

Right of Publicity

～Precautions points to use names or portraits, etc. of celebrities～

1. Right of Publicity

1) Marketing technique to adapt celebrities such as singers, entertainers, actors, musicians, athletes, youtubers, voice actors, cultural people for promotional activities is widely used previously. The fact that their name and appearance are known to public to some extent creates impact of advertising or propaganda for the products or services. This right to use the power of a name or portraits etc., to attract consumers etc., is called the right of publicity, which is a right recognized by the judgement of the Supreme Court of Japan.

2) A right similar to the right of publicity is the right of portrait (the right not to have one's face or figure "photographed" or "published" without permission). Both the right of publicity and the right of portraits concern the use and publication of personal appearance, etc. The difference is that the right of portrait is a personal right related to a person's personal interests, while the right of publicity is a right that emphasizes the property right related to economic interests.

3) Unauthorized use of portraits, etc., when such portraits, etc., have the power to attract consumers to promote the sale of products or services, etc. is considered an infringement of the right of publicity and illegal under the Tort law, if the purpose of the use of the portrait can be said to attract consumers such as (i) using the portrait itself as a product to be appreciated independently, (ii) placing the portrait on a product for the purpose of differentiating the product, or (iii) using the portrait as an advertisement for a product (Supreme Court February 2, 2012 (Case No.2009 (Ju) 2056)).

4) If a portrait photograph is used by another person without permission, you can claim both infringement of portrait right and infringement of publicity right. As specific actions, it is possible to demand an injunction against the unauthorized user to stop such activities as well as to claim for damages.

2. Points of concern when using names and portrait photos

1) As in (i) through (iii) above, if the main purpose is to utilize the customer-attracting power possessed by the portrait, etc., it is an infringement of the right of publicity, but it is not protected without limitation.

Since those whose portraits, etc., have the power to attract customers attract the attention of society their portraits, etc., may be used in newspapers and magazines to report on current events, in editorials, in creative works, and so on. Thus, when used as a legitimate act of expression, etc., it is not illegal. Therefore, it is important to determine whether the specific use is "mainly for the purpose of using the portrait to attract customers," or whether the use is a legitimate act of expression. The size and number of photos, the relationship between the text and the photos (are they used to supplement the content of the text?), the content of the text itself, where and how the photos are used (product packaging, cover, website location), and the content of websites, newspapers, magazines, etc. will be considered comprehensively.

2) In addition, even if the use of the name or portrait is authorized in the contract, it is necessary to confirm whether the name or portrait photograph is used within the scope authorized in the contract (e.g., purpose, duration, number of photographs used, manner of use, etc.). In the case of a company, even if the legal staff is aware of the scope of the contractual license, the scope of the license may not be sufficiently communicated to the web designer or advertising staff. In addition, there have been cases in which a company was sued for infringement of publicity rights because it did not remove a name or portrait photo from its website even though the contract for its use had expired.

Our firm has experience in many cases of infringement of publicity rights, so please feel free to contact us for a consultation.

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