

Woman Whose Image Appeared in an HIV Ad Is Awarded \$125K in Damages

The model, who does not have HIV, did not give permission to use the photo, and no disclaimer appeared in the 2013 campaign.

January 1, 2019 By [Trent Straube](#)

A New York judge awarded \$125,000 in damages to a woman whose photo was used without her permission in an HIV awareness campaign, [reports Gay City News](#).

Avril Nolan felt “completely shocked” and “devastated” to learn in 2013 that her image appeared in an anti-discrimination HIV ad by the State Division of Human Rights (DHR). The main text in the ad read “I AM POSITIVE (+)” and “I Have Rights.”

The problem, aside from the lack of permission? For one thing, Nolan is not living with HIV. For another, the campaign did not identify her as a model.

According to court filings reported by Gay City News, photographer Jena Cumbo photographed Nolan for a 2011 Soma magazine article, for which Nolan did not sign a model release form. Cumbo later sold the image to the stock photo agency Getty Images. DHR, which created the ad, then bought the image from Getty, assuming that Nolan had signed the proper release forms.

[As previously covered in POZ](#), Nolan had planned to sue DHR for \$1.5 million in 2015. The Court of Claims ruled the case could move forward, but DHR appealed, saying “HIV is no longer a shameful condition.” In January 2018, a judge ruled that Nolan could sue because HIV fell into what’s called a “loathsome disease” category. As such, Nolan was entitled to damages without having to prove financial harm.

In deciding the damages, Judge Thomas H. Scuccimarra reviewed testimony from Nolan and witnesses on how the incident affected her life and employment. Although she did not lose her job at a fashion industry public relations firm, the judge noted, Nolan did suffer anxiety and distress.

The judge decided that an appropriate compensation is \$125,000, plus interest on that amount from his first ruling in her favor in June 2015.
