

Guernsey image rights

In late 2012 Guernsey introduced an innovative image rights legislation and image rights register (The Image Rights (Bailiwick of Guernsey) Ordinance, 2012).

BACKGROUND

We live in a world where image is everything and the cult of celebrity is pervasive. Overnight, sportspeople and entertainers can be converted into globally recognised brands. However, such treatment raises questions about how these brands can be protected through intellectual property (IP) rights.

Traditionally, the main way to protect the IP in a personality has been through trade mark rights. While there are other related IP rights that come into play, such as copyright and design rights, trade marks are the most relevant. However, they only go so far in protecting the rights of the modern celebrity, or brand image and whose interests are more wide ranging than have historically been the case.

The Guernsey image rights legislation addresses the needs of the modern marketplace by allowing a personality to formally register not only images but also other characteristics of themselves.

GUERNSEY IMAGE RIGHTS

The Guernsey image rights legislation works on two levels: the registered personality right; and the underlying image rights.

A 'personality' is a person's brand ie the name by which the person is known. To be registerable, it must be the personality of one of five types of person or subject, referred to as the *personnage*:

- a natural person (alive or died in the last 100 years)
- a legal person (ie corporate)
- a joint personality (two people intrinsically linked)
- a group (eg sports team or pop group)
- a fictional character (of a human or non-human)

Assuming the person or subject meets one of these five descriptions then their personality can be registered along with any associated images. These can be any characteristics associated with the personality, such as aliases, signature, voice, mannerisms, gestures or other indicia. The main benefit of this is to create a formal registerable right that provides clarity and flexibility.

PROTECTION AND EXPLOITATION

Personality and image rights effectively cover all manner of activity conducted in the personality's name, which means they offer a high degree of protection when considering the use of the celebrity's image by unauthorised third parties.

In addition, the personality and image rights can be licensed, assigned and generally dealt with separately, allowing complete freedom in their use and operation by the personality or their licensees.

The Guernsey legislation specifically allows for the image rights of dead personalities to be registered, if they died within 100 years of the rights being registered. This allows flexibility for estates and their beneficiaries to effectively control and commercialise these valuable rights long after the personality's death – another world-first for these rights.

However, it should be noted that the Guernsey legislation also includes express provisions balancing these rights with other interests, including the right of free speech, parody or satire and news reporting.

REGISTERING

A registered image right agent in Guernsey is required to undertake the registration process. A selection of the registration fees is as follows (initial and renewals):

- Natural person: £1,000 for ten years
- Legal person: £2,000 for ten years
- Image: £100 for three years

For more information visit: www.guernseyregistry.com