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Advertising

## Is Imitation Flattery, Theft or Just Coincidence?

By STUART ELLIOTT

A DISPUTE over the uniqueness of a popular new commercial for the Apple [iPod](#) is again raising the issue of what constitutes originality in advertising.

The commercial, featuring the rap artist Eminem, is the most recent in a two-year-old campaign from [Apple Computer](#) that uses silhouettes of singers and iPod users to promote the iPod digital jukebox and the iTunes service. From Times Square to Turkey, the Apple commercial has been sending eyebrows skyward among writers and readers of Web logs devoted to advertising.

In the last week, the bloggers have posted scores of comments describing and decrying what they have deemed to be far too many similarities between the Apple commercial, created by the longtime Apple agency, TBWA/Chiat/Day, and a spot produced three years ago by another agency, which was selling the Lugz brand of boots.

In a statement late yesterday, its first since the debate began a week ago, TBWA/Chiat/Day said any resemblance between the commercials was "disappointing and surprising" as well as "regrettable."

Both commercials show shadowlike silhouettes posed against stylized urban settings, which are rendered in red, orange, yellow and black. In the Apple spot, titled "Detroit," the silhouette is Eminem; in the Lugz spot, titled "Arrow," it is an anonymous young man wearing Lugz boots.

Both commercials feature rap music. In the Apple spot, the song is "Lose Yourself" by Eminem; in the Lugz spot, the music is an untitled tune by Funkmaster Flex.

The comments last week on the blogs, including [Adfreak.com](#) and [Adrants.com](#), prompted the senior executive of the agency that created the Lugz spot, Avrett Free Ginsberg, to write Apple and TBWA/Chiat/Day, questioning what he called the "many similarities" between the commercials.

"It is often said that imitation is the sincerest form of flattery, and in most cases I would agree," Frank Ginsberg, chairman and chief executive of Avrett Free in New York, wrote in his letter, a copy of which was shared with reporters. "But sometimes, imitation crosses the line." Avrett Free, which handled the Lugz account until late last year, is part of the [Interpublic Group of Companies](#).

In an interview, Mr. Ginsberg said he was particularly "shocked" by the Apple commercial because of the company's reputation for being "so innovative."

When he first saw the Apple commercial, he added, "I said: 'It's the same commercial. I don't get it.'"

A principal at Jack Schwartz Shoes in New York, which does business under the Lugz name, echoed Mr. Ginsberg's concerns.

"We're very upset," Larry Schwartz, executive vice president and principal at Lugz in New York, said in an interview. "The look and feel are awfully similar."

"We think very highly of Apple," Mr. Schwartz said. "We don't understand how this could have happened."

In the statement from TBWA/Chiat/Day, part of the TBWA Worldwide unit of the [Omnicom Group](#), the agency described itself as "dedicated to creating original ideas."

"We do not plagiarize, borrow, or steal them, and have a strict policy of not accepting third-party ideas in our creative process," the statement read. The agency's Playa del Rey, Calif., office has long created campaigns for Apple including award-winning ads that carried the theme "Think different."

The dispute is the latest in a lengthy list of quarrels over the genesis of the ideas at the heart of advertisements. Generally, courts have held that although an idea cannot be copyrighted, the specific expression of an idea may be protected in some cases.

Such arguments can extend to the highest levels of the industry. For instance, in 2003, a hugely popular British commercial for [Honda](#), called "Cog," was denied the most prestigious honor at the International Advertising Festival in Cannes, France, because some judges considered the spot too derivative of a film made in 1987, "The Way Things Go."

But the complaints of creative copycatting from the makers of "The Way Things Go," which were aimed at Honda Motor and its agency, Wieden & Kennedy, did not prevent "Cog" from winning more than a score of other awards for creativity.

"Personally, I didn't think it was an issue," said Tony Granger, a Cannes judge who is the executive creative director at the flagship New York office of Saatchi & Saatchi, part of the [Publicis Groupe](#).

"Everything is inspired by something," Mr. Granger said. "We all see the same movies, read the same books. It's as if there's a collective consciousness."

One implication of that, Mr. Granger said, is that "when there's an idea, get it out as quickly as possible before anyone else does."

Another implication is that "agencies have to be more familiar with what's out there than ever before," he said, to make sure they are not becoming too inspired by someone else's work.

The Lugz commercial ran from August through December 2002 and has not appeared since, Mr. Ginsberg said. But it has been available for viewing, he said, on the Web site of the production company that worked on the commercial, Psyop ([www.psyop.tv](#), click on "Archive").

The Lugz spot was nominated for a prominent British advertising award in 2003, Mr. Ginsberg said. That suggests it may be familiar to at least some creative employees in the industry.

"People at agencies have been able to watch it over and over for years," said Rory Braunstein, a group creative director at Avrett Free who worked on the Lugz

account. "It's hard for me to think this is a coincidence because it's so shockingly close to the ad we created."

But in its statement, TBWA/Chiat/Day said, "We can assure you that the 'Detroit' spot was created without any reference by TBWA/Chiat/Day to the 'Arrow' spot."

"Our intention was to develop a campaign that was a natural and independent evolution of the 'Silhouettes' campaign," the statement read. "Any similarities between the two spots are regrettable."

A spokesman for Apple in Cupertino, Calif., Steve Dowling, said he did not think the company would elaborate on the statement from TBWA/Chiat/Day.

Under policies that guide relationships between agencies and clients, the clients almost always retain ownership of work produced for them by their agencies. That means Lugz is the owner of the 2002 commercial.

As such, Mr. Schwartz said, "we're going to take all the steps we need to protect our rights."