

Does the Ebola-free Nurse Doll Raise a Right of Publicity Claim?

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In general, a right of publicity is a right to control use of your name, likeness, and other aspects of your identity. Right of publicity laws normally give an individual the exclusive right to license the use of their identity for commercial promotion. This right is traditionally associated with celebrities where the name or image of a famous person is used to market products or services. However, under some right of publicity laws, any individual, famous or not, can assert a right of publicity claim. Typically, if a right of publicity has been violated, the remedy includes any damages sustained by the person or persons injured as a result of the violation. These damages can include compensatory damages, punitive damages and even attorneys' fees.

The right of publicity is a constantly changing body of law that is governed by state law and thus varies greatly from state to state. Many states still do not have any right of publicity laws, while others, like California have continuously evolving state laws involving the right of publicity. Currently, about nineteen (19) states have right of publicity statutes and about twenty-eight (28) more recognize the right by common law. In addition, many states recognize a post-mortem right of publicity. The length of post-mortem right of publicity varies greatly from state to state. For example, Tennessee recognizes a right of publicity for ten years after death, while Indiana provides recognition for a right of publicity for 100 years after death.

A recent new doll by HeroBuilders raises some interesting right of publicity implications. The doll is called the “Ebola-free Nurse” and comes at a time when nurse Kaci Hickox, who treated patients with Ebola in Africa, has been in the news because she was quarantined in New Jersey against her will. The new Ebola-free Nurse doll by HeroBuilders appears to resemble Kaci Hickox. The HeroBuilders doll has a similar hair color to Ms. Hickox’s hair and includes other similar features. It also has a red “X” over the right eye. The doll is on sale for \$29.95 and includes an Ebola-free health certificate.

One must wonder whether Ms. Hickox authorized HeroBuilders to construct a doll with similar features as hers. Nothing has come out yet of her objection to the doll. It remains to be seen if she decides to take action against HeroBuilders, but it appears that she may have strong arguments in her favor. If she decides to pursue an action, she may be able to recover both compensatory and punitive damages.

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