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Copyright Assignment 2
Due Nov 3 2016

PART 1:

In the 12th Subcircuit, Carrie Hamilton is the judicial candidate for Cook County, Illinois. In a marketing strategy in order to promote Judge Hamilton and raise awareness of her campaign, signs have been posted that are reminiscent of the logo of Hamilton: An American Musical. The potentially infringing sign itself predominantly features a gold background with a centered large silhouetted black star. This design is recognizable as the foundation of the Hamilton: An American Musical logo. However, instead of a silhouette of a character from the musical (as is present in the original work), atop the star stands a silhouette of Judge Hamilton dressed in robes, gavel in hand. In the center of the star where the text would have originally displayed "HAMILTON An American Musical" the text now reads "Carrie HAMILTON for Judge."

This case has not been filed, and it's unclear if it ever will be. Both sides are aware of the potential for a lawsuit, and this sign has been produced recently enough that there has been no substantial time for action so far. However, in an article published by the Chicago Tribune on the inventive new signs for Judge Hamilton, a representative of her staff mentions that they had spoken to lawyers before producing the signs. These lawyers indicated that they were firmly in the clear, as this use of the logo constitutes a "parody," and therefore falls squarely under Fair Use.

Specifically, the lawyers for Judge Hamilton note that they are not using this logo for any commercial purpose. It is only present on campaign materials, and there are no t-shirts or other merchandise that will ever be made that utilize this logo. Eric Sussman, the candidate's spouse and an attorney based out of Chicago, also noted that this homage has been done in good faith, to the extent that they proceeded to give away tickets to see Hamilton: An American Musical in a free-to-enter raffle named "Hamilton for Hamilton." In fact, Hamilton's campaign committee went as far as to say that they were within the spirit of the musical, as it has a strong emphasis on diversity (and Judge Hamilton is female) in addition to a political emphasis. However, their most persuasive legal argument is that this is a parody, and parodies are covered under Fair Use.

Although there have been no lawyers from Hamilton: An American Musical involved with this situation at this point, one could imagine that it's this very declaration of the signs as a parody that are at fault. In order to be a parody, the work needs to be altered to a deliberate comic effect. Although this logo has been altered to reflect a different cause, the line here between a parody and an homage is incredibly thin. In this situation, it comes down to the question "what are you parodying about Hamilton: An American Musical?" the sign does not claim that the musical is ridiculous, nor does it particularly convey an attempt at comedic effect. As Sussman has noted, they agree with the musical's emphasis on diversity and politics, and clearly respect these messages that the musical so clearly imparts. The attorneys on behalf of Hamilton: An American Musical, would likely say "your respect for our work is well and good, but

it is not a parody in any sense of the word. With the exception of the parody, it is not a satire and would not be prohibitive of free speech. It is therefore an infringement on that basis alone.”

However, a parody does not necessarily Fair Use make, and it’s vital to consider PNAME¹ when determining whether the production of this campaign sign is covered. The purpose of this sign is to promote Judge Hamilton in a noncommercial manner. The campaign appears to have used the logo as a form of flattery, and did not intentionally set out to ruin the prospects for Hamilton: An American Musical. They even went so far as to consult with lawyers before producing the sign in order to ensure that they were not at risk of infringing.

The Nature of the work is rather simple. It is a black star with a person standing on top. The background is gold, and the name of the play is on the front. Although it’s not necessarily unoriginal, it is simple and it would be straightforward to create. Because of this, it would likely lay somewhere towards the middle of the “uncreative / creative” spectrum.

The Amount is one aspect that is entirely contingent on whether you agree that this representation of the logo is a parody or not. If it is deemed a parody, then it’s necessary that this level of the logo should be copied in order to correctly convey the meaning. However, if you disagree that it is a parody, then you are sorely in danger of infringing.

