

Sued for Posting a Meme - That Just Happened

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Last week, we blogged about [Gigi Hadid getting sued for reposting a photo of herself on Instagram](#) and the post received a lot of interest. So we thought we'd also let you know about Fiji Water Company, LLC getting sued for posting a meme on its social media feeds featuring the "Fiji Water Girl." You remember the Fiji Water Girl, don't you? She was that woman wearing a blue dress holding a tray of Fiji Water bottles in the background of what seemed like every red carpet photo from this year's Gold Globe Awards on January 6. Kelly Steinbach, or Kelleth Cuthbert as she is professionally known, went viral that night as photos from the red carpet and then memes started popping up all over social media. According to the [complaint](#) filed by Ms. Steinbach's attorneys in California Superior Court on January 31, she was hired by a staffing agency to model on the red carpet. The complaint further alleges that the day following the Golden Globes, Fiji Water sought to capitalize on Steinbach's popularity by creating a "worldwide cardboard cutout marketing campaign." The life-size cutouts of Steinbach appeared in stores in LA and other places around the world. Fiji Water also posted a few memes on their Instagram and Twitter account, but those posts have since been taken

down. Fiji Water's affiliate also filed two trademark applications for FIJI WATER GIRL on January 7.

Steinbach alleges that all of this was done without her permission, despite Fiji's efforts to have her sign an agreement in the days following the Globes. The complaint contains some strange details, including an allegation that "during Steinbach's [January 9] visit to Fiji Water's Los Angeles office, Fiji Water pressured Steinbach into video recording a fake signing of a fake document to simulate Steinbach signing on as a Fiji Water Ambassador for use in the event an agreement was reached between Steinbach and Fiji Water in the near future." Steinbach's attorneys go on to note that "the fake document Steinbach fake signed in the potential future promotional video was not an agreement" and "the fake document was not signed by Fiji Water and was later destroyed by Steinbach." The complaint contains a claim for misappropriation of likeness and right of publicity under California Civil Code Section 3344 and common law. Steinbach's damages claim asks for Fiji's profits, unspecified punitive damages and compensatory damages. So how much is Steinbach thinking she'll get? Well, the complaint puts the value of the brand exposure at about \$12 million for just January 6 and 7. We'll be watching this case and will keep you updated, but cases like this tend to settle for undisclosed amounts, leaving us with little to no case law on memes.



Luckily, memes, when used on social media by brands like Fiji Water, aren't all that innovative in the eyes of the law. The ability to control the use of one's name, likeness, voice, and other personal attributes is known as the right of publicity. If you want to use someone's image or likeness in advertising (and brand social media accounts are likely advertising), you will probably need to get their permission. Right of publicity is governed by state law, and California, New York and Tennessee (hi Elvis) have some of the most developed bodies of law in this area. So before your brand starts posting the latest meme featuring the image or likeness of someone other than your brand ambassadors, you should think carefully (and creatively) about how to join the conversation without using a name, likeness, voice, or other personal attributes that might cost your brand unspecified damages in a lawsuit.