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BARRISTERS

Sports Stars: Protection of their  
Privacy and Image

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*Spring 2008*

## INTRODUCTION

1. There are two elements to privacy and image to consider. The first is the way in which an individual's right to privacy is protected under the law as it has now developed. The second is the way in which private information relating to an individual can be protected from unauthorised third party commercial exploitation. In both these areas the law has developed considerably over the past few years. It has happened on a piecemeal basis under the strong influence of Europe combined with a large helping of judicial ingenuity. It remains the case though that there is no clearly defined cause of action protecting privacy. Well established principles have nonetheless emerged under which an individual's right to privacy can be protected and unauthorised third party exploitation can be restrained. It is helpful to see how the principles developed to understand the nature of the protection which now exists.

## WHAT IS BEING PROTECTED BY THE SO-CALLED "RIGHT TO PRIVACY"?

2. In the era of the celebrity image and money are of great importance and sport stars rank amongst the great celebrities. No celebrity wants to be portrayed in a bad light and a good marketable image can be very lucrative. Details of extra marital affairs and sexual activities which might dent or

destroy the image are best kept out of the news. The media (responsible, at least in part, for creating celebrity personas) respond that the public should know about their celebrities particularly if the celebrity has courted publicity for financial gain. Celebrities might not like exposure of things about them they don't like but is there much they can do to stop it?

3. Privacy (whatever meaning is attached to the term) is not something which is protected by a single overarching cause of action. As now developed the relevant claim is for breach of confidence or - as more accurately described - a claim for misuse of private information.
4. It was always thought that the common law played the necessary part in protecting privacy and has been suggested <sup>1</sup> that a general principle existed in common law jurisdictions protecting a person's sayings, acts and personal relations from being exposed in public. This would embrace, for example:
  - Intrusion upon an individual's physical solitude or seclusion (long-distance photography and telephone harassment and so forth).
  - Public disclosure of private facts.
  - Publicity putting an individual in a false light and
  - Appropriation for gain of an individual's name or likeness.

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<sup>1</sup> Warren and Brandeis ("The Right to Privacy" (1890) 4 Harv LR 193). See generally *Wainwright v Home Office* [2003] 4 AllER 969 at 965.

5. There was loosely a concept of "invasion of privacy" but it was not protected by one all embracing tort but by an amalgam of vaguely linked torts:

- Trespass.
- Nuisance.
- Defamation.
- Malicious Falsehood.

Statutory remedies under the Harassment Act 1997 and the Data Protection Act 1998 were also developed.

6. Despite this there was no high-level generalisation from which a rule could be deduced protecting "a right to privacy" that could then be applied in particular concrete cases. The courts refused to formulate a general principle of "invasion of privacy" and the House of Lords held in *Wainwright v Home Office* (2003) that there was no general common law tort of invasion of privacy. The position remains to this day that there is no statutory tort of infringement of privacy despite this having been recommended <sup>2</sup>. The weakness of the law was exposed in the Gordon Kaye case in the early 1990s when the law failed to provide a remedy for Gordon when he was photographed in his hospital bed.

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<sup>2</sup> The Calcutt Report on Privacy and Related Matters June 1990: Cmnd 1102.

7. Article 8 of the European Convention on Human Rights had a big impact in the development of the law. It provides that everyone has the right to respect for his private and family life, and his correspondence. Although the Human Rights Act did not incorporate the ECHR into the UK's laws it did fundamentally affect how the law in this regard would have to develop.
8. Against that, however, is Article 10 which provides that everyone has the right to freedom of expression. Obviously a working relationship between Article 8 (the right to respect for private and family life) and Article 10 (freedom of expression) needed to be sorted out. The common law is a freedoms based law<sup>3</sup>; the added European dimension is that it is has to be interpreted with rights based laws. Neither right has precedence over the other – they both are there to protect liberty. Articles 8 and 10 played a central role in the Court of Appeal decision in **A v B** (2003) which involved a footballer and publication of his extra marital activities. The Court of Appeal set out guidelines for breach of confidence claims and stipulated that the relevant assessment was of Articles 8 and 10 with previous case law providing little assistance.
9. Articles 8 and 10 also played a central role in the landmark case **Campbell v MGN** where the House of Lords recognised that the values in Articles 8 and 10 underlay breach of confidence claims<sup>4</sup> and apply generally, that is

