February 2013

Image Rights and the Isle of Man

It will have been noted that Guernsey introduced legislation which came into force on December 3 2012 creating a new form of intellectual property, the "image right".

The basic right, as defined, relates to a "registered personality". It is obtained by the registration of the personality of any of the following: any natural or legal person, a joint personality, a group or fictional character (either non-human or human). This basic right is also supplemented by the right to protect images associated with that registered personality. "Image" is widely defined and includes any characteristics, such as name, voice, appearance, signature, as well as pictures and illustrations.

Registration will give the proprietor exclusive rights in the images associated with or registered against the personality, and unauthorised use of a protected image will amount to an infringement.

A personality or image may not be registered if it is identical to an existing right and regulations may provide for any objection to be made through opposition proceedings.

Registration of a personality will last for 10 years (fees may range from £1,000 - £5,000), whilst registration of a specific image registered against that personality will last for three years (fees may range from £50 - £200). Registrations may be renewed for further periods of ten and three years respectively.

In the Isle of Man, as in UK, image rights are unregistered and may be enforced (to the extent they are enforceable at all) usually by way of a “passing off” or similar action. Such an action is usually dependent on the existence of some sort of reputational or other connection with the jurisdiction in question, although there is no reason why unregistered rights, the value of which may depend on the activities of the personality concerned in a number of countries, may not be held by a company or other entity in the Isle of Man and, indeed, the Isle of man is recognised as an alternative jurisdiction in which to hold

© February 2013 Simcocks

such rights. In the Guernsey ordinance there is no requirement for there to be any connection between the personality or image concerned, and Guernsey.

Since the new rights are limited to Guernsey, it remains to be seen how many registrations will be filed and how far they will be enforced. For example, it may be arguable that where infringement occurs in UK (or the Isle of Man) the infringer may be sued in UK (or IOM) for infringement of a foreign (ie Guernsey) intellectual property right.

Conversely, third parties particularly when dealing with online material which may be accessible in Guernsey, may need to check that the new image rights are not inadvertently infringed.

It is not clear at this stage how far it may be possible to maintain a watch on personality or image right applications in the Guernsey registry. Also, since there are arrangements in place between Guernsey, UK, the Isle of Man and other countries for the reciprocal enforcement of judgements, it remains to be seen how far any judgement for a sum of money by way of damages obtained in Guernsey for the infringement of a registered personality or image right might be enforceable in UK or IOM, particularly if the right to the registered personality or image is contested.

It is possible, therefore, that personality or image right registrations may be used as a basis for monitoring and taking action against possible infringers.

In practice, it may however, be assumed that such personality and/or image registrations will be relevant for tax planning purposes. In particular, if a person is or is likely to become famous, personality or image rights could be applied for and the resulting registrations held by a local company set up for the purpose. Wills and succession planning could be reviewed to incorporate the new rights. The registrations could also be used as a basis for the grant of licences to sponsors and others.

The Island does not, of course, at present have its own registry for intellectual property rights. However, it may be worth following the progress of the Guernsey “image right” to see if a similar registry and legislation may desirable in the Island.

Contact Us:

For further information please contact us by telephone +44 1624 690300 or by email at enquiries@simcocks.com

Ridgeway House

© February 2013 Simcocks

Ridgeway Street
Douglas
Isle of Man
IM99 1PY
Tel: +44(0)1624 690300
Fax: +44(0)1624 690333

Web: www.simcocks.com

The above material is of a general nature only. It does not constitute legal advice nor does the distribution or receipt of this material create a client-advocate relationship. Readers should seek specific advice in relation to any decision or course of action.

© February 2013 Simcocks