

August 2013

## Rihanna successful in Topshop T-shirt case

When is it legitimate for a clothing retailer to use the image of a celebrity on clothing without the consent of the celebrity? That is the question that the High Court has had to decide in a judgment handed down on Wednesday. The High street retailer Topshop sold substantial numbers of T-shirts bearing a photograph of world famous pop star Rihanna. Although they had permission from the photographer, they did not have Rihanna's consent to use her image. The Court held that in the circumstances this amounted to passing off. The full judgment delivered by his Honourable Justice Birss can be read [here](#).

English law does not have a specific law that protects image rights. Celebrities wishing to control their image must therefore rely on the law of passing off. This requires proof that the celebrity has a reputation and that the use of their image is likely to cause customers to be confused into thinking that the celebrity has authorised the use of their image. The final hurdle is to show that this has caused the celebrity damage.

The judge therefore had to decide whether the use of this particular photograph of Rihanna on clothing caused the public to consider that it was a Rihanna authorised product or whether they would see it simply as decoration. He decided that the combination of Topshop's reputation on the high street, the fact that Topshop use celebrities to endorse their clothing, the nature of the exact image used (taken on the set of one of Rihanna's music videos) and Rihanna's trendsetting position in the fashion world served, in the court's mind, to enhance the likelihood that the consumer would assume that the T-shirt had been authorised by Rihanna. Further tweets from Topshop employees about Rihanna shopping at one of their stores did little to help Topshop's case.

It is clear from this judgement that passing off is not a foregone conclusion in all cases where a celebrity's image is used on clothing without consent. However the use of this image of this person on this garment by this shop in these circumstances was considered to be passing off. The issue is one of fact and as stated by HHJ Birss, "will always depend on the nature of the relevant market and on the perceptions of the relevant customers" [at Para. 34].

The decision may encourage other celebrities to complain about the unauthorised use of their image as they look for other ways to protect their image in a jurisdiction where "image rights" are not recognised. Designers, manufacturers and retailers alike would be best advised to proceed with caution and take legal advice at the outset. A few points to take from the Judgment are:

- A merchandising case is no different to a false claim or suggestion of endorsement and can thus satisfy a passing off claim.
- The public's perception of official merchandising has changed. Gone are the days when a T-shirt bearing tour dates and a simple block image could be distinguished from the unauthorised fashion item. An allegation of misrepresentation will therefore be more difficult to refute.
- The more influential the well-known person is in the fashion industry, the greater the likelihood of passing off being established.

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- It will be more difficult to establish a misrepresentation where no reference is made to the celebrity on the swing tag or other labelling, though this will not be determinative.
- The nature of the retailer of the product may alter the public's perception.
- The exact image chosen may affect potential liability.

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