I SEE IT, I LIKE IT, I WANT IT, I GOT IT: ARIANA GRANDE’S RIGHT OF PUBLICITY LAWSUIT AGAINST FOREVER 21

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Abstract: In 2019, Ariana Grande filed a lawsuit in the United States District Court for the Central District of California against Forever 21 for violating her right of publicity, a legal construct designed to help celebrities control their identities for commercial use. This right is important to protect in light of the influence of celebrity endorsements and the risk that businesses will misappropriate celebrities’ images because they cannot afford the hefty price tags associated with celebrity endorsement. This Essay argues that under common law, Forever 21’s use of unauthorized photographs of Grande and the look-alike model violate Grande’s right of publicity. Under California statutory law, Grande would only be able to recover for Forever 21’s unauthorized use of photographs of Grande.

INTRODUCTION

Ariana Grande is a world famous Grammy-winning singer and songwriter.1 Grande performs at concerts worldwide, has more than thirty billion streams on various streaming platforms, and is the most followed woman on Instagram with over 169 billion followers.2 In addition to Grande’s fame and success in the music industry, she also has great social influence.3 Businesses, recognizing that social media is a valuable marketing platform, often approach Grande to secure commercial endorsement deals for their products.4 Forever 21, Inc., a fashion retailer, sought an endorsement deal with Grande, which Grande allegedly declined.5 Forever 21 nevertheless began a marketing campaign which included photographs of Grande from her music videos and of a look-alike model that Grande argues, falsely suggested her endorsement.6 As a result, Grande sued Forever 21 in September 2019 for violating her statutory and common law rights of publicity as recognized by California law.7 Part I of this Essay summarizes the events leading up to Grande-

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3 Complaint, supra note 1, at 2.

4 See id. at 27 (discussing how Grande is paid by companies to endorse their products or services).

5 Id. at 2.

6 Id. at 7–9.

7 CAL. CIV. CODE § 3344 (1971); Complaint, supra note 1, at 2.
**Butera v. Forever 21, Inc.**, which is pending in the Central District Court of California.\(^8\) Part II discusses the common law rights and statutory rights of publicity in California.\(^9\) Lastly, Part III argues that Forever 21 violated Grande’s common law right of publicity when the company used Grande’s photographs and a look-alike model.\(^10\) Additionally, Part III argues that Forever 21 violated Grande’s statutory right of publicity by using her photographs, but not by using a look-alike model.\(^11\)

## I. FACTS AND PROCEDURAL HISTORY OF GRANDE-BUTERA v. FOREVER 21, INC.

Grande’s right of publicity suit against fashion retailer Forever 21 illustrates the commercial value of a celebrity persona.\(^12\) In early 2019, in anticipation of the release of her wildly popular album, “thank u, next,” Forever 21 sought an endorsement deal with Grande to promote their clothing and accessories on her social media accounts.\(^13\) According to Grande, she declined the deal because Forever 21 would not pay her what she was worth.\(^14\)

Forever 21 launched a marketing campaign on its website and social media in early 2019 without Grande’s consent.\(^15\) Forever 21 published at least thirty images and videos that Grande argued showed similarities to her “thank u, next” music videos.\(^16\) In the complaint, Grande illustrated that the images and videos mimic the imagery in her 7 Rings music video, which depicts Grande and her friends at a house party with pink hues throughout the scenes.\(^17\) Grande argued that Forever 21 hired a look-alike model, and that the model also appropriated Grande’s signature hairstyle.\(^18\) Additionally, Grande stated that the model wore similar clothes and accessories to those she wore in music video: purple camouflage jogger pants, pink platform heels with white socks, and a white belt.\(^19\) Moreover, one of the photographs Forever 21 posted on its Instagram page that Grande took issue with includes a model wearing a “distinctive hair accessory” with pink puff balls and embellishments similar to the accessory worn by Grande in her music video.\(^20\)

In addition to copying the clothing, accessories, and imagery of the 7 Rings music video for its marketing posts, Forever 21 also played the 7 Rings audio over some of the posts and included lyrics from the song in their captions, as well as direct references to her name.\(^21\) Grande also argued that Forever 21 intermixed and posted photographs of herself from both her 7 Rings and thank u, next music videos,

