



*
 Right of Publicity in
 Israeli Law
 *
 The Duration of the
 Right after a Person's
 Death

Dear Clients and Colleagues,

On August 28, 2016, the Israeli District Court of the Central District issued a decision regarding the right of publicity under Israeli Law (In re **Fundacio Gala Salvador Dali v. V.S Marketing** (Israel 2005) Ltd.). The right of publicity is the right of a person to financially exploit his name, picture or voice. This decision is innovative in two main regards – First, it determines that the right of publicity is a judicially created property right, independent of statutory privacy and intellectual property laws. Second, it determines that the right of publicity survives a person's death and lasts for at least 25 years after the person's death, and that it could be transferred by bequest.

Legal Background

The right of publicity is distinct from other intellectual property rights such as trademarks, copyright, performers' rights etc., and protects the ability to financially exploit the public "persona" of a person using his name, picture or voice. The right of publicity is recognized by law in many jurisdictions worldwide and is recognized in section 2(6) of the Israeli Privacy Protection Act which states that "the use of a person's name, nickname, picture or voice for commercial purposes" without the person's consent is a breach of his right of privacy.

Factual Background

The Gala Foundation, a Spanish foundation for the protection of the works of the late artist Salvador Dali, filed a suit against two Israeli companies. The foundation argued, that the defendants are using Dali's name for marketing, advertising and commercial promotion purposes, thus violating Dali's right of publicity. The main argument of the defendants was that the statutory right of publicity recognized in the Privacy Protection Act is conclusive, and therefore this right expires immediately after a person's death and is actionable only within six months of the date of death, as the Act determines.

Please visit us:

www.fbclawyers.com

The Decision

The court decided in favor of the foundation and handed down several important new rulings. *First*, it decided that the statutory right of publicity under Israeli privacy law is not conclusive and that an independent judicially created right of publicity exists as a full property right actionable by an unjust enrichment cause. *Second*, the court decided that this right of publicity does not expire upon the person's death and that it lasts for at least 25 years after the death. *Third*, the court decided that this right of publicity becomes a part of a person's estate after his death, and is transferrable by inheritance of bequest as any other property right.

Concluding Remarks

This new and innovative decision raises many questions as to the application of the principle rulings in it in future cases, and may lead to uncertainty in a legal field that requires certainty and stability. It may be argued that this decision does not sufficiently set forth the necessary justification and foundation required for the recognition of such a broad new right. Specifically, it may be argued that the public's interest in the use of name, pictures and voice of deceased public figures, even for commercial purposes, was not given due weight in the balancing formula presented in the decision.

In fact, the court's decision according to which the right of publicity is an independent, judicially created property right which expires at least 25 years after a person's death and is transferrable by bequest, makes this right an important economic right and significantly expands its exploitation potential. Thus, and to the extent that the decision will survive an appeal and be adopted as a precedent, the right of publicity will become a significant right in the bundle of intellectual property rights recognized in Israel, similar to its status in certain other jurisdictions.

It appears as if this decision is part of a line of decisions of district courts in Israel, expanding the scope of intellectual property rights using the general cause of unjust enrichment. It is yet to be seen how the Israel Supreme Court will react, and whether it will adopt or restrain it.

This update was written by Adv. Omri Rachum-Twaig

Sincerely,

Fischer Behar Chen Well Orion & Co.

For further information please feel free to contact:

| | | |
|------------------|--|----------------|
| Adv. Amit Dat | adat@fbclawyers.com | +972.3.6941320 |
| Adv. Yael Riemer | yriemer@fbclawyers.com | +972.3.6944290 |

.....
The information provided herein is solely for informational purposes and shall not be construed as a legal opinion or legal advice of any sort.

All rights reserved to Fischer Behar Chen Well Orion & Co.

In order to subscribe to or be removed from the distribution list please e-mail: newsletter@fbclawyers.com