

OneBeacon

PROFESSIONAL INSURANCE®

Advertising Agency Alarm

Right of Publicity

For a national advertising campaign for a large clothing manufacturer/designer, an advertising agency negotiated a license for the broadcast and publication rights relating to a breathtaking location at a private residence in Los Angeles. Unfortunately, Internet rights were not included within the licensing agreement. The advertisement appeared in traditional media, as well as on the manufacturer's web site. The manufacturer was sued by the property owner for right of publicity. (The property was well known). The advertising agency stepped in to protect the interests of the client. The case was eventually settled after spending significant sums in legal expense – low six figures.

Negligence

An advertising agency inadvertently transposed a client's phone number in a print advertisement published in a large daily newspaper. Callers were to receive a free product for calling the number. Because of this little mistake, a small dentist's office was deluged with calls disrupting its business. The advertising client was unhappy because it had "staffed-up" in preparation for all of the calls, which were never forthcoming. With the help of insurance, the advertising agency indemnified its clients for the loss and reimbursed the dentist for its lost business for the day.

OneBeacon

PROFESSIONAL INSURANCE®

Advertiser Anxiety

Copyright and Trade Dress Infringement

A national advertiser was sued for copyright and trade dress infringement because the packaging of one of its products displayed the same advertising copy and instructions of a competitor. After a federal judge granted a temporary restraining order to prevent further distribution of the infringing packaging, the case was settled for six figures. The legal fees were slightly less than the settlement.

OneBeacon

PROFESSIONAL INSURANCE®

Special Appearance – In Court

Trademark Infringement

A famous actress became involved with a beauty pageant after her acting career on a popular sitcom ended. Because she was known for her style and beauty, endorsing a beauty pageant as a celebrity spokesperson was a logical career move. A rival beauty pageant, however, sued her personally for trademark infringement for allegedly adding to the confusion in the marketplace in respect to the two pageants. The case was eventually settled with a contribution from the actresses' special appearance policy.

OneBeacon

PROFESSIONAL INSURANCE®

Author Angst

Defamation

An author of a “tell all” about a famous deceased designer and the publisher were threatened with litigation from family members, who were identified in the work. The claim arose not from the publication of the book, which had not been released, but from the galley copies that the publisher had released to the media for publicity. Despite the fact that the book had been closely vetted by counsel, the publisher decided to scrap its publication plans. The author was able to keep his advance.

OneBeacon

PROFESSIONAL INSURANCE®

Book Publishing Problems

Defamation, Breach of Confidence and False Light Invasion of Privacy

A book publisher and author/psychiatrist were sued for defamation, breach of confidence and false light invasion of privacy after publishing a book that relied upon case studies of the author's patients. The case was eventually dismissed because the court deemed that the book was not "of and concerning" the plaintiff. However, legal fees to defend the case were high – in excess of \$100,000 – because the jurisdiction wherein the case had been filed was very expensive.

Defamation, Emotional Distress

A publisher with expertise in world travel guides was sued for defamation in Europe by the proprietor of a youth hostel. Young women were warned to stay away from the plaintiff's hostel because of his voyeuristic tendencies. After years of jurisdiction skirmishes and exorbitant legal expense – legal expense in excess of \$300,000, the case was finally dismissed.

Trade Dress Infringement

Book publisher A., a publisher of mysteries, sued book publisher B for trade dress infringement arising from B's book jacket cover that featured cut-outs in the jacket that provided "glimpses" into the artwork beneath, which was similar to the jackets of A. In granting summary judgment for B, the judge ruled that there wasn't a likelihood of confusion. Legal expense, however, was in excess of \$50,000.

Trademark Infringement

A publisher, which specialized in "unauthorized" biographies, planned to publish a book about a television character. The book was advertised in its Fall Title Catalog. The book's title referenced the name of the television character, along with a picture from the television series. Because the publisher was trading on the likeness of the character, it was sued by the television network that produced the series for trademark infringement. The network also filed a motion for a restraining order, which was granted by the court, to prevent the distribution of the book. (The Actress could have sued for right of publicity.) This claim illustrates the need for coverage in place at the time works are advertised as it was the title and jacket cover that triggered the claim – not the content of the work.

OneBeacon

PROFESSIONAL INSURANCE®

Cable Broadcasting Blues

Negligence, Negligent Supervision and Emotional Distress

A suit for negligence, negligent supervision and emotional distress was threatened after a cable company got its wires crossed – literally. The claimants alleged that their young children lost their wide-eyed innocence after watching an adult entertainment channel, which should not have been included in the family’s cable package. The family was pacified with free cable service and a nominal donation to the children’s school.

Copyright Infringement

A cable company was sued after a shiny bauble displayed on an infomercial was claimed to infringe upon the design of a well-known jewelry manufacturer. While the cable company, which owned the shopping channel, did have a hold-harmless agreement with the vendor of the alleged infringing jewelry, the vendor did not have insurance to back-up its promise to pay, and the cable company was liable as an innocent infringer.

