AMIcUS CURIOUS

NIU professor becomes expert on IP tattoo law

Captured by legal arguments in Mike Tyson case, Yolanda King carves out new field with copyrights

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Mike Tyson’s face tattoo got him into trouble. It got Warner Bros. sued. It got Yolanda M. King intrigued.

When Tyson’s famous tribal tattoo appeared on actor Ed Helms’ face in “The Hangover Part II,” the tattoo artist who created it sued Warner Bros. Entertainment Inc. for copyright infringement.

FILED in St. Louis by artist S. Victor Whitmill in U.S. District Court in April 2011, one month before the film’s release, the lawsuit settled two months later after an undisclosed amount.

The film — with a cameo appearance by Tyson just like its predecessor — finished in the top 10 that year in worldwide gross, earning the studio $858 million.

The feud was over. King’s work was just starting.

“I thought it was really interesting,” said King, who teaches intellectual property and entertainment law at Northern Illinois University College of Law.

“It was a type of subject matter I had never considered for copyright protection.”

Fascinated by the subject, King published articles about tattoo copyright in 2013 in the Oregon Law Review and 2014 in the Journal of Intellectual Property at the University of Georgia School of Law.

She is working on a third article set for publication this spring in the Nevada Law Journal.

In addition, she’s headed to Columbia Law School in October as a panelist at a copyright symposium.

“My first two articles concerned the copyrightability of tattoos and the enforcement of tattoo copyright,” King said.

“The third article assumes that there are enforceable copyrights, but if the tattoo is on the body of a celebrity, then the tattoo-bearer may have a right of publicity claim independent of the tattoo artist’s copyright claim.”

Whitmill’s case was the second high-profile lawsuit on tattoo copyright. The first was Reed v. Nike Inc., et al in 2005, when a tattoo artist sued Nike for a television commercial in which NBA star Rasheed Wallace tells the stories behind his tattoos.

The suit settled in October 2005, eight months after it was filed in U.S. District Court in Oregon. To date, no tattoo copyright suit has gone to trial.

“There’s not a lot of literature out there on tattoos, so she is one of the few scholars who has explored it in an academic manner,” said Fippa Almond, one of three organizers of the symposium where King is speaking.

Called “Copyright Outside the Box,” the symposium is part of an annual series of copyright symposia hosted by the law school’s Kernochan Center for Law, Media and the Arts.

The symposium on Oct. 2 will feature King along with panelists discussing copyright issues in yoga poses and type font.

The tattoo-copyright debate comes down to two points of view, sistant, Anne E. McLean, who earned her J.D. at Northern in 2013. “She inspired my career path.”

Today, McLean is a project coordinator at UChicagoTech Center for Technology, Development and Ventures at University of Chicago, working in its IP office.

As an NIU student, she met King when she expressed to a classmate an interest in IP law.

She ended up taking four of King’s courses and spending two years as King’s research assistant, working on the first two articles.

“At the end of the day, I don’t want to be doing something that I’m not completely enthralled with,” McLean said.

“For me, that’s always been intellectual property. And seeing professor King’s total enthralment with all things IP was super inspiring for me moving forward.”

King and McLean found a dichotomy within the world of tattoo artists as stark as the one expressed in the Tyson case.

“Tattoo artists are part of a counterculture, McLean said, and hence are “not the kind of people who are calling the cops on people or filing lawsuits, especially over artwork.”

Along with working for King, McLean conducts her own research with tattoo artists — she speaks with them while they tattoo her, which distracts her from the pain.

“Some tattoo artists say, ‘I don’t care about laws. I don’t need the United States to enforce laws so that I feel good about my art,’” she said.

“And then you have some tattoo artists who say, ‘Well, if other people were (filling suit), maybe I would too.’”

All of these debates make King’s work particularly timely, Almond said.

“She’s an up-and-coming scholar,” said Almond, whose co-organizers on the symposium include professor Jane Ginsburg, daughter of U.S. Supreme Court Justice Ruth Bader Ginsburg.

“We always like to have people who are newer to the profession. ... We are thrilled to have her.”

The symposium typically draws between 75 and 100 people, Almond said. Registration begins on web.law.columbia.edu/kernochan at the end of the month.

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