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Westlaw Journal Entertainment Industry

***1 September 15, 2011**

Misappropriation of Likeness

ACTORS SUE FOR PROFITS FROM TV AND MOVIE CLASSICS

Ward v. Warner Bros. Entm't

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NEW YORK, Aug. 18 (Reuters) - The red-haired bully from the movie "A Christmas Story" is preparing for a courtroom slugfest with Warner Bros. Entertainment.

Ward v. Warner Bros Entertainment Inc. et al., No. 11-6749, *complaint filed* (C.D. Cal. Aug. 16, 2011).

Actor Zack Ward, who played Scut Farkus in the 1983 film, has sued Warner Bros for using his image in toy action figures without his permission.

The suit, filed Aug. 16 in California federal court, charges that the studio had no right to license Ward's likeness for use in consumer merchandise. Ward wasn't consulted and didn't authorize the production of the Scut Farkus figurine, the complaint said.

Ward's case is the latest in a spate of actions by actors seeking to recover merchandise profits related to classic film and television works.

As recently as five years ago, such suits were rare because actors had little way of knowing if and when their images were being used by studios. That has changed, thanks to the Internet, as well as a steep increase in merchandising by studios, making the products more generally visible.

In April four members of the 1970s show "Happy Days" sued CBS Studios and Paramount Pictures, alleging they were owed royalties. David Cassidy also claims that he is owed a hefty sum in merchandise sales related to the 1970s television show "The Partridge Family."

"Actors are looking and saying wait, they're making a lot of money on merchandise," said lawyer Jon Pfeiffer of Pfeiffer Thigpen FitzGibbon & Ziontz, who represents the "Happy Days" actors. "They start talking to other actors and realizing they haven't been paid."

Ward was contracted to play Scut Farkus in the film in 1983. Initially, his part was minor, but the director decided to give Ward the lead bully's lines because of his height, according to Ward's lawyer Randall Newman.

Although Ward changed roles, he kept his original contract, which did not include a standard provision that would give the production company the right to use the actor's image in merchandise related to the film. Ward is the only major character from the film who retained the rights to license his likeness, the suit said.

Warner Bros. spokesman Paul McGuire said the company had not yet received a copy of the lawsuit and declined to comment.

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The suit said Warner Bros. responded to the allegations in a letter stating, “Although the hat, sweater, jacket and boots are similar to those worn by Mr. Ward in the picture, the face of the character is not Mr. Ward's face,” according to the complaint.

*2 “It's got red hair and slanty eyes, which is what Zack has,” Newman said. He said Ward made a few thousand dollars off the film in 1983 while the company is now “making millions of dollars off him.”

The suit seeks to recover profits from the figurine sales and punitive damages. Ward is also pursuing a related lawsuit against the National Entertainment Collectibles Association over the use of his image in board games related to the movie.

While Newman could not estimate sales of the merchandise, both the figurines and board games are available on sites such as Amazon.com.

From T-shirts to slot machines

Newman said Ward's claims are rare, given that actor contracts today are more sophisticated and likely to include merchandise provisions.

“I'm not sure you'd ever see this happen again unless it relates back to a really old movie,” Newman said.

Other actors have filed similar claims, seeking royalties for products ranging from T-shirts to casino slot machines.

The actions against CBS and Paramount were brought by actors behind secondary characters (Anson Williams, who played Potsie; Marion Ross, who played Mrs. Cunningham; Don Most, who played Ralph Malph; and Erin Moran, who played Joanie) on “Happy Days.”

They are seeking between \$1.5 million and \$2 million apiece, according to Pfeiffer.

A lawyer for David Cassidy, meanwhile, has sent a formal request to Sony Corp. for an accounting and payment of any amounts owed under his contract.

Pfeiffer said it's easier for actors from older shows and movies to stake a claim to merchandising revenues. While the percentage of the actor's cut has remained steady in acting contracts through the years, ranging from 2.5 percent to 5 percent, “what has changed is how tightly they're written,” Pfeiffer said.

The “Happy Days” contracts, for example, contained broad language, giving the actors a right to royalties whenever the studio uses their name, voice or likeness “in connection with” the sale of merchandise, Pfeiffer said. Contracts drafted today would require the image to be on the merchandise, he said.

(Reporting by Terry Baynes)

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