DISPUTES

Vampire Weekend's Mutinous Muse

Ann Kirsten Kennis says her face appeared on the cover of a No. 1 album without her knowledge or consent. Does she deserve compensation?

BY JESSICA FLINT | PHOTOGRAPHS BY JUSTIN BISHOP | AUGUST 24, 2010 12:00 AM

Ann Kirsten Kennis with her daughter, Alex, at home in Fairfield, Connecticut.

Ever since she was 23, people have been using Ann Kirsten Kennis's image to sell their products. Throughout the 1980s and early 1990s, she appeared in magazine advertisements, catalogue pages, and television commercials for a long list of recognizable brands, among them L'Oréal, Revlon, Fabergé, Parliament, Cuervo, Jordache, and Vaseline. She did looker ads and lingerie ads and bathing-suit ads too. Her picture was even on the cover of a romantic novel.

She liked seeing her face in public. For a model, those images meant money in the bank.

But last winter, when Kennis learned that an old Polaroid picture of herself was being used to promote the No. 1 album in the country, she was anything but pleased, she says. Kennis had never heard of the band, Vampire Weekend, and had no idea how her image had made its way onto the cover of the group's new album, *Contra*. Nor had she heard of Tod Brody, the photographer who claims to have taken the photo.

The album cover in dispute.

Kennis's 13-year-old daughter, Alex, made the discovery last January, just after the album's release. Kennis, 52, says she walked through the door of her family's three-story house in Fairfield, Connecticut, to find Alex at the kitchen table,

staring intently at the screen of her MacBook Pro. “Mom, come here, come here!” she said.

Kennis leaned over her daughter’s shoulder and examined the Barnes & Noble banner ad, which featured a Polaroid of a striking young blonde in a Polo shirt with a popped collar. “And I was like, ‘Yeah, that’s strange. That’s me, many years ago,’” says Kennis, who was momentarily stunned by the sight of all that beautiful hair. Three weeks earlier she had completed chemotherapy for breast cancer, and her hair was just starting to grow back.

Kennis might have chosen to ignore the whole thing, if only that had been an option. Parking her car on Columbus Avenue, in Manhattan, she saw a poster of the album cover pasted to a storefront’s construction scaffolding; flipping through *The New York Times,* she saw a picture of the band using her photo as a giant concert backdrop; walking into the Gap, she heard Vampire Weekend playing over the speakers. Friends said they’d seen the cover in Montreal and even

Finland.

At first, Kennis found the attention flattering—especially since Alex was having fun with it. (Alex set her phone to play Vampire Weekend's "Horchata" and flash the album cover when Ann called.) But the more she thought about it, the angrier she became. "It felt like someone was exploiting me," Kennis says. "Who do these people think they are that they can just take my picture from god only knows where and plaster it everywhere?"

So, on July 14, Kennis's lawyer, Alan Neigher, filed a $2 million misappropriation-of-image lawsuit in Los Angeles against Vampire Weekend, Tod Brody, and the band's London-based label, XL Recordings. Some music-business insiders whispered that she was squandering the opportunity of a lifetime: Vampire Weekend had transformed this retired catalogue model into the golden mystery girl of indie rock, and she repays them by *filing a lawsuit?* But they're missing the point. For the models of Kennis's generation, there is a right way and a wrong way to recruit a model to sell your product. And in this episode, it's clear something seems to have gone very wrong indeed.

Growing up in Buffalo, New York, Ann Kirsten Klendshoj always felt like a magnet was drawing her to New York City. After a couple years of college, she moved to Manhattan, where she got a job as a bunny at the Playboy Club.

Everyone always said Ann should model, and it didn't take long before she found herself on the test boards at Ford Models, still one of the most recognized modeling agencies on the planet. Ann left the agency to follow veteran Ford

booker Sue Charney, who was starting her own shop, and later she did work with more obscure agencies. Somewhere along the line, Ann started using just her middle name, Kirsten, as her single-name pseudonym—her Danish last name, Klendshoj, was too hard to pronounce.

In her early 20s, she traveled around the globe—to Germany, Italy, Switzerland, and Spain—building her portfolio. “I would come home for a few days or a week, and I would still have a suitcase packed and my agent would call and say, ‘They want to book you for this hair campaign. I can get you other bookings,’” she says. “Before I got home, I was turning around to go back to Europe.”

She modeled for about 10 years, then went on to develop a line of Space Bear teddy bears, which is how she met her husband, Jeffrey Kennis, who works in the toy industry. Today Ann is relaunching the line under the name Cosmic Cubs Club.

Vampire Weekend formed in 2006, when its four members were students at Columbia University. Their self-titled first album, released in 2008, was a staggering success by indie-rock standards, selling 558,000 copies and landing the band on the cover of *Spin* magazine. Every act needs a gimmick, and Vampire Weekend’s is ingeniously straightforward. In a music scene dominated by rebels of every description, they play the ultimate conformists, performing in Ivy

League–style getups: Oxford shirts, boat shoes, chinos, cardigans.

