

# James Dean dispute nearing end

*Korean underwear crux  
of CMG copyright tiff*

**By Scott Olson**

IBJ Reporter

James Dean's been dead almost as long as the Korean War's been over, but his rebel image is alive and well in the Asian country after being revived by an underwear maker in the early 1990s.

Now the Supreme Court of Korea must decide if Dean's likeness will live on there, following an eight-year legal challenge brought by locally based CMG Worldwide Inc. The licensing and marketing firm in Fishers represents about 200 celebrities, dead and alive, including Dean.

CMG client James Dean Inc. appealed to the Supreme Court earlier this year following a series of defeats in two lower Korean courts. James Dean Inc., which asserts the legal "rights to publicity," argues that Good People Inc. infringed its copyright by producing the James Dean brand underwear.

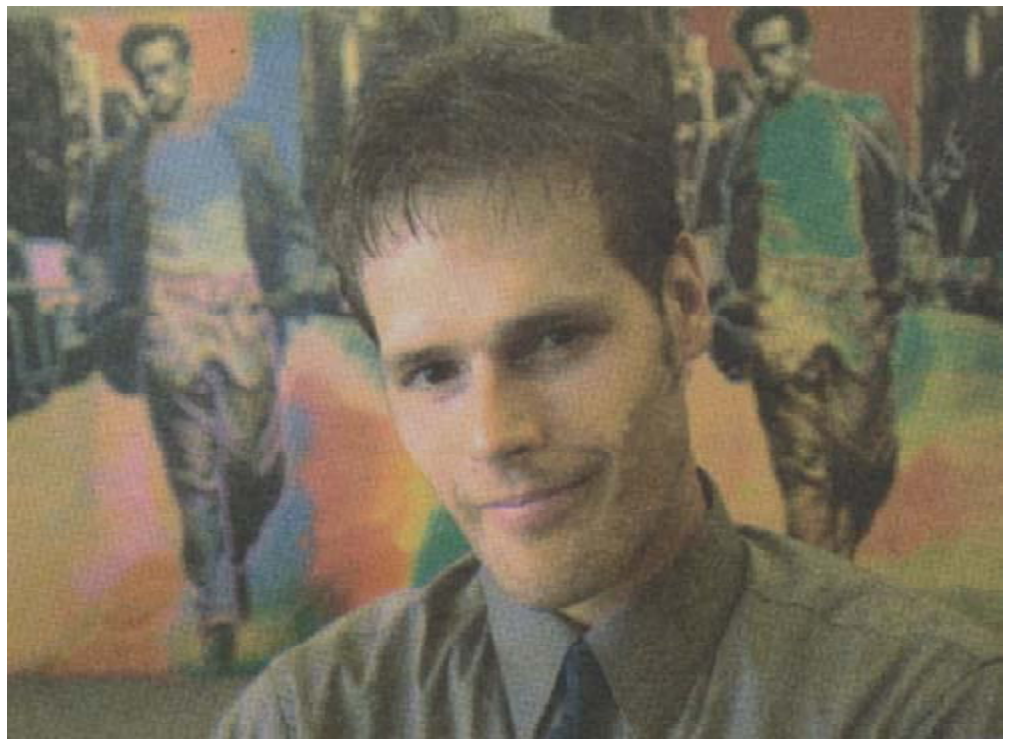
But the courts ruled in favor of the defendant and rejected James Dean Inc.'s right to act as legal proxy of the late film icon and Hoosier native. The courts also failed to recognize the rights of publicity, which are not codified in Korean law.

A key component in Korean trademark law, known as the "first-to-file system," has made it difficult for CMG and its client to halt the manufacturing of the underwear. The system awards a trademark to the first person to apply without exercising much review, according to Jonathan Faber, CMG vice president of business and legal affairs.

"The laws in Korea are part of the reason why this is hanging around 10 years later," Faber said. "Their method of recognizing the rights of a deceased celebrity are different."

CMG first lodged a damages suit in 1994, citing fraudulent use of the actor's name. CMG insisted that its contract with Marcus Winslow, Dean's cousin, provides the right to represent the legal affairs of the legend. James Dean Inc. carried on CMG's legal battle in 2000, after CMG lost two trials.

In the meantime, Good People has grown into Korea's main underwear manufacturer, largely due to the James Dean line. The company employs 450 people and amassed \$66 million in annual revenue in 2000, according to the company's Web site. Its president and founder, Joo Byoung-jin, is a former comedian and



CMG Corporate Counsel Jonathan Faber has helped fight the nearly 10-year-old legal battle.

national celebrity, and is known as the "Johnny Carson of Korea."

Good People should be paying James Dean Inc. \$100,000 a year and a percentage of the profit from underwear sales, Faber said. Representatives of CMG and Good People met in Indiana and in Korea in the early stages of the dispute but couldn't come to an agreement, Faber said.

Good People's use of Dean's likeness is considered a serious breach of CMG's rights because Joo built his business model around Dean's name, Faber said. In most cases, CMG will grant companies license to use a personality's name for a certain product, not an entire business. For instance, Parker Bros. has the rights to use the names of Babe Ruth, Lou Gehrig and Jackie Robinson in a base-ball-themed Monopoly game.

Lawyer Chang Duk-soon of the First Law Offices of Korea, who represents Good People, told *Korea Times* that Korean legislation protects the rights of a living person's image, but there is no law protecting the rights of publicity for the dead. Furthermore, he said, there is no proof that CMG and James Dean Inc. hold the legal rights to represent the actor.

The Kim & Chang Law Firm, which represents James Dean Inc., expects the high court to set a judicial precedent on the U.S. style rights of publicity, which concern the transfer and

succession of tangible and intangible assets, according to *Korea Times*.

Representatives of both law firms did not respond to e-mails seeking comment on the case.

Jim Coles, intellectual property practice chairman at Bose McKinney & Evans LLP, said the case will be difficult to win.

"It's pretty tough to enforce your rights in some of these countries that don't have developed intellectual property rights," Coles said.

If CMG and James Dean Inc. are unsuccessful, they can at least take some solace in knowing Good People cannot export its James Dean underwear line to most other Asian nations, Faber said. Countries such as Japan, Taiwan and Malaysia have more stringent trademark laws that favor CMG.

"We have a very clear advantage in those countries, and that's something [Joo] is aware of because he has visions of taking his company beyond Korea," he said.

Faber said he believes Dean remains fashionable in that part of the world because a lot of U.S. troops were stationed there during the height of Dean's career. Asian countries since have clamored for American pop culture, Faber said.

"A tribute to James Dean or Marilyn Monroe is that their popularity has not waned," Faber said. "Ten years later and with quite a lot of money on both sides being expended, we're still slugging it out."

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