

Litigating Personal Brand: Intellectual Property & the Construction of Self

Alexandra J. Roberts¹
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Introduction

Designer Hayley Paige Gutman accuses her employer of stealing her name and social media accounts to sell bridal couture. Amazon Influencer Sydney Nicole Gifford comes for another influencer for copying her style and vibe with similar posts. Carmen Electra sues several strip clubs in different cities for using her image in social media posts and advertisements. Musical group the OMG Girlz battles a toy company over dolls that resemble the singers. In recent years, courts have seen a sharp rise in these kinds of lawsuits—suits claiming that someone has infringed, impinged, or exploited an individual’s “personal brand” without their permission. The causes of action in personal brand lawsuits can include just about anything, but trademark, copyright, and right of publicity appear frequently among them. A claim that someone violated copyright in a photograph or infringed trademark rights in a logo is straightforward. But when the thing allegedly infringed is someone’s personal brand—a public-facing, commodified, yet still intrinsically personal version of the “self”—it doesn’t map neatly onto any legal doctrine.

“Personal brand” as a catchphrase and cultural concept has been in heavy circulation since the late nineties. While both the idea and the practice predate the naming of it,² self-branding books and articles flooded the market in the last quarter-century. A practice pitched to CEOs and celebrities quickly became something evangelists insist is crucial for everyone.³ College students applying for jobs, high school students seeking scholarships,⁴ professionals climbing the corporate ladder, and online daters seeking romantic connections are all encouraged to brand themselves and curate their communications and representations accordingly. And of course, the entire industry of influencer marketing is built on the idea of personal brand.

At its heart, personal brand is about packaging one’s person and personality into a product that appeals to its target audience. So it’s no surprise that people counseled to pour a great deal of time, energy, and resources into cultivating their personal brand eventually began to view it as something they alone own. Personal brand has become, for some, a kind of intellectual or cultural property in the self. In the influencer age, personal brand serves as not just a means to market services, connect with clients, or advance at work, but an extension of selfhood. Social media simultaneously enables and demands self-definition and self-promotion.⁵ So when people perceive their personal brand to

¹ Professor of Law & Media, Northeastern University; Faculty Director, Northeastern Center for Law, Information & Creativity; Fellow, Yale Law School Information Society Project. Thanks to Lee Ann Jastillana and Nyah Tewani for excellent research assistance and Brian Frye and Rebecca Tushnet for helpful comments.

² Sergey Gorbatov, Svetlana N. Khapov, & Evgenia I. Lysova, *Personal Branding: Interdisciplinary Systematic Review and Research Agenda*, *Frontiers in Psychology* 9:2238 at 3 (Nov. 2018), doi: 10.3389/fpsyg.2018.02238.

³ Osorio at 697 (“The key premise of personal branding is that everyone has a personal brand and the potential to develop it”).

⁴ Personal Branding in College and Scholarship Applications, North Forty News (July 1, 2025), <https://northfortynews.com/category/how-to/personal-branding-in-college-and-scholarship-applications/>.

⁵ Alice Marwick, STATUS UPDATE: CELEBRITY, PUBLICITY, AND BRANDING IN THE SOCIAL MEDIA AGE (2015)

be infringed, stolen, or violated, they can feel that harm acutely, in the form of not just economic loss but also injury to their reputation, dignity, privacy, creative process, or sense of self.

The literature on personal brand is copious and spans almost every field imaginable: one systematic review of the academic literature includes articles from marketing, sociology, communication, psychology, organizational behavior,⁶ economics,⁷ and accounting.⁸ But even across disciplines, some themes are consistent.⁹ We can locate within the personal branding literature the seeds of many of the legal doctrines currently being asserted to protect and enforce rights. When personal brand gurus tell adherents to analogize the self to corporate brands like Nike or Apple and devise a slogan that captures their uniqueness, that conception can lead someone to register that slogan as a trademark and sue violators when they use similar language. When those gurus counsel followers that personal branding means crafting a narrative that defines them and writing the story that sets them apart, that conception can lead them to view their story as an expressive work subject to copyright protection and then sue a creator who tells a similar story. And when the gurus and the books and articles insist that personal branding requires cultivating a particular image, style, and signature look, that conception can lead someone to regard their look as proprietary and sue a perceived copycat for misappropriating their right of publicity.

Throughout this Article, I quote extensively from the popular and academic literature on personal brand as well as the lawsuits and decisions about it because I'm interested in the discourse surrounding personal brand and the language used by stakeholders. The vocabulary of litigating personal brand has a lot to tell us about how the personal branding movement has shaped, and been shaped by, law. In order to explain how the cultural investment in personal brand led to an explosion of litigation clustered around (but not limited to) trademark, copyright, and right of publicity claims, I look first to the recurring words and metaphors that marketing experts, journalists, influencers, and—increasingly—courts use in this spate of suits and disputes.

The creep of intellectual property law into personal brand is perhaps inevitable. As the authors of the literature review observe, much of the academic work on personal brand either centers the noun, *personal brand*, as product, or the gerund, *personal branding*, as process.¹⁰ That distinction maps on to intellectual property law's dual focus on protection and enforcement. When personal brand is a finite, bounded product, it can appear subject to legal protection such as trademark or copyright registration. When personal branding is a process, a key part of that process is maintenance:

⁶ Id. at 1.

⁷ Id. at 7.

⁸ Id. at 1.

⁹ Daniel J. Lair, George Cheney, and Katie Sullivan, *Marketization and the Recasting of the Professional Self: The Rhetoric and Ethics of Personal Branding*, 18 MGMT COMM Q 307, 319 (2005), <http://mcq.sagepub.com/content/18/3/307.abstract> (accessed June 23, 2025) (“the personal branding literature, regardless of its source, displays remarkably similar themes across authors and contexts”).

¹⁰ Sergey Gorbatov, Svetlana N. Khapov, & Evgenia I. Lysova, *Personal Branding: Interdisciplinary Systematic Review and Research Agenda*, Frontiers in Psychology 9:2238 at 6 (Nov. 2018), doi: 10.3389/fpsyg.2018.02238; but see Stefan Scheidt & Jörg Henseler, *Personal Branding: A review on a contemporary phenomenon* (2018)

<https://www.researchgate.net/publication/346914136> at 4 (“a large majority of the reviewed articles do not distinguish clearly between the process, i.e. personal branding, and the thing, i.e. the personal brand”); see also Antonia Erz & Anna-Bertha Heeris Christensen, *Transforming Consumers Into Brands: Tracing Transformation Processes of the Practice of Blogging*, JOURNAL OF INTERACTIVE MARKETING 43 (2018) 69-82, 80 (“The processual view [of branding] might be better suited for human, or corporeal, brands, than a conventional perspective; it considers the human behind the brand as stakeholder who inevitably co-creates the brand's identity as a person”) (citations omitted).

performing personal brand continuously and enforcing real or perceived rights against violators and copycats. Even the self-help literature encourages protecting and enforcing personal brand, and blog posts by “influencer lawyers” baldly perpetuate this narrative.¹¹ One lawyer poses the question “How can a trailblazer influencer protect themselves from others who mimic their style to unfair commercial advantage?” And answers it by advising “build a ‘brand’, not just an ‘aesthetic’... with some *formal IP rights* to back it up.”¹²

But personal brand is not intellectual property, and we should push back hard against the growing inclination to treat it that way. Intellectual property principles are deeply embedded in the literature and ideas about personal brand, which helps explain why so many adherents have latched onto the idea of personal brand as IP. And many of the stories this article recounts, from Hayley Paige Gutman to the OMG Girlz, garner sympathy. It’s easy to relate to the influencers who allege harm to their personal brand, given their investment of time, energy, and resources in brand-building and their perception of their brand as an external representation of their physical and emotional self. But trademark, copyright, right of publicity, and other related causes of action, such as defamation and false endorsement, are more than adequate to address the legal issues in play in these disputes. Personal brand doesn’t give rise to a new right or necessitate an expansion of law. And if lawyers, litigants, and courts keep behaving as though it does, the chilling effects will be substantial.

What is Personal Brand?

In the summer of 1997, Fast Company ran an article—maybe “manifesto” is more apt—by Tom Peters entitled “The Brand Called You.”¹³ The article, which coined the term “personal brand,”¹⁴ was a call to action, encouraging entrepreneurs to “be your own brand” and become the CEO and head marketer of “Me, Inc.”¹⁵ The manifesto spawned an entire industry, including hundreds of books, articles, guides, workshops, retreats, and even a dedicated magazine entitled *Personal Branding*.¹⁶ Peters, an independent consultant and management expert who studied at Cornell and Stanford and trained at consulting giant McKinsey, exhorted readers: “Starting today you are a

¹¹ E.g. Ethan Wall, *Influencer Law: How to Protect Your Personal Brand with an Influencer Lawyer*, THE SOCIAL MEDIA LAW FIRM, <https://thesocialmedialawfirm.com/blog/influencer-law/how-to-protect-your-personal-brand-with-an-influencer-lawyer/> [https://perma.cc/8GSN-ZXNL] (accessed June 12, 2025).

¹² Mary White, How to avoid a sad beige ending: Lessons drawn from the ‘sad beige influencer’ case, Fashion United (June 11, 2025), <https://fashionunited.in/news/fashion/how-to-avoid-a-sad-beige-ending-lessons-drawn-from-the-sad-beige-influencer-case/2025061050138> [https://perma.cc/QC3U-8ENC].

¹³ Tom Peters, *The Brand Called You*, Fast Co. Aug/Sept. 1997 at 83, <https://www.fastcompany.com/28905/brand-called-you>, archived without paywall at <https://personalimpact.ca/wp-content/uploads/2015/08/thebrandcalledyou.pdf>.

¹⁴ Researchers note related terms used in academic literature include “self-branding,” “self-marketing,” “personal marketing,” “human branding,” and “corporate personhood.” Stefan Scheidt & Jörg Henseler, *Personal Branding: A review on a contemporary phenomenon* (2018) <https://www.researchgate.net/publication/346914136> at 2, 3. Others surveying the literature use “human brands,” “celebrity brands,” “personal brands,” and “person-brands.” Maria Lucila Osorio, Edgar Centeno, Jesus Cambra-Fierro, A thematic exploration of human brands: literature review and agenda for future research, *Journal of Product & Brand Management* 29/6 (2020) 695-714, 695 (placing “personal brands” and “human brands” at opposite ends of a continuum: “The former refers to individuals applying branding strategies on themselves in search of professional advancement whereas the latter refers to brands that are also people”).

¹⁵ Peters, *The Brand Called You*.

¹⁶ Marwick at 166.

brand.”¹⁷ (One of the many books that followed his is titled simply: *U R a Brand!*)¹⁸ In that first article, Peters uses the language of corporate branding, urging individual entrepreneurs to compare themselves to well-known companies and products and consider themselves “every bit as much a brand as Nike, Coke, Pepsi, or the Body Shop.”¹⁹ As media theory and cultural studies scholar Alison Hearn writes, in the early literature of personal branding from management gurus like Peters, Stedman Graham, and Peter Montoya, “success is dependent, not upon specific skills or motivation, but on the glossy packaging of the self and the unrelenting pursuit of attention.”²⁰

Peters’ 1997 article is often heralded as marking the invention of personal brand, and some refer to him as the movement’s father.²¹ But the ideas the article espouses predate his work. Many locate the roots of personal branding in Erving Goffman’s self-presentation theory, which focuses on how people attempt to control the impressions that others form of them, as captured in his 1956 book *The Presentation of Self in Everyday Life*; others trace the idea as far back as Dale Carnegie’s *How to Win Friends and Influence People*.²² Authors Al Ries and Jack Trout also explored the idea of strategically crafting one’s personal or professional identity in the career-focused chapter of their 1981 book *Positioning: The Battle for Your Mind*. “The concept of marketing people and their attributes as if they were products is not a new one,” writes Stedman Graham, who cites the Eisenhower campaign of the 1950s and “the Hollywood star-making machine” as prime examples.²³ Scholars have linked the sudden focus on self-branding to the dot-com boom or the evolving employment relationship of the 1980s and 90s, in which flexibility and efficiency replaced security and stability and “workers were encouraged to assume responsibility for their own training and to substitute loyalty to themselves and their careers for loyalty to the firm.”²⁴

But how is “personal brand” actually defined? A team of psychologists who conducted an interdisciplinary review of the academic literature on the topic observe that “the exact boundaries of the concept” vary,²⁵ but after a thorough review of approximately 100 articles, they propose the following definitions:

Personal brand is a set of characteristics of an individual (attributes, values, beliefs, etc.) rendered into the differentiated narrative and imagery with the intent of establishing a competitive advantage in the minds of the target audience.

¹⁷ Peters, *The Brand Called You*.

¹⁸ Catherine Kaputa, U R A BRAND! (2006), available at <https://capitaldemarca.wordpress.com/wp-content/uploads/2012/04/u-r-a-brand1.pdf>. Later editions spell the words out: YOU ARE A BRAND! (2010).

¹⁹ See also, e.g., Stedman Graham, BUILD YOUR OWN LIFE BRAND! 3 (2001) (“Just as Coca-Cola, Apple, and Tommy Hilfiger have brands with assets that they develop and pitch to consumers, you too have assets that you must build upon, market, and expand.”).

²⁰ Alison Hearn, ‘*Meat, Mark, Burden*: Probing the contours of the branded ‘self’’, *Journal of Consumer Culture* Vol. 8(2) 197-217, at 205 (2008), DOI: 10.1177/1469540508090086

²¹ But see Daniel J. Lair, George Cheney, and Katie Sullivan, *Marketization and the Recasting of the Professional Self: The Rhetoric and Ethics of Personal Branding*, 18 MGMT COMM Q 307, 318 (2005), <http://mcq.sagepub.com/content/18/3/307.abstract> (accessed June 23, 2025) (Noting Montoya “also lays claim to pioneering the concept in 1997”).

²² Lair et al, *Marketization and the Recasting of the Professional Self* at 308.

²³ Stedman Graham, BUILD YOUR OWN LIFE BRAND! 118-19 (2001).

²⁴ Marion Crain, *Managing Identity: Buying into the Brand at Work*, 95 IOWA L. REV. 1179, 1188-89 (2010), citing Peter Cappelli, THE NEW DEAL AT WORK: MANAGING THE MARKET-DRIVEN WORKFORCE vii, 28, 244 (1999); Peter F. Drucker, MANAGING IN A TIME OF GREAT CHANGE 165-70 (1995).

²⁵ Gorbatov et al, *Personal Branding* at 3.

Personal branding is a strategic process of creating, positioning, and maintaining a positive impression of oneself, based in a unique combination of individual characteristics, which signal a certain promise to the target audience through a differentiated narrative and imagery.²⁶

In the wake of his viral article, Peters published several books on the topic, as did his peers. Personal brand boasted application to ever-broader audiences: it isn't just for C-suite executives and celebrities, or even just for aspiring entrepreneurs, but for everyone seeking to find their niche, market their services, grow their small business, or advance at work. Personal brand adherents promised the concept had just as much relevance outside of the workplace as within it. Stedman Graham encourages readers of his books to consider their brand value in their relationships and communities.²⁷ Robin Fisher Roffer claims personal branding is not just about success at work, but also about self-actualization: "Branding makes you an active partner in fulfilling your destiny in business *and in life*."²⁸ And personal brand in the digital age is all-encompassing: with the proliferation of social media and the advent of influencers, personal brand gained a new audience of eager acolytes.²⁹ Aspiring influencers are encouraged to build their personal brand around fitness, parenting, fashion, food, or whatever fuels their passion.³⁰

By now, the concept of personal brand has been repackaged and marketed to individuals in every age, stage, and cultural demographic.³¹ As one recent article proclaims, "Brands are not limited to influencers, celebrities and businesses but are for individuals, including you."³² Personal branding expert Cynthia Johnson reiterates, "Personal branding is for *everyone*"³³ and "something we all need to do."³⁴ Marwick observes "The idea of turning yourself into a brand is now presented as an essential Web 2.0 strategy."³⁵ Famously successful self-brand practitioner Gary Vaynerchuk enthuses, "Everyone—EVERYONE—needs to start thinking of themselves as a brand. It is no longer an option; it is a necessity."³⁶ In fact, according to Peter Montoya, "You already have a

²⁶ Gorbatov et al, *Personal Branding* at 6.

²⁷ Graham, BUILD YOUR OWN LIFE BRAND! at 71-77, 184-206, 207-224.

²⁸ Fisher Roffer at 8 (italics mine).

²⁹ Johnson at 4 ("our online presence...is the most public expression of our personal brand").

³⁰ See Roberts, False Influencing, 109 GEORGETOWN L. J. 81 (2020) (defining "influencer").

³¹ Ilana Gershon, *Selling Your Self in the United States*, 37 POLAR: Pol. & Legal Anthropology Rev. 281 (2014), ("In self-help books, workshops for job seekers, and sessions with career counselors, they are urged to market themselves as though their personal characteristics can be repackaged as a brand."); See also, e.g., PERSONAL BRANDING FOR DUMMIES at 251-269 ("College Students: Getting on Brand Straight Out of the Gate"; "Young Professionals: Conveying Energy and Professionalism"; "The Middle Years: Strategizing for Success"; "Branding a Second Career"; "Community Volunteers: Merging Mission and Meaning with Community"); Banet-Weiser at 58.

³² Scott Baradell, *How to Build a Successful Personal Brand in 5 Simple Steps*, ENTREPRENEUR (Aug. 9, 2022), <https://www.entrepreneur.com/growing-a-business/5-simple-steps-to-build-a-personal-brand/429483> [https://perma.cc/39HS-BVMS].

³³ Cynthia Johnson, PLATFROM: THE ART & SCIENCE OF PERSONAL BRANDING 4 (2019).

³⁴ Johnson at 6.

³⁵ Marwick at 164.

³⁶ Gary Vaynerchuk, CRUSH IT! 9 (2009).

Personal Brand” whether you like it or not. “Every person does.”³⁷ Brand strategist Robin Fisher Roffer concurs: “If you don’t brand yourself, someone else will.”³⁸

For influencers like Sydney Nicole Gifford and Hayley Paige, the personal brand is a project painstakingly constructed and monetized online across social media platforms. Alice Marwick, who conducted ethnographic fieldwork studying the status structure of the tech community, notes:

Self-branding presumes that the broadcasting and connective capacities of Web 2.0 technologies make the subject available and intelligible to others. It is both this visibility and the presence of a network that make self-branding seem possible.³⁹ ...Self-branding...is intrinsically linked to the features of social media technologies that make self-promotion on a wide scale possible.⁴⁰

Hearn calls the creation of the branded self a “persona produced for public consumption”⁴¹ that “involve[s] an outer-directed process of highly stylized self-construction.”⁴² She observes that “the function of the branded self is purely rhetorical; its goal is to produce cultural value and, potentially, material profit.⁴³ Communication professor Sarah Banet-Weiser adds:⁴⁴ “The relationship of immaterial labor to self-branding involves...an understanding of the self as a kind of product, as flexible, fragmented, and saleable.”⁴⁵ While the definitions cited earlier cast personal brand as completed product and personal branding as ongoing process, Hearn and Banet-Weiser’s understanding of self-brand straddles the two statuses, and both explore the role that labor plays in the production of personal brand: “The product is still present, but the practices of labor that produce it also make the product ephemeral, emotional, and affective.”⁴⁶ Author-influencers Bucci and Walker rely heavily on the metaphor of personal branding as “journey,” casting self-branding as an iterative process of refreshing, reevaluating, and reinventing.⁴⁷ And one court in a personal brand case acknowledged, “Social media influencers ‘have perfected the art of self-commoditization,

³⁷ Peter Montoya, THE PERSONAL BRANDING PHENOMENON (2002); see also Johnson at 4 (“If you don’t build and manage your brand, the world around you will do it for you”); Johnson at 8 (“Personal branding is for everyone. You have it even when you don’t.”).

³⁸ Robin Fisher Roffer, Make a Name for Yourself: 8 Steps Every Woman Needs to Create a Personal Brand 2 (2002).

³⁹ Marwick at 188

⁴⁰ Marwick at 166; see also Dave Fagundes and Jorge L. Contreras, *Private Ownership of Public Facts: Docudramas, Deals, and Life Story Rights*, 57 UC DAVIS L. REV. 743, 758 (2023) (“The rise of social media in the last decade-plus...has exploded this traditional understanding of celebrity. While the circle of famous people used to be small and entry into it mysterious and difficult, any person with a smartphone today has a shot at becoming a celebrity. Social media platforms like Twitter, Instagram, and TikTok enable users to generate potentially huge followings, which often translate into identity brands.”).

⁴¹ Hearn, *Meat, Mask, Burden*’ at 201, citing Andrew Wernick, PROMOTIONAL CULTURE: ADVERTISING, IDEOLOGY AND SYMBOLIC EXPRESSION (1991).

⁴² Hearn at 201

⁴³ Hearn at 198.

⁴⁴ Banet-Weiser at 60.

⁴⁵ Banet-Weiser at 72, citing Hearn, *Meat, Mask, Burden*.; see generally Banet-Weiser 51-89, “Branding the Postfeminist Self: The Labor of Femininity.”

⁴⁶ Banet-Weiser at 72.

