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Copyrights Part Two: Infringements

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ABOUT US

BILL HANNIGAN

Bill Hannigan is the founder of two premium licensing agencies, [AUGUST](#) and [OTTO](#). He was also a photographers' agent for more than a decade.

EMILIE PITTS

Emilie Pitts is an intellectual property attorney representing artists and organizations with a focus on advocacy, contracts negotiations, and copyright protections.

Part One: Editorial Contracts

A CONTRACT IS A MEETING OF THE MINDS

The base of all negotiations with brands and publications begins with the agreed upon terms.

Part Two: Infringements

WHEN A BRAND OR THIRD PARTY USES ANY IMAGE WITHOUT PERMISSION, IT CONSTITUTES COPYRIGHT INFRINGEMENT

There are various ways to protect, respond and settle these claims in an amicable way that will benefit your artist.

INTRODUCTION TO INFRINGEMENTS

STEPS TO PROTECT YOUR WORK

DIGITAL MEDIA

STRATEGIC NEGOTIATIONS

REMEDIES TO INFRINGEMENTS

OVERVIEW + QUESTIONS

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INTRODUCTION TO INFRINGEMENTS

Copyright infringements are any unauthorized uses of your work.

Infringements can happen at any stage in the process of a photoshoot - from the moment a photo is taken, to hours after first publication, to even years after publication.

Infringements can either be:

- (1) when a client exceeds the agreed upon usage; or
- (2) when a third party uses your work that never had permission in the first place.

INTRO TO INFRINGEMENTS: CONTRACTS

WORK-FOR-HIRE LANGUAGE MEANS YOU DO NOT OWN THE WORK SO YOU CANNOT PURSUE ANY INFRINGEMENTS THEREOF.

Some contracts explicitly say that the terms of the project are work-for-hire (WFH), which means that you automatically assign your rights to the work to the commissioning party.

NOTE: In California, WFH language is unenforceable, so you should also look for language that requires you to transfer your copyright and assign the commissioning party to be your attorney-in-fact to transfer these rights on your behalf.

If you own the underlying work, then you can syndicate the images after an embargo period and also actively pursue infringements.

INTRO TO INFRINGEMENTS: CONTRACTS

WHAT TO LOOK OUT FOR IN A CONTRACT

OWNERSHIP LANGUAGE

Who owns the work? For how long? In what territories? From what date?

USAGE

Is this exclusive or non-exclusive? There are different levels, from digital use, to print to OOH, industrial use, etc.

LICENSING RESTRICTIONS

Look for language that explicitly grants a license to the commissioning party for use of the work. Is it non-transferable? Sub-licensable? These factors will determine third party rights

