I Am My Own Brand

We live in a branded world. Companies spend millions of dollars to create and protect their brands. Similarly, celebrities work hard to cultivate the public's perception of them in the hope that they can create a unique brand to take full commercial advantage of their notoriety. After all, endorsements can be the most lucrative reward for celebrity status.

I, too, am my own brand and I want the right to control that brand. Fortunately, I live in California and California has a law that allows me to protect the commercial exploitation of the essence of my brand – i.e., my name, image or likeness. That law is the right of publicity.

The right of publicity is handled on a state-by-state basis and not all states recognize the right of publicity. But the biggies do. New York does. Florida does. California does.

How does the right of publicity protect my brand? What do I have to prove to win a right of publicity case? First, you must establish that your name, image or likeness has in fact been used. Your name includes the name your mama gave you plus, under the right circumstances, stage names, pen names and nick names. California also provides protection for your voice and signature.

Second, you must prove that the appropriation of your name or likeness was for defendant's advantage and you did not consent to its use. Next, the defendant must have knowingly used your name, image or likeness for advertising, solicitation or selling of merchandise, products or services. Next you must prove a direct connection between the use and the commercial purpose. Logically, this makes sense because attaching your name or image to a product implies that you have endorsed that product.

Finally, you must be harmed by the unauthorized use. Actors, athletes and other celebrities appear in commercials to pitch a product for a fee and damages for loss of future earnings could be large if the unauthorized use impairs their image. That could be the biggest component of their damages.