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3 Douglas v Hello [2001] paragraph 64

4 Lord Nicholls at paragraph 16 in Campbell v MGN [2004] 2 AllER 995 at 1003

to say as much to disputes between individuals and disputes between individuals and non-governmental bodies (such as newspapers) as to disputes between individuals and public authorities. The House of Lords said that the necessary relationship of confidence might be identified in personal information cases although it was awkward to distinguish information from relationship. For this reason it was thought best to refer to these claims as misuse of private information. The central issue is whether or not the information in question is *private*. (**Campbell** and subsequent authorities have recently been comprehensively reviewed by the Court of Appeal in **Murray v Big Pictures (UK) Limited** (2008)<sup>5</sup> – this case will be looked at later).

10. So the equitable claim for breach of confidence came to the rescue by being expanded and moulded to do the job. A remedy for wrongful use of private information had existed for a long time by way of an action for breach of confidence. Originally the information had to have been disclosed in confidence (in circumstances "importing an obligation of confidence") even where no contract prohibiting disclosure existed<sup>6</sup>. But the need to prove an initial confidential relationship is no longer required and the "duty of confidence" is now imposed whenever a person receives information he knows or ought to know is fairly and reasonably regarded

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5 Neutral citation number [2008] EWCA 446 – a copy of the full report can be obtained by "googling" the name.

6 Megarry J in *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 47 – 48.

as confidential. Since information about an individual's private life is not ordinarily called "confidential" the information under consideration for that reason is more naturally described as "private". So the claim is better described now as misuse of private information<sup>7</sup>.

11. The House of Lords thought that it was usually obvious from the circumstances whether or not there was a reasonable expectation of privacy. It is a straightforward question. In *Douglas v Hello!* (2005)<sup>8</sup> the Court of Appeal thought the test should cover information personal to the person possessing it which they did not intend to share with the public and which was clearly private from the nature or form of the information. In the Prince Charles' diaries case the Court of Appeal said that the information had to be private or confidential. In that case the diaries were subject to an obligation of confidence and this should be taken into account. The balancing should not involve only whether the information was a matter of public interest but whether in all the circumstances it was in the public interest that the obligation of confidence should be breached.
12. *Douglas v Hello!* (2005) was useful because it gave guidance about the nature of the right to protect personal privacy and the extent of protection particularly in relation to photographs (which are a means of recording and publishing images). It was said:

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<sup>7</sup> Lord Nicholls paragraph 14 of Campbell

<sup>8</sup> [2005] EWCA Civ 595

- *The interest in the private information about the events at the wedding did not amount to a right of intellectual property – there is no form of proprietary interest. If that were the nature of the right it could be exercised against a third party irrespective of whether he ought to have been aware the information was private or confidential. In fact the right depends upon the effect on the third party's conscience of the third party's knowledge of the nature of the information and the circumstances in which it was obtained.*
- *Private information must include information that is personal to the person who possesses it and that he does not intend that it shall be imparted to the general public. The nature of the information, or the form in which it is kept, may suffice to make it plain that the information satisfies these criteria.*
- *Special considerations attach to photographs in the field of privacy. As a means of invading privacy, a photograph is particularly intrusive. The camera and the telephoto lens can give access to the viewer of the photograph<sup>9</sup> to scenes where those photographed could reasonably expect their appearances or actions would not be brought to the notice of the public.*
- *The objection to publication of unauthorised photographs taken on a private occasion is not simply that the images that they disclose*

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<sup>9</sup> Or voyeur as the viewer was thought more properly described!