ADDITIONAL FEES

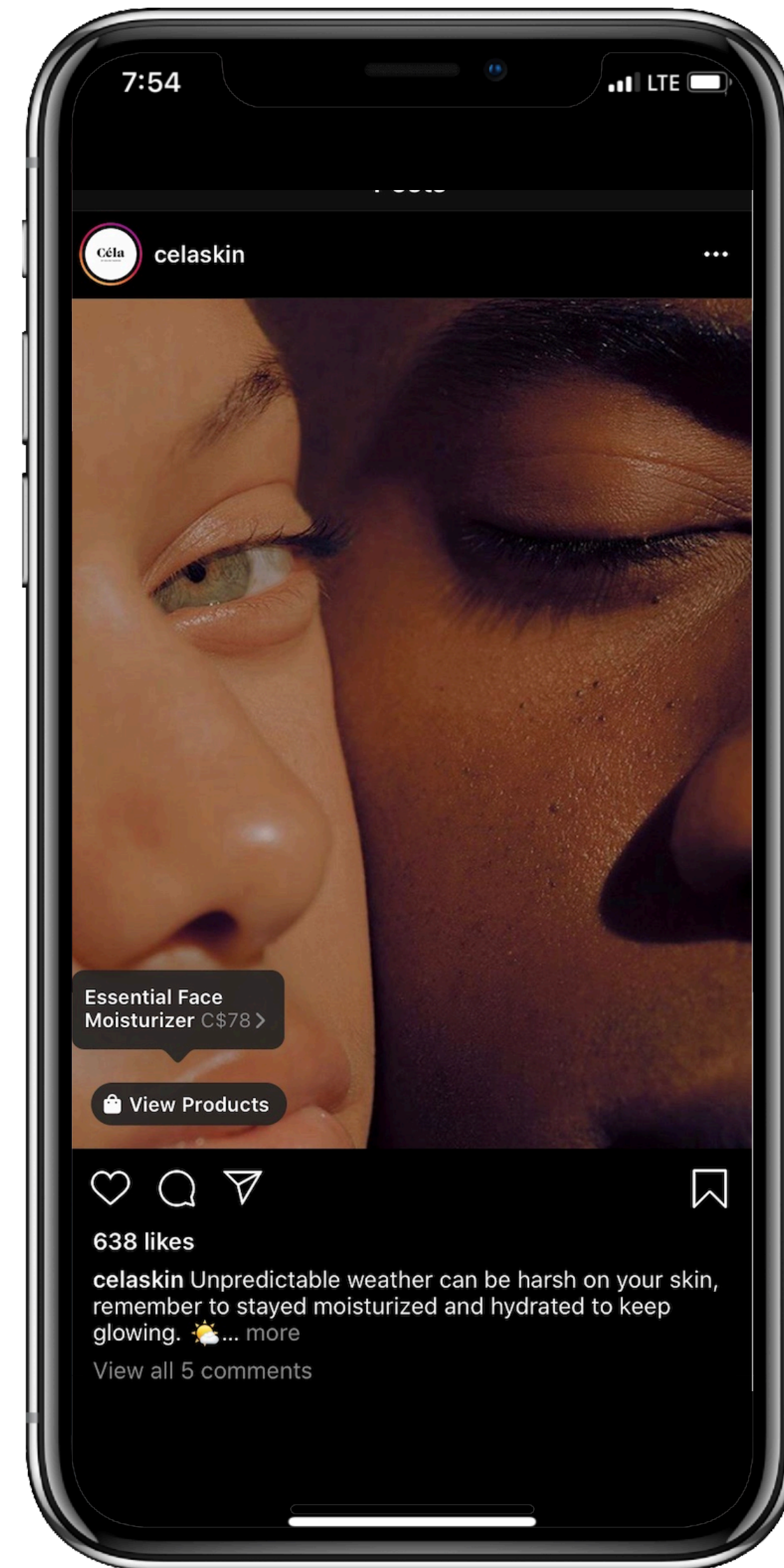
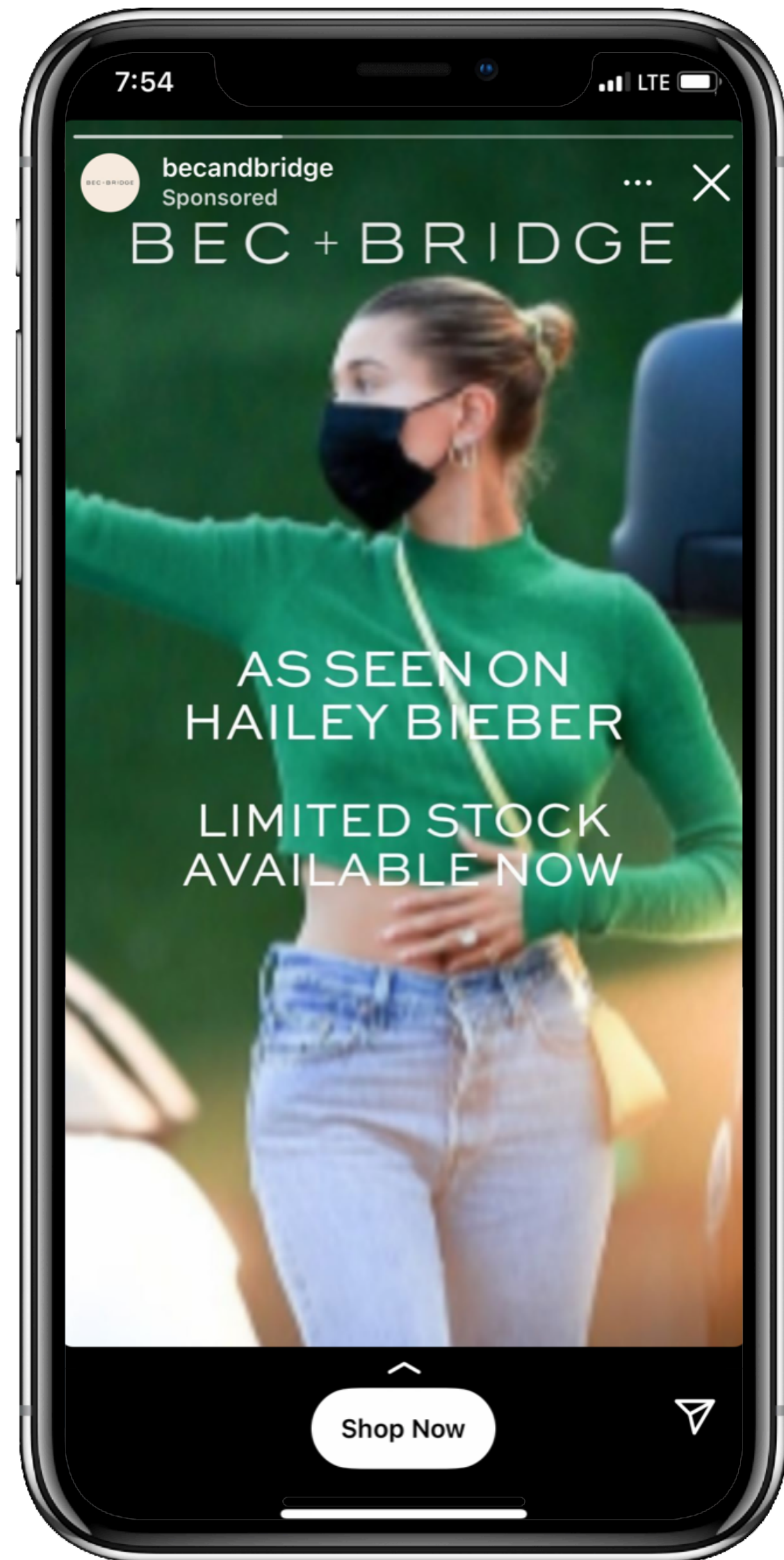
Additional fees may be pre-negotiated for potential extended use or graduated usages

