

## Zia Modabber Speaks With *Law360* on Rick Astley's Legal Fight Over Voice Impersonation

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Zia Modabber, managing partner of Katten's Los Angeles offices and chair of the Entertainment and Media Litigation practice, was quoted in a *Law360* article discussing singer Rick Astley's lawsuit that alleges his voice was improperly impersonated in a rap artist's song.

The lawsuit, which is pending before the California Superior Court, Los Angeles County, stems from Yung Gravy's single "Betty (Get Money)." That song featured another individual imitating Astley's voice from the 1987 hit "Never Gonna Give You Up." The "nearly indistinguishable imitation" of Astley's voice was a violation of his right of publicity, according to the complaint, which also alleges that the defendants engaged in false endorsement and unfair competition.

Touching on the claims and potential defenses in the case, *Law360* highlighted the tension between Astley's right to publicity claim and a potential First Amendment defense. Zia spoke with *Law360* about the difference between First Amendment protections and protections under the right of publicity. He explained that the First Amendment is intended to encourage artistic expression, and in doing so, generally provides creative or expressive works with greater protection than other types of speech like, for example, commercial speech. The right of publicity, on the other hand, is designed to protect individuals' right to control and exploit the commercial use of their name, voice, likeness and image, which at times can run up against the First Amendment.

Zia noted the transformative use test, under which the First Amendment generally will protect the use of an individual's voice or likeness in a work when it's transformative. In this case, a court may well examine whether the imitation of Astley's voice was used "only as an element of the new work, [adding] a host of other important creative elements that make it something else that is new and worthy of First Amendment protection."

"The case could well turn on how the court decides this issue," Zia told *Law360*.

["Rick Astley May Face Rocky Path In Suing Over Voice Theft,"](#) *Law360*, February 4, 2023

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