⁴⁷ Dain Walker, THE 90 DAY BRAND PLAN 126 (2024); Amanda Bucci, FOLLOWED: THE CONTENT CREATOR’S GUIDE TO BEING SEEN, FACING JUDGMENT, AND BUILDING AN AUTHENTIC PERSONAL BRAND, 165-248 (discussing the various stages in the “journey” of personal branding) (2023); see also Johnson at 205 (“You can’t keep doing the same thing over and over. You will get bored, the world will change, and so will your audience.”).

turning their personal image or reputation (also known as their ‘brand’ or ‘persona’) and their recommendations into highly valuable tools.”⁴⁸

In fact, a trio of marketing researchers reviewing the literature in the field distinguish personal brand from what they call “human brands.”⁴⁹ They place the two at opposite ends of a continuum, where personal branding “refers to the advice for anyone striving to win employment opportunities by positioning themselves as having unique characteristics that make them stand out in a crowded marketplace,”⁵⁰ while human brand “refers to brands that are also people.”⁵¹ “Human brands have a dual nature,” they explain, “comprising the individual and the persona, where the persona rather than the individual is associated with offerings that have brand value.”⁵² The target audience of Peters’ and Graham’s books are engaged in personal branding; the aspirational examples they present as role models and objects of study, like “MJ, Oprah, and Martha,”⁵³ are fully realized human brands. In more contemporary terms, a social media influencer who is just starting out, finding followers and establishing her posting style and strategy, is engaging in the project of personal branding; once she has reached a few hundred thousand followers, become a well-known entity, partnered with traditional brands for paid endorsements, and succeeded in turning herself into a micro- or full-scale celebrity, she is a human brand. While the so-called fathers of personal branding wrote for lay people seeking workplace advancement and the ability to be their own boss, the lawsuits citing infringement of or harm to personal brand are more likely to come from fully realized human brands. And while the focus and locus of personal branding is the person⁵⁴—physically, emotionally, and reputationally—the focus and locus of human brand is the *persona*, an external construction of self that is primed for propertization and even alienability.⁵⁵

A great deal has been written about the creation of the persona in the context of self-branding. According to media scholar Crystal Abidin, digital media users “are now able to broadcast, control, and negotiate how they would like their identities...to be perceived as intentional ‘presentations’ of the self.”⁵⁶ Influencer Amanda Bucci acknowledges the threat of forgetting “the reality that you are

⁴⁸ *In re Vital Pharm.*, 652 B.R. 392 (Bankr. S.D. Fla. 2023), quoting Grace Greene, Comment, *Instagram Lookalikes and Celebrity Influencers: Rethinking the Right to Publicity in the Social Media Age*, 168 U. PA. L. REV. ONLINE 153, 155 (2020); see also *Court of Master Sommeliers v. Pilkey*, No. 19-cv-03620-SK, 2019 U.S. Dist. LEXIS 232395 (N.D. Cal. Dec. 9, 2019) (“Personal Instagram accounts may indeed be used to build a personal ‘brand’”).

⁴⁹ Osorio at 695-6.

⁵⁰ Osorio at 696.

⁵¹ Osorio at 695.

⁵² Osorio at 697.

⁵³ Peters, THE BRAND YOU 50, dedication; see also Graham, BUILD YOUR OWN LIFE BRAND! at 52-55 (discussing athlete Shaquille O’Neal, comedian Jerry Seinfeld, and pop stars Jewel Kilcher and Brandy, as well as MJ, Oprah and Martha); Susan Chritton, PERSONAL BRANDING FOR DUMMIES 40-51 (2nd ed. 2014) (discussing Oprah, Martha, Simon Cowell, Cal Ripken Jr., Lady Gaga, Kate Middleton, and more); Montoya (featuring an image of Oprah, Martha Stewart, and Michael Jordan on the cover of some editions of the book and again to introduce each section).

⁵⁴ Osorio at 698.

⁵⁵ Jennifer E. Rothman, *The Inalienable Right of Publicity*, 101 GEO. L.J. 185, 225-228 (2012) (considering “separability,” i.e. whether it is possible to actually separate identity-holders from their identities and the ability to control those identities; Hearn at 208 (“The law...treats the public persona as a saleable commodity in its own right, ultimately alienable and descendible from the body that produced it”); see also Alexandra J. Roberts, *Of Marks and Minors*, 62 HOUS. L. REV. 307, 320-22 (2024) (discussing same in the context of registration of minors’ names and images as trademarks); Osorio at 697 (“a human brand constitutes a blend of a person and a commercialized entity sold as a product in the marketplace, whose duality is recognized”).

⁵⁶ Crystal Abidin, *Internet Celebrity: Understanding Fame Online* 10 (2018).

not your Content Creator persona.”⁵⁷ Banet-Weiser notes, “in the practice of branding the self, the construction of the self-brand necessarily acknowledges the individual’s role as the producer of her life narrative.”⁵⁸ Banet-Weiser focuses on girls and women in particular in this brave new world of self-branding: “the fact that girls produce media—and thus ostensibly produce themselves through their self-presentation—within the context of a commercially driven technological space is not only evidence of a kind of empowering self-work but also a way to self-brand in an increasingly ubiquitous brand culture.”⁵⁹ On the other hand, that empowerment can be undermined by the constant feedback loop such self-presentations spur and feed on, which objectify, sexualize, and evaluate the self-presentation of girls and women.⁶⁰ That culture of feedback, requiring that the branded self is constantly revising self-presentation to satisfy the needs and desires of consumers and followers, can translate to discipline and control.⁶¹ And members of marginalized groups are afforded far less access to the tools and practices of personal branding than are thin, white, middle-class creators.⁶²

Within the language of the marketing gurus, self-help evangelists, and cultural theorists, we can find the seeds of intellectual property-based conceptions of personal brand, from trademark and trade dress, to copyright, to right of publicity. These lay understandings of legal doctrines feed into the self-branding literature, which in turn feeds into the law. While general resources about personal brand usually avoid legal terminology, as do academic approaches from outside of law, terms like “distinctiveness” and the selection of keywords, logos, and slogans reference trademark concepts; “narrative” and “story” conjure up copyright principles; and discussions of “style,” “appearance,” “identity,” and “persona” gesture toward right of publicity.

Personal Brand as Trademarks

Personal brand as trademark may seem almost too obvious to explicate. The whole idea of personal brand is based on taking the principles of trademark and marketing strategy used by corporations and applying them—sometimes with little adjustment—to people. In his seminal article, Peters relies on the language of trademarks: compare “brand You and brand X,” he advises: “every feature [major brands] offer in their product or service yields an identifiable and *distinguishable* benefit for their customer or client. …Start by identifying the qualities or characteristics that make you distinctive from your competitors.”⁶³ The idea of distinctiveness, crucial to the definition of trademarks,⁶⁴ pervades this literature. In order to be protectable, by definition, a trademark must

⁵⁷ Bucci at 185.

⁵⁸ Banet-Weiser at 60.

⁵⁹ Banet-Weiser at 66; 74; 86 (“those women who have mastered the skills of…building successful self-brands, are those who are the most socially and culturally valuable: white, middle-class women and girls.”).

⁶⁰ Banet-Weiser at 69.

⁶¹ Banet-Weiser at 78-79; see also Marwick at 197, 199 (“self-presentation is regulated and surveyed”), 196 (“Self-branding…necessitates the careful construction of an edited yet authentic self, which demands ongoing self-monitoring, a thick skin, and an ongoing awareness and evaluation of the audience”).

⁶² Banet-Weiser at 75, 85-86; Marwick at 263, 280; see also Lair et al at 330-334, noting the perpetuation of stereotypes about women and the omission of any discussion of race, class, or age in the personal branding literature.

⁶³ Peters, *The Brand Called You*, Fast Co. (emphasis mine).

⁶⁴ The Lanham Act, the federal statute focused on trademark law, defines a trademark as “any word, name, symbol, or device, or any combination thereof . . . used by a person . . . to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” 15 U.S.C. § 1127; see generally Alexandra J. Roberts, *Trademark Failure to Function*, 104 IOWA L. REV. 1977 (2019) (discussing threshold requirements for trademark protection, including distinctiveness and use as a mark).

distinguish the goods or services of one producer from those of competitors. In bold font, Peters urges his audience to seek clarity: “So...how **am I different?**”⁶⁵ He instructs readers to ask the question, “What is the **o-n-e** thing you want to be distinct for/at? ...Write it down. Pin it above your desk. Put it on your screen saver. Carry it on a card in your wallet.”⁶⁶ Because whether you’re a widget corporation or Wendy the web designer, “Saleable Distinction is, after all, what a brand is.”⁶⁷ Montoya concurs, decreeing “the law of distinctiveness” one of his eight unbreakable laws of personal branding.⁶⁸

The related terms “differentiation” and “uniqueness” also dominate the resources aimed at aspiring self-branders.⁶⁹ As the popular *Personal Branding for Dummies* guide urges, “Personal branding sets you apart because you identify your differences and then learn to use those differences to make yourself memorable. Having a brand distinguishes you from the crowd by celebrating your individuality and drawing on your unique strengths to offer value to the people you serve.”⁷⁰ An article in Harvard Business Review similarly emphasizes differentiation and uniqueness in articulating one’s personal brand: “assess yourself against the ‘competition’... Which attributes and benefits are unique to you? Those will become your points of difference.”⁷¹ Dain Walker, an Australian CEO and branding expert, writes that in building a personal brand, “you want to be different from everyone else—drastically different.”⁷² Academics summarizing this subset of marketing literature highlight articulating and demonstrating “uniqueness” as key to the definition of personal branding.⁷³

The trademark idea of “goodwill” also makes some appearances in the personal branding literature, including as another of Montoya’s eight unbreakable laws of personal branding.⁷⁴ Montoya seems to define “goodwill” as simply positive associations⁷⁵: “The Law of Goodwill states that a Personal Brand will produce better results and endure longer if the person behind it is perceived in a positive way.”⁷⁶ He goes so far as to profile Mother Teresa as his example of a personal brand role model for the chapter.⁷⁷ Goodwill is a variation on “reputation” that comes straight out of trademark law.

⁶⁵ Peters, THE BRAND YOU 50 at 102.

⁶⁶ Peters, THE BRAND YOU 50 at 93.

⁶⁷ Peters, THE BRAND YOU 50 at 101.

⁶⁸ Montoya at 95-106

⁶⁹ Susan Chritton, PERSONAL BRANDING FOR DUMMIES (2nd ed. 2014), 28 (“differentiation is crucial to branding success”); 16 (“identify your uniqueness”); Amanda Bucci, FOLLOWED: THE CONTENT CREATOR’S GUIDE TO BEING SEEN, FACING JUDGMENT, AND BUILDING AN AUTHENTIC PERSONAL BRAND 15 (2023) (emphasizing the importance of “having a unique perspective”), 203 (“your unique selling proposition is *your unique perspective* on the same content and trends you see over and over”).

⁷⁰ Chritton, PERSONAL BRANDING FOR DUMMIES 37.

⁷¹ Jill Avery and Rachel Greenwald, A New Approach to Building Your Personal Brand, Harvard Business Review Magazine (May-June 2023), <https://hbr.org/2023/05/a-new-approach-to-building-your-personal-brand> [perma.cc/D7ZR-MNVW].

⁷² Dain Walker, THE 90 DAY BRAND PLAN 57 (2024); see also Gorbatov et al, *Personal Branding* at 5 (“The marketing nature of the personal branding construct implies...standing out from the competition in that field (cf. product brand points of differentiation,” citing Tulchinsky, G., *Fantasy and personal branding: market dynamics and stylistic integration of the popular literature*, J. Sociol. Soc. Anthropol. XIV, 364–372 (2011); Parmentier, M.-A. S., and Fischer, E., *How athletes build their brands*, Int. J. Sport Manage. Marketi. 11, 106–124 (2012), doi: 10.1504/IJSMM.2012.045491; Philbrick, J. L., and Cleveland, A. D., *Personal branding: building your pathway to professional success*, Med. Ref. Serv. Q. 34, 181–189 (2015), doi: 10.1080/02763869.2015.1019324.

⁷³ Osorio et al, *A thematic exploration of human brands* at 696.

⁷⁴ Montoya at 141-48.

⁷⁵ Montoya at 141-2; see also id. at 6, 16.

⁷⁶ Montoya at 141 (explaining goodwill to include “respect, admiration, love, identification, or even compassion”).

⁷⁷ Montoya at 146-48. Jesus Christ also makes Montoya’s list of personal brand role models.

Trademarks are often characterized in scholarship and case law as a repository for goodwill—the container that holds all associations that consumers have with the mark itself, whether positive or negative. Goodwill is another word for what is valuable about a trademark—when a mark like GOOGLE or DISNEY is valued at billions of dollars, it's typically not because the mark is inherently “good” in some way, but because of the consumer trust, awareness, and other associations it holds.⁷⁸

An emphasis on consistency in the personal brand literature also sounds in trademark law. In branding yourself, “your job is to send out a consistent message that clearly defines who you are,” writes marketing guru Graham.⁷⁹ “What you want to do is burn in a single-minded identity at every touch point, producing a consistent brand experience,” assures self-branding expert Catherine Kaputa.⁸⁰ Fisher Roffer adds, “Consistency is one of branding’s most important laws.”⁸¹ For a trademark to be protectable, it must be a single thing used in the same way across the products or services on offer. In other words, a goldfish shape for a cracker, or the slogan JUST DO IT for sneakers, succeeds because it is consistent; an attempt to assert protection for something that isn’t the same every time, like “area codes” (rather than one specific area code) for apparel or “pictures of Elvis” (rather than one specific picture) for wine fail because they encompass too many different things, so they would not serve as a single consistent source indicator for consumers.⁸² An article in *Entrepreneur* stresses the importance of consistency in establishing and maintaining personal brand in the digital age, urging personal brand builders to “ensure the overarching tone and image you present online remains similar across platforms”;⁸³ another in *Forbes* concurs.⁸⁴ And, echoing the Chicago school’s theory that trademark law’s main goal is consumer efficiency, experts stress that when personal branding is done well and consistently, followers “will...be able to find you more easily.”⁸⁵

If the product or process of personal branding relies on treating the self as a brand, then it follows that “packaging” and “labeling” are part of that process.⁸⁶ “Never lose sight of the fact that your

⁷⁸ Plaintiffs in personal brand infringement cases have also made arguments about “goodwill,” not only in the trademark context but also in the right of publicity context. See, e.g., Plaintiffs’ Response in Opposition to Defendants’ Partial Motion to Dismiss Counts 2, 3, 5, 6, 7, & 8 of Plaintiffs’ Complaint, Gifford v. Sheil, No. 1:24-cv-00423-RP (July 22, 2024) (Dkt. 16) at 12 (“As a content creator and affiliate marketer, [Gifford’s] primary livelihood derives from and is predicated on the commercial goodwill associated with her name and likeness...The goodwill she has accumulated has increased her credibility and distinction, and the association of her goodwill with the products she transmits is key to her business. This is exactly what the tort of misappropriation aims to protect.”).

⁷⁹ Graham, BUILD YOUR OWN LIFE BRAND! at 131; see also Montoya at 39, 45 (“An effective Personal Brand must remain consistent.”).

⁸⁰ U R A BRAND! at 96 (“What you want is a total brand experience that’s consistent and powerful—that’s you.”).

⁸¹ Fisher Roffer at 12.

⁸² In re Elvis Presley Enters., Inc., 50 USPQ2d 1632 (TTAB 1999).

⁸³ Scott Baradell, *How to Build a Successful Personal Brand in 5 Simple Steps*, ENTREPRENEUR (Aug. 9, 2022), <https://www.entrepreneur.com/growing-a-business/5-simple-steps-to-build-a-personal-brand/429483> [https://perma.cc/39HS-BVMS].

⁸⁴ Jodie Cook, *10 No-Fluff Rules To Build Your Personal Brand In 2025*, FORBES (June 5, 2025), <https://www.forbes.com/sites/jodiecook/2025/06/05/10-no-fluff-rules-to-build-your-personal-brand-in-2025/> [https://perma.cc/6PJU-7HP8].

⁸⁵ Bucci, FOLLOWED at 202; see also Johnson at 15 (“Personal branding...is about bringing focus to your actions so that the right kinds of people can find you”).

⁸⁶ See, e.g., Kaputa at 83-96 (chapter entitled “Tap into the power of symbols, logos, and design to imprint your brand identity”).

Personal Brand is packaging,” counsels Montoya.⁸⁷ Peters titles chapter 6 of his manifesto, “You—Brand You—are a ‘package.’”⁸⁸ He advises those contemplating how to package themselves to seek inspiration at the supermarket, perusing each aisle with an eye out for the product packaging that grabs their attention,⁸⁹ as well as seeking help from graphic artists and packaging designers.⁹⁰ Why? “Because Packaging is Expressed Personality. For Ford. And Fidelity. ... And McDonald’s. And for me. And...for you.”⁹¹ *Personal Branding for Dummies*, likewise, devotes substantial real estate to “creating a logo and selecting colors, fonts, and images for your brand.”⁹² The author of that book, writing separately for *Huffington Post*, advises: “From business cards to your website, you want to create a consistent visual image for your brand that makes the right impression on your target audience. You want to select images, colors and fonts that create the visual effect that expresses your personal brand.”⁹³ The personal branding literature also relies heavily on trademark and marketing language in ways that extend beyond packaging and labeling. According to Peters, readers must “create a message and strategy to promote the brand called You,” including not just adopting a unique logo, but also “demonstrating an appreciation for design” and launching a “personal brand campaign.”⁹⁴ Summarizing the literature, Marwick writes, “Self-branding practitioners identify their strengths and goals and use advertising and marketing techniques to frame themselves for a potentially lucrative audience.”⁹⁵

At the most basic level, the early personal branding literature discusses both selecting a trademark or business name and crafting a slogan or tagline that summarizes the person’s unique attributes, skills, or appeal.⁹⁶ As Kaputa titles a chapter of *U R A Brand!*, “Harness the power of names, signature words, and phrases to lock in your message.”⁹⁷ Peters never shies away from trademark language: “A brand is a ‘trust mark.’ It’s shorthand. It’s a sorting device.”⁹⁸ So in building a personal brand, “Consider ‘trademarks.’”⁹⁹ Kaputa concurs, exploring stereotypes and pitfalls associated with different kinds of names¹⁰⁰ and encouraging readers to eschew the boring or off-putting (“overly ethnic”) names they were assigned at birth and “create a brand-worthy name,” following the lead of icons like Ralph Lauren (nee Lipschitz), Sigourney Weaver (born Susan), Sean “Diddy” Combs, Tiger Woods, J.Lo, or Bono.¹⁰¹ “Having a different name that is ownable in the category is critical,” she notes, once again analogizing names to corporate trademarks.¹⁰² Kaputa also recommends “owning” words, whether coined or generic, as a path to self-branding.¹⁰³ Johnson deconstructs

⁸⁷ Montoya at 218.

⁸⁸ Peters, *THE BRAND YOU* 50 AT 46

⁸⁹ Peters, *THE BRAND YOU* 50 AT 46.

⁹⁰ Peters, *THE BRAND YOU* 50 AT 48.

⁹¹ Peters, *THE BRAND YOU* 50 AT 47.

⁹² PERSONAL BRANDING FOR DUMMIES at 232-250.

⁹³ Susan Chritton, *Personal Branding and You*, *Huffington Post* (Feb. 20, 2013), http://www.huffingtonpost.com/susan-chritton/personal-brands_b_2729249.html

⁹⁴ Peters, *The Brand Called You*, Fast Co.

⁹⁵ Marwick at 194.

⁹⁶ See, e.g., Fisher Roffer at 32 (“Create a Tagline”).

⁹⁷ Kaputa at 97-

⁹⁸ Peters, *THE BRAND YOU* 50 AT 25.

⁹⁹ Peters, *THE BRAND YOU* 50 AT 28.

¹⁰⁰ Kaputa at 100-105.

¹⁰¹ Kaputa at 101-103.

¹⁰² Kaputa at 103.

¹⁰³ Kaputa at 107-111 (providing examples such as “the Atkins Diet,” “Freakonomics,” Seth Godin’s “ideavirus,” and Jack Welch’s “boundarylessness”).

presidential slogans over the years, holding them up as exemplars of personal brand messaging.¹⁰⁴ *Personal Branding for Dummies* encourages “summing up your personal brand in a tagline” or slogan, defined as a short, catchy phrase that captures “your unique promise of value,” just as “Finger lickin’ good” does for KFC or “Just do it!” does for Nike.¹⁰⁵

Personal Brand as Copyright

Copyright protection is available for expressive works fixed in a tangible medium of expression—including books, poems, films, music, sculpture, choreography, works of visual art, and other products of creativity. “Storytelling” and “narrative” are major themes in marketing and self-help literature on personal brand, which helps connect the dots between personal brand and copyright claims.¹⁰⁶

“A personal brand is your story,” counsels one article.¹⁰⁷ “[S]torytelling is no longer just a creative skill... it’s the key to personal branding,” assures another.¹⁰⁸ “Personal branding...involves a lot of storytelling,” Johnson attests.¹⁰⁹ Harvard Business Review proffers a seven-step process to building your personal brand; after formulating “a list of adjectives or descriptive phrases you think capture the real you,” the authors suggest you “[c]onstruct your personal narrative,” keeping in mind that “[a] brand is not just a jumble of descriptors floating in the minds of other people; it’s built on the meaningful stories that you’ve communicated and that your audience has processed. You need to identify, craft, and refine the narratives that will communicate your brand.”¹¹⁰ Once that narrative is refined, it’s time to market yourself—by sharing “your brand story.”¹¹¹ And *Personal Brand for Dummies* coaches readers, “Personal branding gives you clarity to create your story, live your story, and then tell that story to the right audience. Stories are personal, and nothing builds your brand like a good story.”¹¹² And “Your story becomes your personal brand, and you need to think about which stories you tell to others to illustrate who you are.”¹¹³ And “Your goal is to tell your brand’s story with clarity.”¹¹⁴ Banet-Weiser, who conducted extensive interviews with marketers and experts for her book *Authentic*, reports that “brands are actually a story told to the consumer.”¹¹⁵ And Osorio et

¹⁰⁴ Johnson at 66-69.

