposes

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*In the United States.*—A tort of relatively recent origin, now recognized in the United States, is that of the unauthorized use of one's name or picture for purposes of advertising or trade. One of the earliest cases involving this question was that of *Roberson v. Rochester Folding Box Co.*, (1902) 171 N. Y. 538, 64 N. E. 442, 59 L. R. A. 478. The defendant made use of the picture of a pulchritudinous young lady to advertise its flour without her consent. Prior to this case some state courts had held that the publication of certain matters affecting the private life of a person constituted an invasion of his "right of privacy." The Court of Appeals of New York in a four-to-three decision denied the existence of any right to protection against such conduct, because of the lack of precedent, the purely mental character of the injury, the "vast amount of litigation" which might be expected to follow, the difficulty of drawing a distinction between public and private characters, and the fear of undue restriction of the liberty of speech and freedom of the press. A vigorous dissent was made by

the minority of the Court.

The immediate result of the *Roberson* decision was a lively public disapproval, which led to the passage of a New York statute prohibiting the use of the name, portrait or picture of any living person, without his prior written consent, for "advertising purposes" or "for purposes of trade."<sup>1</sup>

Two years later the Supreme Court of Georgia, in the case of *Pavesich v. New England Life Ins. Co.* (1904), 122 Ga. 190, 50 S. E. 68, 69 L. R. A. 101, considering essentially the same facts, rejected the arguments of the *Roberson* case and held that the invasion of the right of privacy was a cause of action in itself. This decision has been followed by the majority of the courts which have considered the question. At the present time the existence of the common law right is denied in New York, Rhode Island, Washington, Wisconsin and perhaps in Michigan. It has been recognized in California, Georgia, Kansas, Kentucky, Louisiana, Missouri, North Carolina and South Carolina. There are indications that it will be accepted in Maryland, Massachu-

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<sup>1</sup> New York Laws 1903, Ch. 132. Secs. 1, 2 as amended in 1911 and 1921, now Civil Rights Law, Secs. 50, 51.

setts, New Jersey, Oklahoma, Pennsylvania, and the District of Columbia. The federal courts, although bound to follow state laws have been inclined to look on the right with favor.<sup>2</sup>

*In the Philippines.*—No case involving this question has come up before the Philippine courts for decision. The matter is, however, of sufficient importance and interest to deserve consideration. It is well known that there are now many popular Filipino movie and radio stars, athletes, artists, beauties and other popular figures whose names and pictures possess a good commercial and advertising value. Would the use of their names or pictures without their consent constitute an actionable wrong? It is believed that the Philippine Courts may find it hard to accept the theory of "invasion of the right of privacy" adopted by many United States courts because "the right of privacy" is a common-law right and the common law is not in force in the Philippines. As has already been noted, some states in the United States reject the theory of the "right of privacy" as a common-law right and in New York a law had to be enacted to protect such right.

We believe, however, that the right to one's name, likeness or popularity is a property right which is a product of one's industry, ability, ingenuity, or a gift of

nature, and nobody has a better right to it than the person himself. It is something that is attached to his person and its material value, if any, should rightfully belong to him. Article 333 of the Civil Code provides that "All things which are or may be the object of appropriation are considered as movable or immovable property." Certainly, a name or picture is susceptible or may be the object of appropriation within the meaning of said provision of the Civil Code. If a name or picture of a person is a property right which belongs to him, it follows that any unauthorized use of such name or picture by another will give rise to payment of a reasonable compensation for such use.<sup>3</sup>

The present law on trade-marks, trade-names, service-marks and unfair competition just approved by Congress, Republic Act No. 166, prohibits the adoption and use as a trade-mark, trade-name or service-mark, of the name, portrait or signature identifying a particular living individual except with his written consent, or the name, signature or portrait of a deceased President of the Philippines, during the life of his widow, if any except with the written consent of the widow.<sup>4</sup> This is a recognition that a person's name, portrait or signature is a property right belonging to such person. But this

<sup>2</sup> See Prosser on Torts, pp. 1051-1053.

<sup>3</sup> De Buen, Castan, Valverde and Vivante, Spanish Commentators, think one's name, provided that of a famous person, may be contributed to the partnership capital. (2 Castan, p. 644) Manresa believes otherwise. (11 Manresa, p. 273).

<sup>4</sup> Sec. 4(c), Republic Act No. 166.

law does not go far enough because it only prohibits the appropriation of the name, portrait or signature of a living person as a trade-mark, trade-name or service-name. It does not prohibit the use of such name, portrait or signature for advertising or commercial purposes other than as trade-mark, trade-name, or service-name.

To avoid any doubt on the matter, it is hoped that our Congress

will adopt a law similar to that of New York. Or better still, it is hoped that the Code Commission now studying the revision of our Civil Code will incorporate a provision recognizing the right of a person to his name, picture or any reproduction of his likeness, and prohibiting the use of such name, picture or likeness, for advertising or other commercial purposes without his consent.