



Rosa Parks Sues OutKast Over Song Title

In December 2003, the U.S. Supreme Court refused to hear an appeal by the hip-hop duo OutKast and their record label affiliates. By denying OutKast's petition for review, the justices let stand an appellate court ruling that reinstated portions of Rosa Parks' lawsuit against the musicians. In effect, the Supreme Court's refusal to hear the case allowed Parks to proceed with her lawsuit in a lower federal court.

Background

In December 1955, Rosa Parks attained national notoriety by refusing to relinquish her seat to a white passenger and move to the back of a segregated bus. Her subsequent arrest sparked a 381-day bus boycott in Montgomery, Alabama, led by the Reverend Martin Luther King, Jr. The boycott, a significant event in the civil rights movement, ultimately led to court rulings that desegregated public transportation nationwide.

Litigation Ensues Over Song Title

In 1998, OutKast released their album *Aquemini*, which features a song titled "Rosa Parks." Although the song's lyrics do not mention Parks by name, the song contains the chorus, or "hook": "Ah ha, hush that fuss / Everybody move to the back of the bus." In 1999, Parks filed suit, alleging that defendants' use of her name as a song title:

1. Constituted false advertising under Section 43(a) of the Lanham Act
2. Infringed on her right of publicity
3. Defamed her character
4. Interfered with an ongoing business relationship

Based on facts that the parties had agreed upon, a federal district court ruled that none of Parks' claims had merit as a matter of law. As such, the court dismissed them without a trial, and Parks appealed. The Sixth Circuit subsequently reversed the ruling and reinstated part of Parks' lawsuit.

False Advertising

Relying on *Rogers vs. Grimaldi*, an earlier case that also dealt with a title using a celebrity's name, the Sixth Circuit concluded that the district court erred in dismissing the false advertising claim without trial. Here, the Sixth Circuit employed a test enunciated in *Rogers* to balance two competing interests: avoiding consumer confusion and protecting free expression. Under *Rogers*, a title will be protected unless it has "no artistic relevance" to the underlying work or, if it has some artistic relevance, the title "explicitly misleads as to the source or the content of the work." After applying *Rogers*

to the facts of this case, the Sixth Circuit sent the issue back to be resolved by a finder of fact (judge or jury), stating specifically that:

- If the finder of fact determines that OutKast placed the title "Rosa Parks" on a song to which it had no artistic relevance at all, then this would constitute a violation of the Lanham Act resulting in a judgment for Parks
- If the finder of fact determines that the title is artistically relevant to the song's content, then the inquiry is at an end because the title "is not explicitly misleading as to the content of the work," resulting in a judgment for OutKast

Right of Publicity

As a general proposition, the right of publicity protects a celebrity from unauthorized commercial exploitation of her identity. Invoking *Rogers*, the Sixth Circuit ruled that "a title that uses a celebrity's name will be protected by the First Amendment unless the title is 'wholly unrelated' to the content of the work or was 'simply a disguised commercial advertisement for the sale of goods or services.'" The Sixth Circuit ultimately concluded that Parks' right of publicity claim had been improperly dismissed. As a consequence, it sent the issue back to the lower federal court to determine whether the title to the song is or is not "wholly unrelated" to the content of the song.

Defamation

The Sixth Circuit held that the district court properly found in favor of the defendants on Parks' defamation claim. Liability for defamation is imposed for statements containing "actual facts about plaintiff that are 'provable and false.'" The Sixth Circuit ruled that the "song is plainly not about Parks in any biographical sense of the term, and certainly does not make any factual statements about her." As a consequence, it agreed with the district court and threw out Parks' defamation claim.

Interference with a Business Relationship

With respect to Parks' interference with a business relationship claim, the Sixth Circuit agreed with the lower court's finding in favor of the defendants. In Michigan, to succeed on this cause of action, one must show an "intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading...contractual rights or business relationship[s]." Further, this "wrongful act" must promote a contract breach or another breakdown of a business relationship.

Because no such breach or breakdown occurred in this case, the Sixth Circuit dismissed this claim as well.

Lawsuit Settles in 2005

In the end, the Sixth Circuit affirmed the district court's dismissal of Parks' defamation and interference with a business relationship claims. In reversing the lower court's judgment with respect to the other two claims, however, the Sixth Circuit effectively permitted Parks to proceed with her false advertising and right of publicity claims in the lower federal court.

In April of 2005, Parks and OutKast reached a settlement implying no fault on the part of OutKast. The band and their record labels agreed to work with the Rosa and Raymond Parks Institute for Self Development in developing educational programs for youth on the role Rosa Parks' played on the civil rights movement. The band will also perform on a CD tribute to Parks with other contemporary artists and musicians.

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