Massachusetts Federal Court Holds Insurer Owes No Coverage for Strip Clubs' Unauthorized Use of Images of Models in Advertisements

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On February 13, 2026, the Massachusetts Federal District Court in *Tara Leigh Patrick v. Blackboard Specialty Ins. Co.* held that the insurer for three Massachusetts strip clubs had no duty to provide insurance coverage for a $1.895 million settlement of a lawsuit alleging that they used the images of twenty professional models in certain advertising materials for the strip clubs without permission. In the action, the models, who had been assigned the insurance coverage rights of the strip clubs under their insurance policies with Blackboard Specialty as part of the settlement agreement, sought coverage with respect to the models' claimed "advertising" injuries under the policies. The Court decision centered on the policies' coverage for alleged "personal and advertising injury" as well as the applicability of certain exclusions.

One of the issues before the Court was the models' claims that the insured strip clubs were entitled to coverage because the models' images that they had used appeared in various advertisements for the strip clubs, and therefore, there should be coverage available under the clubs' "personal and advertising injury" insurance coverage. The Court, however, held that most of the images of the models were not "posted" or used by the strip clubs during the policies' coverage periods, and as such, with respect to those images, the insurance company had no duty to defend or indemnity the strip clubs with respect to these models' claims. Essentially, the Court was saying that there had been no showing that the policies were "triggered" with respect to these models' images, and as such, there was no coverage available under the "non-triggered" policies. The Court also stated that the models had the "burden of proof" to demonstrate that their images had been used the coverage periods.

For practitioners, the decision shows the necessity of demonstrating, for purposes of showing coverage under an insurance policy's "personal and advertising injury" for the alleged unauthorized use of a person's images, that the images at issue were "posted" during the policy's coverage periods. Moreover, the decision stands for the proposition that a plaintiff must show that there is at least the "possibility" that an image has been posted during a coverage period, As such, for practitioners, the decision demonstrates that it is not sufficient for a plaintiff to merely allege generally that images were improperly used at some point in time, as this will not be found to be sufficient to establish coverage under "personal and advertising injury" insurance policy provision.

A second issue that was before the Court was the question of the applicability of an "intellectual property exclusion" contained in the policies, which applied to "'[p]ersonal and advertising injury' arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights." There was an exception to the exclusion for "the use of another's advertising idea." The Court held that the strip clubs' use of the models' image did not amount to the use of another's "advertising idea" because the models had not alleged, nor did they establish, that the underlying image was an advertising idea, rather than a non-advertising idea that the strip clubs had "repurposed" for advertising. Thus, while the models' images had been used in the strip clubs' social media posts to promote the strip clubs' business, the images themselves were not the models' "'advertising idea." Therefore, the Court held that allegations regarding the models did not trigger a duty to defend under the Blackboard policies because the model's had not alleged any injury arising out of the strip clubs' use of any of the models' "advertising idea."

For practitioners, the decision here shows the necessity of demonstrating the application of exception to the "intellectual property exclusion" for "the use of another's advertising idea," by showing more than just the unauthorized use of the images coverage, and instead demonstrating that the images themselves constituted "advertising ideas." For example, one way to demonstrate that an image shows an "advertising idea" would involve proving that the image uses some form of visual persuasion, through the use of a visual metaphor or brand-consistent storytelling. Where the image being appropriated can be shown to not being just an image of a model, but instead, shows the model in the act of advertising a product, for example, the exception to the "intellectual property exclusion" might be more easily demonstrated. Absent such a showing, however, would lead to a finding of no coverage.

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