Lastly, the market effect is solidly in the favor of the campaign, as it does not affect the sales of Hamilton: An American Musical one way or another. As the campaign even purchased tickets in order to raffle them off, you may even argue that it very slightly contributed to the market value. If Judge Hamilton were known as a notorious character, then perhaps one could argue that the association with her would damage the reputation of the play. However, there is no evidence that she is of poor character, and less evidence that her singular personality could affect the international acclaim that the musical has garnered.

Based on these four factors and the fact that I personally wouldn’t deem this a parody, I would argue that this is not covered under Fair Use. The fact that it’s not a parody would outweigh all of the factors. Taking the factors into account, the good natured non-commercial foundation and basis of flattery on which this campaign sign was created are absolutely favorable to the campaign in this case. However, once you reject parody as an option, the “Amount” factor of this sign is too great to permit the other factors. Unfortunately, conducting yourself in a polite and kind manner does not allow you to disavow yourself from infringement. In the end, Judge Hamilton decided to not throw away her shot for good publicity, and she did so at the very real risk of infringing.

Source Material (Part 1):

Cullotta, Karen Ann. “‘Hamilton’ Musical Inspires Judicial Candidate’s Campaign Signs.”

Chicagotribune.com. Accessed November 2, 2016.

<http://www.chicagotribune.com/suburbs/arlington-heights/news/ct-ahp-hamilton-inspires-campaign-signs-tl-1103-20161028-story.html>.

PART 2:

¹ “Section 107.” In *Copyright Law of the United States of America and Related Laws Contained in Title 17 of the United States Code*, n.d. <http://www.copyright.gov/title17/92chap1.html#107>.

One potential case of Fair Use that we have not discussed that may also come up at an archive, is the use of material that samples other works. A prime example of this is Rob Anen's recent discovery of footage of the 1964 New York World's Fair. Rob stumbled upon film that was of a film (Think) that was being displayed at the World's Fair. This was an incredible find as it aided to the restoration of the footage that was previous uncompileable, but in terms of copyright we would not necessarily have access to the rights of Think, even though we have received permission from the author of the home movie. This example could also very practically be extended to consist of not only one film, but several films within the home movie. The hypothetical of being unable to find the rights for one film may be unlikely, but the inability to find or obtain the rights for one out of ten films is quite a bit more probable. Regardless, it would be safe to say that the film(s) within this example had been transformed, as being featured in a home movie and later used to restore the films was not their original intent.

In terms of factors, PNAM dictates that Purpose, Nature, Amount, and Market Effect must benefit the user in order to adequately determine Fair Use. The Purpose here would be for noncommercial and educational displays. This film is strictly historical and has been used in order to reconstruct further historical materials. There is no intention to capitalize off this material, so it's safe to say that the Purpose lies firmly on the side of the user.

The Nature is that this, as a film, is highly creative and therefore are very firmly covered by copyright with very little wiggle room, and these rights fall on the side of the author, and not for Fair Use. In contrast, although I have not seen the home movie in question and do not know the exact length of Think, I believe that due to the nature of the film and especially home movies, it's likely that this copy is only a fraction of the length of Think, as the nature of this film partially revolved around multiple screens that were simultaneously used. Because of the lack of a remotely complete work, I'd say Amount is on the side of Fair Use.

In this specific situation, considering Think (and likely other films in a more hypothetical situation) are not currently produced or distributed, I would say that there is no viable concern towards impacting the market value of the films in question. So this is another count for Fair Use.

Based on this determination, this archival footage may not be considered infringing and be considered a Fair Use. Home movies and orphan films are also found in archives, so this is an example that could go a long way towards the noncommercial access of films such as these.

Source Material (Part 2):

Barron, James. "A Lost Snippet of Film History, Found in a Home Movie Shot in 1964." *The New York Times*, October 30, 2016.

<http://www.nytimes.com/2016/10/31/nyregion/a-lost-snippet-of-film-history-found-in-a-home-movie-shot-in-1964.html>.