MODIFICATION

Right to crop, edit, modify, etc. the work without consultation or permission. Do they have the right to create derivative works?

SYNDICATION

Which party has the right to syndicate the images after publication?



from \$950.00 AUD



In Our Own World
from \$800.00 AUD



Talk The Talk
from \$2,650.00 AUD



STEPS TO PROTECT YOUR WORK

COPYRIGHT REGISTRATIONS

Your work is automatically protected the moment it is **fixed in a tangible medium**. This can be proven through metadata, date and time stamps, or even verbal confirmation.

You can also register many different kinds of works, from photographs, to videos and illustrations and writings of any kind. However, in order to pursue a copyright infringement claim, your work needs to be registered with the U.S. Copyright Office.

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To register your work with the U.S. Copyright Office, visit <https://www.copyright.gov/registration/>

To note, registration only provides a limited recourse for pursuing an infringement.

STEPS TO PROTECT YOUR WORK

EVEN THOUGH YOU OWN YOUR WORK THE MOMENT IT IS CREATED, YOU MUST HAVE A REGISTRATION IN ORDER TO PURSUE A COPYRIGHT INFRINGEMENT CLAIM.

You may always send a cease and desist, regardless of whether your images are registered. This allows you to take immediate action on a claim, while you register your images in preparation for a lawsuit.

Most cases settle, and the registration is used as a form of provenance, rather than as a requirement to settle.

As we will discuss, you are eligible to claim any amount when you are pursuing a copyright claim, but will always be limited by various factors (i.e., the nature of the relationship with the infringer, the timing of the infringement, the scope of the infringement, etc.)

ADVANTAGES TO REGISTRATION

| TIMELY REGISTERED IMAGES

While you can register your work at any time, it is imperative work is registered regularly (every 90 days) in order for all of the registrations to be **timely**.

One of the important benefits that come from registering your works in a timely manner is the ability to seek statutory damages and attorney's fees.

NOTE: It is only when copyright owners register their image before an infringement begins (or within three months after publication of that work) that they become eligible for an award of statutory damages and attorney's fees.

|| STATUTORY DAMAGES

Statutory damages can range from \$800-\$30,000 per work infringed, with the possibility of recovering up to \$150,000 per work for **willful** infringement. (17 U.S.C. § 412)

Willfulness goes to the intent of the infringer and the court asks whether or not the party knew that they had no right to use the images.

DIGITAL MEDIA

THE CHANGES THAT CAME WITH DIGITAL MEDIA BECOMING A DOMINANT PLATFORM AND HOW THAT HAS IMPACTED THE USE AND MISUSE OF PHOTOGRAPHY

The question is whether a branded social media platform is considered advertising, such that a new post of items available for sale to their followers would be considered use of an image in commerce

The best way for brands to advertise used to be billboards, buses, websites, etc. Now, inherently, consumers look to social media to determine a brand's positioning, which is also immediately measurable in likes, reposts, and click-to-buy links.

