

Bombshell Photos for eBay

Pinups Include Rights To Commercial Use; Estate Expresses Concern

THE BLONDE is up for bids. In an auction set for next month, eBay Inc. and the San Francisco auction house it owns, Butterfields will offer the famously nude "Red Velvet" photo series of Marilyn Monroe. The five shots are outtakes from a 1949 photo shoot that a few years later produced Playboy magazine's first centerfold. Butterfields is auctioning the five pictures as a set that it hopes will bring \$700,000 to \$1 million at a live and online auction March 22.

Whatever the final sum, Butterfields says, the winning bidder will get a bonus: The seller, Tom Kelley Studios of Ventura, Calif., is including both the negatives and the model's release form signed by Monroe when she was just an ambitious unknown. That will enable the winning bidder to slap any of the five nude Monroe images on everything from beer cans to brassieres to billboards.

Packaging the negatives and the release with the photographs is highly unusual and has outraged some collectors and dealers in the pricey photography market, where rarity and reproduction rights are usually tightly controlled. Alan Siegel, a member of the photography committee of New York's Museum of Modern Art, says he is "horri-fied" that Tom Kelley Studios would include the negatives and model's release in the sale.

"It's awful," says Mr. Siegel, owner of eight rare Monroe images, "These are historically important photographs, and they should be treated as such."

Also in the eBay/Butterfields auction is an array of the actress's personal effects, but it's the five outtakes that have the potential to rock the celebrity-licensing industry.

If the auction nabs the seller \$1 million, licensing attorneys and intellectual-property experts predict that model releases will start landing on the auction block left and right. Photographers will be flying back to their files, "says Los Angeles licensing attorney Antonio Sarabia. "If it can happen to Norma Jean [the actress's original given name], it can happen to anybody."

If this auction does start a trend, the older the celebrity, the more likely his or her image would be up for grabs, says Jeff Lotman, chief executive officer of Los Angeles-based

licensing firm Global Icons LLC.

Model releases have become more specific over the last 20 years as stars have exercised tighter control over their images. But if a model's release is valid, Mr. Sarabia says, there is nothing celebrities or their estates can do about it-except bid.

The "Red Velvet" images were taken by Tom Kelley Sr. Tom Kelley Jr. says his father met the actress in 1948, when he was a witness to a minor car accident she had on Sunset Boulevard. The photographer gave the would-be starlet (by then known as Marilyn Monroe) his card and \$5 for a cab, says Mr. Kelley Jr., an encounter that led to her posing nude for a Kelley pinup calendar in 1949. Her fee: \$50.

Mr. Kelley says he considered selling his father's famous series for years. He decided "the marketplace was ready" now based on the recent resurgence of classic images in advertising and endorsements.

Representatives of the Monroe estate say they don't believe they have grounds to halt the sale, as the images are legally the property of Tom Kelley Studios. But "we'd aggressively go after anyone who would try and use those images in commercial fashion," says Mark Roesler, chief executive officer of CMG Worldwide Inc. of Indianapolis, which represents the Monroe estate.

CMG allows about 400 companies worldwide to produce merchandise emblazoned with Marilyn Monroe's name and likeness—a business that generates over \$1 million annually for the estate.

CMG is currently involved in 10 trademark infringement lawsuits and has no compunction about taking on another. "We're more than happy to challenge their so-called model's release," Mr. Roesler says, characterizing the document as so broad that it may not hold up in court.

Nonetheless, Mr. Roesler concedes it is "remotely possible" that the release grants a buyer exactly what the Butterfields auction catalog promises: The right to use Monroe's "name and likeness from the photographs" for "trade and advertising purposes."

The release Monroe signed is legally binding, according to Bob Shuken, Butterfields' general counsel.

Butterfields has already contacted potential bidders as diverse as Hustler magazine and Hallmark Cards Inc. and says it hasn't been hard to drum up interest.



Marilyn Monroe poses for Tom Kelley, Sr.

"People are fawning over the property," says Catherine Williamson, director of entertainment memorabilia for Butterfields. (Hustler is unlikely to bid, a spokesman says, and Hallmark declined to comment, but Playboy is "expected to raise a paddle, according to people close to the situation.")

For eBay and Butterfields, there's a lot riding on this auction. While eBay has been hugely successful with its online flea market, attempts to launch high-end sales of photography, prints and fine art have fallen flat.

The company's alliance with Butterfields, which it purchased in 1999, has been rocky and marked by layoffs and retrenchments. The Monroe auction will be the first major one on eBay Premier, the high-end art site that the company launched late last year.

Historically, the blond icon has shown she can carry a sale. In a two-day auction in 1999 featuring the star's books, clothing and jewelry, Christie's International PLC in New York raked in \$13.4 million—more than triple what even optimistic experts had predicted.

Sotheby's Holdings Inc. is currently auctioning dozens of Monroe-related items consigned by her half sister on its Web site, including the wedding gown from her first marriage.

The highest price previously paid at auction for a Marilyn Monroe photograph was \$222,500, but it's the rights that are key to the much higher estimate for the Kelley outtakes. The Monroe estate will be paying close attention to the sale, Mr. Roesler says, but won't bid. He explains: "We would never pay that price."

-By Brooks Barnes (abbreviated version)