¹⁰⁵ Chritton at 120.

¹⁰⁶ See, e.g., Bucci, FOLLOWED at 222-23; 56 (discussing how her personal brand, which originally used social media to document her preparation for a bikini competition, “closely matched the basic structure of Joseph Campbell’s model of the monomyth, or Hero’s Journey, a storytelling framework that also mirrors stages of human experience.”).

¹⁰⁷ Scott Baradell, *How to Build a Successful Personal Brand in 5 Simple Steps*, ENTREPRENEUR (Aug. 9, 2022), <https://www.entrepreneur.com/growing-a-business/5-simple-steps-to-build-a-personal-brand/429483> [https://perma.cc/39HS-BVMS].

¹⁰⁸ Victoria Chynoweth, *The Future Belongs to Storytellers: Why Your Personal Brand Matters*, ROLLING STONE (Apr. 22, 2025), <https://www.rollingstone.com/culture-council/articles/future-belongs-storytellers-why-your-personal-brand-matters-1235321846/> [https://perma.cc/8F5F-T9TL].

¹⁰⁹ Johnson at 39; see also id. at 69 (“Part of personal branding is helping to craft your own story so that no one else does it for you”).

¹¹⁰ Jill Avery and Rachel Greenwald, *A New Approach to Building Your Personal Brand*, HARVARD BUSINESS REVIEW MAGAZINE (May-June 2023), <https://hbr.org/2023/05/a-new-approach-to-building-your-personal-brand> [perma.cc/D7ZR-MNVW].

¹¹¹ Avery & Greenwald, HBR

¹¹² PERSONAL BRANDING FOR DUMMIES at 18.

¹¹³ PERSONAL BRANDING FOR DUMMIES at 18.

¹¹⁴ PERSONAL BRANDING FOR DUMMIES at 18.

¹¹⁵ Sarah Banet-Weiser, AUTHENTIC: THE POLITICS OF AMBIVALENCE IN A BRAND CULTURE 4 (2012); id. at 223 n.4 (describing her research methods).

al summarize the personal brand literature, “a personal brand is a set of characteristics rendered into a narrative.”¹¹⁶ Writing on self-identity before the personal branding craze, but in a quote found prescient by scholars writing on personal brand, Anthony Giddens noted “identity is not to be found in behavior, nor –important though this is – in the reactions of others, but in the capacity to keep a particular narrative going.”¹¹⁷

A focus on imagery complements the emphasis on story throughout the literature, and it too suggests parallels between personal brand and copyrightable works. A review of academic papers on personal brand notes “Scholars are unanimous regarding the need for a narrative and related imagery.”¹¹⁸ Tom Peters entitles one of his chapters “Paint a compelling, technicolor word picture of who you are.”¹¹⁹ When it comes to personal branding, he urges, “Humans ‘think’ visually. A picture really is worth a million words. And great brands have readily identifiable icons....strong, simple images that connect with consumers.”¹²⁰ In crafting your personal brand, “Paint word pictures. Real pictures.”¹²¹

While one policy goal of copyright law is to reward creativity with exclusive rights, another is to provide incentive for the production of future creative works. “Creativity” is among the most dominant themes in writing on personal brand.¹²² A close sibling to the idea of “uniqueness” discussed above, but perhaps one that imbues the personal brander with more agency, creativity appears in discussions of both the motivation behind cultivating a personal brand and the features of the most successful personal brands. Marwick argues that even with all its drawbacks, self-branding “provides many practitioners with a sense of agency and creativity.”¹²³ Banet-Weiser observes “feminist scholars are now exploring the potential benefits, especially for girls, of exploring the Internet as a space in which creative identity-making...might be possible.”¹²⁴ And if influencers are the paragon of personal branders, the recent shift toward calling all influencers “content creators” or, simply “creatives,” speaks volumes.¹²⁵

Personal Brand as Right of Publicity

The personal brand publications with a self-help bent—Peters and his ilk—also include some advice that sounds in right of publicity. The right of publicity, with its roots in privacy protections, gives individuals a cause of action against the unauthorized commercial use of their name, image, likeness,

¹¹⁶ Osorio et al at 697; see also Johnson at 50 (“consider the narrative” in constructing your resume as a reflection of your personal brand).

¹¹⁷ Anthony Giddens, *Modernity & Self-Identity* 489 (1991), cited in Antonia Erz & Anna-Bertha Heeris Christensen, *Transforming Consumers Into Brands: Tracing Transformation Processes of the Practice of Blogging*, *Journal of Interactive Marketing* 43 (2018) 69-82, 72.

¹¹⁸ Gorbatov et al at 6.

¹¹⁹ Tom Peters, *THE BRAND YOU* 50 xii (1999) (note that the chapter titles listed under “contents” are not identical to the chapter titles as they appear in the book. The alternate title for the chapter referenced here is “Give the world a clear picture of who you are.” Id. at 65.)

¹²⁰ Peters, *THE BRAND YOU* 50 at 37.

¹²¹ Peters, *THE BRAND YOU* 50 at 40.

¹²² E.g. Johnson at 6 (Describing personal branding as “creative”).

¹²³ Marwick at 202.

¹²⁴ Banet-Weiser at 62.

¹²⁵ See, e.g., Bucci at 19 (“As a Content Creator, you interact with creativity every single day...creativity is knocking at your door with potential content ideas for your platform.”). But see also ___ (differentiating influencers from content creators).

or persona—all terms and concepts that have featured prominently in the personal branding literature and scholarship. Law professor Jennifer Rothman, in the introduction to her book *The Right of Publicity: Privacy Reimagined for a Public World*, writes: “The right of publicity is something we all have—it is the right to stop others from using our identities, particularly our names and likenesses, without permission. It is sometimes thought of as a property right in one’s personality.”¹²⁶

Names, of course, straddle both trademark and right of publicity. But where trademark law requires a name be used as a mark in connection with the sale of goods or services, a practice that only a small subset of lay people engage in, right of publicity protects against the unauthorized use of someone’s name in reference to the person themselves. So the advice captured in every book, article, and blurb on personal branding—to make a name for oneself and make that name known—imbues in individuals the idea that their name is a thing of value, a reflection of their investment in themselves, and a signifier uniquely associated with them, even if they don’t use it as a literal trademark. And on social media, folks are encouraged to choose another name in the form of their handle or username with the understanding that they’ll construct their online brand around that alternative name.¹²⁷ While there may be more than one person named Gary Vaynerchuk, there can only be one @garyvee on Twitter, Facebook, and Instagram. Marwick found “people in technology agreed with self-branding consultants that a successful personal brand involves a distinct username.” Johnson’s advice is representative when she counsels that selecting and “claiming” a name for social media is a crucial step in building a personal brand.¹²⁸

Personal branding literature also sounds in right of publicity in its advice for individuals engaged in a personal brand quest to focus on their image, appearance, or physical presentation. Marwick notes that “self-branding involves not only creating an image of oneself, but also making that image visible to others.”¹²⁹ *Personal Branding for Dummies* has an entire chapter called “Fashioning Your Image to Match Your Personal Brand,”¹³⁰ while Fisher Roffer’s book on personal branding for women devotes a chapter to appearance, including hair, makeup, nails, and clothing.¹³¹ Montoya discusses clothing, hairstyle, jewelry, and piercings, as well as how someone speaks, walks, and carries themselves, as part of their personal brand.¹³² And Bucci refers to “dressing up as” one’s social media persona.¹³³

Kaputa, likewise, recommends paying close attention to what your “distinct visual identity”¹³⁴ conveys as a component of personal brand and considering how clothing, hair, jewelry, and other aspects of your appearance fortify your brand message. Kaputa’s tips include “think of clothes as

¹²⁶ Jennifer Rothman, THE RIGHT OF PUBLICITY: PRIVACY REIMAGINED FOR A PUBLIC WORLD 1 (2018).

¹²⁷ See Alexandra J. Roberts, *Getting a Handle on Handles*, Communications of the ACM (Jan. 2023),

<https://dl.acm.org/doi/pdf/10.1145/3571451> [] (“On the consumer-facing Web, your handle is the doorway to your personal brand”).

¹²⁸ Johnson at 73.

¹²⁹ Alice E. Marwick, STATUS UPDATE 186 (2013).

¹³⁰ PERSONAL BRANDING FOR DUMMIES at 213-232.

¹³¹ Robin Fisher Roffer, Make a name for yourself: 8 steps every woman need to create a personal brand strategy for success (2000); see also Kaputa, U R A BRAND! at 66-67 (Arguing self-presentation is crucial to personal branding; ““Everything communicates visually—from your shoes to the watch you wear, your hairstyle to your smile (or frown), your home address to the car you drive.””).

¹³² Montoya at 36, 97-99; see also Kaputa at 125-26 (“Consider the way your voice sounds” in constructing personal brand—“The voice is a potent branding device.”).

¹³³ Bucci at 121.

¹³⁴ Kaputa, U R A BRAND! at 73

packaging,” “use hair as a branding device,” “have a signature color or palette,” and “look different” to stand apart from everyone else.¹³⁵ She cites examples from Donald Trump (the hair) and Larry King (the suspenders) to Jackie Kennedy (the pillbox hats; the oversized sunglasses) and Margaret Thatcher (the purses) to illustrate how well-chosen, consistent sartorial choices can become a key marker of brand.¹³⁶ Readers should ask “Is [your look] consistent with your self-brand strategy? Is there a signature feature or trademark accessory you could use to heighten your visual identity?”¹³⁷ Kaputa’s advice, common in the field, to choose a signature color¹³⁸ or accessory builds upon the idea that a person’s self-presentation might be singularly associated with them and become an identifiable part of their personal brand. In some right of publicity cases appearance, style, and image are paramount, and specific hairstyles or articles of clothing are cast as “tells” that the imitator is evoking the identity-holder’s persona.

Most importantly, the ideas of “identity” and “persona” thread throughout the writing on personal brand from every camp. The idea of personal brand is synonymous with “cultivating your own public persona.”¹³⁹ “A distinguished, constantly-attended-to Identity is anyone’s ...most cherished asset,” advises Peters.¹⁴⁰ “If ‘identity’ works for BMW...it’ll work for you...if you work at it.”¹⁴¹ The more contemporary writing on constructing personal brand in the context of digital culture has far more to say about identity and persona, often grappling with the tension creators face in maintaining a personal brand or “public persona”¹⁴² that is somehow both the self and not the self—both authentic and purely constructed performance.¹⁴³ Lair et al observe, “At its most general level, the rhetoric of personal branding encourages and endorses the process of turning oneself into a product—in effect, engaging in self-commodification.”¹⁴⁴ Marwick describes one early influencer whose “persona-brand...was literally a ‘thing’ separate from her everyday understanding of herself.”¹⁴⁵ Like many scholars, she credits social media with enabling individuals to “strategically construct an identity,”¹⁴⁶ to “create and project a self-conscious persona,”¹⁴⁷ in ways that would be impossible without those platforms.¹⁴⁸ “The edited self,” or the self-branded persona, “is an entrepreneur whose product is a neatly packaged, performed identity.”¹⁴⁹ Banet-Weiser titles a section of her chapter on self-branding “Identity as Industry”¹⁵⁰ and casts online spaces and social media profiles as opportunities for “identity-making,” sites where users “establish creative,

¹³⁵ Kaputa, U R A BRAND! at 80.

¹³⁶ Kaputa, U R A BRAND! at 80.

¹³⁷ Kaputa, U R A BRAND! at 71.

¹³⁸ Kaputa at 89.

¹³⁹ Johnson at 6.

¹⁴⁰ Peters, THE BRAND YOU 50 at 129.

¹⁴¹ Peters, THE BRAND YOU 50 at 129.

¹⁴² Abidin at 47.

¹⁴³ Marwick at 167 (“Self-branding...is inherently contradictory. It promotes both ‘authenticity’ and business-targeted self-presentation. This incongruity creates tension and stress for practitioners, who must engage in emotional labor and self-surveillance to ensure an appropriate branded persona.”); see also Peter Montoya, *personal marketing and personal branding*, www.petermontoya.com/mt/what_is_personal_branding/home.htm (accessed Nov. 11, 2003), cited in Lair et al at 324 (“A Personal Brand is not you; it’s the public projection of your personality and abilities.”).

¹⁴⁴ Lair et al, *Marketization and the Recasting of the Professional Self*: 18 MGMT COMM Q 307, 319.

¹⁴⁵ Marwick at 164.

¹⁴⁶ Marwick at 192.

¹⁴⁷ Marwick at 194.

¹⁴⁸ Marwick at 192.

¹⁴⁹ Marwick at 195.

¹⁵⁰ Banet-Weiser at 85.

multifaceted identities” as a form of self-branding.¹⁵¹ Not only do these terms also appear in right of publicity case law,¹⁵² they even appear directly in some state statutes.¹⁵³

Personal brand as property

The use of trademarks and creation of expressive works are easily categorized as generating property rights in the form of intellectual property. In tracing the early roots of the right of publicity in the US, Jennifer Rothman notes the propertization of that right too.¹⁵⁴ In 1973, when performing artist Zaccchini challenged the unauthorized television broadcast of his human cannonball act, he framed it as “an unlawful appropriation of [his] professional property”; his petition to the US Supreme Court cast the right of publicity as “the right of exclusive control over his professional affairs.”¹⁵⁵ While the Supreme Court didn’t pick up that “professional” language in its decision, we see it echoed in some modern lawsuits alleging misappropriation of right of publicity based on violation of personal brand.¹⁵⁶ And the Supreme Court defined right of publicity in that case—the only right of publicity case it has decided to this day—as an individual’s right to control “commercial display and exploitation of his personality and the exercise of his talents,”¹⁵⁷ a definition that also serves those influencers’ claims and one consistent with definitions of personal brand. The current treatment of an individual’s right of publicity as alienable¹⁵⁸ and, in many states, descendible,¹⁵⁹ underscores its legal status—rightly or wrongly—as more of a property right than one inherent in and inextricable from the individual.

Several influencers, offering advice on developing and building one’s personal brand on social media, discuss both the urge to copy others and the reasons why doing so is verboten. Bucci

¹⁵¹ Banet-Weiser at 80-81, citing Sandra Weber and Claudia Mitchell, *Imaging, Keyboarding, and Posting Identities: Young People and New Media Technologies*, in YOUTH, IDENTITY, AND DIGITAL MEDIA 27 (ed. David Buckingham 2008),

¹⁵² E.g. Henley v. Dillard Dep’t Stores, 46 F. Supp. 2d 587, 591 (N.D. Tex. 1999) (misappropriation claim may be based on defendant’s use of “an aspect of that person’s persona in a manner that symbolizes or identifies the person”); see also Rothman, THE RIGHT OF PUBLICITY 3 (some states “allow liability for any use that conjures up a person’s identity”).

¹⁵³ E.g., Ohio Rev. Code § 2741 et seq. (“a person shall not use any aspect of an individual’s persona for a commercial purpose”); 765 ILCS 1075/1 et seq. (prohibiting unauthorized use of a person’s “identity” for commercial purpose).

¹⁵⁴ See also Comedy III Prods., Inc. v. Gary Saderup, Inc., 25 Cal. 4th 387, 399 (2001) (“The right of publicity, like copyright, protects a form of intellectual property that society deems to have some social utility.”); see also Fagundes & Contreras at 767 (“while the right of publicity conceptually remains a tort, courts have begun to imbue it with property-like characteristics such as transferability and heritability”).

¹⁵⁵ Rothman, THE RIGHT OF PUBLICITY 76-77, citing Zaccchini v. Scripps-Howard Broad., 433 US 562 (No. 76-577)

¹⁵⁶ See, e.g., Plaintiffs’ Response in Opposition to Defendants’ Partial Motion to Dismiss Counts 2, 3, 5, 6, 7, & 8 of Plaintiffs’ Complaint, Gifford v. Sheil, No. 1:24-cv-00423-RP (July 22, 2024) (Dkt. 16) at 12 (“Protecting one’s name or likeness from misappropriation is socially beneficial because it encourages people to develop special skills, which then can be used for commercial advantage,” quoting Matthews v. Wozencraft, 15 F.3d 432, 437-38 (5th Cir. 1994).

¹⁵⁷ Zaccchini v. Scripps-Howard Broad., 433 US 562, 569-73, quoting Zaccchini v. Scripps-Howard, 351 N.E.2d at syllabus 3 (Ohio 1977), cited in Rothman, THE RIGHT OF PUBLICITY 78.

¹⁵⁸ See generally Jennifer Rothman, *The Inalienable Right of Publicity*, 101 GEO. L. J. 185 (2012) (arguing that the right of publicity should not be alienable, in part because it is impossible to fully separate identity-holders from their identities and the ability to control them); see also Jennifer E. Rothman, *Navigating the Identity Thicket: Trademark’s Lost Theory of Personality, the Right of Publicity, and Preemption*, 135 HARV. L. REV. 1271, 1330 (2022).

¹⁵⁹ About 25 states currently recognize a postmortem right of publicity, including California, New York, Nevada, and Florida. Chang Chae, *Understanding Rights of Publicity or Name, Image, Likeness (NIL)*, The American College of Trust & Estate Council (ACTEC) (Apr., 2022), <https://actecfoundation.org/podcasts/understanding-rights-of-publicity-name-image-likeness->

nil/#:~:text=Because%20of%20this%20view%20that%20the%20right,Island%2C%20Tennessee%2C%20Texas%2C%20Utah%2C%20Virginia%2C%20and%20Washington [https://perma.cc/G86Q-LLPE].

describes the “Imitation Stage” as one of the nine stages of personal branding and uses terms like “copy,” “plagiarize,” and “steal” in characterizing what that stage can look like for burgeoning influencers who lack confidence or an understanding of how to create the kind of content they want to put out.¹⁶⁰ While the impulse is normal, she argues, copying others constitutes “behaving without integrity” and “might be considered social suicide.”¹⁶¹ Walker similarly acknowledges the urge to imitate others and use them as models, taking inspiration from their content, design style, speaking style, personality, body language, and overall presentation.¹⁶² He includes the caveat “it’s crucial that you don’t fixate on one individual and copy everything they do.”¹⁶³ Professors Fagundes and Contreras, describing norms and legal practices around life story rights, acknowledge the expectation of protectability, writing “the explosive growth of social media over the last decade, the prevalence of social media influencers and the monetization of individual personalities through technological means (clicks, eyeballs, likes, shares) both confirm and reinforce the lay intuition that one’s personal story is, in fact, an enforceable, and bankable, property right.”¹⁶⁴

Perhaps unsurprisingly, articles on personal brand, particularly those by lawyers, are emphatic that creating a personal brand results in ownership. “Personal branding is a legal asset,” one lawyer insists.¹⁶⁵ “Anyone can build his or her own personal brand through social media. And when you do, you own that brand,”¹⁶⁶ states a law firm’s website. Lawyers emphasize trademark and copyright registration in particular, advising “The best practice for influencers...is to register unique content for copyright as soon as it is created.”¹⁶⁷ One lawyer cautions sternly, “many overlook the critical IP implications tied to their personal brands. The early clearance and protection of your brand name, social media handles, and associated rights can safeguard your investment and enhance your ability to monetize your following effectively.”¹⁶⁸ Another warns,

As influencers evolve from content creators into lifestyle brands, trademark law is becoming their most valuable shield...Your name, logo, tagline, and even your social media handle can be trademarked—and without protection, they’re vulnerable to copycats, legal disputes, and even loss of commercial control. ...[F]ailing to protect your trademarks is a risk you can’t afford.¹⁶⁹

¹⁶⁰ Bucci at 174-75.

¹⁶¹ Bucci at 174-76.

¹⁶² Walker at 54-60.

¹⁶³ Walker at 54.

¹⁶⁴ Dave Fagundes and Jorge L. Contreras, *Private Ownership of Public Facts: Docudramas, Deals, and Life Story Rights*, 57 UC Davis L. Rev. 743, 749 (2023).

¹⁶⁵ David N. Sharifi, *Influencer Trademark Case: What Recent Disputes Mean for Personal Branding and IP Strategy*, LA Tech & Media Law (accessed June 23, 2025), <https://techandmedialaw.com/influencer-trademark-case/> [https://perma.cc/ACU6-ZMLD] (“In the creator economy, your brand is your business, and the legal foundation of that brand is your trademark portfolio... trademark protection isn’t optional—it’s essential.”).

¹⁶⁶ *Protecting Your Personal Brand*, Parsons & Goltby, PLLC, <https://patentsavers.com/protecting-personal-brand/> [https://perma.cc/KZ5Q-QNDL] (accessed June 13, 2025).

¹⁶⁷ Sushila Chanana and Thomas J. Pardini, *Copyright Law for Influencers and Brands: How Content Creators and Companies Hiring Them Can Navigate Copyright Law for a Successful Partnership*, Farella Braun + Martel (Apr. 15, 2024), <https://www.fbm.com/publications/copyright-law-for-influencers-and-brands-how-content-creators-and-companies-hiring-them-can-navigate-copyright-law-for-a-successful-partnership/> [https://perma.cc/manage/create?folder=169951-169952-336185].

¹⁶⁸ Claybourn, *Protecting Your Own Personal Brand*.

¹⁶⁹ Sharifi, *Influencer Trademark Case: What Recent Disputes Mean for Personal Branding and IP Strategy*, LA Tech & Media Law (accessed June 23, 2025), <https://techandmedialaw.com/influencer-trademark-case/> [couldn’t create perma].

