

## Michael Elkin Discusses Fair-Use Lawsuit Over Beastie Boys Song

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Winston & Strawn partner [Michael Elkin](#) was quoted in the *Law360* article, “Beastie Boys Gotta Fight, But Probably Won’t Win,” published November 25, 2013.

GoldieBlox, Inc. used the Beastie Boys song “Girls” in a girl-empowering parody advertisement, changing many of the lyrics to riff on what it considers the “highly sexist” message of the original. The Beastie Boys threatened a lawsuit, as they do not allow their songs to be used for promotional materials, but GoldieBlox says the gender-critique on the real lyrics means the video falls under the fair-use doctrine.

“The notion that the Beastie Boys have this philosophy of not wanting their works to be used for commercial purposes is almost beside the point,” said Mr. Elkin. “Even if the parody is for commercial purposes, it doesn’t take out the fair use defense.”

Critical commentary is one of the basic transformative uses protected by the fair use exemption, and courts have repeatedly found that making something of a commercial nature does not preclude fair use. “While it is important to protect the integrity of the expression itself ... there’s a very strong case here that the public has an interest understanding the critical commentary of the original work,” Mr. Elkin said.

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