

LEGAL TA MOKO-OVER: M?ORI TATTOOING, COPYRIGHT, AND "THE HANGOVER 2"

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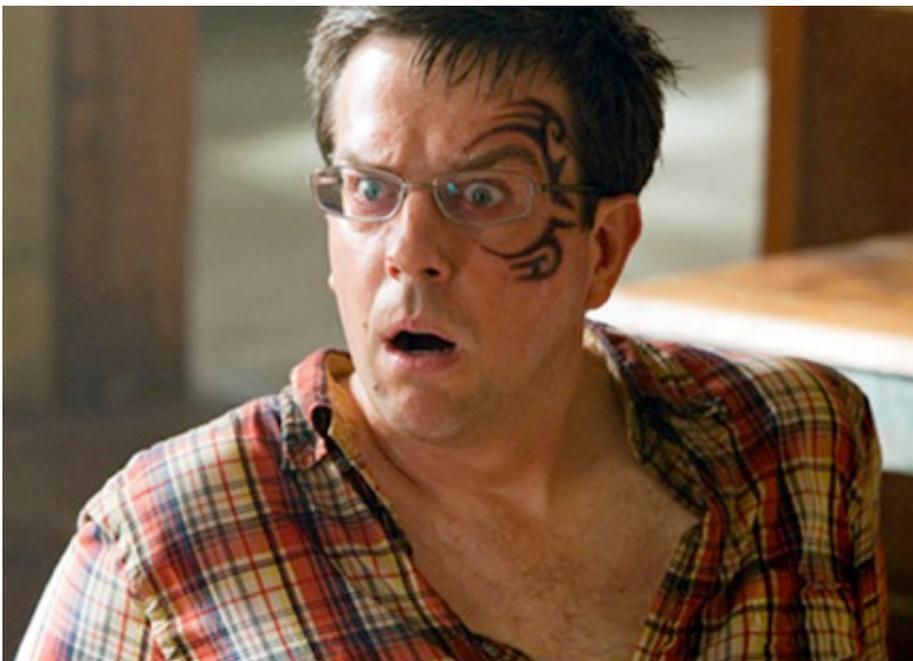
The Hangover 2, the sequel to 2009's summer comedy blockbuster, *The Hangover*, grossed \$86.5 million in its opening weekend, Memorial Day 2011, making the film the best three-day weekend opener for a live-action comedy.[1] The film made over \$135 million over its first five days in the United States, more than double what the original *Hangover* made. It also broke three-day, four-day, and five-day opening box office returns, and is the fastest comedy to gross \$200 million worldwide.[2]

The sequel, like its predecessor, revolves around a picaresque series of comedic exploits, largely fueled by alcohol and chance, that a group of friends find themselves in. This time, the gang, Phil (Bradley Cooper), Stu (Ed Helms), Alan (Zach Galifianakas), and Doug (Justin Bartha) have traveled to Bangkok, rather than Las Vegas, to search out adventure and camaraderie before one of their party (Stu) gets (re)married. I don't think I'm spoiling the plot by saying that things quickly go awry and shenanigans ensue.

One notable plot point involves Ed Helms' character receiving a facial tattoo identical to Mike Tyson's.[3] For the unusually mild-mannered Stu, this is an extreme and out-of-character decision, as it would be for the film's target demographic, young American men. The stakes are particularly high for Helms, as he is scheduled to get married shortly upon his return, and to a woman who would not appreciate this newly acquired ink.



[Mike Tyson's facial tattoo. Found at: <http://tattooku.info/mike-tyson-tattoo/>]



[Ed Helms and the art direction in question. Found at: <http://www.screenjunkies.com/movies/movie->

[news/warner-bros-is-covering-up-ed-helms-hangover-2-tattoo/](#)

The fictional tattoo sported by Helms has recently received media attention from the court case brought by Victor Whitmill, the tattoo artist who created Mike Tyson's facial tattoo. Whitmill is suing Warner Bros. for copyright infringement, stating that he was not contacted by the studio for permission to reproduce his design. Whitmill had sought damages and an injunction to prevent the film from opening.

It is the reproduction of the image on Helms, rather than the appearance of Mike Tyson in the film, that is at stake. Though Tyson signed an agreement stating that the image was Whitmill's intellectual property when he received the tattoo, Whitmill is not seeking an injunction on Tyson's appearance. Mike Tyson (and his tattoo) can legally appear in films, television, shows, print advertisements, etc. without Whitmill's consultation. Whitmill claims that because he copyrighted the tattoo image he is entitled to legal rights about its use. Whitmill's suit states: "This case is not about Mike Tyson, Mike Tyson's likeness, or Mike Tyson's right to use or control his identity... This case is about Warner Bros. appropriation of Mr. Whitmill's art and Warner Bros. unauthorized use of that art, separate and apart from Mr. Tyson."

