

# White v. Samsung Electronics

United States Court of Appeals, Ninth Circuit, 1992

971 F.2d 1395

<http://laws.findlaw.com/9th/2/971/1395.html>

**FACTS** Plaintiff, Vanna White, is the hostess of *Wheel of Fortune*, one of the most popular game shows in television history. Samsung Electronics and David Deutsch Associates ran an advertisement for videocassette recorders that depicted a robot dressed in a wig, gown, and jewelry chosen to resemble White's hair and dress. The robot was posed in a stance, for which White is famous, next to a game board, which is instantly recognizable as the *Wheel of Fortune* game show set. The caption of the ad read: "Longest-running game show. 2012 a.d." Defendants referred to the ad as the "Vanna White" ad. White neither consented to the ads, nor was she paid for them. White sued Samsung and Deutsch under the California common law right of publicity. The district court granted summary judgment against White on this claim.

**DECISION** Judgment reversed.

**OPINION** The law protects a person's exclusive right to exploit the value of her identity. To state a cause of action under the California common law right of publicity, a plaintiff must allege (1) the defendant's use of the plaintiff's identity; (2) the appropriation of the plaintiff's name or likeness to the defendant's advantage, commercially or otherwise; (3) lack of consent; and (4) resulting injury. In this case, the district court dismissed White's claim for failure to meet the second element. Although the robot ad did not make use of White's name or likeness, the common law

right of publicity is not so confined. The "name or likeness" formulation originated not as an element of the right of publicity cause of action, but as a description of the types of cases in which the cause of action had been recognized. The case law has borne out that the right of publicity is not limited to the appropriation of name or likeness. The specific means of appropriation are relevant only for determining whether the defendant has in fact appropriated the plaintiff's identity. It is not important how the defendant has appropriated the plaintiff's identity, but whether the defendant has done so.

To consider the means of appropriation as dispositive would not only weaken the right of publicity but would effectively eviscerate it. The identities of the most popular celebrities are not only the most attractive for advertisers but also the easiest to evoke without resorting to obvious means such as name, likeness, or voice. Consider a hypothetical advertisement that depicts a mechanical robot with male features, an African-American complexion, and a bald head. The robot is wearing black high-top Air Jordan basketball sneakers and a red basketball uniform with black trim, baggy shorts, and the number 23 (though not revealing "Bulls" or "Jordan" lettering). The ad depicts the robot dunking a basketball one-handed, stiff-armed, legs extended like open scissors, and tongue hanging out. Now envision that this ad is run on television during professional basketball games. Considered individually, the

robot's physical attributes, its dress, and its stance tell us little. Taken together, they lead to the only conclusion that any sports viewer who has registered a discernible pulse in the past five years would reach: the ad depicts Michael Jordan.

Viewed together, the individual aspects of the ad in the present case leave little doubt about the celebrity the ad is meant to depict. Indeed, the defendants themselves referred to their ad as the "Vanna White" ad. Because

White has alleged facts showing that Samsung and Deutsch had appropriated her identity, the district court erred by rejecting, on summary judgment, White's common law right of publicity claim.

**INTERPRETATION** The tort of appropriation protects a person's exclusive right to exploit the value of her identity.

**CRITICAL THINKING QUESTION** What are the interests protected by this tort?