And where there is (perceived) ownership, it follows that there are (perceived) enforceable rights. Even in the early days of the personal branding movement, Montoya cautioned readers to “Check your competition. Are you being copied? This is one of the most common problems with creating a successful Personal Brand: less imaginative people will follow your blueprint.”¹⁷⁰ The “risks” he identifies—“dilution of your brand identity and confusion”—sound in trademark causes of action.¹⁷¹ Today, those writing about personal brand emphasize policing it: “Part of having a personal brand is to monitor it and make sure that others are not using your brand without your permission. Keep an eye out for unauthorized uses of your brand or intellectual property, and if you come across any, take legal action immediately to put a stop to it.”¹⁷² Lawyers urge people to “stay vigilant” and “monitor” others’ activities when it comes to protecting personal brand.¹⁷³ Some articles jump explicitly to assertions that all borrowing in the personal brand context amounts to copyright infringement,¹⁷⁴ which ignores a great deal of nuance—*influencers taking inspiration from the style, format, personality, and captions of others’ posts or resumes are not necessarily infringing copyrightable aspects of others’ works.*

Personal Brand Stories

In the stories and cases that follow, influencers and creators accuse peers, employers, and third parties of harming their personal brand in some way. Some of those plaintiffs are more sympathetic than others and some of their legal claims are more credible than others. The complaints allege numerous causes of action, including but not limited to trademark/trade dress, copyright, and right of publicity/false endorsement, and those specific claims range from strong to weak. At their most stripped-down, though, these are stories about individuals who have invested in the ongoing process of constructing and maintaining a personal brand and allege some kind of harm to it by another. But as the Federal Circuit said in *Person’s v. Christman*, “When the law has been crafted with the clarity of crystal, it also has the qualities of a glass slipper: it cannot be shoe-horned onto facts it does not fit, no matter how appealing they might appear.”¹⁷⁵ Whether these doctrines are crystal clear is open for debate. But while the appeal of intellectual property law is evident for these plaintiffs, the doctrines often don’t fit the facts without cutting off a few toes.

The Amazon Influencer

Sydney Nicole Gifford is a content creator and Amazon influencer with over half a million followers across social media platforms, including Instagram and TikTok, where she uses the handle @sydneynicolegiff. On those platforms, as well as Amazon Storefront and bio.site, Gifford posts curated product lists, carefully styled outfits and looks, home décor, and other slices of her life in

¹⁷⁰ Montoya at 200.

¹⁷¹ Montoya at 200.

¹⁷² *Protecting Your Personal Brand*, Parsons & Goltby.

¹⁷³ Joshua A. Claybourn, *Protecting Your Own Personal Brand*, Jackson Kelly PLLC (July 9, 2024), <https://www.jacksonkelly.com/the-legal-brief-blog/celebrity-trademarks-what-to-do-if-your-brand-is-you> [https://perma.cc/6SHG-2SA5].

¹⁷⁴ See, e.g., Meg Giuseppi, 7 Reasons Not to be a Personal Brand Copycat, Executive Career Brand (May 8, 2012), <https://executivecareerbrand.com/7-reasons-not-to-be-a-personal-brand-copycat/> [https://perma.cc/YMM8-TMSK] (“You see a beautifully written, branded resume – or maybe a LinkedIn profile – of a job seeker with similar qualifications to yours, seeking the kind of job you want. It sounds a lot like you, and you don’t write so well, so you see no reason why you shouldn’t use some of that good writing in your own resume or LinkedIn profile... In other words, plagiarizing – known as copyright infringement.”).

¹⁷⁵ *Person’s v. Christman*, 900 F.2d 1565 (Fed. Cir. 1990).

short videos, still images, and accompanying text. The hair, makeup, clothing and accessories feature a bare-faced, minimalist look commonly known as the “clean girl” aesthetic and exemplified by celebrity influencers like Haley Bieber.¹⁷⁶ The décor, similarly, features neutral tones as an extension of that same aesthetic to one’s surroundings; the most famous exemplar is the queen of the influencers, Kim Kardashian,¹⁷⁷ whose video tours of her home(s) and office(s) have garnered millions of views. Gifford claims she spends “upwards of ten hours a day, seven days a week” researching and trying out products, styling videos and photos promoting those products, and editing and posting them.¹⁷⁸

In 2024, Gifford sued another content creator, Alyssa Sheil, for violating Gifford’s “unique brand identity.” More precisely, and relevant to situating the project of personal brand in relation to the human self and the externally constructed self, Gifford and her limited liability company, Sydney Nicole LLC, sued Sheil in her individual capacity and her limited liability company, Alyssa Sheil LLC.¹⁷⁹ The Gifford plaintiffs complained that the Sheil defendants posted content that was too similar to Gifford’s own in a variety of ways that don’t read as particularly anchored to legal rights, leading the New York Times to run an article headlined *Can You Copyright a Vibe?*¹⁸⁰ Other outlets cast the dispute similarly, with Vogue asking *Can You Ever Really Own an Aesthetic?*,¹⁸¹ the Independent inviting readers to *Meet the ‘clean girl’ influencers fighting a vicious Battle of the Beige*,¹⁸² and The Guardian snarking *Who’s the Most Basic Person on the Internet? A Court Will Have to Decide Between These Two Beige Influencers*.¹⁸³ Gifford included eight causes of action in her complaint: direct and vicarious copyright infringement, Digital Millennium Copyright Act (DMCA) violations, trade dress

¹⁷⁶ Mia Sato, *Bad Influence*, THE VERGE (Nov. 26, 2024), <https://www.theverge.com/2024/11/26/24303161/amazon-influencers-lawsuit-copyright-clean-aesthetic-girl-sydney-nicole-gifford-alyssa-sheil> [https://perma.cc/9MNU-H6Y2] (“The “clean girl” is an image, a vibe, a genre — one that promotes self-care, comfort, and looking put-together. The most famous clean girl is perhaps Hailey Bieber, and there are countless explainers, tutorials, think pieces, and critiques of the trending aesthetic online.”); Kennedy Felton, *Social media aesthetic copyright case heads to court*, STRAIGHT ARROW NEWS (Dec. 11, 2024), <https://san.com/cc/social-media-aesthetic-copyright-case-heads-to-court/> [https://perma.cc/4F58-T952] (“The ‘beige girl aesthetic’ is part of the larger ‘clean girl’ trend, which gained momentum in 2022. Stars like Hailey Bieber and Sofia Richie Grainge have popularized the minimalist style.”).

¹⁷⁷ Sato, *Bad Influence* (Both Gifford and the influencer she accuses of copying her “owe a great deal of their look and online persona to [Kardashian,] the person many consider to be the first true influencer”); Arwa Mahdawi, *Who’s the Most Basic Person on the Internet? A Court Will Have to Decide Between These Two Beige Influencers*, THE GUARDIAN (Dec. 10, 2024), <https://www.theguardian.com/commentisfree/2024/dec/10/influencers-lawsuit-sydney-nicole-gifford-alyssa-sheil> [https://perma.cc/C9AG-K7B4] (“If anyone has a right to claim ownership over the look it would probably be Kim Kardashian”).

¹⁷⁸ Sydney Nicole Gifford v. Alyssa Sheil, First Amended Complaint, 1:24-CV-00423RP at ¶ 11 (W.D. Tex., Dec. 11, 2024).

¹⁷⁹ Sydney Nicole Gifford v. Alyssa Sheil, First Amended Complaint, 1:24-CV-00423RP at ¶¶ 1-4. (W.D. Tex., Dec. 11, 2024).

¹⁸⁰ Sandra E. Garcia, *Can You Copyright a Vibe?* NY TIMES (Dec. 5, 2024), <https://www.nytimes.com/2024/12/05/style/clean-girl-aesthetic-influencer-lawsuit.html> [https://www.nytimes.com/2024/12/05/style/clean-girl-aesthetic-influencer-lawsuit.html]; see also Annelise Levy, *Influencers Settle Novel Vibe-Theft Copyright Lawsuit for \$0*, BLOOMBERG (May 28, 2025), <https://news.bloomberg.com/ip-law/influencers-settle-novel-vibe-theft-copyright-lawsuit-for-0> [no perma].

¹⁸¹ Emma Specter, *Can You Ever Really Own an Aesthetic? That’s the Question at the Center of This Influencer Lawsuit*, Vogue (Dec. 10, 2024), <https://www.vogue.com/article/influencer-lawsuit-explainer> [perma.cc/DN8H-9HU3].

¹⁸² Rachel Richardson, *Meet the ‘clean girl’ influencers fighting a vicious Battle of the Beige*, THE INDEPENDENT (Dec. 10, 2024), <https://www.the-independent.com/life-style/clean-girl-sydney-nicole-gifford-alyssa-sheil-tiktok-b2661808.html> [https://perma.cc/GS8P-LS4S].

¹⁸³ Mahdawi, *Who’s the Most Basic Person on the Internet?*

infringement, misappropriation of likeness, tortious interference, unfair trade practices, and unjust enrichment.

As the Vogue article summarizes, Gifford accuses Sheil of “ripping off” everything from her font choices to her hairdo,¹⁸⁴ highlighting the breadth of the material she claims as her intellectual property. Citing at least fifty different allegedly infringing posts across several platforms, Gifford alleges that her “unique brand identity”¹⁸⁵ comprises, and Sheil copies: text captions on videos, like “my best amazon home purchases of 2023”¹⁸⁶; her look, including “haircut,”¹⁸⁷ “apparel,”¹⁸⁸ “makeup,”¹⁸⁹ “poses,”¹⁹⁰ and a flower tattoo on her arm;¹⁹¹ products, including specific “wooden coffee tables” and “cookware sets” available on Amazon,¹⁹² the platform for which both influencers are affiliate sellers; elements of her website on bio.site, “including a similar beige background, link to [her] Amazon Storefront website, capitalized sans serif font, caption, and emoji”;¹⁹³ the “styling, tone, camera angle, and/or text” of specific social media posts;¹⁹⁴ Gifford’s “distinctive trade dress comprised of monochrome cream, grey, and neutral-beige colors coupled with modern, minimal, sophisticated styling of Amazon products”;¹⁹⁵ her choice to promote only products “falling within the monochrome cream, grey, and neutral-beige color scheme”;¹⁹⁶ her “styling of products in modern, minimal backdrops”;¹⁹⁷ her selling black, white, and gray loungewear with specific font and text placement on the sweatshirts;¹⁹⁸ and her “voice”¹⁹⁹ and “distinct relatable way of speaking to followers.”²⁰⁰ Gesturing broadly at everything from her minimalist approach²⁰¹ to her “appearance and sound,”²⁰² Gifford seemingly asserts “intellectual property rights”²⁰³ in it all. Both Plaintiff and Defendant articulate that their personal brand is what’s at stake in the fight.²⁰⁴

¹⁸⁴ Specter, *Can You Ever Really Own an Aesthetic?*

¹⁸⁵ Gifford v. Sheil, First Amended Complaint, 1:24-CV-00423RP at ¶¶ 9, 10.

¹⁸⁶ Gifford, First Amended Complaint ¶ 20.

¹⁸⁷ Gifford, First Amended Complaint ¶ 73; Plaintiffs’ Response in Opposition to Defendants’ Partial Motion to Dismiss Counts 2, 3, 5, 6, 7, & 8 of Plaintiffs’ Complaint, Gifford v. Sheil, No. 1:24-cv-00423-RP (July 22, 2024) (Dkt. 16) at 11 (describing “the drastic change in not only Sheil’s online presence but very appearance after the parties initially met in person in December 2022, including changing her hair to match Gifford’s and obtaining a highly similar flower tattoo on her inner arm after Gifford posted photos showing her new hairstyle and tattoo on the same part of her body.”).

¹⁸⁸ Gifford, First Amended Complaint ¶ 73.

¹⁸⁹ Gifford, First Amended Complaint ¶¶ 78, 79.

¹⁹⁰ Gifford, First Amended Complaint ¶ 79.

¹⁹¹ Gifford, First Amended Complaint ¶ 78.

¹⁹² Gifford, First Amended Complaint ¶ 28; Ex. A, pp.2-13, 43, 46.

¹⁹³ Gifford, First Amended Complaint ¶¶ 29-30.

¹⁹⁴ Gifford, First Amended Complaint ¶ 40.

¹⁹⁵ Gifford, First Amended Complaint ¶ 71.

¹⁹⁶ Gifford, First Amended Complaint ¶ 71.

¹⁹⁷ Gifford, First Amended Complaint ¶ 71.

¹⁹⁸ Gifford, First Amended Complaint ¶¶ 31-36.

¹⁹⁹ Gifford, First Amended Complaint ¶ 79.

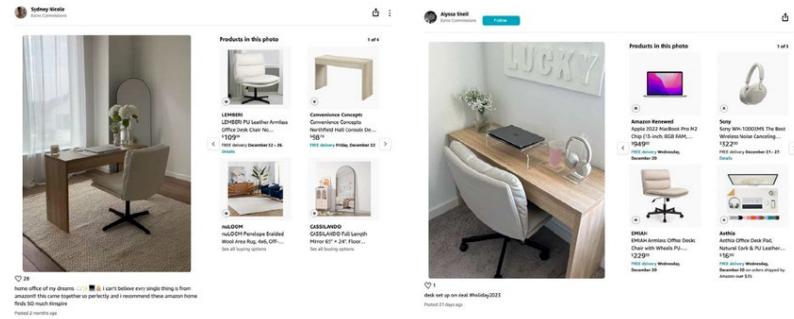
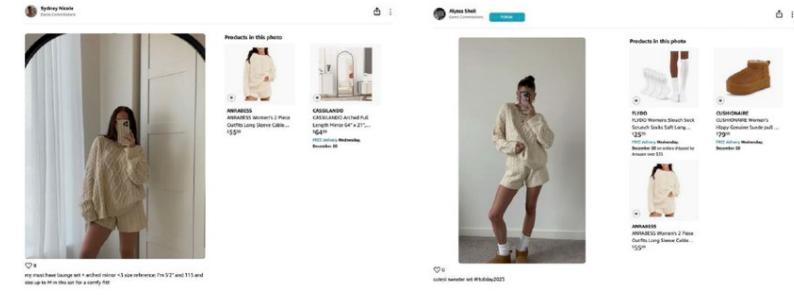
²⁰⁰ Gifford, First Amended Complaint ¶ 71.

²⁰¹ Gifford, First Amended Complaint ¶ 71.

²⁰² Gifford, First Amended Complaint ¶ 73.

²⁰³ Gifford v. Sheil, First Amended Complaint, 1:24-CV-00423RP at ¶73.

²⁰⁴ “This is my personal brand,” Sheil—the alleged copycat—told the Times. Garcia, *Can You Copyright a Vibe?* NY TIMES (Dec. 5, 2024).



<https://www.instagram.com/reel/CylBztOZeg/>

Posted 10/19/2023



<https://www.instagram.com/reel/CzMwfXcp4Ab/>

Posted 11/3/2023

But hairdos and beige furniture are not the typical stuff of IP or right of publicity. Short phrases used as captions are not protectable under either trademark or copyright law. Gifford alleges Sheil misappropriates Gifford's persona just by posting images of herself, but Gifford identifies as a white Hispanic woman, while Sheil is Black.²⁰⁵ Gifford objects that Sheil promotes some of the same Amazon products that she does, but myriad Amazon influencers promote the same products as

²⁰⁵ Sato, *Bad Influence*

other influencers in similar ways every day, partly because Amazon regularly pushes out lists of products they encourage influencers to promote, organized by theme or niche.²⁰⁶ And Gifford's preferred posting style, including unboxing videos and first-person-perspective images like feet on a welcome mat, are in line with current social media trends and used by thousands of others—as is her preferred color scheme—making those choices akin to scènes à faire in the influencer content landscape. The awkward fit between these areas of law and all that Gifford claims her brand encompasses gave rise to the skeptical tone of the popular and legal coverage.²⁰⁷

Despite that mismatch, when Sheil moved to dismiss most of the claims, a federal magistrate judge found plenty to salvage,²⁰⁸ and the supervising district court judge adopted the magistrate's report and recommendations.²⁰⁹ The decision notes that the lawsuit “appears to be the first of its kind—one in which a social media influencer accuses another influencer of (among other things) copyright infringement based on the similarities between their posts that promote the same products.”²¹⁰ A federal court deciding a motion to dismiss must accept all allegations in the complaint as true and draw all inferences in favor of the non-moving party,²¹¹ and the court won't dismiss claims unless the plaintiff has failed to plead sufficient facts to state a plausible claim for relief. The magistrate judge dismissed the claims for tortious interference with contractual relations, unfair competition, and unjust enrichment, but declined to dismiss the rest.²¹² Gifford had registered a number of her posts and videos with the Copyright Office, and the judge held Sheil's similar social media posts might subject her to liability for vicarious as well as direct copyright infringement.²¹³ he agreed with Gifford that the works did not need to be identical to subject Sheil to liability under the DMCA.²¹⁴ And he found that Sheil, by posting similar content under her own handle and failing to include Gifford's handle, could be subject to liability for mishandling copyright management information.²¹⁵

The judge also found Gifford adequately pled a misappropriation claim under Texas state law by alleging Sheil appropriated her likeness for the value associated with it, Gifford could be identified in Sheil's posts, and Sheil received some advantage from the misappropriation.²¹⁶ He found sufficiently plausible Gifford's allegation that by imitating her “outfits, poses, hairstyles, makeup, and voice,” Sheil enabled Gifford's followers to identify Gifford as the person whose identity was appropriated.²¹⁷ The judge cited earlier case law holding that a defendant need not use someone's image or full name to “symbolize or identify” that person: In Don Henley's lawsuit against

²⁰⁶ Sato, *Bad Influence*

²⁰⁷ Alexandra J. Roberts, Does IP Law Protect Influencers' Aesthetics?—Gifford v. Sheil (Guest Blog Post), Technology & Marketing Law Blog (guest post) (Dec. 13, 2024), <https://blog.ericgoldman.org/archives/2024/12/does-ip-law-protect-influencers-aesthetics-gifford-v-sheil-guest-blog-post.htm> [], citing Annelise Levy, *Influencers Settle Novel Vibe-Theft Copyright Lawsuit for \$0*, BLOOMBERG (May 28, 2025), <https://news.bloomberglaw.com/ip-law/influencers-settle-novel-vibe-theft-copyright-lawsuit-for-0> (“Most of Gifford's claims are shaky, according to multiple intellectual property lawyers who reviewed the complaint.”).

²⁰⁸ Report and Recommendation of the US Magistrate Judge, Sydney Nicole LLC v. Alyssa Sheil LLC, 1:24-cv-00423-RP (W.D. Tex. Nov. 15, 2024) (Dkt. 27).

²⁰⁹ Order, Sydney Nicole LLC v. Alyssa Sheil LLC, 1:24-cv-00423-RP (W.D. Tex. Dec. 10, 2024)

²¹⁰ Report and Recommendation at 3-4.

²¹¹ LaFaro v. N.Y. Cardiothoracic Group, PLLC, 570 F.3d 471, 475 (2nd Cir. 2009).

²¹² Sheil had not sought to dismiss Gifford's trade dress claims, meaning those too could go forward.

²¹³ Report and Recommendation at 4-6.

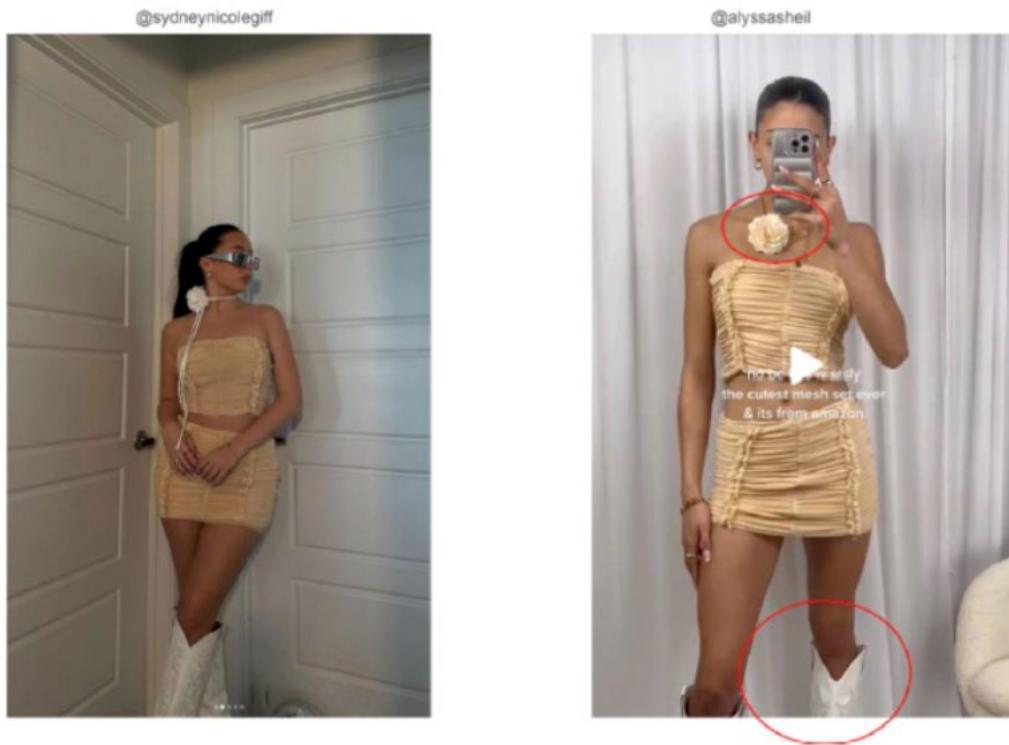
²¹⁴ Report and Recommendation at 6-8.

