

Potus And The Right Of Publicity

By: Jack Greiner on January 7, 2010 on graydon.law

According to a [story](#) in today's New York Times, a photo of President Obama clad in a Weatherproof Garment Company coat is prominently displayed on one of those massive billboards in Times Square.



And not surprisingly, the White House is not happy. According to a White House aide, the “ad is clearly misleading because [it] suggests the approval or endorsement of the president.” A spokesman for Weatherproof Garment contends that the company is “not saying President Obama endorses Weatherproof apparel.” Really? Then why else are they using the picture?

One pillar of the overall “right to privacy” is something called, paradoxically, the “right of publicity.” And it means that a person has the right to control the commercial use of their image. Which means that person has the right to decline a company’s request to use his image in an ad, or alternatively, to demand payment for the use. Interestingly, Weatherproof Garment approached The New York Times, The New York Post and Women’s Wear Daily about placing the ad in those publications. They apparently, you know, checked with their lawyers and declined to run the ads.

Of course, Weatherproof may be accomplishing exactly what it wants here. It's unlikely that President Obama is going to file suit over this. So Weatherproof gets lots of free publicity with virtually no downside risk. And here I am playing right into their hands!