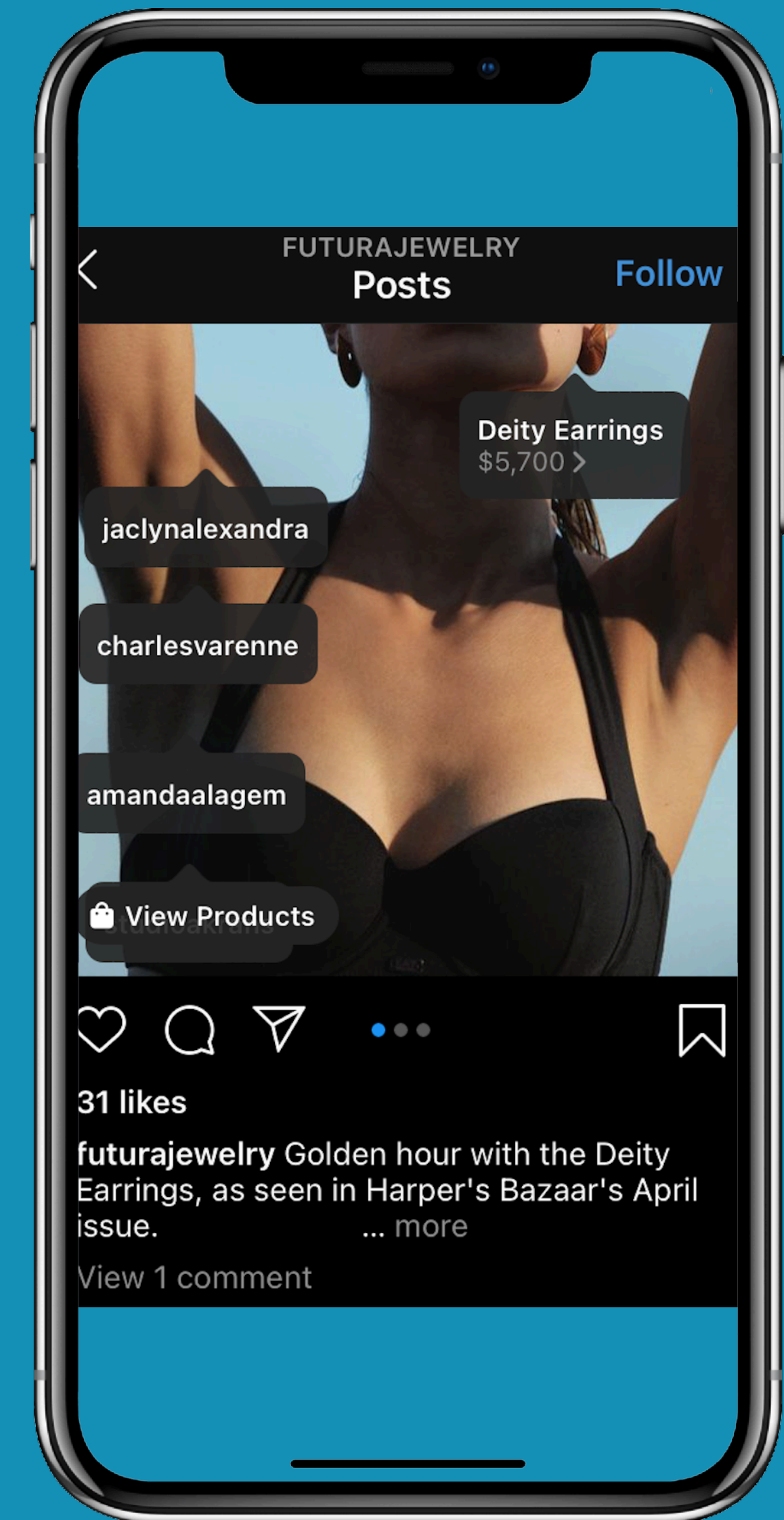


IMAGE USE IN DIGITAL MEDIA

HOW USE OF SOCIAL MEDIA HAS IMPACTED THE MARKET

- Use of images on social media, like Instagram, has created an ongoing legal question of whether it can be considered an advertising platform, lending to images being used in commerce without permission. If so, this is copyright infringement.
- Because a brand's social media presence enhances consumer perception and brand positioning, any posts are arguably advertising as the items are often available for sale either in the post, in the caption, or in the "link in bio"
- > With this understanding, a brand needs to ask permission the same way it would to use an image on a bus, or a billboard, or any use that was not authorized initially or at all