Some rock fans consider this tantamount to sacrilege, and Vampire Weekend seems to have been simultaneously jabbing its critics and sending a winking message to its fans when the band began teasing its upcoming album with a photograph of the ultimate prepster: blond hair, blue eyes, popped collar. “It’s a fuck-you,” keyboardist Rostam Batmanglij told *Vanity Fair* in 2009, “to all the people who are waiting to analyze our band in a superficial way.”

By the time *Contra* debuted, on January 12, the band had been publicizing its mystery girl for months. Early last September, a scan of the original Polaroid was sent to music Web sites around the world, linking to a site called I Think Ur a Contra. Bloggers and commenters were left to argue over what it was supposed to mean. On September 15, the picture was revealed to be the new album cover. The band then used the image as its stage set at concerts in November and December to build buzz leading up to *Contra’*s unveiling. Even today, Vampire Weekend’s eponymous Web site displays a huge blowup of the picture.

How Vampire Weekend found the Polaroid of Kennis from the 1980s is a matter of debate. In interviews about the album, the band has revealed only that Batmanglij found the image sometime around April 2009, and that lead singer Ezra Koenig quickly mocked up a cover on his computer late one night at the studio.

According to Kennis’s lawsuit, Vampire Weekend purchased the photograph for $5,000 from a New York photographer and filmmaker named Tod Brody. Brody, 53, says he took the photo of Ann in the summer of 1983 during a casting session

for a television commercial.

At casting calls in the 1980s, frequently a photographer's assistant or someone involved with the project's production would snap Polaroids of the auditioning models, which would be labeled with the subject's name and filed away. (Today, such photos are shot digitally.) A golden rule of modeling, bookers say, was not to sign a release for casting-call pictures—since both modeling agencies and models themselves earn money by protecting their image rights.

Brody says there were probably a dozen people in the room when Ann's photo was taken, among them representatives from the ad agency and the commercial's director. "We probably saw 20 or 30 [models] that day," he recalls. "I don't think I held on to any of the other [Polaroids] from that day. I wish I had, frankly, because they all would have been taken up against the same wall."

He kept the snapshot of Kennis because, well, he liked it. "Just like Vampire Weekend thought it was a cool photo, I thought it was a cool photo," he says. Brody used to have a back wall in his studio that was about 20 feet wide by 14 feet high where he would tack up Polaroids and snapshots that he thought were interesting—which is why he says the original *Contra* picture has eight or nine pushpin holes in it. (The pushpin holes are visible on the original ithinkuracontra.com scan.) There were, "like, hundreds of Polaroids" on that back wall, Brody contends, including ones he snapped of Meryl Streep and Diane Keaton when he served as the executive producer of the 1996 Leonardo DiCaprio vehicle *Marvin's Room*.

SLIDE SHOW: Page through Ann Kirsten Kennis's modeling portfolio.

But Kennis, who says she can't remember the *Contra* photo being taken, claims Brody didn't shoot the picture. "It's not even like it's a Polaroid before a photo shoot, because the hair's not done, the makeup's not done, the lighting's not done. Nothing. It almost looks like somebody caught me by surprise," says Kennis. "The other thing that's strange about this photo is that it's not taken [in front of a] seamless [back-drop] like it would be in a photographer's studio. You can see a door frame there and hinges right in the background."

Kennis thinks her mother might have snapped the picture. In fact, on a table in her living room sits a framed Polaroid that her mother took of Ann and her sister both holding cats; it's straight out of the *Contra*-cover era. "I do know my mother used to take Polaroids of my sister [and me] like crazy," she says. But former modeling-agency owner Charney has a different opinion, saying, "To me it is very clearly a Polaroid taken at a casting session."

Vampire Weekend, photographed for *Vanity Fair* in 2009. From left: Rostam Batmanglij, Chris Tomson, Ezra Koenig, and Chris Baio. *Photograph by Justin Bishop.*

"As a photographer, for them to try to say that I didn't take the photo and I claimed I took the photo—that's extremely damaging," Brody says. "Unfortunately, I don't think Ms. Kennis's attorney really researched me that well. He read some bad stuff about me on the Internet and thought I was some fraudulent clown who happened to acquire this photo."

To be fair, there is quite a lot of bad stuff about Brody on the Internet. An anonymous Web site called the Tod Brody Fraud Blog accuses him of being a "con-man who presents himself as a producer, film maker, and photographer in order to gain income through deceiving others." The site collects stories from anonymous tipsters who complain that Brody has scammed them.

“I don’t claim to have my credits. The records are pretty clear,” Brody says. “How much credence can you give to an anonymous guy who makes claims that are easily disproved?”

Embedded in this miscellany is a bizarre series of YouTube videos, including one in which a small-time Canadian film director named James Barclay appears on the now defunct Danish television program *Den 11 Time* to bring attention to Brody’s alleged misdeeds. “Even though Tod has some impressive producing credits on his C.V. from the middle of the 1990s,” Barclay says in the video, “be aware that he has a long history of criminal activity behind him, and has been arrested for fraud, grand larceny, and was also investigated by the F.B.I.”

