

## Toyota Motor Sales, U.S.A., Inc. v. Tabari (9th Cir. 2010)

- New Kids test instead of Sleekcraft
  - (1) the product was “readily identifiable” without use of the mark
  - (2) defendant used more of the mark than necessary; or
  - (3) defendant falsely suggested he was sponsored or endorsed by the trademark holder
- “If the nominative use does not satisfy all the *New Kids* factors, the district court may order defendants to modify their use of the mark so that all three factors are satisfied; it may not enjoin nominative use of the mark altogether”



## Tiffany (NJ) Inc. v. eBay, Inc. (2d Cir. 2010)

- Nominative fair use analysis
- Will something other than the Polaroid factors apply?
- “We have recognized that a defendant may lawfully use a plaintiff's trademark where doing so is necessary to describe the plaintiff's product and does not imply a false affiliation or endorsement by the plaintiff of the defendant.”