

COMMERCIAL APPROPRIATION OF A PERSON'S IMAGE: *WELLS V ATOLL MEDIA (PTY) LTD* (UNREPORTED 11961/2006) [2009] ZAWCHC 173 (9 NOVEMBER 2009)

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SUMMARY

Our modern society has become transfixed with celebrity. Business people and marketers also endeavour to cash in on the popularity enjoyed by the stars and realise the value of associating merchandise or trademarks with the rich and famous. This leads to difficulties when the attributes of a person are apparently used without consent, which poses new questions to the law: should the law protect the individual against the unlawful use of his or her image? If so, to what extent should such protection be granted? These were some of the questions which the court had to answer in *Wells v Atoll Media (Pty)*. The judgment in *Wells* has redefined the right to identity and provided some clarity on what the infringement of that right would amount to. When the attributes of a person are used without consent, the right to identity can be violated in one of four ways. A person's right to identity can be infringed upon if the attributes of that person are used without permission in a way which cannot be reconciled with the true image of the individual concerned, if the use amounts to the commercial exploitation of the individual, if it cannot be reconciled with generally accepted norms of decency, or if it violates the privacy of that person.

KEYWORDS

Identity; image rights; publicity rights; personality rights; delict; tort

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