Warner Bros. is contesting the suit, saying that the studio, the film, and its promotional materials are protected under fair use laws that cover parody. While the judge on the case ruled that the film could open on time, the copyright lawsuit is being allowed to go forward.[4]

While Whitmill's case is a challenge to copyright law, it is not the first time that tattoo artists have claimed copyright over their designs that appear on celebrity clients. In 2005, tattoo artist Matthew Reeds sued basketball star Rasheed Wallace and Nike to stop using the design he created for Wallace in a promotional biographical video for the Nike Corporation. The commercial [5] simulates the creation of the tattoos on Wallace's arms through animation. In another case, UK tattoo artist Lou Molloy threatened to sue David Beckham if he chose to engage in a promotional campaign that featured Molloy's famous "Guardian Angel" tattoo that appears on Beckham's back. Both cases were settled out of court.



[David Beckham's "Guardian Angel" tattoo. Found at: <http://www.masterofink.com/david-beckham-tattoos/>]

It is also not the first time that this tattoo, Whitmill, and Tyson have been in the news. In 2003, Tyson got the facial tattoo, a stylized version of a New Zealand M?ori *moko*. Traditionally, *ta moko*, or facial tattoos, were the domain of M?ori *ariki*, or chiefs. These designs were uniquely personal to the user, and were administered by a *tohunga*, a ritual specialist. M?ori responses to Tyson's tattoo were a mixture of ambivalence and outrage, for neither Tyson nor Whitmill had been properly authorized to wear or administer the design. Like Robbie Williams before him, who also sports a Maori-inspired tattoo that inspired similar umbrage, Tyson seemed to have little more than passing knowledge of Maori culture.[6]

Not surprisingly, some M?ori have claimed that Whitmill, who is non-M?ori, had no right to claim this design, or to ink it on Tyson. *The New Zealand Herald* quoted Professor Ngahaia Te Awekotuku, author of *Mau Moko: The World of M?ori Tattoo*, on the subject: "It is astounding that a

P?keha [non-M?ori] tattooist who inscribes an African American's flesh with what he considers to be a M?ori design has the gall to claim ...that design as his intellectual property...The tattooist has never consulted with M?ori, has never had experience of M?ori and originally and obviously stole the design that he put on Tyson...The tattooist has an incredible arrogance to assume he has the intellectual right to claim the design form of an indigenous culture that is not his.”[7]

On June 9, 2011, Warner Bros. filed papers saying they will digitally alter the DVD home version of *The Hangover 2* to remove the tattoo from Ed Helms and replace it with a different tattoo. This filing is a response to Whitmill's request for an expedited trial date. Currently, a mediation hearing is slated for June 17, and a court date is set for Feb. 21, 2012. According to the Warner legal team: “If the parties are unable to resolve their dispute, Warner Bros. does not intend to make any use of the allegedly infringing tattoo after the film ends its run in the theaters because Warner Bros. will digitally alter the film to substitute a different tattoo on Ed Helms's face. As a result, there is no reason for the highly accelerated trial Plaintiff has asked this Court to hold on Plaintiff's request for a permanent injunction.”[8]

If the copyright case goes forward, it remains to be seen how the M?ori component of Whitmill's design will be taken into account with regards to his claim to original authorship, and how the U.S. court system will address the legality of Whitmill's negligence in following M?ori protocols. Online speculation favors out of court settlement, so these questions of potentially reconciling international Indigenous copyright laws with American domestic artistic copyright and parody laws may be more hypothetical than legal reality.

[1] http://extratv.warnerbros.com/2011/05/weekend_movies_hangover_2_make.php

[2] <http://www.philstar.com/Article.aspx?articleId=693678&publicationSubCategoryId=70>

[3] Tyson starred in the first Hangover as a (presumably) hyperbolic version of himself.

[4] A good discussion of the legalities of Whitmill's case can be found here: <http://www.needlesandsins.com/2011/05/tattoo-copyright.html>

[5] Which can be seen here: <http://www.youtube.com/watch?v=RqmRu34PXrU>

[6] A link to an excerpt from an upcoming documentary entitled “Tyson” where the retired boxer talks about the Maori origins of his tattoo can be found here:

<http://www.youtube.com/watch?v=leXKGpe6R30>

[7] “Tyson's moko draws fire from M?ori.” The New Zealand Herald, 25 May 2011. http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10727836

[8] <http://insidemovies.ew.com/2011/06/09/hangover-tattoo-lawsuit-dvd/>