

Illinois Court Finds Contest Sponsor's Unauthorized Use of Entrant's Image Violated Illinois Right of Publicity Act

APRIL 15, 2013

An Illinois Appellate Court recently reversed a lower court's grant of summary judgment and awarded statutory damages, finding that McHenry County Living magazine used a mother and daughter's images without their written permission and in violation of the Illinois Right of Publicity Act when it published a photo of the two on a media kit used to generate advertising revenue for the monthly publication. Plaintiff entered the magazine's gardening contest, by registering online and submitting photographs with descriptions of her garden. She later received an email notifying her she was a finalist and that a photographer would contact her "to set up a photo shoot" at her home. A photographer then photographed her and her daughter in their garden. After notifying the plaintiff that she was a winner in the contest, the magazine published a photo from the shoot in (1) its autumn 2009 issue, for general distribution, and (2) the "McHenry County Living Media Kit & Editorial Calendar 2010," which it distributed to advertisers in order to generate additional advertising revenue. The Appellate Court held the second publication, the "Media Kit," violated the Right of Publicity Act, finding it was a publication of the plaintiff's likeness for a commercial purpose without her consent. The court further found that the contest rules did not include "any language that would advise a contest entrant that, by entering the contest, he or she agreed to the unlimited use of his or her likeness for commercial purposes," and noted that neither the magazine nor its photographer subsequently obtained a written release for the use of the photograph at issue. In contrast, the court found the first publication in the magazine itself qualified as "news" – a "non-commercial purpose" specifically excluded from the Act's scope.

Tip: Before publishing any materials containing the name, likeness, or persona of an entrant or winner, make sure that you have secured a release for such use in the rules for the contest or sweepstakes and in a signed release from the winner. The release should be broad and cover any use of any individual's name, likeness, or persona by the sponsor.

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