

Facebook Agrees to Pay \$10 Million to Settle Right of Publicity Suit

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Facebook has agreed to pay \$10 million and make various changes to its terms in order to settle a lawsuit alleging that the company's Sponsored Stories violates members' rights of publicity.

With Sponsored Stories, when a Facebook member "likes" a company, checks-in at one of its stores, or performs certain other actions, that member's profile picture and name may appear as an ad for the company in the right-hand column of Facebook, along with other paid ads. Facebook Chief Executive Mark Zuckerberg called Sponsored Stories the "Holy Grail" of advertising because the implied endorsement from consumers leads to more clicks. The plaintiffs were less enthused, however, and alleged that Facebook had unlawfully misappropriated their names and likenesses without their consent, in violation of California's right of publicity laws.

In addition to paying \$10 million, Facebook agreed to make certain changes to its site for at least two years. Among other things, the company agreed to (a) revise the Facebook Statement of Rights and Responsibilities to clarify that members' names and likenesses may be used as sponsored stories, (b) provide a mechanism to allow members to see and control which actions will lead to their being featured in Sponsored Stories, and (c) take steps to ensure the company secures consent from the parents of minors before using the minors names and likenesses.

This settlement serves as a reminder that you should obtain consent from individuals before using their names or images in ads. You should also be aware that Facebook isn't the only company that has been challenged over Sponsored Stories -- some plaintiffs have also targeted advertisers who use the service. Once Facebook implements its changes, it may be harder for plaintiffs to bring these challenges, but you should discuss the risks with your counsel before moving forward.