The Dangers of Using AI Generated Imagery In Audiovisual Works: Tesla Sued by Blade Runner Producer

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In what will join a new generation of cases arising from the use of AI in audiovisual works, the producers behind the *Blade Runner 2049* film (the "Film"), Alcon Entertainment LLC, recently sued Tesla Inc. and its CEO Elon Musk for using AI generated imagery based on the Film in promoting Tesla's fully autonomous Cybercab. The allegedly infringing image was used at an Oct. 10, 2024 Tesla promotional event that was livestreamed globally from a studio lot at Warner Brothers Discovery Inc. (WBDI). Tesla requested permission to use a still image from the Film, and when permission was denied, fed the still along with other images from the Film into an AI-driven image generator. The resulting AI-generated image appeared in a presentation slide displayed for 11 seconds — or what the Complaint called "a marketing and advertising eternity" — at the Tesla event.

No doubt attempting to create a fair use defense, Musk, when presenting the allegedly infringing image, "encouraged the global audience to think about the Cybercab's possibilities in juxtaposition" to the fictional future depicted in the Film. The Film, like Musk's presentation, according to the Complaint, "features a strikingly-designed, artificially intelligent, fully autonomous car" throughout. Moreover, the Complaint alleges that the producer Plaintiff had received dollar sums "in the eight figures" to associate automotive brands with the Film, and that it "was in talks with other automotive brands for partnerships on Alcon's BR2049-based *Blade Runner 2099* television series currently in production," resulting in a likelihood of confusion. The Complaint also notes that Alcon had spent hundreds of millions of dollars to create the Film and thereby build the Blade Runner brand.

The original image from the film appears below:

The allegedly infringing image used by Tesla is below:

The Complaint also alleges injury based on brand association with "Musk's massively amplified, highly politicized, capricious and arbitrary behavior, which sometimes veers into hate speech."

Based upon these and many other detailed allegations, the Complaint pleads infringement of Plaintiff's registered copyright in the Film as well as false endorsement in violation of federal trademark law. The case graphically illustrates the dangers of relying on third-party imagery in connection with AI tools to create and deploy new images for audiovisual use. Such risks can arise whether the user feeds the original work into the AI generator or relies on an AI image generator that may have, without permission, scraped original third-party content. If the case is litigated to summary judgment or trial, it will illustrate the boundaries of fair use, and whether the original imagery was altered sufficiently to evade infringement under the copyright law.

In a novel twist, the case will also test whether a false endorsement claim will lie in circumstances where AI imagery is used to promote one famous brand, using imagery associated with a famous film.

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