

# TRADEMARKS, PELOTONS, AND HEART ATTACKS: THE SEX IN THE CITY TRIFECTA

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We who toil in the field of intellectual property have our own NSFW collection of cases that we file in the folder labeled *Stuff You Can't Make Up*. For example, did you know that the esteemed Seventh Circuit Court of Appeals had to grapple with whether the Fartman doll infringed the copyright in Pull My Finger Fred? As Judge Diane P. Wood, [writing for the three-judge panel](#), explained:

*Meet [Pull My Finger® Fred](#). He is a white, middle-aged, overweight man with black hair and a receding hairline, sitting in an armchair wearing a white tank top and blue pants. Fred is a plush doll and when one squeezes Fred's extended finger on his right hand, he farts. He also makes somewhat crude, somewhat funny statements about the bodily noises he emits, such as "Did somebody step on a duck?" or "Silent but deadly." Fartman could be Fred's twin.*

And then there is the plight of the vendor of chocolate lollipops who unsuccessfully sought to register the federal trademark for the lollipop version she sold to fans of the University of South Carolina Gamecocks. Her proposed trademark: [Cock Suckers](#).

And for fans of X-rated patents, you can follow the enforcement efforts of Interactive Life Forms

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LLC, owner of the invaluable patent in, er, a device known as the Fleshlight. (Do your own Google search for this one. I'm already on the H.R. Department's Watch List.)

Well, guess what? We IP nerds have finally gone mainstream. No, not BuzzFeed or some Twitter meme. I'm talking *New York Times*, *Wall Street Journal*, and other major news outlets around the country, all jumping on the hottest trademark issue of the year.

## But first, some background:

In the 21<sup>st</sup> Century world of television, commercials can either be fast-forward-avoided (via TIVO) or eliminated (on Netflix and HBO). As such, the realm of product placement has dramatically morphed. Companies that once spent big bucks to reach their target audiences by placing their products in advertisements during commercial breaks are now spending big bucks to place their products *inside* the shows themselves. And these products—whether a Corona beer or a BMW car or a Starbucks latte—are all protected by trademarks. Accordingly, if you're the ad exec handling product placement for, say, a Black & Decker chainsaw, you want to make sure that your client's product will not have a featured role in the remake of *Texas Chainsaw Massacre*.

## And Just Like That...Sex in the City is Back

Which brings us to HBO's *Sex in the City* series—and more specifically, the recent reboot of that series, *And Just Like That*. Those of you who were fans of the original series are familiar with Mr. Big (Chris Noth). He was the on-again off-again love interest of Carrie Bradshaw (Sarah Jessica Parker).

If you missed the first episode of the reboot—**Spoiler Alert!**—**Click here**. Mr. Big clips onto his Peloton stationary exercise bike, completes an intense workout, climbs off the bike, and promptly drops dead of a heart attack.

Apparently, the company had approved use of the Peloton for the show without knowing how it was to be used. Talk about the product placement from hell. According to the *New York Times*, Peloton's stock dropped by 11 percent overnight after the episode aired and continued to fall after that. And suddenly the telephones of trademark lawyers and professors around the country (including mine) were ringing with reporters from all the major print and broadcast media calling to ask whether Peloton could sue HBO for trademark infringement or trademark dilution via tarnishment.

Litigation was certainly an option for Peloton—after banishment of its product placement knucklehead to the Isle of Elba. But cooler, and far cleverer, heads quickly prevailed at the company headquarters.

The first indication was the statement issued the next day by Dr. Suzanne Steinbaum, a cardiologist on Peloton's health and wellness advisory council, who observed that Mr. Big's extravagant lifestyle and his previous cardiac event in Season 6 of *Sex and the City* were the most likely causes of his death. As quoted in that *Times* article, she speculated that "riding his Peloton bike may have even helped delay his cardiac arrest."

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And then came Peloton's brilliant *coup de grâce* in the form of a 38-second commercial released on Twitter, Instagram, and elsewhere, incredibly enough, on the first Sunday after the airing of that episode of the HBO show. The ad features Mr. Big himself romantically cuddled on the couch before a Christmas-time fireplace with an actual female Peloton instructor. The voiceover ends: "He's alive."

Although some angry shareholders may still try to pressure Peloton into seeking recompense from HBO, I was ready to place Peloton's clever commercial right up there in my trophy case next to Groucho Marx hilarious response to the lawyers for Warner Bros. in the form of a letter I previously celebrated here.

**Note that I stated I "was ready" to place it in my trophy case. But, alas, to quote Oscar Wilde, "No good deed goes unpunished."**

Just two days after I finished typing the trophy-case paragraph above, the headline in *The Hollywood Reporter* blared: "Peloton Removes Viral Chris Noth Ad After Sexual Assault Allegations."

Turns out that two women had come forward to accuse Noth of violent sexual assaults, and thus once again Peloton found itself the focus of a product placement from hell. Although Noth vigorously denied the accusations, Peloton's spokesperson told the publication that "every single sexual assault accusation must be taken seriously."

Accordingly, while explaining that Peloton "was unaware of these allegations when we featured Chris Noth in our response to HBO's reboot," the company had removed the commercial from its Official Twitter and Instagram accounts and halted all promotion of it. Indeed, it may no longer be available at the link above. And bad news keeps rolling in for Chris Noth, who has now been dropped from CBS's "The Equalizer" series because of those sexual assault allegations.

So for now, at least, I have moved that commercial to my overstuffed folder labeled *Stuff You Can't Make Up*. But on the bright side—to quote Cousin Eddie's cheerful comment in *National Lampoon's Christmas Vacation* after Clark (Chevy Chase) discovers that his much-anticipated Christmas bonus is instead a 12-month subscription to the Jelly of the Month Club—for us trademark professionals this Peloton product placement disaster "is the gift that keeps on giving the whole year."

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