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UNAUTHORIZED EXPLOITATIONS AND INFRINGEMENTS OF CELEBRITY RIGHTS, FAME AND POPULARITY: A LEGAL OVERVIEW OF CELEBRITY RIGHTS IN NIGERIA.

Introduction

The rationality and sentimentality attached to dignity of an individual should be treated equally. In contemporary times, media has outgrown in importance, which has resulted in unprecedented exposure and revelation. This spotlight defines celebrity as an individual holding personality attributes and commercial values recognized by the public at large. In the wake of rapid digitalization and mass accessibility, celebrities are more prone to exploitation through misappropriation, misrepresentation and defamation. Protecting celebrity rights under intellectual property (IP) laws would be a significant development in the field of intellectual property rights. Celebrities can flaunt their popularity and are permitted to make riches out of their identity. However, celebrities have often lent their voices, faces and names to various commercial and non-commercial endeavors for free.

The right of celebrities is persistently being abused in several ways through misappropriation by others. The right of publicity and the right to commercial use of their identity are constantly infringed. Private details of celebrities are routinely leaked to the public and their privacy encroached upon. Misrepresentation or defamation is also common by depiction in a false light, use of photographs in advertisements without permission, and reports on media linking them to inappropriate behavior.

Celebrities often have two streams of income, one for the work they are known for (like acting, singing, dancing, comedies etc) and the other, from endorsement deals and sponsorship. This second, which is the most important stream of income, is often derived from the image and personality that these celebrities have built over time. These unique characteristics such as the appearance, voice, use of catchphrases, amongst others, make up a celebrity's image, and this image most times compel their fans and followers to patronize products and services to which they are associated.

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This article highlights and explains various celebrity rights like right to privacy, publicity/merchandising right, moral right, personality right, and right of passing off. It further explains various issues concerning celebrity rights and their protection under IP laws. There are various international conventions, which have recognized these rights, either directly or indirectly. The Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights are noteworthy evidence in this regard.

Who is a Celebrity?

While discussing celebrity rights, it is first necessary to understand what the term celebrity means. It is also important to remember that celebrities have the sole right to exploit the value of being a celebrity. Today, actors, authors, artists, politicians, models, athletes, musicians, singers, television personalities, well-known business executives, and anyone who seeks to capture the public attention including reality TV stars are all celebrities. Public perception is the main criteria for determining whether an individual is a celebrity or not. The word celebrity comes from a Latin word 'celebritatem' which means 'the condition of being famous'. In the case of **Martin Luther King Jr Center for Social Change v American Heritage Products Inc**, the court held that the term 'celebrity' should be interpreted in a broader sense to encompass more than the traditional categories of movie actors, rock stars and ball players. Under the 'direct commercial exploitation of identity test' when an unauthorized use of a person's identity is made that is both direct in nature and commercial in motivation, the person whose identity has been misappropriated has by definition become a celebrity for right of publicity purposes.

The word 'celebrity' is perceived by a large chunk of population as an honour and a reward for success. Sportspersons and artists earn it by skill, businesspersons and TV personalities earn it by wit, politicians earn it by votes and for some it is spontaneous like in the case of princes and princesses, who acquire it by birth or by marriage. Certain others may acquire it by their chance involvement in newsworthy events.

Concept of Celebrity Rights

The rights enjoyed by celebrities are a bundle of rights including publicity rights, reproduction rights, distribution rights, rental and lending rights, personality rights, privacy rights and so on. However, these rights can be broadly classified under three major categories, namely personality rights, publicity rights/merchandising rights, and privacy rights.

Personality Rights

An individual's personality is a means by which the individual recognizes others

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and identifies his place in the society.

Through the creation of one's personality, an individual creates an expectation of himself in the eyes of others and the way in which he is expected to behave in the society. For instance, members of the society will have different individual expectations from a sportsperson, actor, a spiritual guru, a politician with regard to their contributions expected towards the society. Each of these personalities contributes differently to the society according to their individual talents.

There is no doubt that in creating such a personality an individual has to put in a lot of efforts and conscious care. An individual's personality involves a great amount of emotional, dignitary and moral values attached to it. This personality might be very close to the celebrities' heart. However, the media frequently violates these personality rights of an individual celebrity by associating him with products or activities that run contrary to the image created by him in the society or that affect the dignity of the said celebrity.

In the case of **Tolley v Fry [1931] AC 333; (1931) 1 All ER Rep 131** there was controversy relating to the use of a picture of a popular amateur golf player to advertise Cadbury chocolates. Tolley's complaint was that the defendants made it appear as if he had consented to appear in the advertisement for gain or reward, and thereby misused his reputation as an amateur golf player for advertising purposes. The court held that the conduct of the defendant was capable of amounting to libel, and awarded damages.

