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The Use of Celebrity Look-Alikes in Advertising and the Interplay Between State Right of Publicity and Federal Trademark Infringement Claims

The Licensing Journal, Volume 40, Number 1

November 13, 2019

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What is a world-wide, massively popular pop music star and actor supposed to do when a company negotiates with her to secure her image in an endorsement deal, declines to pay her asking price, but then goes ahead, without permission, and runs advertisements using a model that looks almost exactly like her, is dressed in almost identical clothing to what she wears in her music videos, and poses in ways that evoke her image as well? The complaint almost writes itself. Ariana Grande's lawyers had a lot to work with in preparing her lawsuit² against retailer Forever 21 (which just filed for bankruptcy protection) and its affiliated beauty boutique Riley Rose, for their advertising campaign which allegedly "stole her name, likeness and other intellectual property to promote their brands for free."

Celebrity lawsuits based on the use of look-alikes are nothing new, nor is the sheer brazenness of the defendant to go ahead with a campaign using a look-alike after negotiations with the genuine article failed. What does deserve some additional scrutiny from a legal perspective, however, is the interplay between the state-based celebrity right of publicity claim and a claim for false endorsement based on the federal Lanham Act. While these claims are often asserted simultaneously, as they were in Ariana Grande's case, they vindicate different rights and have different burdens of proof.