*convey secret information or impressions that are unflattering. It is that they disclose information that is private. The offence is caused because what the claimant could reasonably expect would remain private has been made public.*

- *Recognition of the right of a celebrity to make money out of publishing private information about himself, including his photographs on a private occasion, breaks new ground. It has echoes of droit a l'image in France. We can see no reason in principle why equity should not protect the opportunity to profit from confidential information about oneself in the same circumstances that it protects the opportunity to profit from confidential information in the nature of a trade secret.*
- *Where an individual ("the owner") has at his disposal information which he has created or which is private or personal and to which he can properly deny access to third parties, and he reasonably intends to profit commercially by using or publishing that information, then a third party who is, or ought to be, aware of these matters and who has knowingly obtained the information without authority, will be in breach of duty if he uses or publishes the information to the detriment of the owner.*

13. 13. Turning back to the privacy test – if a celebrity is complaining

about private details being exposed the first question is whether the information he or she does not want revealed is really sufficiently private to engage Article 8. The celebrity has to be objective about this – was there a reasonable expectation of privacy? This plainly objective test entails consideration of whether a reasonable person in the position of the celebrity would expect privacy in respect of what was about to be disclosed<sup>10</sup>. Information will not be private if it is generally accessible or if it relates to a criminal act. This last one could cause problems because it is not always easy to determine whether private acts are in fact criminal (drug taking). Sensitive data under the Data Protection Act 1998 has been viewed as private for these purposes (eg sexual orientation, political or religious beliefs). Information about and arising from intimate relationships is likely to be viewed as private.

14. Once it is established that Article 8 is engaged (that is to say that the information is private and that its publication contravenes the right to respect for private and family life enshrined in Article 8) the next step is to undertake the important balancing exercise of seeking to reconcile Article 8 with Art 10 (freedom of expression). This requires the exercise of proportionality: noting that neither right has precedence over the other. A balance must be struck between privacy and freedom of expression:

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<sup>10</sup> In *Campbell* the reasonable person would be a person in the position of needing drugs rehabilitation treatment.

- Articles 8 and 10 have equal weight and value in a democratic society.
  - Consideration should be given to the extent to which it is truly in the public interest that publication should be allowed.
  - One test is whether publication pursues a legitimate aim and whether the benefits of publication are proportionate to the harm it would cause.
  - The restrictions on the right to privacy imposed by article 10 have to be rational, fair and not arbitrary, and should impair the right no more than necessary.
  - Some forms of expression are afforded more weight than others. General public interest reasons for publication will count for more than tabloid gossip.
15. In the *Hannover* [2005] case<sup>11</sup> (the Princess Caroline case) the ECtHR (in 2004) found that publication of photographs of the Princess going about her daily life was within the scope of Article 8 and she was entitled to stop publication. The pictures did not contribute to public debate and it was pointed out that there is a fundamental distinction between reporting facts which might contribute to a debate, for example, about politicians in

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11 This was the case about photographs of Princess Caroline of Monaco.

democratic society on the one hand and reporting details about the private life of, say, celebrities who are not exercising public functions. Freedom of expression was thought to be of lesser importance in such cases. It was considered that the right to privacy extended to the private life of private individuals who are entitled to protection from interference by other private individuals. The ECtHR thus pointed to a fundamental distinction between details of public figures in respect of their official functions and details of their private lives. It was thought the press should only be the guardian of the public interest in respect of official functions. This distinction is not drawn in this way in our law. The Court of Appeal has rejected the argument that once a public figure reveals information about a specific area of their life they have a lower expectation of privacy in respect of that area.

16. In *Murray v Big Pictures (UK) Limited* (2008) the Court of Appeal laid down some useful guidance on the impact of these authorities. This case concerned a claim issued in the name of JK Rowling's son David against the publishers of a photograph of him out with his parents on the basis that the photograph infringed his right to privacy contrary to Article 8 and on the basis of the Data Protection Act. It was said in the judgment of the Court:
- *The appeal raises an important point about the relationship between **Campbell v MGN** and **Von Hannover v Germany**.*

- *The relevant principles from Campbell can be summarised in this way:*

(1) *The first question is whether Article 8 is engaged ie whether there is a reasonable expectation of privacy (in the sense that a reasonable person in the position of the claimant would feel that the photograph should not be published<sup>12</sup>). This is an objective question. The reasonable expectation is that of the person who is affected by the publicity. The question is what a reasonable person of ordinary sensibilities would feel if placed in the same position as the claimant faced with the same publicity. The question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred,*

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<sup>12</sup> It was said [39] that the first question whether Article 8 might be engaged might be answered on the footing that the claimant had a reasonable expectation that commercial picture agencies would not set out to photograph him with a view to selling the photographs for money without the claimant's consent.

