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## Target Beats Rosa Parks IP Suit Via First Amendment

By **Bill Donahue**

Law360, New York (February 09, 2015, 1:39 PM ET) -- An Alabama federal judge ruled Monday that Target Corp. was shielded by the First Amendment from a lawsuit claiming the retailer violated the publicity rights of civil rights icon Rosa Parks by selling books and other goods bearing her name and image.

Parks' heirs claimed the merchandise at issue — biographical books and movies, as well as a plaque memorializing Parks — were unfair exploitations of her name and likeness, but Target said works depicting a central player in events of great historical importance was "clearly" something that's protected free speech.

On Monday, U.S. District Judge W. Keith Watkins agreed with the retailer, saying the estate was "mistaken."

"To quote from one of the biographical works at issue, Rosa Parks is 'perhaps the most iconic heroine of the civil rights movement,'" the judge wrote. "And, as both parties agree, one cannot talk about the Civil Rights movement without including Rosa Parks. The importance of her story serves as an apt reminder of why First Amendment protection for biographical works is so vital."

The memorial plaque required a separate free-speech analysis, the judge said, but the outcome was the same. He cited an unauthorized use of jazz legend Louis Armstrong's image on a DVD of a historical jazz performance.

"Just as Louis Armstrong's image is significant to the history of jazz, Rosa Parks' name and image are historically significant to the fight for equality in the South," the judge wrote on Monday.

The Rosa and Raymond Parks Institute for Self Development sued the big-box retailer back in November 2013, alleging Target sold the unauthorized Parks memorabilia in order to profit off of her fame.

Parks, who died in October 2005, became a celebrated figure when she helped ignite the Civil Rights movement in 1955 by refusing to give up her seat to a white man and move to the back of a racially segregated city bus in Montgomery, Alabama.

In moving to toss the case in October, Target cited a previous case in which the Sixth Circuit refused to block posters bearing an image of golfer Tiger Woods winning the Masters on the grounds that it was a "historic event in the world of sports."

"If the First Amendment interests in a golf tournament preclude right of publicity liability for a poster about that tournament, the First Amendment interests in the Rosa Parks story preclude liability for a poster about that story and the story of the modern Civil Rights movement," the retailer said at the time.

The estate fired back a month later, saying that Target was seeking a "free pass on a technicality that is not supported in law" to continue to unlawfully exploit their legal rights in Parks' publicity rights.

"The actions by defendant in this instance reflects an arrogant and reckless disregard for the only charity started by this selfless martyr," the group said. The Institute was reportedly co-founded in 1987 by Parks and friend Elaine Eason Steele, who still runs it.

On Monday, Institute attorney Gwendolyn Thomas Kennedy of Kennedy Law Group LLC vowed to appeal the ruling.

"It defies logic to assume that anyone can use an icon's name or image for commercial reasons and not have to pay for it," Kennedy said. "Historical significance and making money off something are two different things. That's where the line is drawn."

Target is represented by Helen Kathryn Downs of Butler Snow LLP and James R. Steffen and Mary Andreleita Walker of Faegre Baker Daniels.

The Rosa and Raymond Parks Institute for Self Development is represented by Gwendolyn Thomas Kennedy of Kennedy Law Group LLC.

The case is Rosa and Raymond Parks Institute for Self Development v. Target Stores Inc., case number 2:13-cv-00817, in the U.S. District Court for the Middle District of Alabama.

--Editing by Philip Shea.

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