²¹⁵ Report and Recommendation at 7.

²¹⁶ Report and Recommendation at 8-11.

²¹⁷ Report and Recommendation at 9.

department store Dillard, the store advertised henleys (a type of shirt) with a character they called Don without using the musician's name directly or including his image. The court found the use satisfied the elements of Texas' right of publicity law because the ad used "an aspect of [Henley's] persona in a manner that symbolizes or identifies [Henley]."²¹⁸ Cases in other states have reached the same conclusion where defendants have used neither the plaintiff's name nor image: In *Motsenbacher*, an advertiser's use of a race car was held to identify the car's professional driver;²¹⁹ in *White v. Samsung*, an ad featuring a robot game show hostess in a blonde wig identified Vanna White;²²⁰ in *Carson v. Here's Johnny*, Carson's signature Tonight Show catchphrase identified him;²²¹ and in *Midler v. Ford*, a recording of a soundalike singer performing one of Midler's (properly licensed) songs identified her. Likewise, the magistrate judge found, Sheil photographing herself in a specific beige skirt set with white cowboy boots and a flower clip could potentially be found to "identify" Gifford.



Ultimately, the parties settled. No money changed hands, which Sheil's attorneys billed as a win for the defense,²²² but the decision on Sheil's motion to dismiss deeming many of the claims plausible

²¹⁸ *Henley v. Dillard Dep't Stores*, 46 F. Supp. 2d 587, 591 (N.D. Tex. 1999) (applying Texas law) cited in *Gifford v. Sheil Report and Recommendation of the US Magistrate Judge* at 10.

²¹⁹ *Motsenbacher v. R.J. Reynolds Tobacco Co.*, 498 F.2d 821 (9th Cir.1974), syllabus (applying California law; reversing summary judgment for defendant and holding "fact that the 'likeness' of driver was unrecognizable in the commercial and that cigarette manufacturer had changed number of racing car from '11' to '71' and had added a 'spoiler' to the car did not preclude finding that driver was identifiable as plaintiff in view of the distinctive decorations appearing on the car").

²²⁰ *White v. Samsung Elecs. Am., Inc.*, 971 F.2d 1395, 1399 (9th Cir. 1992), as amended (Aug. 19, 1992) (applying California law).

²²¹ *Carson v. Here's Johnny Portable Toilets, Inc.*, 698 F.2d 831, 835-7 (6th Cir.1983) (applying Michigan law).

²²² Jason McManis, Press Release, 'First of its Kind' Influencer Copyright Case Dropped Against AZA Client, Chambers & Partners (May 28, 2025), <https://chambers.com/articles/first-of-its-kind-influencer-copyright-case-dropped-against->

based on vague violations of brand identity still stand and will likely have ramifications for future influencer and personal brand disputes.

The lawsuit attracted attention for a number of reasons, including its potential to disrupt the entire influencer marketing industry. But this case is unprecedented not for the complaint at the heart of the dispute—that one influencer copied another’s look and content—but rather for the choice to take that complaint to court rather than relying on self-help or battling it out in the court of public opinion.²²³ IP scholars have described the practices in a number of communities, from stand-up comics²²⁴ to clowns²²⁵ to tattoo artists²²⁶ to roller derby players,²²⁷ of resolving disputes (over jokes, makeup, tattoos, and pseudonyms, respectively) without involving lawyers or legal claims.²²⁸ Social media users are accustomed to seeing similar posts laid out in similar ways, as evidenced by accounts and bloggers who collect examples that highlight the repetition.²²⁹

[aza-client](https://perma.cc/EUZ9-S86Y) [https://perma.cc/EUZ9-S86Y] (“Online influencer Alyssa Sheil saw a highly publicized lawsuit against her dropped by influencer Sydney Gifford, who non-suited her claims and took nothing. ‘It is rare to secure a win like this where the plaintiff has to ask you for permission to give up.’”); see also Email from attorney Thomas Frashier to the author (May 28, 2025) (on file with author) stating “Ms. Sheil prevailed today and will be paying nothing for Ms. Gifford’s meritless claims.”

²²³ Angela Yang and Kalhan Rosenblatt, *Influencer drops lawsuit alleging rival creator copied her videos*, NBC NEWS (May 30, 2025), <https://www.nbcnews.com/tech/internet/influencer-drops-lawsuit-alleging-rival-creator-copied-videos-rcna210019> (“Arguments between influencers copying or stealing content from each other typically play out in the digital court of public opinion and rarely, if ever, make it to the actual judicial system... Gifford’s lawsuit sought to take the issue into the courtroom, attempting to apply laws typically used by traditional media to the relatively lax world of influencer content.”).

²²⁴ Dotan Oliar & Christopher Sprigman, *There’s No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy*, 94 VA. L. REV. 1787 (2013) (finding stand-up comics protect their jokes through a system of social norms).

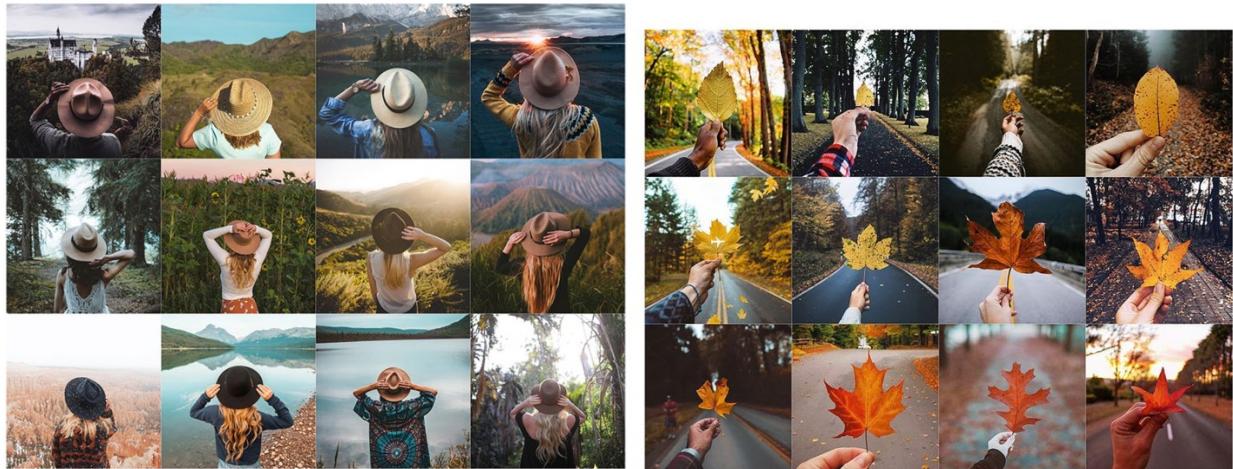
²²⁵ David Fagundes & Aaron Perzanowski, *Clown Eggs*, 94 Notre Dame L. Rev. 1313 (2019) (describing the Clown Egg Register, which the authors describe as “formalized registration related to norms-based ownership rules”).

²²⁶ Aaron Perzanowski, *Tattoos & IP Norms*, 98 MINN. L. REV. 511, 513 (2013) (describing the tattoo industry’s “choice to forego formal assertions of legal rights” and adopt a set of norms instead).

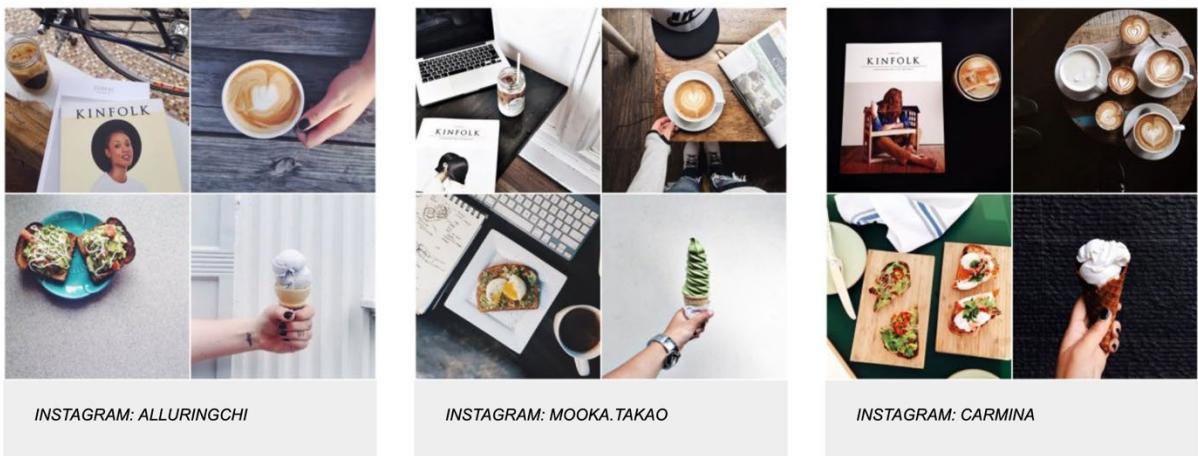
²²⁷ David Fagundes, *Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093 (2012) (describing how roller derby players use elaborately-structured social norms, including a registration system and governance regime, to protect their pseudonyms).

²²⁸ This body of scholarship is often referred to as “IP without IP” or “the norms-based governance of intellectual property.” Fagundes & Perzanowski, 94 Notre Dame L. Rev. at 1313.

²²⁹ See, e.g., The Kinspiracy, <https://thekinspiracy.tumblr.com/> [https://perma.cc/VM9Q-G57Z]; insta_repeat, https://www.instagram.com/insta_repeat/



Left: images from 12 different Instagram accounts showing a person wearing a cowboy hat shot from above and behind, with hands holding the hat on; Right: images from 12 different Instagram accounts showing a hand holding a fall leaf centered in front of a road, both from the account @insta_repeat



Images from *The Kinspiracy* show Instagram grids from three influencers, each featuring lattes shot from above, avocado toast on a plate, a hand holding an ice cream cone, and an issue of *Kinfolk Magazine* on a table

When an influencer perceives a competitor as copying them, typically they might reach out to the other influencer privately²³⁰ or call them out publicly by leaving comments on their posts²³¹ or posting threads on other platforms like Reddit.²³² The influencer might make the copycat the subject

²³⁰ @Robert Reacts, *Fashion Influencer tried to steal someone's whole LIFE!!* YOUTUBE, <https://www.youtube.com/watch?v=AqCZ0SrYNs> (detailing TikTok influencer Vi Luong's confrontation with copycat Yuyi Cha in the form of private messages and public videos).

²³¹ E.g. Ray William Johnson, *This TikTok Star is a Total FRAUD*, YOUTUBE, <https://www.youtube.com/watch?v=7evQAPvd1Go> (American YouTube creator calls out Spanish influencer Mike Fajardo for copying and translating his and others' video content and stories verbatim; video displays comments Johnson posted on Fajardo's videos objecting to the copying and direct messages doing the same).

²³² E.g. @FancySk8erGirl, AITA for confronting an influencer for kinda copying my post? Reddit/AITA, https://www.reddit.com/r/AITA/comments/1diwz2r/aita_for_confronting_an_influencer_for kinda/ ("I wrote a comment under each of her two posts saying 'I see you took inspiration from one of my instagram posts. Looks great btw 😊👍' to confront her.").

of their posts,²³³ highlighting the similarities with side-by-side images²³⁴ as Gifford does in her legal complaint.²³⁵ They might warn their followers to unfollow the other influencer and avoid purchasing products through her links. Followers themselves often chime in when copycats are called out²³⁶ or take it upon themselves to name and shame influencers who they perceive as posting unoriginal content. If the influencer who believes they were copied registered some of their content with the Copyright Office, as Gifford did, they might avail themselves of notice-and-takedown procedures under the DMCA,²³⁷ an approach that calls upon the law in a more efficient and low-cost way than litigation. And Gifford did succeed in using DMCA complaints to have some of Sheil's posts taken down on three different platforms.²³⁸ But after Sheil reposted some of the deleted content, and after Gifford emailed Sheil to state her objections and received no response, Gifford lawyered up, opting to follow cease and desist letters with an expensive federal lawsuit.²³⁹ Her preference for litigation over community-based self-help might have looked like “the first of its kind” to those focused on the specifics of her claims, but it highlights a change in approach that’s representative of the rise in litigating personal brand.

The Model Influencers

The Cave is a strip club in Decatur, Georgia. It sells food and alcohol and features nude and semi-nude women as entertainment. The Cave has social media profiles on Facebook, Instagram, and

²³³ See @Markie, *Influencer Called Out By Multiple TikTokers In Wild Drama*, YouTube <https://www.youtube.com/watch?v=6TC9kdKyTVc> (showing clips of several influencers accusing influencer Yuyi Cha of copying their videos); Sophie Miner, My Unfiltered Thoughts on “Copycat” Culture On Instagram... (Mar. 25, 2018), <https://sophiemilner.co.uk/2018/03/my-unfiltered-thoughts-on-copycat-culture-on-instagram.html/> [https://perma.cc/W7XV-N626]; Danielle Cohen, Unpacking the Nara Smith Boba-Tea Controversy, The Cut (June 21, 2024), <https://www.thecut.com/article/the-nara-smithonezwa-mbola-controversy-explained.html> [https://perma.cc/SW4S-4QQX] (detailing public claims by TikToker Onezwa Mbola that model and influencer Nara Smith has been copying her content and recipes); Ray William Johnson, *This TikTok Star is a Total FRAUD*, YOUTUBE, <https://www.youtube.com/watch?v=7evQAPvd1Go>.

²³⁴ E.g., Christianna Silva, What the hell is going on with maximalism design TikTok? Mashable (Aug. 7, 2023), <https://mashable.com/article/diy-tiktok-drama-maximalism-design> [https://perma.cc/CJY2-4PYN] (explaining conflict between two maximalist interior decorating influencers and recounting, “Tay BeepBoop called out Kaarin Joy out for copying her work—making her case by showing images of her projects followed by images of Kaarin Joy’s projects.”).

²³⁵ See, e.g., TikTok user Kelsey_kotur calling out others for copying her content, https://www.tiktok.com/@kelsey_kotur/video/7460949637973724446

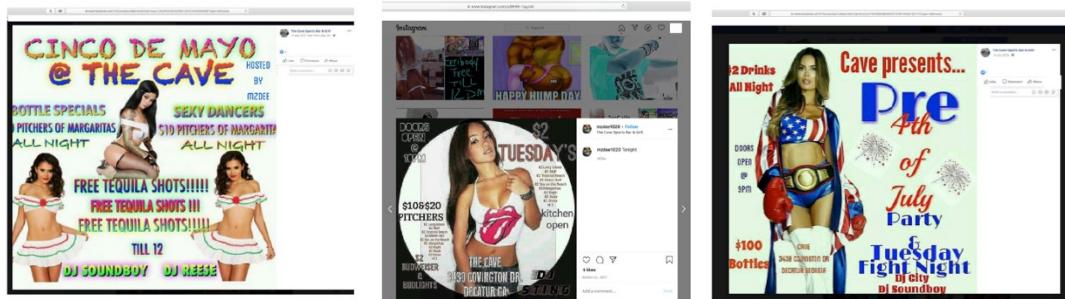
²³⁶ See @Markie, *Influencer Called Out By Multiple TikTokers In Wild Drama*, YouTube <https://www.youtube.com/watch?v=6TC9kdKyTVc> and comments: @finneganfox6470, “The fact she copied almost everything she did in her video. Like how are you proud to be an exact copycat?” @axuwu6939, “Copying everything down to the MANNERISMS seems like way more effort than just, being yourself and doing your own thing??”; @MorganVsTheInternet, “It’s one thing to review the same stuff because it’s viral, but the fact that she says the same thing line for line is creepy!” @icannotthinkofanynamesdude, “There’s a fine line between “getting inspiration from other creators” and “straight up stealing”. Girlie doesn’t even see the line lmao.”

²³⁷ Sato, The Verge (“copyright itself is frequently weaponized in inter-creator conflicts through the Digital Millennium Copyright Act (DMCA) notice-and-takedown regime.”).

²³⁸ Gifford First Amended Complaint at ¶ 36 (“Plaintiffs submitted copyright infringement reports reporting fifteen posts to TikTok, eighteen posts to Instagram, and fourteen posts to Amazon. Each platform promptly removed the infringing content.”).

²³⁹ Yang & Rosenblatt, *Influencer drops lawsuit alleging rival creator copied her videos*, NBC NEWS; Jonathan Roffe & Madison Mull, *Surprise, Surprise: The “Sad Beige Lawsuit” ends*, CLARK HILL (May 30, 2025), <https://www.clarkhill.com/news-events/news/surprise-surprise-the-sad-beige-lawsuit-ends/> [https://perma.cc/G9UU-THKZ] (“Gifford, for her part, cited rising litigation costs and a desire to refocus on her business and growing family as reasons for ending the case.”).

Twitter, where it advertises the business and promotes events.²⁴⁰ Over the course of several years, the Cave posted photographs of women with superimposed text announcing Fourth of July, Halloween, and Cinco de Mayo celebrations as well as promotions like “\$10 & \$20 pitchers,” “\$2 margaritas all night,” and “sexy dancers.”²⁴¹



Left to right: Facebook post featuring Campos; Instagram post featuring Iglesias; Facebook post featuring Stage, all posted from “The Cave Sports Bar & Grill” accounts.²⁴²

But the women featured in the advertisements aren’t employees of The Cave. They don’t dance at The Cave, they don’t endorse The Cave, they aren’t affiliated with The Cave, and they haven’t licensed the use of their images to The Cave.²⁴³ Instead, they are models, influencers, dancers, and actors. Sarah Stage is a social media influencer with over 2 million followers on Instagram who has been featured in commercials for Kia, Budweiser, and Samsung, and in magazines including *Maxim*, *Shape*, and *Allure*.²⁴⁴ Jennifer Walcott Archuleta has appeared on reality television shows and graced the covers of over a dozen magazines.²⁴⁵ Alana Campos has modeled in a number of major campaigns since she began her career at age fifteen.²⁴⁶ Melanie Iglesias is an MTV regular with 1.2 million Instagram followers, over 1.5 million Facebook followers, and 602,000 Twitter followers.²⁴⁷ Cora Skinner has modeled extensively and appeared in music videos like Def Leppard’s “Nine Lives.”²⁴⁸ Rosa Acosta is a classically trained ballerina who joined the Dominican Nacional Ballet as the youngest soloist member in 2002,²⁴⁹ making it perhaps all the more embarrassing that she is featured posing suggestively in The Cave’s flyer for Cinco de Mayo, a holiday that celebrates Mexico’s victory at the Battle of Puebla. She has over 1.6 million Instagram followers.²⁵⁰

²⁴⁰ Cora Skinner; Alana Marie Souza A/K/A Alana Campos; Jennifer Walcott Archuleta; Melanie Iglesias; Rosa Melanie Iglesias; Rosa Acosta; and Sarah Stage, Plaintiffs, v. The Cave Ent., Inc. d/b/a The Cave, Sheree Graham; Cave Wings & Fries, LLC and Leon Graham, 2023 WL 3997410 (N.D. Ga.) ¶ 52, No. 1:22-cv-03162-ELR (Apr. 17, 2023).

²⁴¹ Skinner Complaint at ¶ 26 and Exhibit A.

²⁴² Skinner Complaint Exhibit A.

²⁴³ Skinner Complaint at ¶¶ 34, 37, 39, 43, 46, 49, 58, 59.

²⁴⁴ Skinner Complaint at ¶ 47.

²⁴⁵ Skinner Complaint at ¶ 38.

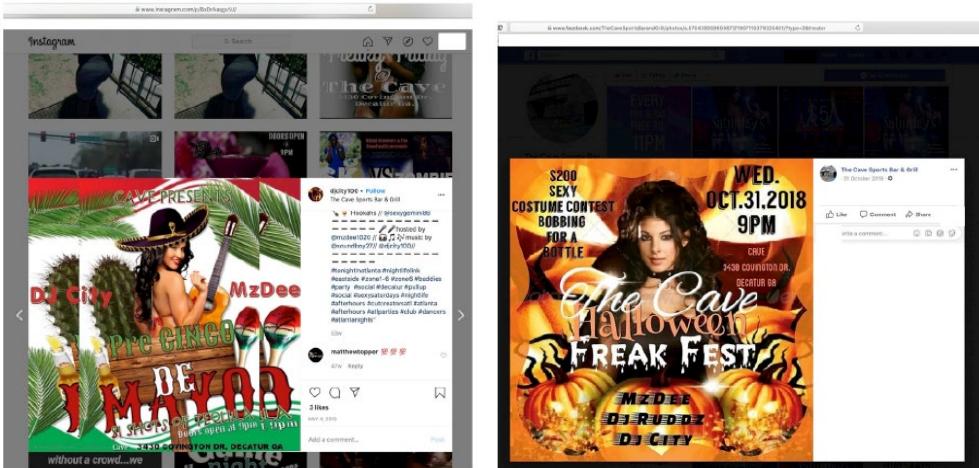
²⁴⁶ Skinner Complaint at ¶ 35.

²⁴⁷ Skinner Complaint at ¶ 41.

²⁴⁸ Skinner Complaint at ¶ 32.

²⁴⁹ Skinner Complaint at ¶ 44.

²⁵⁰ Skinner Complaint at ¶ 44.