*the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.*

(2) *If the answer to the first question is yes the next second question is how the balance should be struck between the individual's right to privacy on the one hand and the publisher's right to publish on the other. If the balance were struck in favour of the individual, publication would be an infringement of the individual's Article 8 rights whereas if the balance were struck in favour of the publisher there would be no such infringement.*

- *Insofar as it is relevant to consider whether publication must be "highly offensive in order to be actionable"<sup>13</sup> it is relevant to consider it only in relation to proportionality ie the balance to be struck between Articles 8 and 10 (and not whether or not Article 8 is engaged).*
- *At each stage the questions to be determined are essentially questions of fact.*
- *The focus should not be on the taking of the photograph in the street but on its publication. The mere taking of the photograph*

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<sup>13</sup> See Lord Nicholls in Campbell at [22]

may be unobjectionable. The Court of Appeal rejected the suggestion that if the claimant were to succeed the courts would have created an image right<sup>14</sup>.

- It was recognised that there may well be circumstances in which there will be no reasonable expectation of privacy even after *Hannover* – it all depends on the facts of the case. The court did not think it possible to draw a clear distinction in principle between being engaged in family and sporting activities and something as simple as a walk down a street or a visit to the grocers to buy the milk.
- An expedition to a café is at least arguably part of a person's recreation time intended to be enjoyed by them and such that publicity of it is intrusive and such as adversely to affect such activities in the future. Routine acts such as a visit to the shops or a ride on a bus might attract a reasonable expectation of privacy – it depends on the circumstances. The court thought that the view expressed is consistent with *Hannover* to which it was permissible to have regard<sup>15</sup>.

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<sup>14</sup> Sports celebrities might not be able to object to a photograph being taken of their image but might well be able to object to their image being published.

<sup>15</sup> *Hannover* was, of course, a decision of the ECtHR.

- If the trial judge were to conclude that Article 8 was engaged and that the Article 8/10 balance should be struck in the claimant's favour it would follow that the processing of the claimant's personal data would have been unlawful and it would follow that the processing would be unfair and that none of the conditions of schedule 2 of the Data Protection Act would be met.

17. Note that in cases where the celebrity is protected by a covenant restraining disclosure of private information (for example a nanny's contract of employment) the public interest and Article 10 considerations will have a much reduced role to play. The contractual right to enforce the restraint against the person who gave the covenant is usually paramount. It is generally thought to be in the public interest that people should comply with their contractual obligations unless there is a very good reason for releasing them. Obtaining an interim injunction to restrain publication.
18. Useful guidance was recently given in the *Max Moseley* case ([2008] EWHC 687 QB) where Eady J came to the conclusion that the material (concerning hookers, S&M and the like) was so widely accessible that an order preventing disclosure would make little practical difference. He said that it could be looked at in one of two ways. Either Mr Moseley no longer had had any reasonable expectation of privacy in respect of the widely familiar material or, even if he has, it had entered the public domain to the extent that there was in practical terms no longer anything that the law could protect. It was said that the dam had effectively burst. The judge held

that although the material was intrusive and demeaning and there was no legitimate public interest in it being published further the granting of an order would be a futile gesture. It was easy to access the footage and there was no point restraining the News of the World from publishing further.

19. There was another recent illustration of the application of these tests in a case involving unsavoury *fictitious* allegations of sexual conduct in a case called Quigley. Judgment was given on 16th May 2008 and in that case Eady J granted a permanent injunction to restrain publication on the grounds that it was necessary and proportionate to prevent distress and embarrassment to the claimants even though the allegations related to imaginary activities. The judge held that there was no conceivable public interest in making such scurrilous allegations public and although the threat related to imaginary activities publication would constitute an unacceptable intrusion into a personal and intimate area of the claimant's lives.
20. In summary the issues that need to be focused on are:
  - Is the information about to be disclosed the sort in respect of which the celebrity has a reasonable expectation of privacy?
  - Is it proportionate to prevent disclosure of the information on the grounds of free speech?
  - The following factors are relevant in line with the Prince Charles diaries case:

- o The nature of the information.
- o The nature of the relationship (if any).
- o In all the circumstances whether it is legitimate for the information to be kept confidential or whether it was in the public interest to make it public.