“What extensive criminal record? Prove it. I have no criminal record,” Brody says when asked about the video. “I have never been convicted nor pled guilty of any crime in any jurisdiction in the world. And anyone can check that out.”

But the public accusations don’t stop there. In October 2005, New York–based documentary filmmaker Zita Zenda accused Brody of grand larceny for allegedly scamming her out of $42,000. (“There was no trial. The charges were dropped,” Brody says.) And in late 2008, Danish actress Gry Bay raised allegations that Brody never paid her for a month of work on a film called *The Old Cemetery*. “Gry didn’t do anything on the film,” Brody says. “The film had a really fantastic Danish cast, but because I couldn’t finance the film, there was no work on the film.”

Brody says he sees how anyone surfing the Web wouldn’t think too well of him. “It’s really easy to say things about people on the Internet. Really easy,” he says.

"Well, tell someone to prove one of those things. Tell someone to prove one of them. I mean people saying outrageous things like I have a criminal record. You can't just say that! Where do people get off saying something like that?

"I have kind of sat back over the last few years as people have made negative statements about me on the Internet," Brody says. "I'm not going to take this anymore. As with Ms. Kennis, I just can't allow people to make these flippant statements and get away with it."

But Brody hasn't been as passive as he suggests. In 2008, he set up a Web site, theoldcemetery.blogspot.com, dedicated to refuting the charges against him. And he recently took to the Internet to attack Kennis on his Web site Tod Brody Photo, writing, "By her absurd claim that her mother took the photo, Ms. Kennis has attempted to appropriate my copyright as the photographer, and has slandered and defamed me which I don't take lightly."

If the *Contra* case does go to trial, the outcome could hinge on a key document: a model release form that appears to be dated July 30, 2009. (The date is crossed out and re-written.) The form is from Vampire Weekend Inc. to someone named "Kirsten Johnsen" (spelled "Johnson" elsewhere on the form), who signed her permission for the band to use her image for a fee of $1. The form contains no mention of Brody, but it does include an address named in the suit as Brody's residence. No release form from the 1980s has yet been presented in court.

The notion that Ann Kennis would have signed the document in 2009 using her old stage name, Kirsten, and a last name seemingly pulled from thin air stretches credulity, as does the idea that this veteran model, who was compensated at a

level just below that of an elite supermodel during her 10-year modeling career, would have sold the rights to her image for a mere dollar.

"I'm not going to address the merits of her case or anything else," Brody says. "We will try that in court, not in *Vanity Fair* or in the media."

Both Vampire Weekend and XL Recordings declined to comment, referring to the statement they gave after the lawsuit was filed: "As is standard practice, Vampire Weekend and XL Recordings licensed the rights to use the photo on the cover of *Contra* pursuant to a license agreement that contains representations and warranties authorizing this use of the photo."

Kennis filed her lawsuit in California, one of the 28 states in the U.S. that honor the right of publicity. Under such rules, the release is all-important. If it is found to be authentic, then Kennis may have no legal claim. But if the judge decides that it's a fake, then she could have a very strong claim to misappropriation of identity. Vampire Weekend Inc. and XL Recordings may be on the hook in the lawsuit, too, with Kennis's lawyers arguing that the band and its label should have done due diligence to make sure the release was authentic.

California's misappropriation-of-identity statute has a generous compensation clause that allows a plaintiff to recover both actual damages (the cost of the image, emotional distress, damage to reputation, and so on) and profits from the misappropriated use. In a California case in 2005, a jury awarded ex-model Russell Christoff $15.6 million after concluding that an unauthorized image of his face accounted for 5 percent of sales of the coffee products on which it appeared.

SLIDE SHOW: Page through Ann Kirsten Kennis's modeling portfolio.

How many sales of *Contra* can be attributed to Kennis? That would be up to a jury to decide. Some would argue that, with the rise of digital downloads, album covers don't really mean anything anymore. Yet given the mystique of the *Contra* girl and the publicity campaign built around the image, the theory could hold that Ann's face was integral to the marketing of the album, which has sold 377,000 copies in the U.S.

In an age when photos are easily swapped around the Internet and everyone with a camera phone has become a photographer, this lawsuit is more than just a cautionary tale. It's a symptom of an increasingly treacherous generation gap. "You start to see interviews from fans of the band, and they are like, 'I would just be glad that my picture was on it.' Well, not really. They are using it for their gain," says Kennis, who came of age at a time when anyone whose image was used and distributed could expect to reap sizable financial rewards. "Something is

wrong here. It's like, don't just use my picture all over the place."

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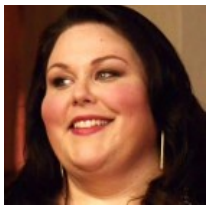

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