# [GB] English Courts Clarify Law on Image Rights

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The Honourable Mr Justice Birss of the High Court, London gave judgment on 31 July 2013 in a court action between the pop star Rihanna and the United Kingdom clothing store Topshop which confirmed in English law that there is no legal concept of image rights, which is found in certain legal jurisdictions such as the USA. Image (or Personality) Rights is the right of an individual (or a legal entity) to have control over the commercial exploitation of their name, likeness, or other unequivocal facet of their identity; for example if a photographic image of a well-known performer appeared on a T-shirt sold in the USA for commercial gain, then the performer's consent would need to be sought, as well as compensation paid regardless of the fact that the performer did not own the copyright in the photograph used. Mr Justice Birss clarified the English law by stating that there was no legal concept of Image Rights in English law.

Even so the judge found in favour of Rihanna against the clothing retailer, Topshop, for using an image of her on a T-shirt giving the impression that it was official merchandise authorised by the singer and approved by her, by applying the legal concept of passing off which is a form of misrepresentation whereby the public could be confused by the representation, believing it to be one thing when it was another; in this case official Rihanna merchandise even though her "R" logo did not appear.

The background is that Rihanna had previously endorsed Topshop through publicity events and selling her merchandise in their shops. However, separate from such arrangement Topshop had purchased photographs from a photographer taken of Rihanna during the video shooting of her song 'We Found Love'.

One of the images appeared on a line of T-shirts produced by Topshop and sold in 2011 and early 2012. The photographer owned the copyright in the image.

However, Topshop had not sought the permission of Rihanna nor her management for the use of her image in the context of that T-shirt.

In the light of the previous relationship with Topshop it gave the impression that the T-shirt was official merchandise and endorsed by Rihanna, which was not the case.

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The Honourable Mr Justice Birss in his judgment said that in English law there was no legal concept of image rights. However, Rihanna had proven her case as one of passing off whereby a substantial number of customers were likely to have bought the T-shirt in the belief, albeit falsely, that the product had been authorised by Rihanna.

The judge considered that the actions by Topshop represented damage to Rihanna's goodwill and it was for her to determine what garments the public thought had received her endorsement.

Mr Justice Birss did not suggest that there had been any bad faith on the part of TopShop, but given their previous relationship with Rihanna he considered that confusion in the marketplace would arise as to whether the product was thought to have had been officially endorsed. Topshop feel that no confusion has arisen, and are considering an appeal.

The case has clarified the matter of image rights in English law and that famous people cannot stop the use of photographs of themselves for use on a product, but that they can prevent passing off of products where they are sold or promoted in a certain way that may lead the public to believe the product has the official endorsement of the person.

***Robyn Rihanna Fenty(1) Roraj Trade LLC(2) Combermere Entertainment Properties LLC(3) v. Arcadia Group Brands Limited (t/a Topshop)(1) Topshop/Top Man Limited(2) High Court of Justice,Chancery Division, Intellectual Property [2013]EWHC2310 (Ch)***

http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/fenty-v-arcadia310713.pdf

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