### **Obtaining an interim injunction to restrain publication**

21. Section 12 of the Human Rights Act comes into play when considering whether to restrain publication because freedom of expression is affected. Section 12(3) provides that: "*No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that the publication should not be allowed*". This section has had the following consequences:
  - A claimant must establish a *real prospect of success* at trial if publication is to be restrained. (The lower *American Cyanamid v Ethicon* standard is, therefore, modified for such cases. In *American Cyanamid* the House of Lords held that at the interim stage the court need only be satisfied that the claim was not frivolous or vexatious and that there is a serious question to be tried on the merits. This approach was not adopted all cases – applications for interim injunctions in defamation cases being a good example <sup>16</sup>).

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16 Bonnard v Perryman.

- The House of Lords in *Cream Holdings v Banerjee* [2004] applying section 12(3) held that a restraint order preventing publication pending trial would not be granted unless the applicant's prospects of success at trial were sufficiently favourable in all the circumstances. Generally this means an applicant must show he would probably succeed at trial although where the circumstances warrant it a lesser degree of likelihood might suffice.
- "Likely" in section 12(3) was held not to mean "more likely than not" in all situations but that flexibility was essential – so "likely" has an extended meaning setting as a normal prerequisite likelihood of success at trial higher than "real prospect" but allowing the court to use a different standard where the circumstances warrant it.
- There is thus no single, rigid standard governing all applications for interim restraint orders restraining publication in privacy cases. As a result of section 12(3) interim restraint orders are not made unless the applicant's prospects of success are sufficiently favourable to justify the order in the particular circumstances of the case. Generally this requires proof that the applicant will probably win at trial and this threshold should generally be crossed before discretion is exercised.
- Flexibility is sometimes in order, for example, where the potential adverse consequences of disclosure may be particularly grave or

where a short lived injunction is needed to enable a full application to be heard a little later.

22. In summary the threshold giving the court jurisdiction is not subject to a single rigid standard but normally the applicant must show he will probably succeed at trial although a lower standard might be used if the circumstances warrant it. The intention is that regard is given to the right to freedom of expression whilst maintaining sufficient flexibility to give effect to countervailing Convention rights.
23. In *Coys Ltd v Autocherish Ltd*<sup>17</sup> Tugendhat J made it clear that *Cream Holdings* does not apply to defamation claims – these are subject to a stricter test:
  - The statement is unarguably defamatory.
  - There are no grounds for concluding the statement may be true.
  - There is no other defence which might succeed.
  - There is evidence of an intention to repeat or publish the defamatory statement.
24. Unless the defamatory material is private material of the kind giving rise to an expectation of privacy it is very difficult to get an injunction to restrain publication.

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<sup>17</sup> [2004] EWHC 1334 (QB)

25. Non-official public activity of celebrities can be protected under the right to privacy although in **Campbell** publication of photographs taken in a public place was considered to be actionable only in exceptional circumstances. There is seldom much public interest served justifying publication of photographs of celebrities in public who are going about their daily lives. The Court of Appeal has allowed a newspaper to expose flaws in a sportsman seen as a role model for young children even though it was done in a lurid and sensationalist way. It was not the court's function to lay down moral judgments about the way the story is written. The issue is whether or not the information is private in accordance with the above tests.

### **Personality as a merchantable item**

26. Image and marketing today are closely linked so it is very important to maintain the image. The use of the true identity of an individual in the marketing of goods and services is widespread and hugely lucrative. Endorsement and association with products and services is a main income stream for many sports stars. Branded and designer goods endorsed by celebrities are very popular and merchandising by football clubs is widespread. Likenesses used in relation to goods and services is a way personality is merchandised – think no further than David Beckham and Tiger Woods. The image itself is a valuable product and a powerful marketing tool. The wages of some football stars reflect the value of the image rights.

27. There is no fully developed personality right in our law ie image is not subject to a defined property right. It is not easy to see why such a right could be justified. Protection of celebrity personality is on a piece by piece basis and involves trade mark law, passing off, copyright and the law of confidence. There are three justifications for protecting an image from unauthorised use:

- Wrongful appropriation of the value attaching to the image.
- Protecting the privacy of the individual involved.
- Protecting the right of the individual involved to make money from the image.

