

RIGHT OF PUBLICITY ANALYSIS



I. WHAT ARE THE ELEMENTS OF A CLAIM FOR RIGHT OF PUBLICITY?

To prevail on a claim for right of publicity you must prove the following:

- The other party knowingly used your name, image, likeness, or identity;
- For a commercial purpose;
- Without your permission; and
- You were damaged by the other party's use of your name, image, likeness, or identity.

II. A DEEPER DIVE INTO THE ELEMENTS

• The other party knowingly used your name, image, likeness, or identity. Would someone who knows you, or knows of you, looking at the use of your name, image, likeness, or identity know that it was you? Was the use of your name, image, likeness, or identity an accident?

• For a commercial purpose. Did the other party use your name, image, likeness, or identity on or in products, or to advertise or sell products? Did the other party derive some commercial benefit from using your name, image, likeness, or identity?

• Without your permission. Did you sign a contract with the party or a release granting them permission to use your name, image, likeness or identity? Did you verbally agree to the use? A party's use of your name, image, likeness, or identity for a commercial purpose only violates your right of publicity if they did not have your permission to use it.

• You were damaged by the other party's use of your name, image, likeness, or identity. It's not enough that the other party used your name, image, or likeness; that use has to have harmed you in some way.

III. DOES THE OTHER PARTY HAVE A FIRST AMENDMENT DEFENSE?

• Newsworthiness. The use of your name, image, likeness, or identity in a news, public affairs, or sports broadcast, or with a political campaign normally warrants First Amendment protection

• Transformative. Whether a work is so transformed that it has become primarily the other party's own expression rather than your likeness.

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