Cases of Note-Invasion of Privacy, Appropriation

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Recommended Citation  
Strauch, Bruce; Carson, Bryan M.; and Montgomery, Jack () "Cases of Note-Invasion of Privacy, Appropriation," *Against the Grain*: Vol. 29: Iss. 1, Article 25.  
DOI: [https://doi.org/10.7771/2380-176X.7724](https://doi.org/10.7771/2380-176X.7724)

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BELA GEORGE LUGOSI et al. v. UNIVERSAL PICTURES. 603 P.2d 425 (Cal. 1979)

In 1930, Bela Lugosi signed on with Universal Pictures Company to play the title role in Dracula.

Hope Linninger Lugosi and Bela George Lugosi, widow and son of the iconic vampire sued Universal in 1966 alleging they were appropriating property which they had inherited. Universal was licensing out the rights to the Dracula character without family consent.

And boy did they exploit it. Plastic toy pencil sharpeners, plastic model figures, T-shirts and sweat shirts, card games, soap and detergent products, picture puzzles, candy dispensers, masks, kites, belts and belt buckles, and beverage stirring rods.

They actually identified the date of the movie and actor’s name. As if anyone could fail to recognize the immortal Bela, Sr. The trial court found it was clearly Bela’s likeness despite Christopher Lee, Lon Chaney and John Carradine having also also played the role.

Lugosi never tried to exploit his image as Dracula. Had he done so in a business or whatever he would have impressed the business with a secondary meaning protectable under the law of unfair competition. Johnston v. 20th Century-Fox Film Corp. (1947) 187 P.2d 474.

That legal footnote aside, the trial court found that the interest was one of property which could pass to the heirs. They relied on a line of cases which included Haelan Laboratories v. Topps Chewing Gum (2d Cir. 1953) 202 F. 866 and Cepeda v. Swift and Company (8th Cir. 1969) 415 F.2d 1205.

The Appeal

The appellate court and later the Supreme Court of California relied on Dean Prosser who said it was an issue of privacy. Prosser, “Privacy” (196) 48 Cal.L.Rev. 383, 406.

Lugosi could have created “… a right of value” in his name or likeness. But he didn’t do it.

Had he done so, it would have been protectable during his lifetime under one of the forms of invasion of privacy — Appropriation for the defendant’s advantage of the plaintiff’s name or likeness.

The court found it odd to urge that, because an ancestor did not exploit his publicity for commercial purposes, the right to do so descends to the heirs. If so, how many generations could this descend to?

A concurring opinion notes that Lugosi was an actor. He memorized lines written for him and played the role. He neither wrote the novel nor the screenplay. Many others played the role. He had no more right to exclusivity in exploiting it than George C. Scott does to General Patton.

Questions & Answers — Copyright Column

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QUESTION: A high school librarian inquires about a campus-wide freshman reading program initiative and asks whether the school can show a motion picture as a part of this program.

ANSWER: To show an entire motion picture to the whole school or to all of the freshmen students is a public performance, and the school would need a license for this.