28. Passing off is not really an effective means of protecting an image:

- If the image has been licensed it would be necessary to show damage to the licensor's goodwill. If the activity is in a different field of activity this may be difficult. The fact that use of the image in another field of activity might damage the licensing potential of the image is not enough.
- It is also necessary to show a misrepresentation. This depends upon showing customer confusion ie that the public believes that the goods in question bearing the image are authorised. This will not work if the public do not understand character merchandising and

particularly if there is no commercial exploitation in the image. In that case it would simply be a misappropriation of the image.

29. A central question is whether or not the image or other indication of the celebrity is seen as an indication of the *origin* of goods and services sold under the celebrity's name or image. Celebrities sometimes argue that articles such as T-shirts bearing their likeness convey the impression that they have consented to the use of the image. This argument was rejected in the ABBA case<sup>18</sup> on the grounds that most people would not have thought the group consented to the products and all that was happening was that a popular demand for ABBA images on T-shirts was being met.
30. There is a distinction between endorsing a product and merchandising. Endorsement means that the celebrity is stating to the public that he or she approves of the product or is happy to be associated with it. Merchandising involves exploiting images etc of the famous and it is not necessary for the public to believe that the products are endorsed by the owner of the image. There may be cases where the marketing and packaging suggest both endorsement and exploitation of the image.
31. In *Irvine v Talksport* [2002] Laddie J gave some useful guidance about the nature of the claim in passing off<sup>19</sup>:

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18 *Lyngstad v Anabas Products* [1977] FSR 62.

19 This case went to the CA and Laddie's judgment was approved.

- *If someone acquires a valuable reputation or goodwill the law of passing off will protect it from unlicensed use by other parties. The law will vindicate the claimant's exclusive right to the reputation or goodwill. It will not allow others to use it to reduce, blur or diminish its exclusivity. It is not necessary to show that the claimant and the defendant share a common field of activity or that sales of products will be diminished. There is a need to establish a misrepresentation because it is that which enables the defendant to make use or take advantage of the claimant's reputation.*
- *It is common for famous people to exploit their names and images by way of endorsement. They do it not only in their own field of expertise but, depending on the extent of their fame or notoriety, wider afield also.*
- *For many sportsmen income received from endorsing a variety of products and services represent a substantial part of their total income. The lustre of a famous personality if attached to goods or services will enhance the attractiveness of those goods and services to the target market.*
- *There is no good reason why the law of passing off in its modern form and in modern trade circumstances should not apply to cases of false endorsement.*

- *Separate issues arise in character merchandising cases; in those cases the defendant's activities do not imply any endorsement. There is nothing which prevents an action for passing off succeeding in a false endorsement case. The burden is on the claimant to prove (1) that at the time of the misrepresentation he had a considerable reputation or goodwill (2) that the actions of the defendant gave rise to a false message which would be understood by a not insignificant section of his market that his goods been endorsed, recommended or are approved by the claimant.*

32. One sure way of protecting an image is to register it as a trade mark. It has long been perceived there is considerable commercial value in having celebrities endorsing products and services – pictures of sports stars have been registered as trade marks eg in the case of Damon Hill and Eric Cantona. Johnny Wilkinson has registered community marks denoting his name. However, to be registered it is necessary that the mark should be distinctive and not conflict with pre-existing rights. Trade marks do not attract special treatment simply because they represent the image of a celebrity – otherwise trade mark law would be giving special protection to images. The position is that the image of a celebrity sports star will not be registered in respect of goods or services unless the mark has acquired distinctiveness through use. This is because in the case of very famous celebrities the image is not likely to be viewed as a trade mark (essentially

as a badge of origin). It is unlikely, therefore, that the image of well known celebrity sports stars would be registrable in a wide variety of classes of goods and services and this means that defensive registrations would not be allowed.

33. It is not possible to register the image of a living individual without that person's consent – the application will be considered to have been made in bad faith. The consent of the person concerned is required. It is also necessary to have a bona fide intention to use the name.

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### Spring 2008

A specialist business lawyer whose practice focuses on commercial and chancery litigation and advisory work covering contract, sale of goods, partnership, construction, banking and guarantees, restraint of trade and fraud & asset tracing. He also deals with a large number of professional negligence claims. Robert has particular expertise in intellectual property, media & entertainment and IT including copyright, trade marks, trade libel, defamation,



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