

Los Angeles Times

Thursday, April 8, 1999

Protecting Dead Icons Back for an Encore

■ **Monroe, Bogart and others now star in commercials, raising thorny legal and financial issues.**

by Greg Johnson
Staff Writer

Scott Whiteleather, an attorney, is vice president of CMG Worldwide, an Indianapolis-based company that specializes in protecting and marketing the manes and images of such deceased personalities as Marilyn Monroe, Humphrey Bogart and James Dean. The company, which recently opened an office in West Hollywood, is advising surviving family members who are lobbying state legislators to strengthen their ability to control how likenesses of deceased personalities are used. Thanks to advances in digital technology, dead celebrities such as Fred Astaire and John Wayne increasingly have been used in commercials to grab consumers' attention. SB 209, introduced by state Sen. John Burton (D-San Francisco), has been supported by the Screen Actors Guild but opposed by some motion picture executives and some 1st Amendment activists. Times staff writer Greg Johnson discussed the issue with Whiteleather. What follows is an edited transcript.

Question: What controls are in place when it comes to using images of deceased personalities? And why is the state considering changes?

Answer: There is no federal legislation. Now, we often must walk through a minefield of different legislation in different states. California is considering extending the protection for deceased individuals from 50 years to 70 years. Some states, including New York, don't recognize a decedent's right [to control] publicity at all. California, because of Hollywood and the number of celebrities who live here, is obviously the leading jurisdiction, so this is an important amendment. There's also the creation of new, digital technology, which gives people more ways to use a deceased individual's image. It's the ability to put James Dean in an ad and make it look as if he actually was there. This already is a business involving many, many millions of dollars in licensing fees.

Q: How do the rights of an estate or surviving family members compare to the rights of a living person or to a cartoon character?

A: When it comes to the rights of the living versus the dead, there's not a dramatic difference. The differences are more in the minds of, let's say, the public, and some attorneys who oppose the [proposed] legislation. A Brad Pitt, for example, can scream and shout and be very verbal about the fact that he doesn't want his photo used some commercial fashion. But if an estate is upset about the way an image is used, they get less attention from the public. A cartoon character has even more protection. In the case of, say, Mickey Mouse, Mickey is protected by copyright law. Some of the particular uses of, say, mouse ears are protected by trademarks.

Q: What about a famous face from the movies or professional sports? Don't the movie producers or the sports leagues have rights to use the images?

A: In the case of James Dean, while Warner Bros. owns the copyright to the film, along with specific images from the film, they don't own James Dean. That's owned by the family, by the estate. In the case of a jeweler now using Humphrey Bogart in a commercial, they purchased the copyright for the film clip from the studio and they acquired the right to publicity from the Bogart family. It's to the benefit of the studio and the family to work together.

Q: This is about who gets the money, right? The estate or a third party?

A: CMG licenses the rights to use the images of such personalities as Marilyn Monroe, James Dean and Humphrey Bogart. Those estates are interested in using the images in tasteful ways. But other clients aren't looking to make money. They're more interested in protection. There are celebrities and families who might not want their name associated with any product. This law would allow these families to prevent unauthorized use.

Q: How about 1st Amendment issues, the right to use a famous face or personality?

A: Right now, the law allows exemptions in certain areas, such as books, movies and magazines. The problem is that the exemptions create more confusion than clarity. The amendment would introduce the same type of legal tests that are used in 1st Amendment cases. How would that affect books, movies, newspapers? Use of images would then be determined by the same type of legal tests used for freedom of speech and freedom of the press. Hopefully, the proposed amendment would clarify some of the concerns.