Left to right: Instagram post featuring Acosta; Facebook post featuring Skinner.²⁵¹

The women in this story could bring straightforward right of publicity claims on these facts, and they did. They are not the first to sue nightclubs over unauthorized commercial use of their images and they won't be the last.²⁵² But the harm they and some of their peers have articulated is different in kind from what they might experience if a more traditional company—say, Old Navy or Outback Steakhouse—had used their images commercially without their consent. The Cave is a strip club, and the plaintiffs claim that The Cave didn't just use their images, it altered them to make it appear as though they endorsed the club. In their complaint, they argue that their “careers in the modeling industry place a high degree of value on their good will and reputation, which is critical to maximize their earning potential, book modeling contracts, and establish each of their individual brands.” In other words, they locate value in their personal brand above and beyond potential profit from future modeling or endorsement deals. They allege that the harm to their personal brands was greater because of the nature of the defendant's business and the negative connotations it carries with it.²⁵³ As a result of the use of their images, “any company or brand that sought to hire any of the Plaintiffs as a company or brand representative would be less likely to do so upon learning that she [was] a club employee, an inference which Defendants' publication of the Images support.”²⁵⁴

While right of publicity plaintiffs often argue that they deserve the right to pick and choose with whom they do business and what entities they will allow to use their name, image, or likeness, the argument seems to have particular salience here. The plaintiffs point out that “In furtherance of establishing, and maintaining, their brands, Plaintiffs are necessarily selective concerning the

²⁵¹ Skinner Complaint Exhibit A.

²⁵² E.g. Edmonson v. Velvet Lifestyles, LLC, No. 15-24442-CIV, 2017 WL 11680315 (S.D. Fla. July 28, 2017) (granting summary judgment on liability in favor of plaintiffs, professional models and businesswomen whose photographs were used in advertisements for a swingers' club), rev'd and remanded as to two of the defendants sub nom. Edmondson v. Velvet Lifestyles, LLC, 43 F.4th 1153 (11th Cir. 2022); Geiger v. C&G of Groton, Inc., 424 F. Supp. 3d 276, 293 (D. Conn. 2019); Cerny v. Costa Verde Corp., Civil Action No. 21-cv-10927-ADB, 2022 U.S. Dist. LEXIS 147914 (D. Mass. Aug. 18, 2022).

²⁵³ Skinner Complaint at ¶ 65.

²⁵⁴ Complaint, Skinner et al at ¶ 124.

companies, and brands, for which they model.”²⁵⁵ And the plaintiffs, most of whom are active social media influencers, highlight that the very images The Cave misappropriated and altered were plucked from their social media pages, sites that “each Plaintiff uses to market to potential clients, grow their fan base, and build and maintain their personal brand.”²⁵⁶ Their causes of action included false advertising and false endorsement under the Lanham Act, deceptive advertising and unfair competition under Georgia state law, violation of each of their common law right of publicity, false light, defamation,²⁵⁷ and unjust enrichment.²⁵⁸ It’s clear that from the plaintiffs’ perspective, the penumbra of rights around the personal brands that they invested time and energy in cultivating is broader than the right of publicity alone.

The models, dancers, actresses, and influencers who sued The Cave are in good company. Similarly-situated (and in fact, sometimes the very same) models, dancers, actresses, and influencers have sued myriad businesses over the unauthorized use of their image or persona over the past decade. One model sued a strip club in Oklahoma called Long Ears Club on the same rationale as the Cave Plaintiffs.²⁵⁹ Ten models sued a Connecticut nightclub for using their altered images in social media posts.²⁶⁰ Another twelve sued La Kimball Lounge & Restaurant in North Carolina, alleging harm to their brands.²⁶¹ One group sued Omega Restaurant & Bar in Virginia Beach for using their images on its website and social media accounts to promote its business.²⁶² Some of the same plaintiffs in that case, including Carmen Electra, sued the owner of two nightclubs in Connecticut, Mynx Hartford and Mynx Groton, for the same wrongs.²⁶³ Electra and nine others also sued the New York Dolls Gentlemen’s Club.²⁶⁴ And some of the same plaintiffs in that case sued three adult entertainment clubs in Philadelphia all called some version of “Club Risque.”²⁶⁵ Other suits were against swingers clubs Eyz Wide Shut²⁶⁶ and Miami Velvet,²⁶⁷ both in Florida, and a nightclub in Massachusetts that “sells alcohol and food in a sexually-charged atmosphere.”²⁶⁸ Plaintiffs in the Miami Velvet case came armed with survey evidence that 89-97% of individuals sampled believed the women agreed to be featured in the club’s ads and 73-75% believed those women might participate in the swinger events hosted at the venue.²⁶⁹ While right of publicity suits over

²⁵⁵ Cora Skinner; Alana Marie Souza A/K/A Alana Campos; Jennifer Walcott Archuleta; Melanie Iglesias; Rosa Melanie Iglesias; Rosa Acosta; and Sarah Stage, Plaintiffs, v. The Cave Ent., Inc.. d/b/a The Cave, Sheree Graham; Cave Wings & Fries, LLC and Leon Graham, 2023 WL 3997410 (N.D. Ga.) ¶ 26, No. 1:22-cv-03162-ELR (Apr. 17, 2023).

²⁵⁶ Complaint, Skinner et al at ¶ 31.

²⁵⁷ In fact, plaintiffs allege the use of their images constitutes defamation per se because “insofar as said publication falsely portrays each of the Plaintiffs as club employees, it imputes unchastity to her.” Complaint, Skinner et al at ¶ 125.

²⁵⁸ Complaint, Skinner et al at ¶ 70-144.

²⁵⁹ Gibson v. JGA Corp., No. CIV-23-628-F, 2024 WL 150600 (W.D. Okla. Jan. 12, 2024).

²⁶⁰ Souza v. Algoo Realty, LLC, No. 3:19-CV-00863 (MPS), 2020 WL 5300925 (D. Conn. Sept. 4, 2020).

²⁶¹ Nobriga v. La Kumbala Lounge & Rest., Inc., No. 7:23-CV-00005-M, 2024 WL 2951753 (E.D.N.C. May 23, 2024), report and recommendation adopted, No. 7:23-CV-5-M-RN, 2024 WL 2947704 (E.D.N.C. June 11, 2024).

²⁶² Brenda Lynn Geiger, et al. v. Omega Restaurant & Bar, LLC d/b/a Omega Bar a/k/a Omega, Case No. 2020-14428.

²⁶³ Geiger v. C&G of Groton, Inc., 424 F. Supp. 3d 276 (D. Conn. 2019).

²⁶⁴ Electra v. 59 Murray Enters., Inc., 987 F.3d 233 (2d Cir. 2021).

²⁶⁵ Lopez v. Conchetta, Inc., No. CV 23-5030, 2024 WL 2300767 (E.D. Pa. May 21, 2024).

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²⁶⁷ Edmonson v. Velvet Lifestyles, LLC, No. 15-24442-CIV, 2017 WL 11680315 (S.D. Fla. July 28, 2017), rev’d and remanded sub nom. Edmondson v. Velvet Lifestyles, LLC, 43 F.4th 1153 (11th Cir. 2022).

²⁶⁸ Cerny v. Costa Verde Corp., Civil Action No. 21-cv-10927-ADB, 2022 U.S. Dist. LEXIS 147914 (D. Mass. Aug. 18, 2022).

²⁶⁹ Edmonson v. Velvet Lifestyles, LLC, No. 15-24442-CIV, 2017 WL 11680315 (S.D. Fla. July 28, 2017), rev’d and remanded sub nom. Edmondson v. Velvet Lifestyles, LLC, 43 F.4th 1153 (11th Cir. 2022).

unauthorized use of models' images predate the rise of personal brand, the language in both the lawsuits and judicial decisions has expanded to incorporate the idea of personal brand.

The Bridal Influencer

Bridal designer and influencer Hayley Paige Gutman considers herself an early adopter of social media.²⁷⁰ In 2004, while an undergrad at Cornell studying fiber science and apparel design, she opened a Facebook account at the URL “misshayleypaige.”²⁷¹ After stints as an apparel designer for Priscilla of Boston and Marchesa, Gutman worked as a celebrity styling assistant, co-founded a bridal gown rental company, and started a fashion blog. In 2011, at the age of twenty-five, Gutman entered into an employment agreement with bridal mainstay JLM Couture determined to become a household name. In the years that followed, she launched social media accounts on Instagram, Pinterest, and TikTok at the same handle, @misshayleypaige. By 2019, Gutman had become well known in the industry: the Instagram account alone had over a million followers, her designs were popular and sold well, and Gutman appeared on bridal gown reality shows “Say Yes to the Dress” and its spin-off “Say Yes to America.” Gutman used the social media accounts to promote her JLM bridal designs, post personal content,²⁷² and—eventually—promote products from other brands, including olive oil, beer and nutritional supplements.

But there was a problem. Gutman’s agreements with the company gave JLM the exclusive right to use every variation of Gutman’s name in connection with the sale of bridal clothing, accessories, and other wedding-related items²⁷³—in perpetuity, according to JLM.²⁷⁴ With Gutman’s written consent, JLM had registered ten federal trademarks containing her name, including HAYLEY PAIGE, LA PETITE HAYLEY PAIGE, BLUSH BY HAYLEY PAIGE, HAYLEY PAIGE OCCASIONS, and JUST GOT PAIGED.²⁷⁵ JLM maintained that it, not Gutman, was the owner of all @misshayleypaige social media accounts created after the start of their agreement. Gutman, for her part, says she created the accounts for her personal use and never agreed to share ownership or run them on behalf of or for the benefit of JLM,²⁷⁶ nor would doing so have been standard or expected for an employee in her position.²⁷⁷ Gutman set the accounts up using her name, personal cell phone number, and personal email account.²⁷⁸ She created the passwords, but shared them with JLM interns and employees and delegated tasks, including responding to questions in the comments and

²⁷⁰ Defendant Counterclaim-Plaintiff Hayley Paige Gutman’s Counterclaims to the Amended Complaint, CV-10575-LTC-SLC (Aug. 13, 2021) at ¶ 18.

²⁷¹ Gutman’s Counterclaims at ¶ 17.

²⁷² Counterclaims at ¶ 19 (“Hayley’s first posts to her Instagram were highly personal and included inspirational quotes, a photo of Hayley’s apartment, and a picture of her best friend. Hayley’s Instagram has maintained this personal character and authentically reflected her life, family, adventures, and work.”); JLM Couture, Inc. v. Gutman, 91 F.4th 91, 97 (2d Cir. 2024) (“Gutman’s earliest posts include pictures of wedding dresses, as well as pictures of the New York City skyline, chairs, dogs, a wine bottle, and what appears to be a beach vacation.”).

²⁷³ Second Amended Complaint, JLM Couture v. Hayley Paige Gutman and Conrad Louis Clevlen, Case No.: 1:20-CV-10575-LTC-SLC (Aug. 13, 2021) at ¶ 25; Gutman’s Counterclaims at ¶ 24.

²⁷⁴ Second Amended Complaint, JLM Couture v. Hayley Paige Gutman at ¶ 26; but see Defendant Counterclaim-Plaintiff Gutman’s Counterclaims at ¶ 26 (“the Employment Agreement clearly sets forth that, to the extent JLM has any rights in Hayley’s name, such rights are limited in scope and time.”).

²⁷⁵ Second Amended Complaint, JLM Couture v. Hayley Paige Gutman at ¶¶ 37-38.

²⁷⁶ Gutman’s Counterclaims at ¶ 21; @allthatglittersontheGram, Instagram (Dec. 29, 2020),

<https://www.instagram.com/p/CJZqicJHOR9/> (“Prior to the TRO being granted, I have never had a contractual obligation to post or give JLM access to my social media accounts.”).

²⁷⁷ Gutman’s Counterclaims at ¶ 32.

²⁷⁸ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 97 (2d Cir. 2024).

direct messages.²⁷⁹ According to JLM, the @misshaleypaige accounts came to serve as “critical advertising platforms” for the company’s products and events.²⁸⁰

Gutman recounts her unease as JLM pushed her to take a greater role in marketing the company and its products, including seeking to expand her employment agreement to include using her social media accounts to do so, and says she sought clarity on the company’s position with regard to her name. Her boss, CEO Joe Murphy, reportedly assured her in a 2019 email that the company did not “claim access to [her] persona.”²⁸¹ But several months later, Gutman says Murphy “started claiming expanded ownership over Hayley’s persona and personal Instagram account @misshaleypaige.” She pushed back and the conflict escalated, culminating in JLM suing Gutman over her use of the accounts. A district court issued a temporary restraining order and later a preliminary injunction prohibiting Gutman from using the @misshaleypaige Instagram or Pinterest accounts or the “Designer’s names, Trademarks, or any similar term”—i.e., using her own name—without Murphy’s permission.²⁸² The court also enforced a five-year restrictive covenant that barred Gutman from “identifying herself” as a designer of certain goods.²⁸³

Gutman resigned from the company and responded to the lawsuit by filing a number of counterclaims, including breach of contract, hostile work environment, defamation, unjust enrichment, and conversion. She also alleged violation of the Stored Communications Act based on JLM taking control of the social media accounts and accessing Gutman’s personal content and messages associated with the accounts, and false advertising based on JLM representing to followers that Gutman continued to be associated with the accounts. She asked the court to enjoin JLM’s use of the HAYLEY PAIGE marks and names and issue a declaratory judgment that Gutman was the proper owner of the trademark registrations and the @misshaleypaige accounts and had the right to use her name freely in the bridal industry.²⁸⁴

In Gutman’s counterclaims, she alleges monetary damages and harm to consumers who have been and will be deceived by JLM’s use of her name and social media accounts after her employment contract was terminated. She details her investment in the Instagram account and its value, emphasizing her influencer status, follower count, engagement, and other metrics.²⁸⁵ But the dignitary and reputational harm and Gutman’s loss of “control” of her personal brand take center stage. She accuses Murphy and JLM of “express[ing] a claim of ownership over her persona”²⁸⁶ and

²⁷⁹ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 96 (2d Cir. 2024) (In November of 2019, “Gutman changed the passwords to the Disputed Accounts and refused to give JLM access”).

²⁸⁰ *JLM Couture, Inc. v. Gutman*, No. 20-cv-10575, 2023 WL 2503432, at *4 (S.D.N.Y. Mar. 14, 2023); JLM Couture, Inc. v. Gutman, 91 F.4th 91, 97 (2d Cir. 2024).

²⁸¹ Gutman’s Counterclaims at ¶ 125 (the full quote from Murphy, allegedly in responses to Gutman’s inquiry seeking clarity on JLM’s position with regard to “the ‘Hailey Paige’ name,” was “As far as [your] personal investment (regarding JLM) it really is only related to Hayley Paige wedding gowns and related categories. . . . But rest assured, I do not claim access to your persona beyond what I describe above.”). *Id.* at ¶¶ 124-25.

²⁸² Gutman, 2021 WL 827749, at *1; Gutman’s Counterclaims at ¶ 131.

²⁸³ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 96 (2d Cir. 2024). The district court later modified the preliminary injunction to expire on August 1, 2022, when the Contract expired. *JLM Couture, Inc. v. Gutman*, No. 20-cv-10575, 2021 WL 2227205, at *8 (S.D.N.Y. June 2, 2021).

²⁸⁴ Defendant Counterclaim-Plaintiff Gutman’s Counterclaims at ¶ 291-95, 300-04.

²⁸⁵ Gutman’s Counterclaims at ¶ 144

²⁸⁶ Gutman’s Counterclaims at ¶ 127.

“exercis[ing] dominion and control” over her social media accounts²⁸⁷ and over Gutman herself.²⁸⁸ Gutman is outraged that not only did JLM post from the @misshayleypaige Instagram account, but they posted photos of her, both in the content of posts and in the “unauthorized” profile photo of her that accompanied every post and Story,²⁸⁹ and declined her request that the company delete any of the personal content she had posted regularly over the years. She alleges that JLM posting from accounts that bear her name “will tarnish her personal brand”²⁹⁰ and impede her from continuing her career as an influencer.²⁹¹ She includes an anti-SLAPP claim, arguing that JLM’s claims against Gutman based on videos on her new Instagram account discussing the litigation were designed to silence her from participating in discussion on matters of public interest and quash her First Amendment-protected speech rights.

In one of those videos, Gutman situates herself within the grand pantheon of “creatives who have had to face similar legal and moral challenges from their business endeavors,” including a number of designers who entered into agreements with corporate partners and either wound up litigating over their ability to use their name and related trademarks or had to launch a separate brand under a different name:

While I am fighting for my own rights, I am not alone...So this is also for Bobbie Brown²⁹² [sic], Chloe Coscarelli, this is for Jim Hjelm²⁹³ and Kenneth Poole,²⁹⁴ this is for Halston,²⁹⁵

²⁸⁷ Gutman’s Counterclaims at ¶ 219.

²⁸⁸ Gutman’s Counterclaims at ¶¶ 133-35.

²⁸⁹ Gutman’s Counterclaims at ¶¶ 138-39.

²⁹⁰ Gutman’s Counterclaims at ¶ 243

²⁹¹ Gutman’s Counterclaims at ¶ 243 (JLM posting from Gutman’s account “will damage Hayley’s ability to direct those followers to social media accounts that Hayley owns and products she endorses and is associated with”); ¶ 133 (“JLM sought to gain through the legal system that which it could not gain through negotiation – the rights to Hayley’s social media accounts, name, and ability to earn a living.”).

²⁹² Bobbi Brown sold her eponymous brand to Estee Lauder; after working for the company, she signed a non-compete that barred her from selling cosmetics under her name. See Nila Do Simon, *Meet Makeup Mogul Bobbi Brown*, Palm Beach Illustrated (Mar. 28, 2024), <https://www.palmbeachillustrated.com/meet-makeup-mogul-bobbi-brown/>; Mercy Harper, *Bobbi Brown Says It’s Never Too Late to Innovate: I’ve Reinvented Myself in My Sixties*, Chief (Apr. 12, 2023), <https://chief.com/articles/bobbi-brown-says-its-never-too-late-to-innovate-ive-reinvented-myself-in-my-sixties>.

²⁹³ Hjelm was head designer for his own collection at JLM Couture. There is no record of a dispute with the company, but Gutman worked with Hjelm and her inclusion of him in this list likely reflects inside information.

²⁹⁴ Poole granted Amsale the right to use and register as trademarks his name and/or likeness in connection with the design, manufacture/sale of clothing; he also entered into a non-compete agreement with the company. Amsale later sued Poole and David’s Bridal over Poole’s line for David Bridal, including the use of his likeness in connection with the line. *Amsale Aberra LLC v. David’s Bridal Inc.*, No. 06 CIV. 5147 (PAC), 2008 WL 11395573 (S.D.N.Y. Dec. 24, 2008).

²⁹⁵ Designer Halston sold his company, including rights to his name and trademark, then later sought to regain control of his namesake brand but was unable to do so. See Lisa Belkin, *The Prisoner of Seventh Avenue: How Halston Lost the Right to His Own Name*, N.Y. Times Mag., Mar. 15, 1987, <https://www.nytimes.com/1987/03/15/magazine/no-headline-650887.html>; Arya Roshanian, *How Halston Lost His Fashion Empire, & His Name*, Bustle (May 14, 2021), <https://www.bustle.com/entertainment/how-halston-lost-his-company-name-true-story>.

Kate Spade,²⁹⁶ Ralph Rucci,²⁹⁷ Paul Frank,²⁹⁸ Joseph Abboud,²⁹⁹ Catherine Malandrino,³⁰⁰ Karen Millen³⁰¹...this is for Prince³⁰² and Taylor [S]wift³⁰³...and so many others.³⁰⁴

And she was clever to do so; many of those creators' legal battles over the right to use their names as trademarks—or in the case of musicians Prince and Taylor Swift, attempts to break away from what they saw as toxic business relationships and reclaim ownership of their names, music, and careers—garnered tremendous public sympathy. Gutman herself likely feels On remand, the District Court modified the preliminary injunction to give both Gutman and JLM access to the accounts through the term of their contract, but enjoined her from using them for any “non-JLM promotional purposes,”³⁰⁵ on reconsideration, it gave JLM exclusive control over them.³⁰⁶ In 2024, the Second Circuit vacated the district court's injunction in part, finding it erred when it determined JLM owned the accounts and that it failed to assess the reasonableness of the five-year

²⁹⁶ Designer Kate Spade sold her company and trademark rights to Neiman Marcus Group and Liz Claiborne. She later changed her name and launched a new label, but was unable to achieve the same level of success as she had with her first line. Connie Wang, *For Kate Spade, Her Name Was Everything & Nothing*, Refinery29 (June 5, 2018), <https://www.refinery29.com/en-us/2018/06/201040/kate-valentine-spade-name-designer-fashion-career>; Tiffany Hsu, *Kate Spade and Fashion's Identity Crisis: When a Name Makes a Brand*, N.Y. Times (June 6, 2018), <https://www.nytimes.com/2018/06/06/business/kate-spade-fashion-brand.html>.

²⁹⁷ Designer Rucci sold the majority stake in his label, which included his name, to Deia LLC and later left the brand when the relationship soured. Jessica Iredale, *Ralph Rucci: The Rise, and Fall and Rise Again of an American Couturier*, Town & Country (Aug. 7, 2019), <https://www.townandcountrymag.com/style/fashion-trends/a28246870/ralph-rucci-haute-couture-rr331/>; Vanessa Friedman, *He Lost His Name. He Lost His Brand. But He Is No Fashion Victim*, N.Y. Times (June 30, 2019), <https://www.nytimes.com/2019/06/30/fashion/ralph-rucci-couture.html>.

²⁹⁸ Designer Paul Frank Sunich was enjoined from using “Paul Frank” in connection with designs after he left Paul Frank Industries. Paul Frank Indus., Inc. v. Sunich, 502 F. Supp. 2d 1094 (C.D. Cal. 2007).