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\(^8\) See discussion infra Part I.
\(^9\) See discussion infra Part II.
\(^10\) See discussion infra Part III.
\(^11\) See discussion infra Part III.
\(^12\) See discussion infra Part I.
\(^13\) Complaint supra note 1, at 5–6.
\(^14\) Id. at 2.
\(^15\) Id. at 7.
\(^16\) Id.
\(^17\) Id. at 8–10.
\(^18\) Id. at 9.
\(^19\) Id. at 10.
\(^20\) Id. at 9–10.
\(^21\) See id. at 8–9 (discussing how Forever 21 included direct references to Ariana Grande’s Instagram handle @arianagrande in their social media posts).
which she claimed Forever 21 did not have the authorization to post.\textsuperscript{22} Once Grande saw the posts, she demanded that Forever 21 take them down.\textsuperscript{23} Although Forever 21 agreed to take the posts down, not every post was removed.\textsuperscript{24} Grande then filed a ten million dollar lawsuit in the United States District Court for the Central District of California against Forever 21 for violating her right of publicity, claiming that Forever 21 intentionally used photographs of Grande and a look-alike model to suggest that Grande was affiliated with Forever 21.\textsuperscript{25}

II. The Right of Publicity: An Overview

Courts across the United States recognize the importance of protecting celebrities’ commercial rights under the right of publicity against businesses that try to infringe on this right to promote sales.\textsuperscript{26} California courts recognize both a statutory and common law right of publicity.\textsuperscript{27} Section A provides background on the right of publicity.\textsuperscript{28} Section B discusses the statutory and common law right of publicity in California.\textsuperscript{29} Section C expands upon relevant caselaw to highlight how the California courts have expanded the common law right of publicity and have limited the statutory right of publicity.\textsuperscript{30}

A. The Right of Publicity Generally

The right of publicity protects the commercial interests of celebrities in their name, image, and likeness.\textsuperscript{31} The right grants celebrities the ability to control the use of their name and likeness and prevents the unauthorized use of their name and likeness from misappropriation for another’s benefit.\textsuperscript{32} The right of publicity is a type of property right because of the idea that celebrities have ownership in the value they create through the time, energy, money, and ingenuity they spend on building their careers, personas, and brands.\textsuperscript{33} The “celebrity value” derived from these efforts rightfully belongs to the celebrity, and the celebrity has the sole right to control this value.\textsuperscript{34} Therefore, when someone exploits a celebrity’s name or likeness without their consent, the celebrity is considered injured, and injunctions or damages, including lost profits or royalties, are available to the injured party.\textsuperscript{35}

\begin{footnotes}
\item[22] Id. at 8–9.
\item[23] Id. at 11.
\item[24] Id.
\item[25] Id.
\item[26] See discussion infra Part II.A.
\item[27] See discussion infra Part II.B.
\item[28] See discussion infra Part II.A.
\item[29] See discussion infra Part II.B.
\item[30] See discussion infra Part II.C.
\item[32] Id.
\item[33] See White v. Samsung Electronics America, Inc., 971 F.2d 1395, 1399 (9th Cir. 1992) (discussing how the common law right of publicity broadly protects a celebrity’s identity).
\item[34] See id. (discussing how the common law right of publicity broadly protects a celebrity’s identity).
\item[35] Sims, supra note 31, at 457.
\end{footnotes}
Celebrity advertising and endorsements are extremely influential and valuable in promoting a business’s products and services.\textsuperscript{36} Well-known celebrities have broad appeal and large fan bases, which, when used by a business in marketing strategies, have the ability to make products or services more marketable.\textsuperscript{37} As the United States Court of Appeals for the Ninth Circuit noted in 1992 in \textit{White v. Samsung Electronics America, Inc.}, using a popular celebrity to endorse a product makes the product more marketable because a greater number of people will recognize the celebrity and thus may be more inclined to purchase the advertised product.\textsuperscript{38}

