

Copyright infringement**Factual background**

An advertising agency is retained by a baked-goods company to develop a campaign that emphasizes the company's "old fashioned" image. While researching folk art for the campaign, an agency executive comes across a cookbook that is handwritten and distinctively illustrated. The executive contacts the author and invites her to submit illustrations and handwriting samples for the campaign, which she does. The agency then hires another artist to execute the final ads, with instructions to base drawings in the advertisements on the handwriting in the cookbook.

Litigation proceedings

The cookbook author sues the ad agency for, among other things, copyright infringement. After a year of discovery, the trial court grants summary judgment for the agency on all claims except the infringement count. That claim proceeds to trial, which lasts six days.

Outcome

The jury finds that the agency had infringed the plaintiff's copyright, but awards only nominal actual damages of \$1. The court denies plaintiff's motion for a judgment notwithstanding the verdict. The plaintiff then elects an award of statutory damages, which the court determines to be \$10,000. The court further awards the plaintiff, as the prevailing party, \$117,000 in attorney's fees. No appeal is taken.

Costs

The total cost of litigating this case for the agency would be expected to be approximately \$815,000. Defense Cost Payment: \$815,000; Indemnity Payment: \$127,000; Total Loss: \$942,000.

Misappropriation of name/likeness**Factual background**

A department store chain hires an advertising firm to produce a series of newspaper ads featuring clothing from the store's private label. One of the ads is for a line of athletic shirts and features a man wearing a jersey. The words "This is Ron" appear beside the photograph, with an arrow pointing to the man. Below that appear the words "This is Ron's jersey," with a second arrow pointing to the shirt.

Litigation proceedings

Ron Jersey, a famous rock musician, sues the agency and the department store for, among other things, misappropriation of his name. The agency and department store file an early motion for summary judgment, which is denied. The parties then pursue discovery over a period of nine months, at which point the plaintiff files a motion for partial summary judgment.

Outcome

The court finds that the evidence would support only one conclusion: that the phrase "Ron's jersey" clearly identifies the plaintiff and that the defendants, through their intentional "play on words," had used the plaintiff's name to obtain a commercial benefit. Accordingly, the court grants summary judgment to the plaintiff on the misappropriation claim. The parties then proceed to prepare for a trial on the remaining claims and on damages, but reach a settlement through mediation on the eve of trial. The defendants agree to pay \$750,000, with an unspecified portion going to a charity of the plaintiff's choosing and the remainder going toward the plaintiff's attorneys' fees.

These scenarios each are based on a real case or claim and, although not all of them involved Hiscox insureds, they are illustrative of the losses media companies routinely experience. Stated loss and defense costs are either actual, based on public sources or authorized disclosures, or closely estimated. The types of claims illustrated generally fall within the initial scope of coverage afforded by the typical Hiscox media liability policy form, but whether and to what extent a particular claim would ultimately be covered depends on the specific policy wording and the actual facts relevant to the claim.

Costs

The total cost of litigating this case for the agency would be expected to be approximately \$740,000. Defense Cost Payment: \$740,000; Indemnity Payment: \$750,000; Total Loss: \$1,490,000.

Error and omission**Factual background**

A chain of Italian-themed restaurants engages an advertising firm to create and produce a series of television commercials, the underlying theme of which was an emphasis on family. One of the commercials depicts a family enjoying a festive meal at the restaurant. The music playing in the background is a distinctive song associated with a famous deceased recording artist, and the singing voice bears a striking resemblance to that artist in tone and style.

Litigation proceedings

The artist's widow sues the restaurant and the agency for unfair competition, unjust enrichment, misappropriation of the right of publicity, false advertising, and interference with prospective economic advantage. The defendants file a motion for judgment on the pleadings, which requires extensive briefing on choice-of-law issues. The court takes the motion under advisement while discovery proceeds. Four months later, the court rules on the motion, denying it except as to the claim for unjust enrichment, which is dismissed. The court finds that the allegations of plaintiff's complaint were sufficient to allow the remaining claims to proceed.

Outcome

Defendants file a motion for reconsideration, but while that motion is pending the parties reach a settlement.

Costs

The total cost of litigating this case for the ad agency would be expected to be in the range of \$225,000. Defense Cost Payment: \$225,000; Indemnity Payment: \$500,000; Total Loss: \$725,000.

Breach of scope of license**Factual background**

Representatives of an advertising agency, working on behalf of a fast-food restaurant, approach the creators of a canine cartoon character with an idea for making use of the character in an upcoming campaign. The cartoonists agree to create art boards that incorporate their dog character and the restaurant brand. They submit the boards to the agency in the belief that, if the agency uses the idea in the campaign, they will be paid. The agency proceeds to develop a campaign based on a real dog of the same breed that has many of the same characteristics and "personality" traits as the cartoon dog reflected in the art boards.

Litigation proceedings

The cartoonists, who receive no compensation, sue the agency. They contend that the submission of the art boards included an implicit limitation on the scope of their use and that any other use of the ideas without compensation exceeds the implicit license. The trial court grants in part the ad agency's motion to dismiss, but permits some claims to proceed. At the close of fifteen months of discovery, which involves substantial motions practice, the court grants summary judgment for the agency. The court of appeals reverses and remands for further proceedings. On remand, the parties engage in several months of new discovery and additional pretrial motions practice. The court grants summary judgment for the agency on all but one count, which proceeds to trial. After a fourteen-day trial, the jury returns a verdict for the cartoonists and an award of \$30 million. The court awards an additional \$11.8 million in prejudgment interest.

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Loss Scenarios for Advertisers

Outcome

The ad agency appeals, but the parties settle for \$28 million before the appeal is resolved.

Costs

The total cost of litigating this case for the agency would be expected to exceed \$2.5 million. Defense Cost Payment: \$2,500,000; Indemnity Payment: \$28,000,000; Total Loss: \$30,500,000.

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