NOTE: When an image is used without permission - it likely also violates the subject's right to publicity as well

IMAGE USE IN DIGITAL MEDIA

PURSUING INFRINGEMENTS IN SCALE

- It is common practice for reputable companies to use images online without permission and believe they have the right to do so.
- Companies should work to implement better internal policies and practices to educate staff on copyright matters (i.e., what is press use?)
- Even when protection is granted, misuse occurs; the agreement should dictate that the photographer should have full credit, a link back to the original article, and a clear definition of the rights granted

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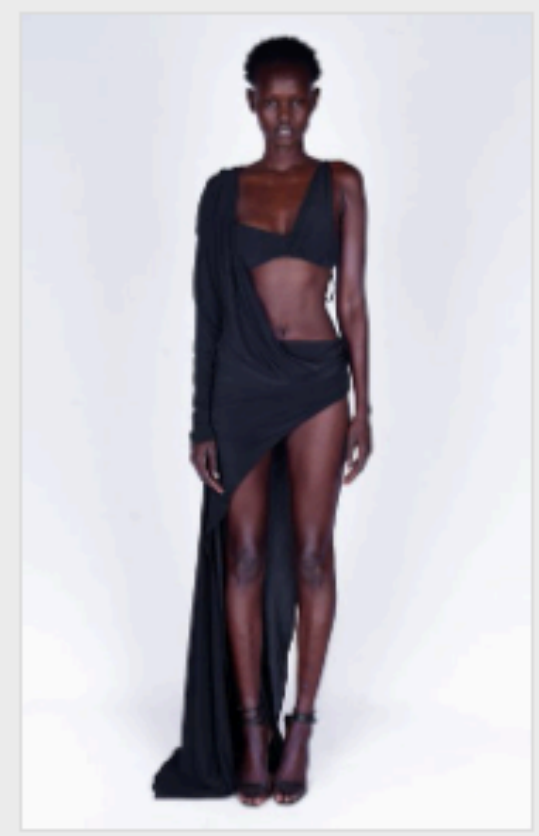
BLACK AND LATIN
AFRO-LATINO ARTISTS SPEAK OUT

plus
EVERYONE'S PAYING FOR STREAMING. NOW WHAT?

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Dare to bare like Jennifer in a dress by Monot



Read more →

Cover stars: 'Like a real girl, which is what I am. People see you as this thing, this star. They

Summ... Fullam... lace ma... around... cheeky... receives... delivery

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Cover stars: 'Like a real girl, which is what I am. People see you as this thing, this star. They forget that you're just a girl and want to live and laugh and be normal,' added Jennifer

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Dare to bare like Jennifer in a dress by Monot

How incredible does Jennifer Lopez look in this shoot for Billboard?

The superstar is donning an array of sexy ensembles by the likes of Celia Kritharioti and LaQuan Smith, but this Monot dress stole our hearts.

Featuring an asymmetric neckline, cut-out details and exaggerated side slit, this dress is right on par with the label's signature aesthetic.

While it isn't available to purchase online, you can click (right) to get your hands on something similar.

Alternatively, swap your LBD for one of the sensational dresses we have lined-up below. With options by I Saw It First, Superdown, Asos and Rick Owens, there's something to suit every budget.



Monot asymmetric draped dress

Buy a similar style!

Buy now



'We wanna make more!' Luther creator Neil Cross reveals Idris Elba WILL return as the hard-bitten detective... with plans for a film already in development

TOWIE's Bobby Norris reveals he has split from boyfriend Matt Snape... just weeks after they discussed marriage and having a family

Kim Kardashian flaunts her 39in hips in a skintight dress as she says she 'loves' her new makeup line that will launch on her 40th birthday next week

'It was a battle I intended to win!' Phillip Schofield reveals he threatened to QUIT This Morning after bosses refused to hire Holly Willoughby

Thanks for the input, Lily! Allen sings foul-mouthed 'F**k you Tier Two' song in response to new government restrictions in London