Nevertheless, as evidenced by Grande’s case, many businesses may not be willing or able to pay for celebrity advertising and endorsements, which can cost upwards of millions of dollars.\textsuperscript{39} As a result, businesses resort to exploiting the identities of popular celebrities to promote their products.\textsuperscript{40} Exploiting a celebrity’s identity is not only free, but evokes a celebrity in the minds of consumers without explicitly using the celebrity’s name, image, or likeness.\textsuperscript{41} Regardless of how obvious or discrete the exploitation may be, the right of publicity is important for celebrities to protect their commercial interests from misappropriation and to prevent the resulting unjust financial gain by businesses.\textsuperscript{42}

\textbf{B. California’s Common Law Right of Publicity and Statutory Right of Publicity}

California recognizes both a common law and a statutory right of publicity.\textsuperscript{43} As described below, California courts impose different tests for plaintiffs to prove a violation of their right of publicity under common law and Section 3344.\textsuperscript{44}

First, under California’s common law right of publicity, a four-part test must be satisfied, under which a plaintiff must demonstrate that the defendant (1) used the plaintiff’s identity and (2) appropriated the plaintiff’s name or likeness to the defendant’s advantage.\textsuperscript{45} Then, the plaintiff must prove that (3) he or she did not consent, and that (4) there was a resulting injury.\textsuperscript{46}

Second, California Civil Code Section 3344 is California’s right of publicity statute.\textsuperscript{47} It protects a person’s name, voice, signature, photograph, or likeness for

\textsuperscript{37}Id.
\textsuperscript{38}\textit{White}, 971 F.2d at 1399.
\textsuperscript{40}\textit{White}, 971 F.2d at 1399.
\textsuperscript{41}Id.
\textsuperscript{42}Id. at 1398; \textit{see also} Sean Mason, \textit{The Presidential Right of Publicity}, \textit{B.C. INTELL. PROP. & TECH. F.} (2010) (explaining that the right of publicity prevents unjust enrichment of others seeking to appropriate a celebrity’s fame).
\textsuperscript{43}CAL. CIV. CODE § 3344 (1971); Newcombe v. Adolf Coors Co., 157 F.3d 686, 689 (9th Cir. 1998).
\textsuperscript{44}See discussion infra Part II.B.
\textsuperscript{45}Newcombe v. Adolf Coors Co., 157 F.3d 686, 691 (9th Cir. 1998).
\textsuperscript{46}Id. at 692.
\textsuperscript{47}CAL. CIV. CODE § 3344.
advertising purposes if it is knowingly used without that person’s consent.  

Section 3344 protects photographs, both still and moving, if the person depicted in the photograph is readily identifiable.  

A person is readily identifiable under the statute if someone viewing the photograph can reasonably identify the person in the photograph as the same person claiming that the photograph was used without their consent.  

The fact that a person’s name, voice, signature, photograph, or likeness is used in a commercial manner, alone, is not automatically a violation of Section 3344.  

Rather, there must be a direct connection between the likeness and the sponsorship or advertisement.  

In addition to satisfying the four-part common law test, under the statutory law of California Civil Code Section 3344, courts have developed an additional three-part test. This test is stricter, and serves to limit the number of statutory claims.  

In addition to the four-part common law test, the plaintiff must also prove that there was (1) a knowing use of his or her name, voice, signature, photograph, and likeness, that (2) the use was for advertising purposes, and (3) a direct connection between the use and the commercial purpose.  

C. Case Illustrations

California courts have expanded the common law right of publicity, but have limited the statutory right of publicity.  

In 1989, in Nurmi v. Peterson, the United States District Court for the Central District of California demonstrated the stricter scope of Section 3344 by limiting the definition of “likeness.”  

In Nurmi, the plaintiff, a former actress, created and performed a character called Vampira, who dressed in dark clothing, carried horror movie props, and had a dark personality.  

The defendants—an actress, marketing, broadcasting, and management firms—contacted the plaintiff to recreate her character, but the negotiations were unsuccessful.  

Nevertheless, the defendants created a character named Elvira, which the plaintiff argued closely resembled Vampira.  

