



Survey of Art and Entertainment Law News Items

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E P I L O G U E

The *Epilogue* section provides readers with an overview of art and entertainment news items that have interesting and relevant legal implications.

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The use of the stage name “Kodak” by a comedian diluted the Eastman Kodak Company’s distinctive trademark, a Federal District Court found. Eastman Kodak’s motion for permanent injunction barring the comedian’s use of the name was granted based on, among several factors, the likelihood that the mark would be “tarnished” if continued use wasn’t prohibited. ENT. LAW REP., vol.12, no.7, at 16, December 1990.

A seafood restaurant chain in Seattle is going to continue airing a commercial that spoofs the film “Dances With Wolves” entitled “Dances With Clams”. The ad shows Norwegians on horseback watching a Kevin Costner look-alike dancing with clams. The restaurant has been threatened with legal action but is presently ignoring the threats from the film producer. *Morning Report*, L.A. TIMES, September 6, 1991, part F, at 2.

An unlicensed distributor of Walt Disney Company souvenirs was sued by Disney recently for alleged copyright infringement. Interestingly, a Federal Court of Appeals held that, for damages purposes at least, only one infringement results when an unlicensed distributor sells souvenirs of Mickey Mouse in three separate poses, despite the fact

that each pose retains its own copyrighted existence. ENT. LAW REP., vol.12, no.7, at 16, December 1990.

The Senate, under the leadership of Jesse Helms, voted to impose strict anti-obscenity curbs on federal grants for the arts. However in a minor victory for NEA supporters, the Senate rejected calls to cut the embattled NEA’s budget. Helms, who sponsored the measure, stated “These ‘artists’ who have their minds in the gutter are free to do what they want to with their own time and own money, but don’t ask for John Q. Public to pay for it.” The amendment would ban all grant money to artists whose work is deemed obscene. *Senate Votes Anti-Obscenity Curbs On Federal Grants*, THE HOLLYWOOD REP., September 20, 1991.

In a related story, Illinois Representative Sydney Yates has vowed to fight the “decency” standards that the Helms Amendment ensures be enforced. Yates stated that a similar amendment was defeated in the Senate/House conference last year and he hopes that he will be able to defeat the amendment in the conference committee. Michael Killian, *Illinois lawmaker takes aim at Helms ‘decency’ campaign*, CHICAGO TRIBUNE, September 22, 1991, (Tempo) at 4.

The Ninth Circuit recently upheld the jury verdict awarding Bette Midler \$400,000 in her ground breaking lawsuit for misappropriation of identity against an advertising agency. In 1988, the Ninth Circuit had

set the stage by remanding the case back to the district court stating that the impersonation of the singer’s voice amounted to pirating her identity. The Court of Appeals did not disturb the lower court’s denial of punitive damages. *9th Circuit Upholds Midler’s \$400,000 Award in Ad Dispute*, THE ENT. LITIG. REP., October 28, 1991.

The Third Circuit Court of Appeals has granted a bit of relief to artists who become insolvent during their careers. Specifically, such artists may have their executory contracts for personal services rejected under the U.S. Bankruptcy Code. However, this holding only applies to that portion of the contract which remains unfulfilled on the date the bankruptcy petition is filed. ENT. LAW AND FIN., vol.6, no.7, at 7, October 1990.

Turner Broadcasting signed an agreement to purchase the Hanna-Barbera cartoon library for an estimated \$320 million. The TBS purchase will be completed some time next year and is part of the launching of a new all-animation network. *Turner Buys Hanna-Barbera*, CRAIN COMM., November 4, 1991, at 3.

The California Supreme Court has denied the appeal of an irate movie-goer who claimed that bargain discounts for seniors and children discriminated against other movie-goers. The Court denied the petition without comment. *California High Court Denies Appeal Of Ticket Price Decision*, THE ENT. LITIG. REP., September 23, 1991.

"A ruling by a state trial court in Manhattan that opera singer Frederica von Stade's career wasn't a marital asset subject to distribution, broke with earlier New York cases that found the careers of actress Marisa Berenson and jazz saxophonist Stan Getz were marital property. Central to this latest ruling was that Ms. Von Stade's husband, a voice coach, had long benefited from the fruits of the singer's career and could be compensated based on his own needs, rather than a valuation of his wife's career." ENT. LAW AND FIN., vol.6, no.7, at 8, October 1990.

While it was once believed that Rembrandt van Rijn had painted nearly 1,000 pictures, twentieth-century investigations indicate that perhaps as few as 250 were of his own creation. The historians and art experts of the Rembrandt Research Project have used numerous scientific techniques to declassify and re-attribute about 200 "Rembrandts" in the last 25 years alone. Apparently, Rembrandt routinely signed his name to the works of many of his students. These tuition-paying proteges often considered such "plagiarism" an honor rather than exploitation. Alexandra Tuttle, *The Gallery: Rembrandt and His Shrinking Corpus*, THE WALL STREET JOURNAL, October 3, 1991, Leisure & Arts, at A12.

The United States Court of Appeals for the Fourth Circuit has upheld the conviction of a satellite interferer. The defendant, an employee of the

Christian Broadcasting Network, has been accused of interrupting satellite broadcasting for several adult programming broadcasters with religious messages. *4th Circuit Affirms Conviction of Satellite Signal Interferer*, THE ENT. LITIG. REP., September 23, 1991.

Century-old Detroit Institute of Arts has recently been forced to cancel exhibits, charge admission, lay-off employees, close individual galleries, and decrease both days and hours of operation. The museum, relying on the state for 60% of its 26 million dollar operating budget, hadn't received any funds from the state as of the middle of last summer due to a statewide deficit of 1 billion dollars and a 38% cut in arts funding in general. Isabel Wilkerson, *Hard Times for Detroit Art Museum*, N.Y. TIMES, July 29, 1991, The Living Arts, at B1, B4.

The Fourth Circuit has recently held that advertising cable descramblers through national publications and then transporting the sold descramblers amounted to a violation of the federal mail fraud statute. The defendant built and sold the cable descramblers which are used to avoid paying for cable television while at the same time receiving the services of cable television. *4th Circuit Holds Descrambler Committed Mail Fraud*, THE ENT. LITIG. REP., September 23, 1991.

Imagine an interactive "drama" designed by an amusement company in which

the public could talk with an image of Sylvester Stallone and box with a 3-D image of Rocky. Andrew S. Zucker, entertainment attorney and founder of the Academy of Interactive Entertainment Arts and Sciences, advises that attorneys should explicitly reserve any and all interactive entertainment rights in their contracts so that their clients are not left unprotected as new technologies create new entertainment media in the years ahead. Sandra Bodovitz, *Interactive Future Is Uncharted*, L.A. DAILY JOURNAL, California Law Business Supplement, June 17, 1991, at S 30.2.

100 pages. Over 1,000 different provisions. More than eight drafts. Seven months in the making. Worth an estimated 1 billion dollars. Running an estimated 18 years. What could this be, you might ask? It's Michael Jackson's recent contract with Sony Corp. Arguably the largest recording contract ever, as well as perhaps the first such multi-media deal, this agreement covers all of Michael Jackson's record, film, and video ventures for entertainment giant Sony, the corporation which now owns CBS Records and Columbia Pictures. Sandra Bodovitz, *Seven Months, 100 Pages, \$1 Billion*, L.A. DAILY JOURNAL, California Law Business Supplement, April 8, 1991, at S 23. Ω

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