REMEDIES TO INFRINGEMENTS

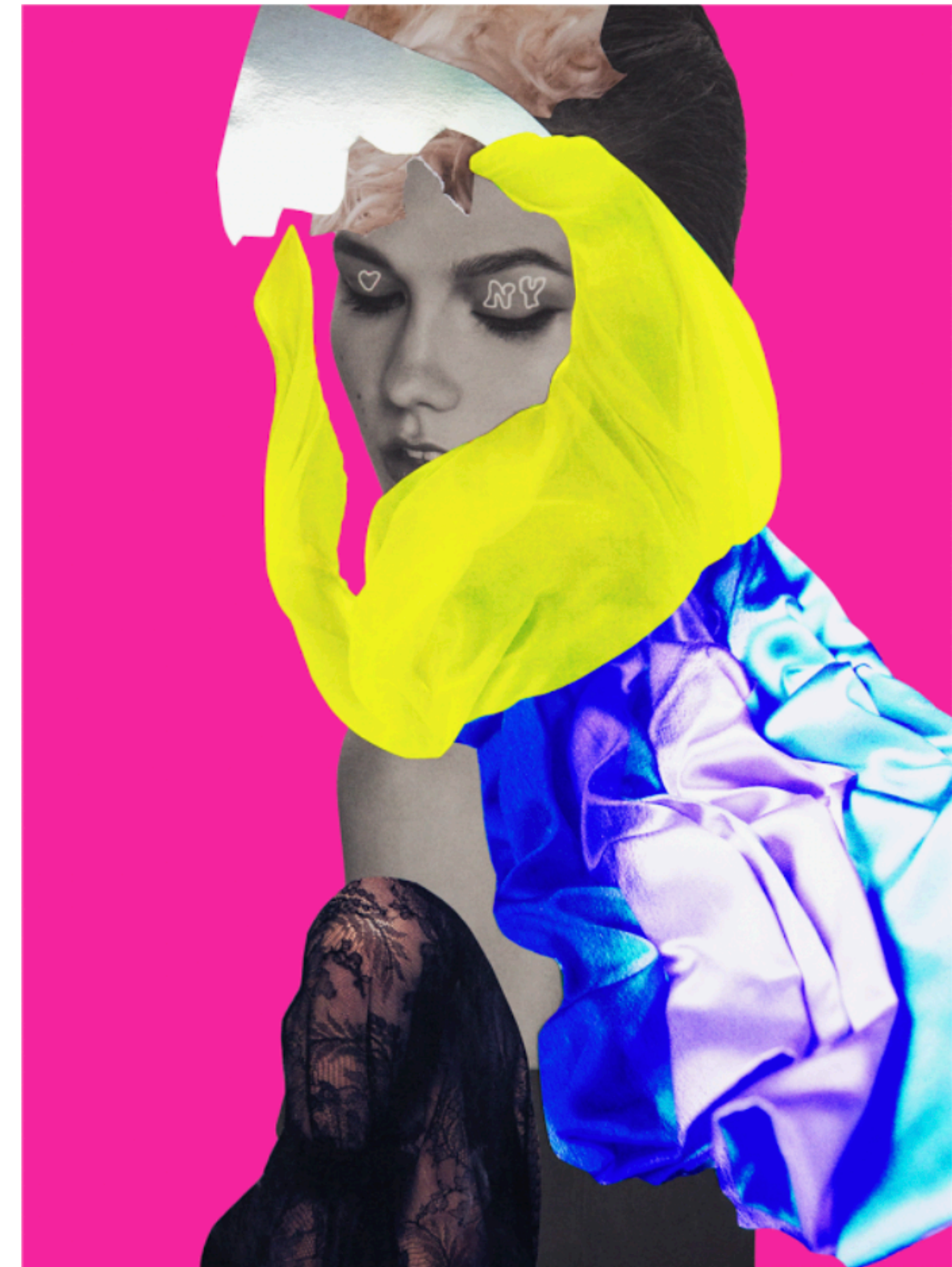
HOW THE FAIR USE ARGUMENT COMES INTO PLAY

- Fair use is an affirmative defense to copyright infringement, which permits the unlicensed use of photographs in certain circumstances, such as:

1. Criticism
2. News Reporting
3. Teaching
4. Parody
5. Scholarship/Research

- Fair use is not permitted in the scope of commerce, and the court uses a balancing test to determine whether the infringer will be able to continue unlicensed use of the work, or not, based on these factors:

1. Purpose and character of the use
2. Nature of the copyrighted work
3. Amount and sustainability
4. Effect upon work's value
5. (Sometimes) Source of the work



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