The plaintiff did not consent to the creation of this character and received no compensation from the television shows, films, or merchandising spin-offs that resulted from Elvira’s success.
The court found that under Section 3344, likeness is not a similarity or close resemblance to a person, but the actual representation of a person.\textsuperscript{61} Even though Elvira may have resembled Vampira, there was no claim under Section 3344 because Elvira did not resemble the plaintiff herself.\textsuperscript{62} Additionally, because the plaintiff’s “actual features” were not used by the defendants, the plaintiff could not recover under the common law right of publicity either.\textsuperscript{63} Thus, the court dismissed the plaintiff’s claims.\textsuperscript{64}

In 1992, in \emph{White v. Samsung Electronics America, Inc.}, the United States Court of Appeals for the Ninth Circuit illustrated the broader scope of the common law right of publicity, and held that although a celebrity could not recover damages under Section 3344, a celebrity could nevertheless recover under the common law right of publicity.\textsuperscript{65} In \emph{White}, the plaintiff was Vanna White, the hostess of the popular television game show “Wheel of Fortune.”\textsuperscript{66} Samsung ran an advertising campaign for its video-cassette recorders which featured a robot dressed in a wig, gown, and jewelry that were “consciously selected” to resemble White’s hair and dress.\textsuperscript{67} The robot stood next to a game board, similar to the Wheel of Fortune game show set.\textsuperscript{68} White sued Samsung for violating both her statutory and common law right of publicity, as she did not consent to the creation of the advertisement and was not paid.\textsuperscript{69} The court held that the robot did not resemble White’s likeness as it was not an actual image of White and did not have White’s precise features.\textsuperscript{70} Thus, White was not afforded protection under California Civil Code Section 3344.\textsuperscript{71}

Nevertheless, the court ultimately held that the common law right of publicity is not limited to the appropriation of name or likeness.\textsuperscript{72} Rather, the common law right of publicity “is not so confined” and is interpreted more broadly to protect a celebrity’s identity, including the individual attributes of celebrities.\textsuperscript{73} In right of publicity claims, it is only important whether the defendant has appropriated the celebrity’s identity, not the ways in which the defendant may have appropriated the defendant’s identity.\textsuperscript{74} In determining whether a celebrity’s identity has been used, a court considers the totality of the individual characteristics viewed together.\textsuperscript{75} Although White was not featured in the advertisement, the court held that the robot, in a dress and pearls, and turning letters of the tiles on a game show, resembled

\begin{itemize}
\item \textsuperscript{61} Id. at *2.
\item \textsuperscript{62} See id. (holding that likeness is the actual representation of a person, not similarity or close resemblance to a person under California Civil Code § 3344).
\item \textsuperscript{63} Id. at *3.
\item \textsuperscript{64} Id. at *4.
\item \textsuperscript{65} \emph{White}, 971 F.2d at 1397.
\item \textsuperscript{66} Id. at 1396.
\item \textsuperscript{67} Id.
\item \textsuperscript{68} Id.
\item \textsuperscript{69} Id.
\item \textsuperscript{70} Id.
\item \textsuperscript{71} Id. at 1397.
\item \textsuperscript{72} Id.
\item \textsuperscript{73} Id.
\item \textsuperscript{74} Id. at 1398.
\item \textsuperscript{75} Id. at 1399.
\end{itemize}
White on *Wheel of Fortune*. 76 Thus, even if celebrities cannot successfully claim a violation of their statutory right of publicity, celebrities may still have a successful claim under the common law right of publicity in California. 77

However, it is possible to bring successful claims under both the statutory and common law rights of publicity. 78 In 1998, in *Newcombe v. Adolf Coors Co.*, the United States Court of Appeals for the Ninth Circuit held that the plaintiff could prove that the defendant misappropriated the plaintiff’s likeness for commercial use under both the statutory and common law tests. 79 The plaintiff, Donald Newcombe, was a former major league baseball player and a recovering alcoholic who sued Adolf Coors Company for using his likeness and identity without his permission in an advertisement for Killian’s Irish Red Beer. 80 The advertisement featured a drawing of a baseball game, which focused on the pitcher in the windup position. 81 The players’ uniforms did not represent a real team, and the stadium was not based on a real stadium. 82 The court held that Coors based the drawing off of a newspaper photograph of Newcombe pitching in the 1949 World Series, as the drawing and the photograph were almost identical. 83

