### Spring 2021

#### First Assignment Form

<table>
<thead>
<tr>
<th><strong>Name</strong></th>
<th>Peter Harvey</th>
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<tbody>
<tr>
<td><strong>Course</strong></td>
<td>Entertainment &amp; Media Law</td>
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<td>Assigned reading for first class:</td>
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<td>2. Review the music videos, case, sound recordings and advertisements mentioned in Hypotheticals 1, 2, 4 and 5.</td>
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<td><strong>1st Assignment</strong></td>
<td>Be prepared to discuss the issues raised in the assigned reading and hypotheticals. (Note that I do make discretionary grade adjustments, and class participation will form the basis for part of each student’s grade.)</td>
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<td><strong>Note to Students</strong></td>
<td>1. My contact information:</td>
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<td>Peter Harvey</td>
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<td></td>
<td>2. I hold office hours by appointment on Zoom. Please send me an email with your availability and, if applicable, the topic(s) you would like to discuss.</td>
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Hypothetical 1: Ariana Grande and Forever 21

In the summer of 2019, struggling fashion retailer Forever 21 posted ads featuring photographs of a model bearing a striking resemblance to Ariana Grande on its Instagram account. The postings included snapshots from Grande's popular music video, “7 Rings,” which depicts a pink-tinged house party for Grande, bedecked in jewels, and her friends. Forever 21 included postings in which the “look-alike” model – a brunette with a slicked back high ponytail – is dressed similarly to Grande in the video. In another post, the model wore a hairpiece with two pink puff balls. The caption echoed lyrics from “7 Rings” (“Gee thanks, just bought it”) and asked viewers to “shop our favorite trend.” In yet another, the model wore camouflage capris and pink stilettos, urging users to “swipe up to shop.”

Grande sued. The complaint alleged: “The resemblance is uncanny, and Forever 21’s intent was clear: to suggest to the viewing public that Ms. Grande endorsed Forever 21, its products, and was affiliated with Forever 21.” The complaint noted that negotiations between Grande and Forever 21 for an endorsement deal in 2018 had fallen through when Forever 21 balked at paying Grande’s six-figure asking price.

Before class, review “7 Rings” and White v. Samsung Electronics America, Inc., 971 F.2d 1395 (9th Cir. 1992), and be prepared to discuss:

- What claims will Grande assert?
- What defenses will Forever 21 likely advance?
- How does this case compare with White?
- What do you predict the outcome of the case will be?
Hypothetical 2: Blurred Lines

Pop singer Robin Thicke released a song called “Blurred Lines,” featuring Pharrell Williams and T.I., in 2013. The recording became a megahit, spending sixteen weeks as the number one single on Billboard’s Hot R&B/Hip-Hop Songs chart. The recording produced over five million downloads in twenty-two weeks, which made the song the fastest-selling in digital music history.

The estate of Marvin Gaye thereafter accused Thicke and his record company of copyright infringement arising out of Thicke’s alleged copying of the Marvin Gaye song, “Got to Give It Up.” Similar threats were made by Bridgeport Music, Inc. that “Blurred Lines” infringed Funkadelic’s song “Sexy Ways.” Thicke made a six figure settlement offer to Marvin Gaye’s estate which was rejected. Thicke, Williams, and Clifford Harris, Jr. (aka T.I.) then filed a declaratory judgment action seeking a declaration that “Blurred Lines” does not infringe “Got to Give It Up” or “Sexy Ways.” Ultimately, a jury awarded the Gaye children $7.4 million on their copyright infringement counterclaim. The case thereafter settled.

Before class, listen to all three recordings. Be prepared to discuss the following:

- What are the elements of copyright infringement in the music context?
- How should the court have gone about applying those elements here?
- Was the jury right?
Hypothetical 3: Sharpshooter

On New Year's Day 2009, a 48-year old man slipped off a ski lift at Vail Resort in Colorado and was caught upside down, dangling by his boot 25 feet above the ground, for 20 minutes. In the process his pants and underwear were caught and pulled completely down (or up), exposing him to the world. Marty Odom, an employee of Sharpshooter Photography, Vail Resort’s exclusively-licensed mountain photography company, snapped several pictures. Odom was not on duty, but he used a camera supplied by Sharpshooter.

The case’s notoriety has made the photos very much in demand. However, Sharpshooter told Odom he could not sell the pictures and suspended him for “unprofessional conduct.” Vail Resorts issued a statement condemning Odom’s conduct, and Sharpshooter publicly disclaimed responsibility, saying Odom violated its policy of “strictly respecting the privacy of Vail Resorts guests.” Odom was quoted in the Vail Daily newspaper as saying that “the whole situation sucks. The situation was newsworthy, and I happened to be there at the right time to capture it. … These are my photos – I took them. I’ve had inquiries to buy rights to them from all over the world. But my boss tells me I can’t sell them, and now my job is in jeopardy.”

Several legal questions arise:

- Who owns the copyright rights to the photos?
- What legal claims can the unfortunate skier assert? Against whom?
- What are the defenses? How would you assess the likely outcome?
- What claims can Odom make? What are the defenses, and likely result?
Hypothetical 4: Girls

GoldieBlox is a San Francisco Bay Area startup company which makes toys and games designed to encourage young women to learn about science and technology. As part of any advertising campaign, GoldieBlox created a video based upon the Beastie Boys’ song “Girls.” The original song, which appeared on the Beastie Boys’ 1986 hip-hop album “Licensed to Ill,” includes the following lyrics:

Girls to do the dishes
Girls to clean up my room
Girls to do the laundry
Girls and in the bathroom.

In the GoldieBlox online video, to the tune of “Girls,” girls are depicted building an elaborate “Rube Goldberg” mechanical device while singing the following:

Girls to build a spaceship
Girls to code the new app
Girls that grow up knowing
That they can engineer that

After the Beastie Boys threatened GoldieBlox with copyright infringement, GoldieBlox filed a complaint for declaratory relief seeking a declaration, among other things, that its use in the video was a fair use.

Shortly thereafter, the Beastie Boys countersued for, among other things, copyright infringement. The case ultimately settled.

Before class, view the “Original GoldieBlox Commercial” video and listen to the Beastie Boys’ song. Both are available on YouTube.

○ Come to class prepared to discuss the merits of the infringement claim and GoldieBlox’s fair use defense.
Hypothetical 5: Honda Yearbook Ad for Superbowl LI

For Superbowl LI in February, 2017, the Japanese car maker Honda Automotive ran an advertisement featuring high school yearbook pictures of people who had become well-known actors. The featured actors included Tina Fey, Jimmy Kimmel, Robert Redford, Steve Carell, Amy Adams, Magic Johnson and Viola Davis. In the ad, the actors pictured are animated, and speak generally in terms of following one’s dreams and becoming the best one can be. The ad is available on YouTube and on the Ad Age website; see http://adage.com/videos/honda-yearbooks/1295. Please review it before class.

Assume that the agency which created the ad obtained releases from some but not all of the actors pictured. Consider the legal claims and defenses which might arise, and be ready in class to address the following questions:

- Who might have claims in this situation?
- What claims might they assert?
- What defenses could be raised?
- How would you assess the likely success of the claims and defenses?
- How would you go about measuring damages?