

Facebook “Sponsored Stories” Lawsuit Highlights Evolving Right of Publicity

by KENNETH C. OH on DECEMBER 19, 2012

Facebook recently received preliminary approval to settle a lawsuit related to its “Sponsored Stories” application. The case highlights the evolution of publicity rights in the face of social media.

Publicity rights have been protected since the advent of the Hollywood celebrity in the second half of the 20th century. In basic terms, the right of publicity prohibits the commercial exploitation of a person’s likeness without his or her permission.

However, the area of law is quickly evolving in response to the growing role of the Internet and social media. As evidenced by the Facebook lawsuit, you don’t even need to be a “celebrity” to make a case.

The lawsuit, *Fraley v. Facebook, Inc.*, involves Facebook’s “Sponsored Stories” advertising program. The service utilizes users’ pictures to endorse products they “like” without providing notification or obtaining their permission. Facebook users aggrieved by the unauthorized use of their likeness filed a class-action lawsuit in California alleging violations of the state’s right of publicity law. Under California’s right of publicity law, “[a]ny person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof.”

The plaintiffs alleged that they were unaware at the time they clicked those “like” buttons that their actions would be interpreted and publicized by Facebook as an endorsement of those advertisers, products, services, or brands. They further claimed that they were local “celebrities” within their own Facebook social networks.

Facebook sought dismissal of the lawsuit by relying on the newsworthy exception to California’s right of publicity law, under which consent is not required. However, the federal judge refused to dismiss the lawsuit, finding that Facebook’s *commercial use* of user “likes” in Sponsored Stories removed them from the scope of the privilege.

The parties ultimately decided to settle the lawsuit. In an agreement recently preliminarily approved by the court, the social media company agreed to pay more than \$20 million. Users whose likenesses were used in sponsored stories can file claim to receive a \$10 payment. In addition, Facebook has agreed to change its policies so that users have more control over how the social media company uses their likeness.

If you have any questions about this case or would like to discuss the right of publicity, please contact me, Kenneth Oh, or the Scarinci Hollenbeck attorney with whom you work.