Under the first factor—using the plaintiff’s identity—the court reasoned that a jury could reasonably identify Newcombe in the image because the pitcher’s stance, uniform, and the proportions and shape of the player in the drawing resembled Newcombe’s likeness. 84 Under the second factor—the defendant used the plaintiff’s identity to the defendant’s advantage—the court reasoned that Coors used Newcombe’s likeness to its advantage, as the advertisement helped sell Killian’s Irish Red Beer. 85 Lastly, under the third and fourth factors—the plaintiff did not consent and there was resulting injury to the plaintiff, respectively—the court reasoned that Newcombe did not consent to this use and that he was injured because he was not paid for the use of his likeness. 86 As for the statutory claim, the court held that a jury could reasonably conclude that there was a direct connection between Newcombe as the dominant figure in the advertisement and the commercial sponsorship of Killian’s Red. 87

III. THE SCOPE OF GRANDE’S RIGHT OF PUBLICITY

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76 Id.
77 See supra notes 53–72 and accompanying text.
78 See *Newcombe*, 157 F.3d at 696 (allowing both statutory and common law rights of publicity claims to be heard before the court).
79 Id.
80 Id. at 689.
81 Id.
82 Id.
83 Id. at 690.
84 Id. at 692.
85 Id. at 693.
86 Id.
87 Id. (discussing that in addition to the direct connection, the court also found (1) a knowing use of his name, voice, signature, photograph, and likeness, that (2) the use was for advertising purposes).
This Part applies the tests under the common law right of publicity and the statutory right of publicity.\textsuperscript{88} Whereas Forever 21’s use of unauthorized photographs of Grande and the use of a look-alike model violate Grande’s right of publicity under California common law, the stricter standard under Section 3344 will only permit Grande to recover for Forever 21’s use of unauthorized photographs of Grande.\textsuperscript{89}

\textit{A. Forever 21 Violated Grande’s Common Law Right of Publicity}

This Section applies the test under the common law right of publicity and argues that Forever 21’s use of unauthorized photographs of Grande and a look-alike model violate Grande’s right of publicity under California’s common law right of publicity.\textsuperscript{90}

First, Forever 21’s unauthorized use of photographs of Grande likely violate her common law right of publicity under the four-part test, under which a plaintiff must prove that (1) the defendant used the plaintiff’s identity, (2) the plaintiff’s identity was used to the defendant’s advantage, (3) the plaintiff did not consent to such use, and (4) there was resulting injury to the plaintiff.\textsuperscript{91} First, a jury could reasonably find that these photos are readily identifiable as Grande, because one could identify that the photographs depict Grande herself.\textsuperscript{92} Second, Forever 21 appropriated Grande’s likeness for its own advantage.\textsuperscript{93} Forever 21, in posting the unauthorized photographs of Grande, used Grande’s image and influence to attract attention to its Instagram page, similar to the defendant’s use of the drawing of Newcombe to attract customers and promote sales in \textit{Newcombe}.\textsuperscript{94} Third, Grande did not consent to the use of her likeness, as she explicitly declined the proposed endorsement deal with Forever 21.\textsuperscript{95} Finally, Grande was injured by Forever 21 because she was not compensated for the use of her likeness.\textsuperscript{96}

