

FIDDLER GONZALEZ & RODRIGUEZ, P.S.C.
ATTORNEYS AND COUNSELORS AT LAW
PO BOX 363507
SAN JUAN, PR 00936-3507

TELEPHONE (787) 753-3113
FAX (787) 759-3123



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PUERTO RICO SUPREME COURT CONSIDERS THE UNAUTHORIZED USE OF A PERSON'S IMAGE

Puerto Rico's Supreme Court has handed down an important decision regarding the liability that an advertiser or publisher may face for the unauthorized use of a person's image.

In *Colón Pérez v. Televiscentro de Puerto Rico*, 2009 T.S.P.R. 43, the Court held that the incidental use in a television news program of a private citizen's image was not defamatory. While reporting on individuals and gangs conducting bank fraud, the program displayed for several seconds a bank security camera image showing a suspect and plaintiff Colón. The suspect appeared in the photo's center and Colón in a lower corner. There was no indication as to whom the suspects were. After the lower courts found the defendants liable for defamation, the Supreme Court reversed. It held that since the photograph appeared momentarily and with Colón as a secondary figure, the report did not refer to him and thus could not cause defamation under Civil Code Article 1802.

The ruling in *Televiscentro* comes in the wake of a 2008 decision, *Vigoreaux Lorenzana v. Quizno's Sub, Inc.*, 2008 T.S.P.R. 38, in which the Court recognized a well-known public figure's right of publicity. Quizno's used prominently a news photograph of Vigoreaux, a TV personality and politician, in a print advertisement referring humorously to his then recent electoral defeat. The lower courts dismissed Vigoreaux's suit. Yet the Supreme Court reversed, holding that commercial advertisers cannot use prominently a person's image without authorization, even if the ad satirizes a well-known public figure with a photo taken at a public event.

These cases are a mixed blessing for Puerto Rico advertisers and publishers. *Televiscentro* reduces the risk of liability by confirming that no publication is defamatory of a private citizen – or a public figure -- without a specific reference to her. Yet *Vigoreaux Lorenzana* creates the potential for increased liability by offering well-known public figures a cause of action not subject to the constitutional hurdles they face in defamation cases. And although *Vigoreaux Lorenzana* held that there is no liability if the person's image plays a secondary role, the plaintiff's notoriety may determine whether this requirement is met. In short, these cases will affect how businesses and legal professionals in Puerto Rico respond to defamation and right of publicity challenges in the years to come.

If you have any questions in regards to the above, please do not hesitate to contact our offices. Our address is: Fiddler González & Rodríguez, PSC, PO Box 363507, San Juan, PR 00936-3507. Fax (787) 754-7532. Our website is www.fgrlaw.com

We welcome your questions and comments. You may contact any of the professionals below:

Diego A. Ramos	(787) 759-3161	dramos@fgrlaw.com
María Teresa Szendrey-Ramos	(787) 759-3115	mtszend@fgrlaw.com
Jaime Mercado-Almodóvar	(787) 759-3234	jamercad@fgrlaw.com
Ramón G. Vela-Córdova	(787) 759-3180	rvela@fgrlaw.com
Tomás A. Román-Santos	(787) 759-3291	taroman@fgrlaw.com

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