



The Potential Impact of Featuring a “Monster”

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By now, the whole world has seen Rolling Stone Magazine’s recently unveiled cover of its August 2013 issue. The issue sparked immense outrage when it was revealed that a photograph of Dzhokhar Tsarnaev, one of the alleged Boston Marathon bombers, is front and center. Interestingly, the photo was taken from one of his social media pages and is not that of many images seen in the days following the attack. The story is titled “How a Popular, Promising Student Was Failed by His Family, Fell into Radical Islam and Became a Monster,” but that title has been overlooked because most of the focus has been on the image on the cover. Contributing editor, Janet Reiter, seeks to humanize a man who, with his brother, allegedly set off one of two bombs at the finish line of the Boston marathon and went on to murder an on-duty police officer.

In response to the cover, which many say glorifies the alleged bomber, Boston Mayor, Thomas Menino wrote a letter to Rolling Stone publisher, Jann Wenner stating, “[y]our August...cover rewards a terrorist with celebrity treatment. It is ill-conceived at best, and re-affirms a terrible message that destruction gains fame for killers and their ‘causes.’”

This is not the first time Rolling Stone has used its cover to make a controversial statement. From a naked John Lennon, to a seductively-posed seventeen-year-old Britney Spears, Rolling Stone has always celebrated rebellion and sought to push the cultural envelope of acceptable covers. In 1970, they even published an issue that won the National Magazine Award with a cover that featured mass-murderer Charles Manson titled, “The Incredible Story of the Most Dangerous Man Alive.” What is always of paramount concern to lawyers, however, is how the need for attention in an ever competitive market will or could potentially adversely affect the publication.

Contractual obligations and lawsuits aside, the publication must also be aware of how its decisions will affect its distribution and brand loyalty.

It would appear that this cover is legally permissible under the First Amendment of the United States Constitution, the same set of laws that allowed O.J. Simpson to publish “If I Did It” and TIME magazine to publish an issue in 1939 featuring Adolf Hitler as “Man of the Year.” It is worth noting that, after the publication of O.J. Simpson’s book, Fred Goldman, father of one of the murder victims, was awarded the publishing rights, previously owned by the Lorraine Brooke Corporation, which had filed for bankruptcy. Goldman’s family purchased the copyright, media rights and movie rights to Simpson’s book, “If I Did It” from a Florida bankruptcy court trustee. They were then able to change the title from “O.J. Simpson: If I Did It, Here’s How It Happened” to “If I Did It: Confessions of the Killer,” and add comments of their own and change the cover design to make the “If” in the title miniscule and concealed within the “I,” so that at first glance a reader may think the cover states “I Did It.” The publication of this book regardless of its graphic and insensitive content, and the change in title that

now portrays Simpson as the murderer despite being found not guilty in a court of law are both protected under the First Amendment.

Tsarnaev's picture seemed to spark outrage beyond that of any of America's growing list of alleged suburban terrorists. On July 12, 2012, James Holmes shot and killed twelve (12) innocent people at a movie theater in Colorado at the premiere of the Batman movie, "The Dark Night Rises." The death toll was triple that of the Boston Marathon bombings. Then, on December 14, 2012, twenty-six (26) people, twenty (20) of whom were children, were shot and killed at Sandy Hook Elementary in Connecticut. This incident caused over six (6) times the amount of deaths that the Boston Marathon bombings caused, but less than six (6) months later the event seemed to have fallen off our collective radar.

However, neither James Holmes nor Adam Lanza, the Sandy Hook shooter, was featured on Rolling Stone's cover, or any major magazine cover for that matter. The only photos of Holmes produced in the media were of him in his orange prison jumpsuit with a crazed look on his face. Moreover, there were almost no photos of Adam Lanza produced following the Sandy Hook shooting; most of the publicity featured the victims.

For three days, the people of Boston were in a state of panic, confusion and terror as a city-wide manhunt for Tsarnaev and his brother ensued - the rest of us looked on in shock as the internet and media coverage was in step with the unfolding manhunt. What makes this particular event and the coverage thereof different, however, could be the fact that the Boston Marathon bombings took place just a little over three months prior to the scheduled release date of Rolling Stone's latest issue; the victims' families are still grieving and Boston is still raw with emotion. Posters containing the message "Believe in Boston" and "Boston Strong" are still hanging around many stores, bridges and highways in the United States. Moreover, it's how Tsarnaev is depicted on the cover that led many to object to its release. His image is that of a contemporary musician or artist staring innocently back at the reader and not that of an alleged terrorist out for destruction. Such a decision to feature him in this light could change the publication's image in the media and, more importantly, damage its reputation and any favorable image it has with the musicians, artists, and fans who support it. It could also poison potential jurors in any upcoming trial as people's memory of the facts dissipates over time.

When advising media clients, and clients who seek media attention, it is important to ask them to take a serious step back and determine the potential fallout from their quest to pursue increased media exposure. Ask them whether they, and their company, are ready for the intense scrutiny that could come from unexpected sources and whether their business relationships will be able to stand such a test. In response to the Rolling Stone issue, New England-based super stores such as CVS, and others like Walgreens, Rite Aid and Stop and Shop have declared that they will not be selling the issue out of respect for their customers and the victims of the bombings. This fact, while temporarily overlooked, has far-reaching legal implications including potential claims for breach of contract and impediments to future contractual negotiations. In aid of the protest, millions of people have vowed through social media to boycott purchase of the issue, and for some the magazine itself. With no distribution contracts between Rolling Stone and the super stores, the stores have a legal right to not sell the issue if they so choose. This development could lead to future negative attention for Rolling Stone which can both generate interest and lead to increased sales, but cost the publication advertisers and fans for some time. Moreover, many publications are sold returnable, leading to a glut of unwanted returns on the balance sheet.

Should the client be forthcoming with its plans, attorneys must ask their clients whether the publicity they seek is worth the price they might pay. Ultimately, businesses must make decisions favorable to the bottom line but attorneys should influence clients to consider all aspects of their decisions before acting. In this instance, Rolling Stone could have previewed the cover to some of its partner retailers and sought their support or comments. This is not to say that controversy and negative attention is always bad – but adverse publicity can be hard to handle and, with proper attention and communication, handled in a coordinated manner. As lawyers, we are constantly faced with adversity and our clients turn to us for guidance and advocacy even if their actions could have contributed to the situation in which they find themselves. What we cannot do, however, is undo permanent brand damage which could have potentially been avoided or mitigated with foresight and planning.