

## **PUERTO RICO'S RIGHT OF PUBLICITY ACT ALSO PROTECTS PRIVATE INDIVIDUALS**

Since July 13, 2011, Puerto Rico joined other jurisdictions of the United States that have right of publicity laws, through Act No. 139 of July 13, 2011, known as the Right of Publicity Act, (the "Act").

The Act grants independent and specific protection, not only for celebrities and public figures, but also for private individuals, whose persona has been used for commercial purposes without his or her consent.

In essence, the right of publicity gives individuals the right to use and gain profit from the commercial use of their name, likeness, image and persona. This gives people the right to license the qualities that distinguish them from others, thus preventing anyone from utilizing said qualities for an unauthorized commercial use. Under the existing unfair competition laws, any person could object to the use of his or her image, name or likeness in a commercial context if he or she is able to prove that it is likely to cause confusion, mistake and/or deceit as to the affiliation or connection of said person with another person, or as to the origin, sponsorship or approval of the products or services of another person. Moreover, under trademark law, a public figure or a celebrity might even be able to obtain a trademark right over his or her own name. However, in order for a cause of action to prevail under federal trademark law, the person would also have to prove the additional requirement that there is a likelihood of confusion.

The right of publicity simplifies the process by providing *any* person, an additional right to object to the use of his or her name, image or likeness, even if there is no proof of confusion among the public in general.

The Act clarifies and limits the extent to which a right of publicity claim will be deemed a violation. Among the main provisions set forth by the Act are the remedies proposed against the infringement of anyone's right of publicity. The Act states that the owner of the right of publicity can request an *injunction* against any infringer, as well as the right to recoup *damages*, including royalties and economic losses, plus attorney's fees and costs (these shall be not more than three times the economic gain lost because of the infringement, although if the court find gross negligence it could establish damages of up to \$100,000.00 per each infringing action). In addition, the claimant may alternatively choose the right to claim *statutory damages* (no less than \$750.00 and no more than \$20,000.00 per infringement).

The Act provides that the right of publicity may be transferred by any written form, including but not limited to, licenses, donations, wills or intestate successions. It also states that the right of publicity lasts for 25 years after the death of the person, even if it was never commercially exploited. The claimant must initiate the infringement claim within one year of knowing about the infringement. Additionally, the Act sets forth several exceptions, similar to those of the *fair use doctrine*.

In an era of constant developments and changes, this Act has placed the right of publicity in Puerto Rico in a very distinctive position.

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