

## PROBLEMS OF CIVIL-LEGAL REGULATION OF USAGE OF THE PICTURES OF ATHLETES FOR COMMERCIAL INTENTIONS

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**Abstract:** *In this article the issues of civil law regulating the usage of pictures of athletes for commercial aims are analysed. Besides comparative analysis of civil legislation of developed democratic countries on the usage of images of athletes in these goals is conducted..*

**Keywords:** *Images of athletes, commercial use, civil-legal regulation, employment contract, advertising*

**Introduction.** At present, the issue of commercial use of the image of athletes in the field of sports has become relevant from the point of view of civil-legal regulation. In practice, the images of athletes are used mainly for promotional purposes. In many developed countries, such use will be based on an agreement with the athlete, and both parties will be interested in this.

It should be noted that for popular athletes, in most cases, the income from participating in advertising exceeds the income from professional activities. For example, the income of golf player Tiger Woods as per terms of the employment contract in 2007 amounted to USD 22.9 million. Although it was identified that his revenue from participation in advertising amounted to USD 105 million. Another golf player, Phil Mickelson, received USD 9,3 million under the employment contract. He received income from participation in advertising – USD 53 million. Basketball player LeBron James received USD 12.4 million under the employment contract, while he received USD 28 million as an income from participation in advertising [5].

**Methods.** At the same time, cases of the use of the pictures of athletes without their permission occurs in practice occasionally, the illegal use of the image harms the honor, dignity and other interests of the athlete, being considered especially relevant when considering that the honor of the athlete and his career are interrelated.

In the civil legislation of the Republic of Uzbekistan, the right to a picture is included in the list of non-political rights of person. Article 99 of the Civil Code states that “The person’s life and health, honor and dignity, personal inviolability, occupational reputation, inviolability of his personal life, private and family secrecy, the right to the name, the right to the image, the right to authorship, other personal non-property rights and other intangible blessings belonging to the citizen from birth or according to the law shall not be confiscated or given to third party.” [1,52].

Personal non-property rights belonging to deceased persons are also protected in accordance with Article 99 of the Civil Code: “personal non-property rights and other intangible benefits belonging to the deceased person may be exercised and protected by other persons, including the heirs of the right holder, in cases and in the manner prescribed by law” [1,52]. We assume that this rule is an exception to the general rule on the right of a citizen.

At the same time, it should be noted that the Civil Code of Uzbekistan does not regulate the issue of the existence of the right to demand a fee for evasion of this in the event that a citizen gives permission to use his image for commercial purposes.

In the first place, it should be noted that the content of the concept “image” is interpreted differently in different legislation. R. Heinz notes that, the concept of image in Great Britain is understood in a broad sense; it takes into account the personality it contains, some parts of the human body, sound, name and signature [6].

K.Dey, D.Romer and B.Doffing wrote that “the right to the image may have meant the individual’s name, appearance and other external aspects, or some obvious aspects of his personality” [7].

V.P. Mozolin and A.I. Maslyayev note that “the individual image contains information that can be obtained without doing special studies, that is, about the person, including appearance, form, physical data, clothing, etc. The individuality of the sound is an expression from the sound being produced by the sound apparatus, from the sounds having a certain range size, strength, timbre and intonation, which are in words, music and other form” [3].

According to paragraph 6 of Article 2, Part 6 of the law of the Republic of Uzbekistan “On advertising” dated December 25, 1998, № 723-I, it is stated that it is impossible to use the name or image of an individual in advertising without his permission. [2, 1]”

As we can see, in the doctrine of modern world civil law, it is widely used to interpret the concept of image in a broader sense than its original meaning, such as a lowered image of a person’s external appearance, a picture of an object (a paper, etc.).

Italian lawyer scientist M.Coluchchi mentioned in this matter “In the practice of using the image of famous people for commercial purposes, the image of the outer appearance of a person is always expressed along with his name”. The author notes that within personal rights, this right most clearly expresses the personality of a famous person [8].