²⁹⁹ Designer Abboud sold JA Apparel all rights to use his name and associated trademarks; JA Apparel later sued him over his use of his name in connection with other labels. JA Apparel Corp. v. Abboud, 591 F. Supp. 2d 306 (S.D.N.Y. 2008), vacated and remanded, 568 F.3d 390 (2d Cir. 2009).

³⁰⁰ Designer Malandrino sued her former business partner, alleging he transformed her namesake brand into a lower-end line without her approval, damaging its value. CM Collections, Inc. v. ASL Holdings LLC, 2018 NY Slip Op 30295(U) (Sup. Ct.); see also Vicki M. Young, *Catherine Malandrino Sues Elie Tahari Over Sale of Her Brand*, WWD (Apr. 24, 2015), <https://wwd.com/business-news/legal/feature/catherine-malandrino-lawsuit-elie-tahari-bluestar-10116515>.

³⁰¹ Millen sold her business to a private equity group and later petitioned to cancel its trademark registrations for KAREN MILLEN. Millen v Karen Millen Fashions Ltd and another [2016] EWHC 2104 (Ch) (16 August 2016); Lynda Zadra-Symes, *Court Holds That Fashion Designer Karen Millen Cannot Use Her Name in Connection with Future Clothing Lines*, Knobbe Martens (Oct. 25, 2016), <https://www.knobbe.com/blog/court-holds-fashion-designer-karen-millen-cannot-use-her-name-connection-future/>.

³⁰² Musician Prince attempted to “emancipate” himself from his contract with record label Warner Bros. by changing his name to an unpronounceable symbol. Lisa Greenwald-Swir, *Prince in Perpetuity: Preserving a Legacy through Trademarks*, Fish & Richardson (Apr. 28, 2016), <https://www.fr.com/insights/thought-leadership/blogs/prince-in-perpetuity-preserving-a-legacy-through-trademarks/>; Jessica Lussenhop, *Why Did Prince Change His Name to a Symbol?*, BBC News Magazine (Apr. 22, 2016), <https://www.bbc.com/news/magazine-36107590>.

³⁰³ Musician Swift re-recorded her previously released albums in order to own her own masters. *Taylor Swift 'Finally' Owns Her Masters. The Sale Happened 'in Spite of Scooter Braun, Not Because of Him'*, People (May 30, 2025), <https://people.com/taylor-swift-owns-masters-sale-happened-in-spite-of-scooter-braun-source-11745165>; Mark Savage, *Taylor Swift Buys Back Her Master Recordings*, BBC News (May 30, 2025), <https://www.bbc.com/news/articles/cp3n799d0v5>.

³⁰⁴ Transcript of @allthatglittersontheGram Instagram video of December 29, 2020, included as Dkt 75-3, reproduced in part in Gutman's Counterclaims at ¶ 160.

³⁰⁵ JLM Couture, Inc. v. Gutman, No. 20-cv-10575, 2022 WL 5176849, at *7 (S.D.N.Y. Feb. 14, 2022).

³⁰⁶ JLM Couture, Inc. v. Gutman, 616 F. Supp. 3d 359, 383 (S.D.N.Y. 2022), reissued and amended No. 20-cv-10575, 2023 WL 2503432, at *9 (S.D.N.Y. Mar. 14, 2023).

noncompete.³⁰⁷ While the district court had created a new six-factor test for determining ownership of the social media accounts, the Second Circuit held they should be “treated...like any other form of property,” citing a case from 1805 to highlight how traditional its approach was.³⁰⁸ Later the same year, a Delaware bankruptcy judge approved a settlement agreement that restored to Gutman ownership of her name marks, the @misshayleypaige accounts, and other IP associated with the Hayley Paige brand.

Gutman’s story highlights the challenges that can arise when personal brand clashes with corporate brand. Gutman regarded her Instagram and Pinterest accounts as deeply personal representations of her own brand and self—“an expression of [her] whole life”³⁰⁹—while JLM perceived them as works for hire under their employment agreement and crucial “advertising platforms” that they had helped build and were entitled to control and exploit. And Gutman similarly viewed the HAYLEY PAIGE trademarks and the use of her name in the industry as fundamentally anchored to her persona, despite having contractually granted exclusive rights in both to JLM. Regardless of their agreement, she viewed her employer’s assertion of ownership over the trademarks and social media accounts as “controlling, manipulative and bullying...overreaching into [her] personal life and creative freedoms.”³¹⁰ Her fans and followers seemed to agree, flooding the @misshayleypaige Instagram account with the hashtag #givehayleypaigehernameback.³¹¹

The Music Influencers

OMG Girlz is a musical group that includes Zonnique Pullins, Bahja Rodriguez, and Breaunna Womack, who also go by stage names “Star,” “Beauty,” and “Babydoll,” respectively.³¹² The group was formed in 2009 under the guidance of Clifford “T.I.” Harris and Tameka “Tiny” Harris, parents of group member Zonnique,³¹³ who was 11-12 years old at the time. The Harrises are well-known in the entertainment industry as musical performers, songwriters, producers, actors, and entrepreneurs.³¹⁴ With several breakout songs and music videos, as well as live and televised performances and reality TV appearances on BET and VH1, OMG Girlz quickly established a fan base. The Harrises managed the young group meticulously, hiring contractors and agents and publicly cultivating high-profile relationships for them with other artists like Beyonce and Lady Gaga. The group maintained a strong presence on social media, boasting 3.2 million followers on Facebook, 211,000 on Instagram, and 278,000 on Twitter by 2022.³¹⁵

³⁰⁷ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 96 (2d Cir. 2024). Previously, the same court had affirmed the preliminary injunction in part and vacated it in part. JLM Couture, Inc. v. Gutman, 24 F.4th 785, 801-02 (2d Cir. 2022).

³⁰⁸ JLM Couture, Inc. v. Gutman, 91 F.4th 91, 103 (2d Cir. 2024), citing, *inter alia*, Pierson v. Post, 3 Cai. 175 (N.Y. 1805).

³⁰⁹ Sarah Nathan, *Wedding gown designer Hayley Paige weeps over bitter dispute with bosses*, PAGE SIX (Dec. 21, 2020), <https://pagesix.com/2020/12/21/wedding-gown-designer-hayley-paige-weeps-over-bitter-dispute-with-bosses/> [https://perma.cc/9BU3-NMM7].

³¹⁰ Nathan, PAGE SIX (Dec. 21, 2020).

³¹¹ Nathan, PAGE SIX (Dec. 21, 2020).

³¹² Declaration of Tameka “Tiny” Harris in Support of Cross-Complainants’ Opposition to Cross-Defendants’ Motion for Summary Judgment Or, In the Alternative, For Partial Summary Judgment, MGA v. Harris, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 169 (May 24, 2022) at ¶¶ 4; 6.

³¹³ Some outlets refer to T.I. as Zonnique’s stepfather, but in his declaration he describes her as his daughter.

³¹⁴ Declaration of Tameka “Tiny” Harris at ¶¶ 14-15; Declaration of Clifford “T.I.” Harris in Support of Cross-Complainants’ Opposition to Cross-Defendants’ Motion for Summary Judgment, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 170 (May 24, 2022) at ¶¶ 4-8.

³¹⁵ Declaration of Tameka “Tiny” Harris at ¶ 29.

From the OMG Girlz' inception, Tiny focused on the group's branding as much as, if not more than, their music. According to Tiny, she "develop[ed] an eye-catching signature look that put them on the map" comprising the name OMG Girlz "coupled with combinations of vibrant hair color in non-monochromatic and contrasting hues—primarily in bright pink, vivid purple, and shades of blue—contrasting wavy and straight hair styling, and experimental, fun, urban, and edgy wardrobes and makeup" as well as "[l]ayered clothing, voluminous skirts (i.e., tutus and other poofy skirts), and bold, over the top clothing and accessories."³¹⁶ Photos from the group's early days capture "the signature style that created a brand through which the OMG Girlz were and remain associated":³¹⁷



At an event in 2010, according to Tiny and other witnesses, toy company MGA "publicly announced [its] specific intention to launch a line of dolls modelled on the OMG Girlz."³¹⁸ While the group was amenable to collaborating with the brand, the parties did not enter into an agreement. But in 2019 MGA released a line of "O.M.G. Dolls" that struck fans as doll versions of the OMG Girlz, mirroring the fashion, hair, and overall image of each member of the group³¹⁹ and, in some cases, wielding musical instruments. In an advertising campaign on YouTube and social media, animated versions of the dolls sang and performed music that the group deemed "strikingly similar" to their own songs.³²⁰

³¹⁶ Declaration of Tameka "Tiny" Harris at ¶ 5.

³¹⁷

³¹⁸ Defendants' Answer to Complaint and Counterclaims, MGA v. Harris and OMG Girlz, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 13 (Feb. 22, 2021) at ¶ 11.

³¹⁹ Counterclaims Dkt. 13 (Feb. 22, 2021) at ¶ 3; 6.

³²⁰ Counterclaims Dkt. 13 (Feb. 22, 2021) at ¶ 4.



The Harrises and OMG Girlz sent MGA a letter in late 2020 that the recipients characterized as a cease and desist,³²¹ while the senders described it as a demand that MGA properly license the rights to portray the singers in doll form.³²² MGA responded by seeking a declaratory judgment of noninfringement in federal court, arguing that the musical group had ceased performing in 2015³²³ and abandoned their trademark rights³²⁴ and that the dolls did not create a likelihood of confusion,³²⁵ especially in light of MGA’s longstanding use of and trademark rights in “O.M.G.” for fashion dolls as a spinoff of (or “big sister to”) its L.O.L. Surprise! line of dolls.³²⁶

Tiny, TI, and the OMG Girlz answered the suit with a set of counterclaims including federal trademark and trade dress infringement, statutory and common law misappropriation of right of publicity, unfair competition, and fraud.³²⁷ The story the counterclaim defendants told was one of

³²¹ Complaint, MGA Entertainment v. Harris and OMG Girlz at ¶ 25.

³²² Counterclaims, MGA Entertainment v. Harris and OMG Girlz at ¶¶ 15-16. According to the Harris parties, the letter was sent “privately and confidentially, hoping to avoid litigation and...damage to [the] line of dolls modelled after the OMG Girlz.”

³²³ Complaint, MGA Entertainment v. Harris and OMG Girlz, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 1 (Dec. 22, 2020) at ¶¶ 26, 29.

³²⁴ Complaint, MGA Entertainment v. Harris and OMG Girlz at ¶ 30.

³²⁵ Complaint, MGA Entertainment v. Harris and OMG Girlz at ¶ 33.

³²⁶ Complaint, MGA Entertainment v. Harris and OMG Girlz at ¶¶ 34-47.

³²⁷ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at ¶¶ 17-64.

“outright theft of...intellectual property, brand and image.”³²⁸ They defined their rights to comprise the group’s name, “unique hair colors, hair styling and wardrobes,” and also their music and images, including images of them “on musical performance tours and in celebrity events as depicted in their television performances and social media releases.”³²⁹

This suit is not the first lawsuit over a doll, toy, or action figure based on or named for a particular individual. Former NASA astronomer Lucianne Walkowicz sued American Girl and Mattel, alleging that their “Luciana Vega” doll, an aspiring astronaut, evoked her with its name, purple-streaked hair, and holographic black boots.³³⁰ Fox News anchor Harris Faulkner sued Hasbro over a toy hamster that was also named “Harris Faulkner,” alleging the hamster “harmed her professional marketability and brand.”³³¹ The family of Evel Knievel sued Disney over its “Duke Caboom” dolls, which were based on a character in Toy Story 4 that allegedly evoked Knievel’s right of publicity.³³² Arnold Schwarzenegger sued over a bobblehead doll; the actress who played Elly May in the Beverly Hillbillies sued over an “Elly May” Barbie doll;³³³ Frida Kahlo’s descendants sued over a Frida Kahlo Barbie doll;³³⁴ an actor from “The Predator” sued over an action figure depicting the character he played in the film;³³⁵ and two actors from the TV show “Cheers” sued over life-sized animatronic doll versions of their characters Cliff and Norm.³³⁶ Those stories are of a piece with that of the OMG Girlz. All of them include right of publicity claims, but many also allege trademark or trade dress infringement, false endorsement, and unfair competition.

But the idea of brand—not just name, image, or likeness, but brand—permeates the OMG Girlz litigation far more than it does those other complaints and decisions. Tiny’s declaration in support of a motion for summary judgment makes more than twenty mentions of the OMG Girlz “brand” in just 15 pages, from general references to their brand as recognizable and valuable³³⁷ to specific discussions of what the group’s brand entails³³⁸ to the Harrises’ investment of “time, talent, and resources” in curating, supporting, promoting, and growing that brand.³³⁹ T.I. describes that investment: “My wife and I leveraged our platforms in the entertainment industry—curated after years of hard work and success—to support and grow the OMG Girlz brand. We used our time,

³²⁸ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at ¶ 2.

³²⁹ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at ¶ 19.

³³⁰ The parties settled. Associated Press, Astronomer’s trademark suit against America Doll resolved (May 5, 2021), <https://apnews.com/article/mars-science-trademarks-business-2efbb5a82dc951b5cdce7cea7070b01> [].

³³¹ Faulkner v. Hasbro, Civil No: 15-6518 (KSH)(CLW) (D. N.J.) (unpublished opinion) at 2, citing Compl. ¶¶ 42, 47. Faulkner and Hasbro eventually settled, but not until after a district court denied Hasbro’s motion to dismiss Faulkner’s right of publicity claim. Civil No: 15-6518 at 4.

³³² K and K Promotions, Inc. v. Walt Disney Studios Motion Pictures, Case No. 21-16740 (9th Cir. 2022) (affirming district court’s dismissal)

³³³ Jennifer Rothman, Mattel’s Barbie doll rendition of Elly May Clampett character from The Beverly Hillbillies draws lawsuit from actress Donna Douglas, Right of Publicity (May 10, 2011), <https://rightofpublicity.com/tag/mattel-barbie-beverly-hillbillies-cheers-john-ratzenberger-george-wendt-right-of-publicity-donna-douglas-elly-may-clampett> [https://perma.cc/ASZ3-Y38Z].

³³⁴ Associated Press, *Relatives win injunction against Mattel’s Frida Kahlo Barbie*, LA Times (Apr. 20, 2018), <https://www.latimes.com/world/la-fg-mexico-frida-court-20180420-story.html> [https://perma.cc/4HKW-2VAE].

³³⁵ Lanham v. Lewis Galoob Toys Inc. (6th Cir. 2000).

³³⁶ Wendt & Ratzenberger v. Host Int’l, 197 F.3d 1284 (9th Cir. 1999).

³³⁷ Declaration of Tameka “Tiny” Harris at ¶ 10, 18, 26, 34, 36, 38

³³⁸ Declaration of Tameka “Tiny” Harris at ¶ 3, 5, 7, 8, 11

³³⁹ Declaration of Tameka “Tiny” Harris at ¶ 13, 22, 23, 29, 38

talent, and resources to create, foster and promote this brand.”³⁴⁰ The term “brand” and the idea of its violation dominates the parties’ counterclaims.³⁴¹ Brand is also the main character in a declaration by OMG Girlz member Breaunna Womack, who describes it as something that preexisted her entry to the group³⁴² but which, after becoming a member, she helped shape and cultivate.³⁴³ Throughout the litigation documents, the OMG Girlz brand is characterized as unique,³⁴⁴ distinctive,³⁴⁵ and consistent.³⁴⁶

But the counterclaims the OMG Girlz and the Harrises brought didn’t stop at trade dress and right of publicity. From their opening salvo, the parties accuse MGA of “cultural appropriation.”³⁴⁷ They cite several definitions of the term, including “the taking – from a culture that is not one’s own – of intellectual property, cultural expressions or artifacts, history and ways of knowledge and profiting at the expense of the people of that culture.”³⁴⁸ They further explain the historical context and harms of such appropriation: “When the appropriator is a dominant group in society, and the source community is subordinate, the appropriator’s assumption of control over the meaning of the source community’s product is said to entrench ‘systems of dominance and control that have been used to colonize, subdue and destroy’ the source community.”³⁴⁹

Framed in this way, MGA’s allegedly infringing actions become wrongs against not just the three young women, but the entire community; both the economic and dignitary harms alleged take on much broader implications. The narrative becomes one of a white-owned corporation stealing from young Black and multi-racial women, commodifying their images without their consent and wresting control of their brand and identities away from them simply because it can. In depositions, witnesses for the OMG Girlz and the Harrises testified that MGA has “a history of commodifying the plagiarized likeness of Black women,” are “getting away with taking from [the OMG Girlz and the Harrises’] culture,” and are “[p]illaging talents, ideas, and the likeness of Black people,” as is the company’s practice.”³⁵⁰ T.I. commented in an interview with Forbes “I noticed that [Larian, CEO of

³⁴⁰ Declaration of Clifford “T.I.” Harris In Support of Counterclaimants’ Opposition to Plaintiffs and Counter-Defendants’ Motion for Summary Judgment, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 170 (May 24, 2022) at ¶ 4.

³⁴¹ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at pages 2, 4, 6, 8, 11, 18, 19, 20, 21,

³⁴² Declaration of Breaunna Womack In Support of Cross-Complainants’ Opposition to Cross-Defendants’ Motion for Summary Judgment, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 167 (May 24, 2022) at ¶ 6.

³⁴³ Declaration of Breaunna Womack at ¶¶ 5-8; 35; 38

³⁴⁴ Declaration of Breaunna Womack at ¶¶ 5; 6; 11; 52; Declaration of Tameka “Tiny” Harris at ¶¶ 10; 17; Counterclaims, MGA Entertainment v. Harris and OMG Girlz at Preliminary Statement ¶ 6; 14; Counterclaims ¶¶ 2; 18; 19.

³⁴⁵ Declaration of Breaunna Womack at ¶¶ 6; 28; Declaration of Tameka “Tiny” Harris at ¶ 10; Counterclaims, MGA Entertainment v. Harris and OMG Girlz at Preliminary Statement ¶ 4; Answer to Complaint ¶ 50; Counterclaims ¶¶ 2; 18; 19; 30; 39; Declaration of Kori Davis In Support Of Defendants’, Cross-Complainants’ Motion for Summary Judgment, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.), Dkt. 166 (May 24, 2022) at ¶ 4.

³⁴⁶ Declaration of Breaunna Womack at ¶ 6.

³⁴⁷ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at page 2.

³⁴⁸ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at page 6, citing Bruce Ziff & Pratima V. Rao, *Introduction to Cultural Appropriation: A Framework for Analysis*, in BORROWED POWER: ESSAYS ON CULTURAL APPROPRIATION 1, 1 (1997).

³⁴⁹ Counterclaims, MGA Entertainment v. Harris and OMG Girlz at page 7, citing Sari Sharoni, *The Mark of a Culture: The Efficacy and Propriety of Using Trademark Law to Deter Cultural Appropriation*, 26 FED. CIR. B.J. 407, 414 (2016).)

³⁵⁰ Counter-Defendants’ Motion In Limine No. 3 re: Accusations of Cultural Appropriation and Racism, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.) Dkt. 184 (May 24, 2022) at 3.

MGA] has not only done this to us but to other Black influencers.”³⁵¹ And at every point in the Answer and Counterclaims, assertions of infringement and misappropriation of personal brand are paired with the claim of cultural appropriation, characterized all together as MGA “stealing from, rather than collaborating with the Black creators who over many years worked to develop the OMG Girlz brand.”³⁵² According to the Harrises and OMG Girlz, that cultural appropriation “is legally actionable where, as here, it has resulted in MGA’s unlawful copying and dilution of the OMG Girlz brand, and misappropriation of their name and likeness.”³⁵³

But on this point, the parties were soon muzzled. MGA moved to strike all references to cultural appropriation and racism.³⁵⁴ The court granted the toy company’s motion to strike³⁵⁵ and a revised answer and set of counterclaims excised all language deemed objectionable.³⁵⁶ After Tiny and T.I. referenced allegations of cultural appropriation in depositions and media interviews, MGA moved for an order precluding the OMG Girlz and the Harrises from introducing any testimony or evidence related to cultural appropriation or any other kind of racial bias or discrimination.³⁵⁷ MGA complained that the use of racism as a “theme” in the litigation was inappropriate and prejudicial and stood to harm the company’s reputation and fuel salacious headlines and social media intrigue: “this is an intellectual property lawsuit where cultural appropriation premised on race is not even minimally relevant.”³⁵⁸ The Harrises and OMG Girlz responded, noting the case included facts “that inevitably implicate race.” In particular, they argued that confusion occurred at a far higher rate among female Black Americans age 35 and under, and a jury must be allowed to hear that evidence.³⁵⁹ But the court granted MGA’s motion.³⁶⁰ And when the jury heard a witness testify that she stopped purchasing MGA dolls because she didn’t want to support “a company that steals from African Americans and their ideas and profit off it,” the judge declared a mistrial.³⁶¹ After both the mistrial and an overturned verdict for MGA, a jury awarded the OMG Girlz and the Harrises

³⁵¹ Counter-Defendants’ Motion In Limine No. 3 re: Accusations of Cultural Appropriation and Racism, at 6-7; Forbes.com

³⁵² Counterclaims, MGA Entertainment v. Harris and OMG Girlz at page 8.

³⁵³ Dkt 27, p.10, para 26.

³⁵⁴ Dkt. 31.

³⁵⁵ Dkt 53.

³⁵⁶ Amended Counterclaims

³⁵⁷ Counter-Defendants’ Motion In Limine No. 3 re: Accusations of Cultural Appropriation and Racism, at 1.

