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IP maven Ron Coleman on developments in trademark, copyright, new media and free speech

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Litigation Guy, updated

Eleven months ago I wrote about Carol Burnett's lawsuit against 20th Century Fox, based on a tasteless parody of her "signature" charwoman character. I worked so hard on that post and it looks so purty, I'm going to drop it in here again, which will also increase the suspense about the opinion in that case that just came down… uh, in June.

But if you're like me and you rely on this blog for your IP news (kidding! I wanted to be a TV writer!), maybe you didn't hear until this *New York Law Journal* article (free with registration). Dated today.

(Look, it's cold and snowy where I am. Maybe I want to talk about a decision from June. From California. It was good enough for the *Law Journal*!)

As we hearken back to that balmy jurisprudential moment, Carol Burnett had sued 20th Century Fox television, makers of

the "Family Guy" sitcom on Fox, for taking her 1970's "charwoman" character and dragging her into a distasteful muck:

> The episode in question refers to Burnett by name as working as a part-time janitor, and depicts her "charwoman" character — complete with trademark blue bonnet and mop bucket — cleaning the floor of a pornography shop, the suit says.
>
> Another character then makes a vulgar reference to the signature ear tug used by Burnett at the close of her variety show each week, according to the lawsuit.

The studio claimed it was a parody:

> "'Family Guy,' like the 'Carol Burnett Show,' is famous for its pop culture parodies and satirical jabs at celebrities," the studio said in a statement. "We are surprised that Ms. Burnett, who has made a career of spoofing others on television, would go so far as to sue 'Family Guy' for a simple bit of comedy."

Well, no. Not "like the 'Carol Burnett Show.'" But perhaps legally defensible as a parody nonetheless, unlike most situations where defendants claim parody. Now, Carol Burnett has gone up against big media before and won. Perhaps she'll get lucky again. The complaint is here at the Smoking Gun. What the main reporting doesn't focus on here is that she did proceed under California's very celebrity-friendly right of publicity statute, very well discussed here.

So could Carol win? It was hard to imagine Fox climbing down from its refusal to pull the episode, or agreeing to a precedent that an upset celebrity can make them withdraw an episode merely by complaining or suing. So an early settlement seemed unlikely. Still, we've said that before, and seems we just get started and before you know it, comes the time we have to say, "So long."

That link to the Smoking Gun above also has the offending video, reminding us of the Golden Rule for advising clients in cases like this, namely that the best way to make sure that the defamatory or scurrilous or offensive content that brought you to my office is repeated and gets as much attention as possible is to file a lawsuit about it.

Later, my twin, separated at birth by about ten years, Ben Manevitz analyzed it; Phillip Baron weighed in, one, with a of the Golden Rule. And then there's Nieporent.

NOW THE UPDATE: So, in June, the Central District of California tossed out the suit. The decision is here. Copyright infringement? A parody; the court rejected the very creative — i.e., desperate — suggestion that it mattered that the copyright "subject," the charwoman, may not have been the subject of the parody so much as Carol Burnett herself, as well as some other fairly ridiculous ideas. The even flimsier claim of trademark infringement was tossed because there was no LIKELIHOOD OF CONFUSION. Dilution? Having already found parody, the speech was legally "non-commercial" and hence not subject to the Trademark Dilution Act (i.e., the G-d-awful *Jews for Jesus* decision is truly dead).

As to the state-law claims I thought could make this interesting, the court declined to exercise supplemental jurisdiction over them, as it has discretion to do, following the dismissal of the federal-question copyright and trademark claims. In other words, yeah, "so long." I don't think this one was done on a contingency.

This entry was posted on Friday, February 22nd, 2008 at 12:03 pm. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site. Edit this entry.

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