The consequences of using the name of a citizen without his permission are established in Part 1 of Article 20 of the Civil Code of the Republic of Uzbekistan: “the person whose interests are violated in connection with the violation of the right to live in his name or his name is being used without law may demand an end to such actions If the interests are intentionally violated, the victim may additionally demand compensation for the damage. To compensate for the loss, it may be required to give the income of the person who violated the interest. When the interest is intentionally violated, the victim also has the right to demand compensation for moral damage” [1, 12.]

In most of the modern legislations, the right of the makers is seen as part of the right to personal immunity. Therefore, the right to the image is interpreted as the right not to be seen by others. This right is also interpreted as the right to leave due to their own interests and necessities to the public [9].

At the same time, there is an opinion that in the doctrine of civil law it is necessary to distinguish the right to the image from the right to the external appearance. According to E.A. Sukhanov, although the right to appearance in the label implies the right of each person to have an external appearance of his own choice (combing hair or wearing clothes at his own discretion), the right to the image implies that any work on the plot of this person can be distributed only with the permission of that person [4].

Other authors, such as V.P. Mozolin and A.I. Maslyayev, do not distinguish these concepts. They noted that “the right to individual appearance includes the determination of what this appearance will be like, its use, disposal and the demand from others not to violate the inviolability of the external appearance” [3]. In addition, “the right to use their own individual appearance also includes the right to allow using or prohibit from using it” [3].

**Discussion.** We think that there is no difference between these concepts, and they are considered synonymous. Therefore, the term “right to the image”, which is relatively common in the article, is used.

It should be noted that since the right to the image is recognized in the legislation of many countries, there are also countries where this right is not recognized. One of these is the UK. According to the doctrine of private law of this country, the right to the image contradicts the freedom of speech and self-expression [10]. Thus, until now, not a single law or precedent in the UK has established norms for the protection of this right [15].

Because of the non-existence of such norms, in this state, they use other legal measures to ensure that the images of celebrities are not publicly displayed. For example, they register them as trademarks in order to prevent their names or signatures from being used for commercial purposes without their permission. This case was considered in the court of Great Britain in 1999 *Elvis Presley*

*Enterprises Inc vs. Sid Shaw Elvisley yours* [11] makes case clarified. But here it is not allowed to register as a trademark of a personal photograph or portrait [16].

M.Tagenhet said that in the UK, changes are beginning to take place in this area, in the first place at the influence of international conventions. In the work of the *Rickless vs. United Artist* [12] reviewed in 1988 the possibility of the use of name of died actor P. Sellers. The dispute over the fact that the image can be shown in an artistic film was considered. The court said in its decision that Great Britain was obliged to protect the rights set forth in this convention because it is a participant of the International Convention on the protection of the rights of performers, phonograms and transmission organizations.

The use of images of individuals for advertising purposes is also controlled by the self – regulatory organization - advertising standards authority (*Advertising Standards Authority*) [17], which according to the organization’s Code of Standards requires the permission of those people to use images of famous people for advertising purposes. At this time, the Code prohibits the use and receipt of hak for the use of the image, and thus the famous person can only allow. We think that this rule was established to meet the requirements of the UK legislation in this area.

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**Results.** Although in Germany, the right to a picture is recognized as part of the concept of inviolability of a general person, but here there are several limitations to this right. For example, if in the photo the person is taken to be taken to the water in demonstrations and other similar screenings, when it is part of the general landscape, and is reflected in great examples of art, then he does not have the right to prohibit the display of such an image to the public. But, as stated in Part 1 of Article 22 of the German law “On the results of creativity”, it is forbidden to print samples of creativity that cause serious damage to the fundamental rights of individuals [13]. Thus, in contrast to the UK, the right to image is protected in Germany, but creativity is protected in a balanced way, taking into account such anti-dependent rights as the husband, the liberty of self-expression.

As we see, in the civil-legal regulation of modern professional sports, the right to a picture is of great importance, which is manifested in two independent cases:

- first of all, the right to the image protects the personality, honor, dignity and harm of a professional career of athletes who are widely known to the public;
- secondly, the right to the makers is considered an important source of income for athletes.

**Conclusion.** Therefore, in order to develop the professional sports this institution of civil law has significance and financial interests, its perfection is necessarily based on the available sources.

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