³⁵⁸ Counter-Defendants’ Motion In Limine No. 3 re: Accusations of Cultural Appropriation and Racism, at 7-8; id. at 11 (“This case is not about racial discrimination or bias; it is, rather, about whether Counter-Claimants’ asserted trade dress and trademark have been infringed, and whether the likeness and name of the OMG Girlz have been misappropriated.”). Note that this document is heavily redacted.

³⁵⁹ Defendants and Counter-Claimants’ Memorandum of Points & Authorities in Opposition to Plaintiffs and Counter Defendants’ Motion in Limine No. 3 Regarding Accusations of Cultural Appropriation and Racism, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.) Dkt. 234 (May 31, 2022) at 1-2; see also id. at 3, comparing the parties’ survey populations and conflicting results to highlight the importance of polling consumers from the relevant demographic. Note that this document is heavily redacted.

³⁶⁰ Minutes [in Chambers] Order re Motions in Limine, Case No. 2:20-cv-11548-JVS-AGR (C.D. Cal.) Dkt. 502 (Jan. 13, 2023) at 6.

³⁶¹ Riddhi Setty, Cultural Appropriation Mistrial Derails OMG Dolls-T.I. Fight, Bloomberg Law (Jan. 25, 2023), <https://www.bloomberg.com/product/blaw/bloombergnews/bloomberg-law-news/XF7OKOP4000000#jcite> [https://perma.cc/WYD3-235F].

seventy-one million dollars in actual and punitive damages. But the damages were first reduced to fifty-three million and then slashed to just one dollar,³⁶² opening up the possibility of a fourth trial.³⁶³

Sydney Nicole Gifford talks about her personal brand like it's a sole-authored creation, although she acknowledges help from her mother, who "works as her manager, handling email communications, booking travel, and more." Carmen Electra and the other models who have sued strip clubs over the use of their images in promotion also tend to characterize their brands as a product of their own individual labor, although they concede the assistance of managers and agents. But Hayley Paige Gutman cannot deny that JLM contributed to the growth of "Hayley Paige" as a bridal brand, and their partnership put her name on the map—before that partnership soured, leaving the parties to tussle over social media accounts and spinoff trademarks. The Gutman litigation demonstrates the role of the corporate partner in creating value, even if the influencer feels personal ownership over³⁶⁴—and asserts exclusive rights in—her brand as a representation of her self. The OMG Girlz, meanwhile, were always openly the product of collaboration. The group was created by T.I. and Tiny, and the group members took on the mantle of their roles as Star, Beauty, and Babydoll and added their own personalities and embodiments of the Harrises' ideas. A band's brand, too, is always necessarily a group project. The decision to frame the OMG Girlz litigation as a story about cultural appropriation takes the idea of collaborative personal brand creation one step further, presenting the girls' brand as a product of the creativity and investment of the three members, the Harrises, and the community itself, such that the band members, their creators, and the community are all harmed by the toy company's alleged (mis)appropriation.

Of course, most of the language used in litigation documents comes from lawyers. Extracting from that language the personal brand plaintiffs' own attitudes about and understanding of events is not an exact science. Because they are influencers, though, many have posted or spoken publicly about the litigation and the events that precipitated it. Speaking to the press and on social media, the Harrises and OMG Girlz frame themselves as warriors: "We did this for the city. We did this for the culture," Tiny said in an Instagram Live video she posted from outside of the federal courthouse.³⁶⁵ "We're just happy we were able to come out on top and fight for creatives and our intellectual property,"³⁶⁶ T.I. told the LA Times. "This is for creatives everywhere," OMG Girlz member Bahja Rodriguez posted on Instagram;³⁶⁷ "This a win for us and all artist/ creatives out there," echoed

³⁶² Kevin Bell, Judge slashes T.I. and Tiny's \$53M lawsuit to just \$1, NewsBreak (July 14, 2025), <https://www.newsbreak.com/hip-hopvibe-com-320218919/4102344833326-judge-slashes-t-i-and-tiny-s-53m-lawsuit-to-just-1> [https://perma.cc/K8US-6CGF].

³⁶³ Rachel Scharf, T.I. and Tiny's \$71M OMG Girlz Doll Infringement Verdict Slashed, Teeing Up Yet Another Retrial, Billboard (July 8, 2025), <https://www.billboard.com/pro/ti-tiny-omg-girlz-doll-verdict-cut-retrial/> [https://perma.cc/E4TE-HD7Z] ("The decision means the long-running dispute between the Harrises and toymaker MGA will likely be tried before a jury for a remarkable fourth time.").

³⁶⁴ On Instagram, Gutman updated her followers about her inability to access her old account and her disagreement with JLM's position: "I opened a personal [Instagram] account under my name...since then, I have operated, controlled, run, manifested my account, from the lighter things like...bake-offs with my fiancé... to heavier things like...my struggle with anxiety and moments of self-doubt. My account has been about so much more than my work with JLM and bridal designs. Since opening my account, I have always considered it mine." @allthatlittersontheigram, <https://www.instagram.com/p/CJD7Clbn7UN/> (Dec. 21, 2020).

³⁶⁵ Angel Saunders, *T.I. and Tiny Awarded \$71 Million in Lawsuit Against Toy Maker: 'A Hell of a Fight'*, PEOPLE MAGAZINE (Sept. 24, 2024), <https://people.com/t-i-and-tiny-awarded-71-million-in-lawsuit-against-toy-maker-8717228>.

³⁶⁶ Alexandra del Rosario, *T.I., Tiny awarded \$71 million in lawsuit over toymaker MGA's OMG Fashion Doll*, LA Times (Sept. 24, 2024), <https://www.latimes.com/entertainment-arts/music/story/2024-09-24/ti-tiny-win-71-million-omg-dolls-mga-lawsuit>

³⁶⁷ @bahjarodriguez, Instagram (Sept. 23, 2024), <https://www.instagram.com/p/DAR3Z9zSp0Q/?hl=en>.

bandmember Breaunna Womack in her own Instagram post.³⁶⁸ Gutman, too, sees herself as an advocate working to “inform more people about the harm of noncompetes and overbearing contracts.” And Gifford tells reporters that she is far from the only victim of copying of personal brand, implying that by suing, she made a stand on behalf of many: “there are so many instances of other creators I’ve seen getting their content completely replicated by people. This is not the first time that this has happened, and that’s why we’re here.”³⁶⁹ Other themes also emerge when personal brand plaintiffs speak publicly, including that they feel “bullied”³⁷⁰ or “violated”³⁷¹ and view litigation as a way to fight back or reclaim their property.³⁷²

Personal Brand in Court

The stories in the preceding section are far from the only stories about litigating personal brand. Plaintiffs in personal brand lawsuits include celebrities in traditional media like actor Cheech Marin, media personality Gina Loudon, football player Brandon Copeland, boxer Jermaine Franklin, and street artists DISA, Snok, and Rennee. They also include professional social media influencers like MrBeast, Brittani Friedman, Hayley Paige Gutman, entrepreneur Alex Hormozi, and celebrity chef Chloe Coscarelli, as well as private individuals and social media users. Individuals in every category have filed lawsuits in the past fifteen years alleging “damage” to personal brand.³⁷³ Variations on the theme include “injury” to personal brand, “harm” to personal brand,³⁷⁴ theft of personal brand,³⁷⁵

³⁶⁸ @jusbrezway, Instagram (Sept. 23, 2024), https://www.instagram.com/p/DAR7SwcycYo/?hl=en&img_index=1.

³⁶⁹ Sato, *The Verge*

³⁷⁰ @bahjarodriguez, Instagram (Sept. 23, 2024), <https://www.instagram.com/p/DAR3Z9zSp0Q/?hl=en>; but see Jason McManis, Press Release, ‘First of its Kind’ Influencer Copyright Case Dropped Against AZA Client, Chambers & Partners (May 28, 2025), <https://chambers.com/articles/first-of-its-kind-influencer-copyright-case-dropped-against-aza-client> [https://perma.cc/EUZ9-S86Y] (Defendant Sheil believed the resolution of Gifford’s suit against her “sets a precedent that young influencers can fight back and not give in to bullying”).

³⁷¹ Rachel Hosie, *Wedding-dress designer Hayley Paige says she’s been legally banned from using her own name amid a bitter legal battle with her parent company*, BUSINESS INSIDER (Dec. 22, 2020), <https://www.businessinsider.com/video-wedding-dress-designer-hayley-paige-banned-from-instagram-account-2020-12?international=true&r=US&IR=T>.

³⁷² Alexandra del Rosario, *T.I., Tiny awarded \$71 million in lawsuit over toymaker MGA’s OMG Fashion Doll*, LA Times (Sept. 24, 2024), <https://www.latimes.com/entertainment-arts/music/story/2024-09-24/ti-tiny-win-71-million-omg-dolls-mga-lawsuit>

³⁷³ E.g., Brittani FRIEDMAN, an Individual, Plaintiff, v. POPSUGAR, INC., a Delaware Corporation; and Does 1 through 10, Defendants., 2019 WL 4593711 (N.D.Cal.); Ludwig v. Owlpoint, 2019 WL 13536898 (N.J.Super.L.); Loudon v. Mediaite, LLC, 2019 WL 6122145 (N.Y. Sup.) (alleging plaintiff’s “personal brand ha[s] been substantially and irreparably damaged”); Beauty Enters. Inc. v. CVS Health, 2017 WL 11491139 (N.D.Ill.); Forrest v. Facebook, 2023 WL 10509915 (N.D.Cal.); Fleming et al v. Straub et al, 9:24cv81507, US District Court for the Southern District of Florida (Nov. 28, 2024); Mason v. Lindseth-Olson, 2021-01184194, Cal. Sup. Court, Orange County (Feb. 10, 2021); Heartland Payment Systems, LLC V. Carr et al, 3:18cv9764, D.N.J. (May 18, 2020); Ephron v. Tacopina, 23STCV21854 (Cal. Sup. Court Sept. 19, 2023); Franklin v. Haak, 1:19cv10137 (E.D. Mich. Jan. 14, 2019); Munoz v. Malcolm, BC608676 (Cal. Sup. Crt. Jan. 28, 2016); Holmes v. McClatchy Co., Case No.: 2023-00335452 (Sup. Ct. Cal. Mar. 1, 2023); Robles v. Contreras, 2:24cv5945 (C.D. Cal. July 15, 2024); Swanson v. Westbrook, NO. 21-2-08089-4 SEA (Sup. Crt. Wash., Nov. 4, 2021); Ghost v. Wilson, 24STCV17314 (Cal. Sup. Crt. July 29, 2024).

³⁷⁴ E.g., Beast Invs., LLC v. Celebrity Virtual Dining, LLC (alleging “material, irreparable harm to the MrBeast brand”); Donovitz v. Biote Medical, LLC, DC-24-21607, Texas District & County Court, Dallas District (Dec. 13, 2024); see also Costello & Iron Fist Int’l v. Does 1-10, 2017 WL 1422630 (Cal.Super.) (alleging actions “having a negative effect on [plaintiff’s] personal brand”).

³⁷⁵ Cole & Grimes v. Does 1-10, 2020 WL 14008691 (Cal.Super.) (alleging plaintiff’s “personal brand...had been stolen”).

“dilution” of personal brand,³⁷⁶ “tarnish[ment]” of personal brand,³⁷⁷ “debase[ment]” of personal brand,³⁷⁸ “hijack[ing]”³⁷⁹ of personal brand, “undermining”³⁸⁰ personal brand, “depriv[ation] of control” of personal brand,³⁸¹ and “loss”³⁸² or “loss of value”³⁸³ of personal brand as a result of a defendant’s actions.

And courts have been receptive to some of those claims. In at least two cases, federal courts explicitly treated harm to personal brand as a cognizable injury. In one case alleging unfair competition and tortious interference with prospective economic relations, the court held that the counterclaim plaintiff satisfied the injury-in-fact requirement by alleging “injuries inflicted upon [his] reputation and personal brand resulting from some of the alleged actions” by the counterclaim defendant, giving him standing to pursue those claims.³⁸⁴ In so doing, the court aligns the case with precedent—including Supreme Court precedent—that “injury to reputation will satisfy the injury element of standing,”³⁸⁵ but it adopts the “personal brand” language proffered by the counterclaim plaintiff, including in the decision’s bold header.³⁸⁶ The court also finds the counterclaim plaintiff’s claims of harm, including those about harm to his personal brand, sufficiently specific to state a viable claim for tortious interference.³⁸⁷ In a suit by influencer Brittani Friedman against PopSugar involving re-publication of social media posts, Friedman alleged “substantial damage to [her] personal brand and image” arising in the state of California that supported her claims, which included copyright infringement, false endorsement, and misappropriation of right of publicity. The court found that the alleged injury to “personal brand and image” was expressly aimed at the forum district and foreseeable to the defendant, supporting a finding that specific jurisdiction existed.³⁸⁸

A number of decisions out of Pennsylvania courts also reference the link between right of publicity and personal brand, citing precedent that plaintiffs who invoke the state’s right of publicity statute “typically...have invested resources in the development of a personal brand, and are suing to redress

³⁷⁶ Paz v. Primo Boyz Records LLC, 2025 WL 1666350 (S.D.Fla.); Richard “Cheech” Marin v. Chiocchi, 2019 WL 4538285, ¶ 10 (C.D.Cal.) (alleging defendants “knowingly, consciously and maliciously ripped-off and diluted Plaintiffs’...brand”); Donovitz v. Biote Medical, LLC, DC-24-21607, Texas District & County Court, Dallas District (Dec. 13, 2024)

³⁷⁷ JLM Couture v. Hayley Paige Gutman, 2021 WL 5320916 (S.D.N.Y.)

³⁷⁸ Hormozi V. Neist Media LLC et al, 0:24cv3241 (D. Minn. Aug. 12, 2024)

³⁷⁹ Coscarelli v. Esquared Hospitality LLC, 2018 WL 3207318 (S.D.N.Y.).

³⁸⁰ Charles Ray Romero v. Cisco Sys., Inc., 25NNCV03319 (Cal. Sup. Crt. May 14, 2025)

³⁸¹ Riddle v. X Corp. aka Twitter, Inc., 2025 WL 799804 (W.D.Tex.).

³⁸² Admiral Ins. Co. v. TBN Labs., 2022 WL 4594458 (E.D.N.Y.).

³⁸³ E.g. Casper v. Sinclair Broadcast Group, 2018 WL 2417892 (M.D.N.C.); Smith v. Vivienne Westwood, Inc., 2025 WL 801516 (C.D.Cal.); see also Copeland v. Polquin Group, 2021 WL 4473009 (D.N.J.) (alleging “measurable loss to” personal brand).

³⁸⁴ Heartland Payment Sys., LLC v. Carr, No. 318CV09764BRMDEA, 2021 WL 302918, at *5-6 (D.N.J. Jan. 29, 2021) (unpublished) (granting in part and denying in part defendant’s motion to dismiss).

³⁸⁵ Heartland v. Carr at *5, quoting Gully v. NCUA Bd., 341 F.3d 155, 161 (2d Cir. 2003); McBryde v. Comm. to Review Circuit Council Conduct & Disability Orders of the Judicial Conf. of the United States, 264 F.3d 52, 57 (D.C. Cir. 2001); Riggs v. Albuquerque, 916 F.2d 582, 585–86 (10th Cir. 1990) (plaintiffs established standing by “alleg[ing] harm to their personal, political, and professional reputations in the community”).

³⁸⁶ Heartland v. Carr at *4.

³⁸⁷ Heartland v. Carr at *6, *7 (“Hear[t]land’s Motion to Dismiss as to Count I is denied to the extent it is based on the alleged injuries inflicted upon Carr’s reputation and personal brand...but is otherwise granted.”).

³⁸⁸ The court nonetheless exercised its discretion to grant transfer to the Northern District of California in the interest of judicial efficiency given the existence of related cases pending in that district. *Id.* at *10.

the unauthorized exploitation of that brand.”³⁸⁹ In so doing, they affirm an approach endorsed by a handful of states holding that rights of publicity are not enforceable by just anyone, but only by those who have already exploited or monetized their rights or established a minimum level of commercial value in their brand.

Conclusion

The stories, lawsuits, and decisions discussed above demonstrate a few things. First, people are investing time, energy, money, and emotion into constructing, maintaining, and commercializing their personal brand. For some, construction of personal brand is a side project, but for others it’s a full-time vocation and a site of tremendous emotional labor. Second, many of those people understand their personal brand as a thing they own—a commodity that extends beyond their selves, their bodies, their words, their images, and their vibes, and yet encompasses all of those things. If property is a bundle of sticks, the supposed bundle that is personal brand includes the sticks along with any leaves, berries, and pinecones; the arrangement of the sticks; the photos of the sticks; the captions of the photos of the sticks; the video of the process of gathering sticks in an aesthetically pleasing forest at dusk; and the vibe embodied in the image of a woman, shot from behind, hair in loose waves with subtle highlights, wearing white cowboy boots and holding the bundle of sticks triumphantly over her head.

Third, people are suing—in droves—over what they experience as impingement upon their personal brand in the form of copying, exploitation, commercialization, or reference. They seem to presume that because they have created something of value, then enforceable rights must ensue.³⁹⁰ But treating personal brand like its own new form of intellectual property creates far more problems than it solves. The chilling effects of cases like Gifford’s are substantial, and they extend to every form of speech, from artistic works to individual self-expression. They also reach competition. Taking the personal brand cases individually, many of the claims that arise from them are governed by existing areas of law. Gutman’s case falls squarely within and is governed by the principles of trademark, false endorsement, and contract law. Nita Batra and the other PopSugar plaintiffs make a strong claim for copyright infringement. Carmen Electra and friends state viable claims for misappropriation of right of publicity. In fact, to the extent that right of publicity claims will continue to climb in number and scope as personal brand disputes arise more frequently, we might view that as an impetus to enact a federal right of publicity to avoid forum shopping and inconsistent rights in an industry in which most use extends beyond state boundaries.³⁹¹

Personal brand is not a form of intellectual property, but a close look at the body of literature on personal brand—both popular and academic—helps reveal how we got here. The writing on personal brand is littered with talk of distinctiveness, goodwill, story, narrative, image, and persona.

³⁸⁹ Taha v. Bucks County, 9 F. Supp. 3d 490, 493 (E.D. Pa. 2014), cited in *MLB Players Inc. v. DraftKings, Inc.*, No. CV 24-4884-KSM, 2025 WL 834201, at *10 (E.D. Pa. Mar. 17, 2025), *Cornette v. Graver*, 473 F. Supp. 3d 437, 471 (W.D. Pa. 2020).

³⁹⁰ See Alfred C. Yen, *Brief Thoughts About if Value/then Right*, 99 B.U. L. REV. 2480 (2019); Rochelle Cooper Dreyfuss, Expressive Genericity: Trademarks as Language in the Pepsi Generation, 65 NOTRE DAME L. REV. 397, 405-06 (1990).

³⁹¹ Twenty-four states have right of publicity statutes and some states recognize a right of publicity under common law, but other states do not recognize one at all, and some states extend the right to everyone while others limit it to celebrities, public figures or individuals who have already monetized or exploited the right. See Jennifer E. Rothman, *Rothman’s Roadmap to the Right of Publicity*, <https://rightofpublicityroadmap.com>.

Intellectual property principles shape the personal brand literature, which helps explain the appeal of personal brand as IP. But the penumbras of personal brand—the aspects of personal brand that fall into the crevices between trademark, copyright, and right of publicity—don’t give rise to any new rights or necessitate any expansion of law.³⁹² Pretending they do threatens to eat the very sites of their production—including but not limited to social media platforms and influencer marketing.

In their article on life story rights and norms around private contracting, Fagundes and Contreras warned, “[t]he next step in this evolutionary process could be the judicial or legislative recognition of a formal property interest in individual events and life stories.”³⁹³ Likewise, the dramatic rise in lawsuits over personal brand and the increasing recognition by some courts that harm to personal brand is cognizable harm could lead to recognition of a property interest in personal brand, and soon. But propertizing personal brand doesn’t serve the main goals of intellectual property law or of trademark or right of publicity law, which are often grouped with intellectual property but are more closely tied to commerce. Protecting personal brand would not promote the progress of science and useful arts, reduce consumer search costs and improve efficiency, or prevent consumer deception.

Protecting personal brand *would* reward creator investment in the creation and maintenance of that brand, which is a stated goal of doctrines like those prohibiting trademark dilution and misappropriation of right of publicity. But again, those existing doctrines likely already cover the wrongs that personal brand plaintiffs seek to avenge. Expanding them to create a property right in, or cause of action for, personal brand risks expanding rights to cover facts, vibes, styles, and other concepts that properly belong in the public domain. Ideas like using beige emojis to punctuate a post about beige decor, documenting a visit to a location by photographing your feet on the doormat, captioning a shopping list “my best amazon home purchases,” and pairing a short set with knee-high boots belong in the public domain—they are ineligible for exclusive rights and must instead remain available for all to use. In the influencer economy, creators need the ability to post expressive and commercial images, captions, and video content freely and compete for endorsements and followers without concern about infringing some ineffable idea of another creator’s personal brand. While personal brand does serve some social purposes, including those of self-expression, connection, and collaboration, the existing trademark, copyright, right of publicity, and false advertising regimes adequately protect consumers from deception and influencers from violation.

The idea of a “law of personal brand” may seem normatively appealing, but it isn’t legally cognizable. We do not need a law of personal brand and, on the contrary, should be on guard against its inadvertent creation as these cases progress through the courts or settle in ways that cast a long shadow.

³⁹² Fagundes & Contreras make a parallel argument about life story rights: “the gravitational force exerted by the lay view that life facts should be private property has slowly begun to bend law in that direction.” Id. at 765.

³⁹³ Fagundes & Contreras at 749.