\textsuperscript{88} See discussion infra Part III.
\textsuperscript{89} See discussion infra Part III.
\textsuperscript{90} See discussion infra Part III.A.
\textsuperscript{91} Newcombe, 157 F.3d at 691–92.
\textsuperscript{92} See \textit{Newcombe}, 157 F.3d at 692 (holding that the drawing of the baseball player was readily identifiable as Newcombe); Complaint \textit{supra} note 1, at 8,10 (showing photographs of Grande that Forever 21 posted to its Instagram page).
\textsuperscript{93} See \textit{Newcombe}, 157 F.3d at 692–93 (holding that the defendant used the plaintiff’s likeness to its advantage when the plaintiff’s likeness was used in an advertisement to attract customers and promote sales); Complaint, \textit{supra} note 1, at 7–9 (discussing that Forever 21 used Grande’s name, image, and likeness to create the perception of a false endorsement to raise sales).
\textsuperscript{94} See \textit{Newcombe}, 157 F.3d at 692–93 (holding that the defendant used the plaintiff’s likeness to its advantage when the plaintiff’s likeness was used in an advertisement to attract customers and promote sales); Complaint, \textit{supra} note 1, at 7–9.
\textsuperscript{95} See \textit{Newcombe}, 157 F.3d at 693 (holding that the plaintiff did not consent to the use of his likeness for commercial purposes); Complaint, \textit{supra} note 1, at 2 (explaining that Grande explicitly declined an endorsement deal with Forever 21).
\textsuperscript{96} See \textit{Newcombe}, 157 F.3d at 693 (holding that the plaintiff was injured because he was not paid for the use of his likeness); Complaint, \textit{supra} note 1, at 2 (explaining that Grande was not paid by Forever 21 in using her name, image, and likeness).
Second, Grande will also likely recover damages for Forever 21’s use of a look-alike model under the common law right of publicity. In accordance with the court’s broad ruling in White, even though a look-alike model may not resemble Grande’s likeness, the court may hold that the use of a look-alike model, taken together with the totality of the characteristics of the advertisement, infringes upon Grande’s identity. The court may find that the hairstyle, clothing, and accessories of the model closely resemble Grande in her 7 Rings music video, similar to the Ninth Circuit’s holding that the characteristics of the robot, taken together, constituted White’s identity in White. Just as the Ninth Circuit held that the robot wearing a blonde wig, dress, and pearls closely resembled White, the district court in Grande may find that the look-alike model wearing Grande’s signature high ponytail, purple camouflage jogger pants, pink platform heels with white socks, a white belt, and a pink hair accessory closely resembles Grande in her 7 Rings music video. Here, the totality of the circumstances may indicate to a reasonable fact-finder that there is resemblance between the Forever 21 model and Grande. If the court comes to this conclusion, it will likely find that Forever 21 violated Grande’s common law right of publicity.

B. Analyzing Whether Forever 21 Violated Grande’s Right of Publicity Under California Civil Code Section 3344

This Section applies the test under Section 3344 of the California statutory right of publicity and argues that the court will likely find that Forever 21’s use of unauthorized photographs of Grande violate Grande’s right of publicity but its use of a look-alike model does not.

First, the court will likely find that Forever 21’s unauthorized use of photographs of Grande violate her statutory right of publicity under the three-part test

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97 See White v. Samsung Electronics America, Inc., 971 F.2d 1395, 1397–99 (9th Cir. 1992) (holding that the common law right of publicity broadly protects a celebrity’s identity).
98 See id. at 1399 (discussing the court’s consideration of the totality of individual characteristics of the advertisement when deciding if a defendant has appropriated a celebrity’s identity); Complaint, supra note 1, at 8–10 (showing photographs where Grande and the look-alike model are wearing similar hairstyles, outfits, and accessories).
99 See White, 971 F.2d at 1399 (holding that the defendant appropriated the celebrity’s identity given the totality of the characteristics of the advertisement); Complaint, supra note 1, at 10.
100 See White, 971 F.2d at 1399 (holding that the individual characteristics of the advertisement taken together violated the celebrity’s right of publicity); Complaint at 10, supra note 1 (juxtaposing photographs where Grande and the look-alike model are wearing similar outfits and accessories).
101 See White, 971 F.2d at 1399 (holding that it is only important whether the defendant has appropriated the celebrity’s identity, not the ways in which the defendant may have appropriated the celebrity’s identity); Complaint at 10, supra note 1 (showing photographs of Grande and the look-alike model from the campaign).
102 See White, 971 F.2d at 1399 (holding that, when looking at the totality of the characteristics of the advertisement, the defendant appropriated the celebrity’s identity); Complaint at 10, supra note 1 (showing photographs where Grande and the look-alike model are dressed similarly with similar hairstyles and accessories).
103 See discussion infra Part III.B.
posed by California Civil Code Section 3344. Under Section 3344, a plaintiff must prove (1) that there was knowing use, (2) that such use was for advertising purposes, and (3) that there was a direct connection between the use and the commercial purpose. First, Forever 21 knew that Grande did not authorize the use of her likeness, as she explicitly declined to work with Forever 21 on an endorsement deal. Forever 21 continued with the marketing campaign, using photographs that clearly depict Grande along with lyrics from her songs, and included her name in its captions, which constitutes knowing use. Second, Grande’s image was used for advertising to attract Instagram users to Forever 21’s Instagram page. Lastly, the use of Grande’s image is directly connected to the commercial use, as Forever 21 knowingly used her photographs to advertise for clothing and accessories that were similar to those featured in her video. It is possible that by repeatedly using Grande’s photographs, Forever 21 created a false perception of her endorsement of its products, which was used to monopolize on Grande’s fame and influence to increase sales.