Privacy Rights

The doctrine of privacy put forth by **Warren and Brande** has played a pivotal role in shaping celebrity rights. They opined that the basic concept of personal freedom extends to every person's right 'to be let alone'. People generally tend to personalize celebrities and become curious about every personal aspect of their lives. Celebrities in turn try to control their personal information since the disclosure of the same might put them in a situation of embarrassment or humiliation resulting in a feeling of insecurity. In **Cohen v Herbal Concepts Inc, (1984) 63 NY.2d 379**, a picture of the plaintiff and her daughter was used on the label of a cosmetic product without their consent. The defendants argued that the faces of the two individuals were not identifiable in the photograph. The court however, accepted the statement of the plaintiff's husband and awarded damages to the plaintiff in recognition of her privacy rights.

In the case of **Barber v Times Inc 159 S.W. 2D 291 (1942)**, a photographer took pictures of Dorothy Barber during her delivery. Dorothy Barber filed a suit of invasion of privacy against Time Inc for unauthorized and forceful entry into her hospital room and for photographing her despite her protests. Dorothy Barber was successful in her suit and the court while awarding damages of US$ 3000 opined: **'In publishing details of private matters, the media may report accurately and yet at least on some occasions may be found liable for damages.**

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Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurts.'

Enforcement Procedure of Celebrity Right to Privacy

Celebrity Right to Privacy is a fundamental right provided for in **Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (As amended)**. To enforce the right to privacy, an aggrieved celebrity can proceed under the Fundamental Rights (Enforcement) Procedure Rules made pursuant to section 46 of the 1999 Constitution. The said section provides that any person who alleges that any of his fundamental human rights has been, is being, or likely to be contravened in any state in relation to him, may apply to the High Court in that state for redress. Because of the relatively easier means of enforcement instituted by the enforcement procedure rules, this remains one of the attractive points of the constitutional right to privacy.

Remedies For Breach of Celebrity Right To Privacy

Damages: The combined cases of **Shugaba v Minister of Internal Affairs (1981) 2 NCLR 459; Ajayi v AG Federation (1996) 9 NWLR (PT. 495) 634 AT 661** and **Abiola v Abacha (1998) 1 HRLRA P.447** clearly establish that damages can be awarded for breach of fundamental human right to Privacy of a celebrity. **In Obisi v Nigerian Navy(2004) 8 MJSC 137,** the Federal High Court adopted the views of Odunowo J in Ajayi v AG Federation that in fixing the amount of damages for infringement of fundamental human rights, the following factors must be taken into consideration:

a. The frequency of the type of violation in recent time;

b. The continually depreciating value of the naira;

c. The motivation for the violation;

d. The undeserved embarrassment meted out to the celebrity, including pecuniary losses;

e. The conduct of the parties generally particularly that of the respondent.

Injunction: This remedy would be appropriate in many respects especially in cases where there is an intended public dissemination of personal information of a celebrity and in cases of intrusion.

Apology: This remedy is very much used in the tort of defamation and there is no reason why in principle it should not be used in privacy cases of a celebrity. The remedy of apology seems quite appropriate for privacy cases where the embarrassment, anguish and distress can be assuaged by a genuine apology.

Publicity/Merchandising Rights

The right to exploit the economic value of the name and fame of an individual is termed as publicity right. It is also known as image or merchandising rights.

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To claim this right, it is necessary to establish that fame is a form of merchandise, that is, an act intended to promote the sale/popularity of a commodity or an activity. Hence, if someone uses the fame of a celebrity to promote his goods without the celebrity's consent it would be termed as an unfair trade practice, misappropriation of the intellectual property of the celebrity, an act of passing, amongst others.

Publicity right is also a form of intellectual property right and any object created by the labour, hard work, conscious efforts, time and skills of an individual celebrity belongs to him. The celebrity has a sole right to exploit the object created by him for any gainful purpose, which he likes. Therefore, a celebrity is at complete liberty to exploit his images, fame and popularity for commercial benefits. He can as well prevent others from exploiting his images and fame. It is very important to state that it would be very unfair for someone else to exploit a celebrity's image, fame or popularity for benefits, which would accrue to him rather than the celebrity.

Every celebrity should have proprietary rights over his fame and popularity in the society because he has put time, effort, talent and finances to become popular. This is also in conformity with John Locke's labour theory of property.

A celebrity's right to publicity includes his exclusive right to the profits accrued through the exploitation of his fame and popularity. Such a right is distinct from the right against invasion of privacy and the right against adverse portrayal of the celebrity's moral rights over his personality. In other words, a celebrity's publicity right concerns intangible or non-physical harm and ownership of intangibles.

