

MA ST 214 s 3A
M.G.L.A. 214 s 3A

TEXT

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
TITLE I. COURTS AND JUDICIAL OFFICERS
CHAPTER 214. EQUITY JURISDICTION
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Current through 1998 2nd Annual Sess.

s 3A. Unauthorized use of name, portrait or picture of a person; injunctive relief; damages; exceptions

Any person whose name, portrait or picture is used within the commonwealth for advertising purposes or for the purposes of trade without his written consent may bring a civil action in the superior court against the person so using his name, portrait or picture, to prevent and restrain the use thereof; and may recover damages for any injuries sustained by reason of such use. If the defendant shall have knowingly used such person's name, portrait or picture in such manner as is prohibited or unlawful, the court, in its discretion, may award the plaintiff treble the amount of the damages sustained by him. Nothing in this section shall be so construed as to prevent any person practicing the profession of photography from exhibiting in or about his or its establishment specimens of the work of such person or establishment, unless the exhibiting of any such specimen is continued after written notice objecting thereto has been given by the person portrayed; and nothing in this section shall be so construed as to prevent any person from using the name, portrait or picture of any manufacturer or dealer in connection with the goods, wares and merchandise manufactured, produced or dealt in by such manufacturer or dealer which such person has sold or disposed of with such name, portrait or picture used in connection therewith; or from using the name, portrait or picture of any author, composer or artist in connection with any literary, musical or artistic production of such author, composer or artist which such person has sold or disposed of with such name, portrait or picture used in connection therewith.

CREDIT

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1989 Main Volume

Added by St.1973, c. 1114, s 62.

<General Materials (GM) - References, Annotations, or Tables>
HISTORICAL NOTES -- HISTORICAL AND STATUTORY NOTES

HISTORICAL AND STATUTORY NOTES

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Prior Laws:

G.L. c. 214, s 3A, as added by St.1970, c. 592.
REFERENCES -- CROSS REFERENCES

CROSS REFERENCES

Injunctions, see R.Civ.P. Rule 65.

REFERENCES -- LAW REVIEW AND JOURNAL COMMENTARIES

LAW REVIEW AND JOURNAL COMMENTARIES

Massachusetts right of privacy statute. (1975) 9 Suffolk U.L.Rev. 1248.

Privacy: A general introduction. Jonathan Brant (1976) 61 Mass.L.Q. 10.

REFERENCES -- LIBRARY REFERENCES

LIBRARY REFERENCES

1999 Electronic Pocket Part Update

Comments.

Equity jurisdiction, protection of person's name and picture, see Alperin and Shubow, 14C Massachusetts Practice s 20.80 (3d ed.).

Invasion of privacy action, distinguished from libel and slander, see Bishop, 17A Massachusetts Practice s 42.9 (4th ed.).

Unauthorized use of name or photograph, see M.P.S. vol. 37, Nolan and Sartorio, s 31.

Forms.

Complaints, invasion of right of privacy, see M.P.S. vol. 10, Rodman, s 1051 et seq.

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Libel and Slander k6(1).

Torts k8.5(6).

C.J.S. Libel and Slander ss 2, 5, 10 to 20, 27, 104.

C.J.S. Right of Privacy s 4.5.

Comments.

Libel and slander, damages, see M.P.S. vol. 17A, Bishop, s 1208.

Libel and slander, invasion of privacy distinguished, see M.P.S. vol. 17A, Bishop, s 1209.

Texts and Treatises

Mass Jur, Personal Injury and Torts ss 17:6, 17:26-17:29.

ANNOTATIONS -- NOTES OF DECISIONS

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ANNOTATIONS (Notes of Decisions Index)

1. In general

This section must be interpreted in a way that permits it to perform its intended function without overlapping the function of s

1B of this chapter. *Tropeano v. Atlantic Monthly Co.* (1980) 400 N.E.2d 847, 379 Mass. 745.

2. Interests protected

Interest which is protected by this section is the interest in not having the commercial value of one's name, portrait or picture

appropriated to the benefit of another. *Tropeano v. Atlantic Monthly Co.* (1980) 400 N.E.2d 847, 379 Mass. 745.

3. Incidental use

Publication of photograph of fisherman unloading catch of crabs to illustrate magazine article on presence of organized crime in

wholesale fish markets, even without his consent, was not appropriation for advertising or commercial purposes under this section.

Morrell v. Forbes, Inc., D.C.Mass.1985, 603 F.Supp. 1305.

Fact that defendant was engaged in business of publishing monthly magazine for profit did not by itself transform incidental publication of plaintiff's picture in article which appeared in magazine into an appropriation for advertising or trade purposes.

Tropeano v. Atlantic Monthly Co. (1980) 400 N.E.2d 847, 379 Mass. 745.

Crucial distinction under this section must be between situations in which defendant makes an incidental use of plaintiff's name,

portrait or picture and those in which defendant uses plaintiff's name, portrait or picture deliberately to exploit its value for

advertising or trade purposes. Tropeano v. Atlantic Monthly Co. (1980) 400 N.E.2d 847, 379 Mass. 745.

Magazine which published photograph of plaintiff in connection with article on modern sexual and social mores, but which did not

mention, discuss, or identify plaintiff in connection with the article, only made an incidental use of plaintiff's picture and did

not actionably appropriate picture for trade or advertising purposes. Tropeano v. Atlantic Monthly Co. (1980) 400 N.E.2d 847, 379

Mass. 745.

4. Trade purposes

Personal injury attorney's truthful response to interrogatory that he had consulted with toxicology professor did not constitute use of professor's name "for the purposes of trade," and thus professor was not entitled to recover for unauthorized use of his name, even if attorney was not compelled to disclose professor's name; although professor was not retained as expert, he had discussed case with attorney and even expressed interest in it. *Tannenbaum v. Grady* (1992) 604 N.E.2d 16, 413 Mass. 717.

5. Injunction

Nationally known investment advisor was properly granted preliminary injunction prohibiting publisher from distributing materials in which his name was represented as criticizing specific person or entity or stating things inconsistent with his published views, distributing materials with his photograph or likeness without his prior written consent, and using his name in title of publication unless royalty payments were made. *Donoghue v. IBC USA (Publications), Inc.*, C.A.1 (Mass.)1995, 70 F.3d 206, 37 U.S.P.Q.2d 1001.

Investment advisor was likely to prevail on his claim that publisher's use of his name and picture was contrary to Massachusetts statute prohibiting appropriation of commercial value of one's name, portrait or picture, where advisor no longer authorized publisher's use of his picture. *Donoghue v. IBC/USA (Publications), Inc.*, D.Mass.1995, 886 F.Supp. 947, 35 U.S.P.Q.2d 1413, affirmed 70 F.3d 206, 37 U.S.P.Q.2d 1001.

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