

## LITIGATION ALERT

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### **Commercial Advertisement in Puerto Rico: Photograph or Image of Public Figure May be Protected under Right of Publicity**

The Supreme Court of Puerto Rico recently held that the unauthorized use of a person's identity, including that of public figures, to market or sell a product is illegal and may violate the person's right of privacy and self-image. Vigoreaux v. Quizno's Sub, Inc., 2008 TSPR 38.

In Vigoreaux, a retailer used a photograph of plaintiff, a former TV personality and politician, in a newspaper ad for a product. Since plaintiff had not authorized the use of his photograph or image in the ad, he sued and requested damages. Both the trial court and the Court of Appeals agreed that the plaintiff did not have a cause of action, because he was a public figure and the publication was purely satirical. The Supreme Court, however, reversed and held that the plaintiff's right of privacy and self-image in this case superseded the commercial establishment's commercial free speech right. The Supreme Court noted that plaintiff's case was not a defamation claim, but rather a claim of unauthorized use of plaintiff's self-image with the intent to gain revenue. It rejected the argument that the ad has satirical or artistic expression.

If you have any questions or comments, or wish additional information regarding this matter, please contact Francisco G. Bruno, Director of our Litigation Practice Group at (787) 250-5608 or [fgb@mcvpr.com](mailto:fgb@mcvpr.com). You may also contact Dora M. Peñagaricano or Roberto C. Quiñones, Co-Chairs of our Intellectual Property Practice Area at (787) 250-5657 or [dmp@mcvpr.com](mailto:dmp@mcvpr.com), and (787)250-2631 or [rcq@mcvpr.com](mailto:rcq@mcvpr.com). The contact information of our Litigation Practice Group attorneys is available at our website: [www.mcvpr.com](http://www.mcvpr.com).

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