Importance of Celebrities' Right to Publicity

The importance of recognizing celebrities' right to publicity includes the following;

i. To secure them a form of intellectual property, which is meant not for protecting them against any harm but to secure them some financial benefits to be gained from the use of the property, and this is generally understood to be justified as a reward or incentive for the celebrity work in creating the intellectual property.

ii. The publicity right is important because it is assignable and licensable to the players in the media world for commercial gains and benefits. In the current context, publicity involves an immense amount of money and the public image of a celebrity is of tremendous value. Recognizing this valuable asset as a property means that the same would be subject to taxation as a capital asset just like any other intellectual property. This creates an economic incentive for the public and celebrities themselves are adequately rewarded due to their moral claim over money arising out of their fame.

iii. The right to publicity is inheritable therefore; the descendants of the celebrity could also gain from the popularity, which the celebrity has

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created during his or her lifetime.

iv. The right to publicity prevents unjust enrichment and deceptive trade practice

How to show Infringement of Right to Publicity

To show Infringement of right to publicity, the celebrity must prove the following;

i. That the celebrity owns an enforceable right in the identity or persona of a human being,

ii. That the person, without the celebrity's permission, has used some aspect of his identity or persona in such a way that the celebrity is identifiable from the person's use of his image,

iii. That the person, without the celebrity's permission, has used some aspect of his identity or persona in such a way that the celebrity is identifiable from the person's use of his image,

Protection of Celebrity Rights

Celebrity rights may be protected using trademark law, copyright law and passing off action. Any infringement of a performers' non-property or recording rights will therefore amount to breach of statutory duty.

Trademark: Trademark registration has a two-fold significance as far as rights of celebrities are concerned. Firstly, trademark registration of any aspect of a celebrity's personality is indicative of the fact that the celebrity is open to the authorized assignment or licensing of his or her personality for merchandising purposes in the class of goods and services for which registration has been sought. Secondly, the celebrity obtains a means of defending those aspects of their personality against unauthorized use. Unlike action under the tort of passing off, trademark registration is unique in providing a prospective form of protection for celebrity personality.

Copyright: There is not much clarity as to what aspects of celebrity rights may be protected under Copyright Act. In **Sim v Heinz & Co Ltd (1959) 1 WLR 313 1959**, the court held that copyright is neither granted to voice, likeness nor other identifiers of a persona. Copyright gives exclusive, although limited, rights of protection and allows celebrities to authorize reproduction, creation of a derivative image, sale or display of a commissioned photograph of themselves by others. To pursue an action for copyright infringement, an individual must be able to show ownership of a copyright in the image and copying of that image. In the context of celebrity photographs, the biggest problem celebrities encounter is their lack of ownership in the photograph being exploited. In case of books involving celebrity authors, any adaptation, if original, nevertheless can get protection under copyright law.

Passing off Action: The action of passing off is relevant in cases of personality merchandising where a person's name, likeness or performance characteristics are misused. In general, a passing off action is a remedy against the injury to the goodwill or reputation of

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a person caused by misrepresentation by another person trying to pass off his goods or business as the goods of another. An action in passing off may lie for any unauthorized exploitation of a celebrity's 'goodwill' or 'fame' by falsely indicating endorsement of products by the celebrity. Similarly, the 'wrongful appropriation of personality' could amount to passing off as the celebrity could be said to have a proprietary right in the exclusive marketing for gain in his personality.

Conclusion

The celebrity rights often generate a fortune in licensing fees for advertising, endorsement, and promotion of business entities. These rights are valuable as their association to products or services attracts valuable gains to the product owners. Consequently, since a bulk of the income of celebrities is often derived from their rights, celebrities are very keen on protecting these rights from infringement.

Moreover, like in trademark infringement, where the image of a celebrity is associated with a brand without authorization, it might cause confusion in the mind of the consumers who might erroneously believe that the celebrity is endorsing such brand. This misuse may also interfere with the celebrity's contractual relations where he or she is perceived to have endorsed a competing brand after signing an endorsement deal with a particular brand. The importance of the protection of this right cannot therefore be overemphasized and like other intellectual property rights, celebrity rights should be legally acknowledged and protected.

The laws in effect do not authorize a celebrity's identity to be used without express permission from the celebrity. Protection is obtained under legislation pertaining to privacy, tortious liability and intellectual property rights. A celebrity's name, face, and appearance has a market meaning that is connected to him because of his work. The commercial exploitation that derives an economic benefit is his right and no unauthorized person can misappropriate the same and benefit unjustly from it. I think it is important for legislators to enact new celebrity rights legislation that would enforce, explain and include safeguards against the abuse of celebrity rights and at the same time grant them privacy. Also, the best way for companies to protect themselves against legal actions is to get properly written approvals from celebrities before using their public images, names, likeness and the like. In the absence of these signed permissions, it is strongly advisable to incorporate adequate legal disclaimers with a view to reducing liability in the case of legal disputes.

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