

Puerto Rico Supreme Court Limits Employers' Use of Employees' and Contractors' Images Without Written Consent

A ruling that affects every business in Puerto Rico that uses images of people in advertising, social media, or promotional content.

The Puerto Rico Supreme Court (the "Court") has issued a significant decision in *Oswaldo Friger Salgueiro v. Mech Tech College, LLC*, clarifying for the first time in this context that any transfer of commercial image rights must be in writing — regardless of the existence of employment, contractual, or any other relationship between the parties.

The case arose in the context of a former contractor whose image continued to be used after his relationship with the company ended.

Key Findings on the Right to One's Own Image

Dual Nature of the Right

The Court reiterated that the right to one's own image has two distinct components:

- **Right of Personality** - A fundamental constitutional right linked to dignity and privacy. This component is non-waivable.
- **Right of Publicity** - The right to control the commercial use of one's identity. This right may be transferred, but only through a written agreement or by operation of law (e.g., inheritance).

Use of Image Requires Consent

Although Mech Tech initially used the former contractor's image lawfully during his contractual relationship with the institution, the Court held that such consent ceased once he sent a cease-and-desist letter in October 2018. Any use thereafter, without authorization, constituted a violation of the Puerto Rico's Right to One's Own Image Act (Act No. 139-2011) (the "Act").

The trial court had determined as an uncontested fact that the company continued using his image after consent was withdrawn, a determination that became binding under the "law of the case doctrine".

Remedies and Damages

Because at least one unauthorized use of the former contractor's image after October 5, 2018 was established, the Court held that he was entitled to statutory damages. The Court affirmed the trial court's award of \$20,000 — the statutory maximum for a single violation — along with \$4,000 in attorney's fees, as mandated by the Act.

Impact of the Decision

This ruling provides clear guidance for employers, advertisers, content-creators, and businesses that use images of people in promotional materials:

- Commercial image rights may be transferred only through a written agreement, regardless of the employment relationship.
- Consent may be withdrawn at any time, and companies must promptly cease all use upon receiving such notice.
- Violations may result in significant statutory damages of up to \$20,000 per violation, plus mandatory attorney's fees — even where only a single unauthorized use is proven.

This decision reinforces individual control over the commercial use of identity and highlights the importance of strict compliance when using image-based content.

If you need guidance reviewing your media, advertising, or talent-use practices to ensure compliance with Puerto Rico's right of publicity laws, please feel free to contact us.

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