

Rihanna wins her merchandising case and that's official



Rihanna won her claim in the High Court for passing off against Topshop today. She complained about a T-shirt sold in Topshop displaying an image of her taken by a paparazzo during a video shoot for her single 'We Found Love'. Topshop obtained copyright clearance from the owner of the copyright in the photograph but did not seek permission from Rihanna. Click [here](#) to read the Judgment.

Birss J. explained that although *Irvine v Talksport* was a case of false endorsement, there was no difference in law between an endorsement case and a merchandising case. The facts would differ but the issue would always depend on the nature of the relevant market and the perceptions of the relevant customers. Merely recognising that the image was an image of a celebrity was not enough to succeed; there must be a misrepresentation about trade origin.

The judge held that there were various factors giving rise to the actionable misrepresentation. First, her fans would notice there was a relationship between the image used on the T-shirt and the video shoot and the CD inlay for the album. It was an image that looked like a publicity shot for what was then a recent musical release. He considered that the image was a fairly strong indication that the T-shirt may be an authorised product, an item approved by Rihanna herself. Secondly, the judge held that the identity of the retailer increased the likelihood of deception because the public links Topshop and famous stars in general, and more importantly Rihanna. This was because Topshop makes considerable efforts to emphasise connections in the public mind between Topshop and stylish celebrities such as Rihanna.

Topshop relied on the absence of any mention of Rihanna or her trade marks on the swing tag and the neck label to support its claim that the public would not assume any connection with Rihanna. It also relied on various third party T-shirts bearing her image that were available for sale generally. Birss J. held that these points were not strong enough to negate the impression that the T-shirt was authorised.

He concluded that a substantial proportion of those considering the product would have been induced to think it was a garment authorised by Rihanna. They would recognise her image, not simply as a picture of the artist, but as a particular picture of her associated with a particular context, namely her recent album. For those persons the idea that it is authorised would be part of what motivated them to buy the product. In which case, they would have been deceived. This deception damages her goodwill. Her merchandising business would have lost sales and it represented a loss of control over her reputation in the fashion sphere.

Andrew Norris of **Hogarth Chambers** was led by **Martin Howe QC** and instructed by **Reed Smith LLP**. They acted for Rihanna.

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