OneBeacon

PROFESSIONAL INSURANCE®

Distributor Distress

Copyright Infringement

A local cable station broadcast a weekly program specializing in Middle Eastern content. During its program, the cablecaster broadcast two music videos, which were produced by a third party. A claimant alleged that the videos used snippets of unlicensed footage and initiated a copyright infringement claim against the deep-pocket distributor as the producer was financially insolvent and did not have insurance. Even though the distributor of the content was an innocent infringer, he and the insurer were ultimately responsible for legal fees and loss in excess of \$300,000. It is important for all parties in the distribution chain, including the producer, to carry insurance.

OneBeacon

PROFESSIONAL INSURANCE®

Magazine Malaise

Defamation and False Light invasion of Privacy

An alternative magazine with a national circulation was sued for defamation and false light invasion of privacy after a special Anniversary Edition misidentified a college athlete as having abused cocaine in a championship game. An independent fact-checker for the magazine even confirmed the student's name with the college registrar. In reality, the drug problem belonged to a team member with a similar name. After filing a motion for summary judgment based upon the public figure status of the plaintiff and the publication's lack of actual malice, the parties settled for a reasonable sum. The legal fees were staggering – well into six figures.

Negligence (Contextual Errors and Omissions)

A teen magazine was sued for negligence after publishing an advice column regarding the use of toothpaste to banish blemishes. A young girl received a burn on her face after following the publication's advice. A broad form errors and omissions endorsement with coverage for bodily injury responded to this claim.

OneBeacon

PROFESSIONAL INSURANCE®

Multimedia Company

A multimedia company faces exposure arising from its varied media operations. It is not unusual for complex media companies to have claims that involve a number of its media segments. These are typical claims involving a multimedia conglomerate during a recent policy term. Because frequency sometimes gives rise to severity, it is important for multimedia companies to have adequate primary and excess limits.

Source Conundrum

An investigative news team for a local television affiliate reports on an alleged embezzlement involving a local school district official. The station identifies an individual as being investigated in conjunction with the scandal, when in fact, the official was not involved. The reporter did not rely upon police records, but a confidential source within the police department who spoke on the condition of anonymity. Summary judgment was not granted, and the parties settle for a confidential amount during a subsequent mediation to protect the source.

Radio Reprise

A radio station in a middle market is sued for trade name and trademark infringement from a competitor that serves the same market. The legal fees were significant as both parties vigorously litigated their intellectual property interests. The case was ultimately settled without payment, but legal expense was in excess of \$100,000.

Cocktail Confidential

A city magazine for a large market regularly publishes a column that discusses cocktail chatter concerning local personalities. While the public seems to enjoy such juicy tidbits of information, most judges and juries do not find such statements to be newsworthy or of substantial public interest. A snippet about a socialite in respect to her penchant for alcohol gives rise to a defamation claim. Because the statement was difficult, if not impossible, to substantiate, the claim was settled for a donation to a charity.

OneBeacon

PROFESSIONAL INSURANCE®

Newspaper Publishing Problems

Defamation, Invasion of Privacy and Outrageous Conduct

A mid-sized west coast daily newspaper was sued for defamation, invasion of privacy and outrageous conduct after publishing a personal ad placed by a spurned girlfriend, who decided to get even by identifying her former boyfriend by name and address and warning all single women to “stay away” because of his HIV status and an alleged penchant for theft, drugs and other conduct that would render him unfit for a serious relationship. Fortunately for the newspaper, the plaintiff failed to comply with the state’s rather unforgiving retraction statute that required a retraction demand to precede the filing of suit. The case was dismissed, but the legal fees made this a costly mistake for the newspaper.

Copyright Infringement

A newspaper publisher and a vacation company were sued for copyright infringement for use of the golden “Oscar” statuette in an advertisement, which was designed by the newspaper’s advertising department. The case was promptly settled for approximately \$25,000.

Negligence and Emotional Distress

A small town newspaper was sued by a “decedent” and his family for publishing an obituary of the deceased, who was quite alive. Some family members, who thought their relative looked fine, were quite surprised to learn of this passing and were upset by the obituary. (The obituary had been placed by feuding neighbors.) Fortunately, the complaint was filed in a jurisdiction where the standard of care was gross negligence. The publication’s failure to investigate the placement of the obituary – despite a few discrepancies – did not rise to the level of gross negligence. Summary judgment was granted. Legal fees did exceed the publication’s retention.

Defamation by Implication

A small rural newspaper was sued for defamation by implication by a dairy farmer whose picture was placed in the newspaper in close proximity to an article about e-coli bacteria contamination of ground water from livestock feces run-off. A “clarification” was published after attorneys for the dairy complained about the article. It is anticipated that the matter will settle in exchange for free dairy advertising in the publication.

OneBeacon

PROFESSIONAL INSURANCE®

Commercial Printer Panic

Negligence

A printer was sued for negligence because an advertisement it published contained an incorrect phone number, which was the number for an unrelated third party business. The third party sued the printer for damages resulting from the mistake which tied up its phone system, causing it to lose sales. The case was settled in excess of \$75,000.