

State of New York Court of Appeals

MEMORANDUM

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

No. 23
Karen Gravano,
Appellant,
v.
Take-Two Interactive Software,
Inc. et al.,
Respondents.

Thomas A. Farinella, for appellant.
Jeremy Feigelson, for respondents.
Jarryd Huntley; Motion Picture Association of America, Inc. et al.; Entertainment Software Association; American Booksellers Association, et al.; Eric M. Freedman, et al.,
amici curiae.

MEMORANDUM:

The order of the Appellate Division, insofar as appealed from, should be affirmed, with costs. A computer-generated image may constitute a “portrait” within the meaning of Civil Rights Law §§ 50 and 51 (see Lohan v Take-Two Interactive Software, ___ NY3d

___, ___ [2018] [decided herewith]). Plaintiff, however, is not recognizable from the images at issue here, namely, the “Andrea Bottino” avatar in the video game in question (see Cohen v Herbal Concepts, 63 NY2d 379, 384 [1984]).

In view of our determination, we do not address plaintiff’s additional contentions.

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Order, insofar as appealed from, affirmed, with costs, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Feinman concur. Judge Wilson took no part.

Decided March 29, 2018