

Right of Publicity	Date	November 30, 2023	Court	Tokyo District Court, 40th Civil Division
	Case number	2023 (Wa) 70056		
- A case in which an act of unauthorized use of the name, "エンリケ," that has a capability to attract customers constitutes the infringement of right of publicity.				

Summary of the Judgment

1. The Plaintiff was formerly a so-called "kyabakurajō" (a hostess serving customers at a "kyabakura" (hostess bar)) and had used the professional name, "エンリケ" (enrike). The Defendants are stock companies in which a non-litigant B is involved in the business management. The Plaintiff and the non-litigant B had been in a marital relationship since 2019, but divorced on October 26, 2022. The Plaintiff assumed the position of representative director of the Defendant Enrike Kukan on June 6, 2019, when the same company was incorporated, but on October 14, 2022, the Plaintiff resigned from the position and the non-litigant B became the representative director of the same company.

This is a case wherein the Plaintiff alleged that the Defendants' act of using portraits of the Plaintiff specified in the attachment to the judgment (hereinafter referred to as the "Plaintiff's Portraits"), as well as the names, "エンリケ", "ENRIKE", and "enrike" (hereinafter collectively referred to as the "Plaintiff's Names") constitutes an infringement of her right of publicity, and demanded the following based on the right of publicity: [i] the injunction of use of the Plaintiff's Portraits; [ii] the injunction of the use of the trade names, marks and domain names that contain any of the Plaintiff's Names; [iii] the deletion of the Plaintiff's Names and Plaintiff's Portraits from the web pages; [iv] the deletion of the domain names that include any of the Plaintiff's Names; and [v] the procedures for registration of cancellation of registration of the trade names containing any of the Plaintiff's Names.

In this judgment, the court held as follows: considering that the Plaintiff, unlike an ordinary bar hostess as alleged by the Defendants, is found to have gained the wide recognition of the public as a legendary top-selling bar hostess in Japan who has published many books, appeared in various television shows, and gained a large number of followers, it is reasonable to find that the Plaintiff's Names or Plaintiff's Portraits have gained the capability to attract customers to promote the sale, etc. of goods.

Further, the court decided that, in light of the manners of publication of the Plaintiff's Names and Plaintiff's Portraits, the Defendants have used them by fully

leveraging the brand value of "Enrike" for all services provided by the Defendants, and therefore, it is reasonable to find that the Defendants have used the Plaintiff's Names or Plaintiff's Portraits in their trade names, marks, web pages and domain names with the intention of differentiating their services from other services in the same sector by leveraging the abovementioned capability of the Plaintiff's Names and Plaintiff's Portraits to attract customers; and that the Defendants' act of using the Plaintiff's Names and Plaintiff's Portraits constitutes an infringement of right of publicity as it falls under Category II as defined in the judgment of the Pink Lady case.

Based on the above, the court granted all of the Plaintiff's claims.