

Marilyn Monroe's Residence at Death Is Key to Posthumous Right of Publicity

May 2, 2008

A recent decision of a California federal court may spell the end of years of licensing and enforcement of Marilyn Monroe's right of publicity since her death in 1962, by concluding that Monroe was a New York resident when she died. The case concerns Marilyn Monroe's valuable posthumous right of publicity -- right to exploit her name, image and likeness after her death. The existence and contours of such posthumous rights are generally determined by the law of the deceased individual's domicile state. Although individuals may reside or own property in a number of states, they can only have one domicile or permanent residence. Monroe had residences in both California and New York, but it was unclear which state was her domiciliary state based on the incomplete record at the time.

In *Milton H. Greene Archives, Inc. v. CMG Worldwide, Inc.*, 2:05-CV-022200 MMM (MCx) (C.D. Cal. Mar. 17, 2008), the United States District Court for the Central District of California granted a motion for reconsideration concerning its earlier January 7, 2008 order (the "January Order"). Based on a limited factual record, the January Order found that plaintiffs were not estopped from claiming that Marilyn Monroe died a California domiciliary and that California's posthumous right of publicity *could* be applicable.

Determining Monroe's domiciliary state carries significant repercussions. If, as defendants argued, Monroe was a New York domiciliary at the time of her death, then the plaintiffs lacked standing to pursue the action on their posthumous rights because New York law does not recognize any such posthumous rights. On the other hand, if Monroe was a California domiciliary at the time of her death, the plaintiffs could assert posthumous rights under Cal. Civil Code Section 3344.1(b) (in response to an earlier decision in that case, the California legislature clarified that Section 3344.1(b), which established a descendible right of publicity that is protectible for 70 years after a celebrity's death, applied retroactively to any celebrity who died between January 1, 1915 and January 1, 1985, i.e., dating back 70 years from the enactment of the statute).

After reviewing additional evidence, the defendants asked the court to reconsider the January Order based on, *inter alia*, statements made to the California Inheritance Tax Appraiser by the executor of Monroe's estate and by counsel for the estate. These statements showed that Monroe was a non-resident of California at the time of her death and that her home in Los Angeles was a temporary residence and used primarily for when she was filming movies in California. The record also contained evidence that Monroe viewed New York as her permanent residence.

In a detailed opinion issued March 17, 2008, Judge Morrow held that the plaintiffs were judicially estopped from arguing that Monroe was a California domiciliary at the time of her death, because of the inconsistent positions previously taken by Monroe's estate before the California inheritance tax appraiser. By claiming that Monroe was a New York resident and presenting evidence that she viewed New York as her permanent residence, Monroe's estate succeeded in drastically reducing their California inheritance tax liabilities. Therefore, the court found it would be improper for the plaintiffs to do an about-face by now claiming that Monroe was actually domiciled in California at the time of her death to gain access to the Monroe's posthumous right of publicity under California law. By minimizing their California inheritance tax exposure, Monroe's estate -- perhaps unknowingly -- undermined any future claim to Monroe's posthumous right of publicity under California law.

Intellectual Property & Technology

The *Milton* case aptly illustrates the profound impact that significant variations in state law can have on the posthumous right of publicity. It also shows that statements or representations before a court or administrative body for one purpose may later impact or undercut the future assertion of a posthumous right of publicity.

The time for filing a notice of appeal from the *Milton* decision has not yet expired.

For questions regarding the posthumous right of publicity, please contact your regular Sonnenschein intellectual property attorney.

To unsubscribe from this Intellectual Property & Technology e-Alert list, please forward this e-mail to Sonnenschein_Marketing@sonnenschein.com with the words "unsubscribe Intellectual Property & Technology" in the SUBJECT field of your e-mail.

These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel and you should not send us confidential information without first speaking to one of our attorneys and receiving explicit authorization to do so.

This e-mail was sent by Sonnenschein Nath & Rosenthal LLP, located at 7800 Sears Tower, 233 South Wacker Drive, Chicago, IL 60606 in the USA.

Intellectual Property & Technology

Sonnenschein Nath & Rosenthal LLP
www.sonnenschein.com

