



fair use & tater tots

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In 2011, Plaintiffs Tamita Brown, Glen S. Chapman, and Jason T. Chapman composed and recorded the children's song *Fish Sticks n' Tater Tots* (the "Song"), which details a student's journey from her classroom to her school cafeteria to eat fish sticks and tater tots for lunch.^[1] Six years later, the documentary film *Burlesque: Heart of the Glitter Tribe* (the "Film") — which chronicles the stories of a group of burlesque dancers in Portland, Oregon — was released for streaming on Amazon, Netflix, and Apple. In the Film, a dancer named Babs Jamboree performs a food-themed routine centered on the concept of a "reverse mermaid," which consists of a creature with the head of a fish and the legs of a woman. During the performance, Jamboree — previously wearing a fish head — steps behind a sign labeled "hot oil" and emerges, having changed into brown leggings and removed the fish head, a transformation that makes it appear as though she has been changed into fish sticks. In total, approximately eight seconds of the Song play in the background of Jamboree's performance, consisting of the lyrics "fish sticks n' tater tots" sung by Brown a total of five times. The resulting lawsuit, *Brown v. Netflix, Inc.*, No. 19 CIV. 1507 (ER), 2020 WL 2749571, at *1 (S.D.N.Y. May 27, 2020), concerns the scope of fair use of the Song in the Film and the potential liability of these streaming services...

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