Second, although the court will likely find that Forever 21’s use of actual photographs of Grande violated her statutory right of publicity under California Civil Code Section 3344, its use of a look-alike model does not similarly equate to the use of Grande’s likeness under the statute. Applying the court’s holding in Nurmi, the look-alike model does not constitute Grande’s likeness because even though the model has features that closely resemble those of Grande, the model

104 See CAL. CIV. CODE § 3344(e) (mandating that the plaintiff must also prove there was knowing use, that the use was for advertising purposes, and that there was a direct connection between the use and the commercial purpose).
105 Id.
106 See Newcombe v. Adolf Coors Co., 157 F.3d 686, 694 (9th Cir. 1998) (holding that defendants knew the plaintiff had not authorized the use of his likeness and continued to use it); Complaint, supra note 1, at 2 (explaining that Grande explicitly declined an endorsement deal with Forever 21).
107 See Newcombe, 157 F.3d at 694 (holding that the defendants used the plaintiff’s identity to sell beer); Complaint, supra note 1, at 8–10 (showing that Forever 21 used photographs of Grande, lyrics from her songs, and included Grande’s name in its captions on Forever 21’s Instagram page).
108 See Newcombe, 157 F.3d at 692–93 (holding that defendants used the plaintiff’s likeness to its advantage because the advertisement helped sell the defendant’s product); Complaint, supra note 1, at 7–8 (discussing that Forever 21 used Grande’s name, image, and likeness to create the perception of a false endorsement to raise sales).
109 See Newcombe, 157 F.3d at 694 (holding that the plaintiff’s likeness was directly connected to the commercial use because the plaintiff was the central figure in the advertisement used to attract the attention of consumers); Complaint, supra note 1, at 8–10 (showing photographs where Grande and the look-alike model are wearing similar hairstyles, outfits, and accessories).
110 See Newcombe, 157 F.3d at 694 (holding that the plaintiff’s likeness was directly connected to the commercial use because the plaintiff was the central figure in the advertisement used to attract the attention of consumers); Complaint, supra note 1, at 7–9 (discussing that Forever 21 used Grande’s name, image, and likeness to create the perception of a false endorsement to raise sales).
111 See Nurmi v. Peterson, No. 88-5436-WMB, 1898 WL 407484, at *2 (C.D. Cal. Mar. 31, 1989) (holding that likeness is limited to the actual representation of a person under California Civil Code § 3344); Complaint, supra note 1, at 9–10 (showing photographs of the look-alike model compared with Grande).
does not actually represent Grande.\textsuperscript{112} Therefore, Grande will likely not be able to recover on a statutory right of publicity claim for the look-alike model in accordance with the strict scope of likeness under California Civil Code Section 3344.\textsuperscript{113}

CONCLUSION

Celebrities have the right to profit from and control the commercial use of their name, likeness, and identity. When a business infringes on this right by using a celebrity’s identity or likeness without consent, the business receives a valuable benefit that rightfully belongs to the celebrity. Thus, the celebrity can invoke his or her right of publicity to recover damages for this unjust commercial gain. In, \textit{Grande-Butera v. Forever 21, Inc.}, Forever 21 used photographs of Grande to increase sales of its clothing and accessories by way of capitalizing on Grande’s success and influence. Under California’s common law and statutory rights of publicity, Grande is likely to recover for Forever 21’s use of photographs of her for its commercial benefit. Because the use of a look-alike model does not equate to Grande’s likeness under California’s statutory right of publicity, Grande will likely only be able to recover damages for Forever 21’s use of a look-alike model under the common law right. Regardless of the exact damages Grande may recover, this case illustrates a valuable lesson for future businesses that seek to feature celebrities for commercial gain: consent is key.