

## JURY INSTRUCTIONS

**Your Duty as Jurors.** Ladies and gentlemen of the jury: As the judge, it is my duty to instruct you in the law that applies to this case. As jurors, you must follow these instructions. Your duty will be to decide what the facts are in this case based on the evidence you heard. You must then apply the rules of law to those facts. When you apply the rules of law, you may not use your own judgment. You may not rely on your own opinion about what the law should be. You must base your verdict only on the law that I give you in these instructions.

**Consider Only the Evidence.** To decide this case, you must consider the evidence. Evidence consists of the witnesses' testimony and the exhibits you saw. Any arguments or opinions the lawyers expressed are not evidence. Anything you have seen or heard outside the courtroom is not evidence. In addition, you must disregard any evidence that was objected to if I sustained the objection. You may not use any other source of information to help you decide this case.

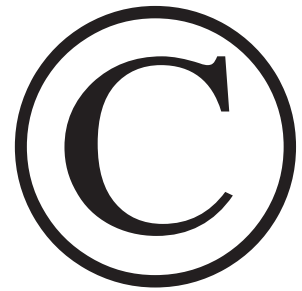
**Copyright Law.** Original motion pictures are protected by United States copyright law. Only the owner of the motion picture may create works based on that motion picture. It is a violation of United States copyright law for someone else to create a work based on the copyrighted movie. As jurors, it is your duty to determine whether Honda created a work based on the "James Bond" films.

**"Fair Use" Defense.** Someone accused of violating a copyright may defend themselves on the ground that they made "fair use" of the copyrighted work. It is not a violation of copyright law to use a copyrighted work for criticism, comment, news reporting, teaching, or research. This is called "fair use." You will determine fair use based on three factors:

- 1) Purpose of the Use. The first factor is the "purpose of the use." If the original work was copied in order to make money, this factor weighs against fair use. However, if the original work was transformed in order to make fun of it or criticize it, this factor weighs in favor of fair use. In addition, the more the copy transforms the original, the less it matters whether the copy was used to make money.
- 2) How Much was Copied. The second factor asks how much of the original was copied. If the copy steals the "heart" of the original, this factor weighs against fair use. This means that the copy has the same style and feel as the original. Even if it does, the purpose of the use and the amount of transformation may override the fact that the copy has the same style and feel as the original.
- 3) Effect on Market for Original. The third factor is the effect on the market for the original. If people would buy the copy instead of buying the original, this factor weighs against fair use. Ask whether anything about the copy would make the original less valuable or make people not want to buy the original.

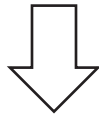
**Balancing the Factors.** You must balance these three factors together to decide whether, as a whole, they weigh in favor of fair use. If you find that Honda made "fair use" of the James Bond idea, you must find that Honda is not guilty of copyright violation even if Honda copied the James Bond idea. If you find that Honda copied the James Bond idea but did not make "fair use" of the idea, you must find that Honda violated U.S. copyright law.

Initial Question:  
Did Honda Copy James Bond?



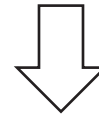
Directions: You must decide whether the Honda commercial copied James Bond. As a group, sort through the Evidence Cards. Discuss each piece of evidence and decide whether it tends to show that Honda did or did not copy James Bond. Stack the cards on the appropriate square below.

This evidence shows that Honda **DID** copy James Bond.



(STACK CARDS HERE)

This evidence shows that Honda **DID NOT** copy James Bond.









(STACK CARDS HERE)

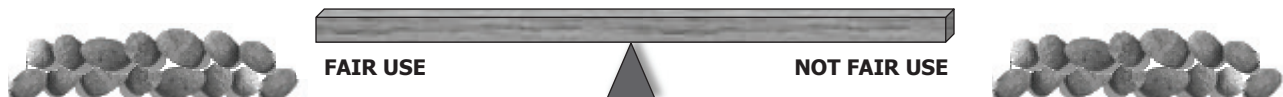
- Decision:**
- Honda did copy James Bond
  - Honda did not copy James Bond



## Fair Use Factor #1: The Purpose of the Honda Commercial

Directions: You must decide whether this factor weighs for or against the argument that Honda made "fair use" of the James Bond idea. Answer the questions and pile stones on the seesaw to decide.












- 1) Based on the evidence, did Honda copy the James Bond idea in order to make money?  
 Yes.  Not Fair Use (Draw 3 stones on the "not fair use" side.)  
 No.  Fair use (Draw 3 stones on the "fair use" side.)
  
- 2) Based on the evidence, does it seem like the Honda commercial makes fun of James Bond?  
 Yes, it is trying to make James Bond look ridiculous.  Fair use  
 No, the James Bond character in the ad is supposed to look cool.  Not fair use
  
- 3) Based on the evidence, does the commercial seem to criticize James Bond?  
 Yes, the ad shows that Honda has a negative opinion of James Bond movies.  Fair use  
 No, Honda does not seem to have a problem with James Bond.  Not fair use



## Fair Use Factor #2: How Much of James Bond Did Honda Use?



Directions: You must decide whether this factor weighs for or against the argument that Honda made "fair use" of the James Bond idea. Answer the questions and pile stones on the seesaw to decide.







- 1) Based on the evidence, how much of the James Bond idea do you think Honda copied?
  - Honda copied the whole James Bond idea.  (Draw 3 stones on the "not fair use" side.)
  - Honda took some ideas from James Bond, but the rest was Honda's own ideas.   
(Draw 2 stones on the "fair use" side AND draw 2 stones on the "not fair use" side.)
  - Honda did not copy any of the James Bond idea.  (Draw 3 stones on the "fair use" side.)
  
- 2) Based on the evidence, does the Honda commercial seem to have the same style and feel as a James Bond movie?
  - Yes, the evidence shows that the commercial has almost the same style as a James Bond movie.  Not fair use
  - The evidence shows that the commercial's style is a lot like James Bond, but some of the style is like any action movie.  Not fair use AND  Fair use
  - No, the evidence shows that the style of the commercial is like any action movie and is not unique to James Bond.  Fair use
  
- 3) Based on the evidence, does the Honda commercial seem to steal the "heart" of what a James Bond movie is like?
  - Yes, the commercial steals the very things that make a James Bond movie unique.  Not fair use
  - The commercial steals some unique ideas from James Bond, but also contains new ideas.  Not fair use AND  Fair use
  - No, anything the commercial borrows from James Bond is not what makes James Bond movies unique.  Fair use

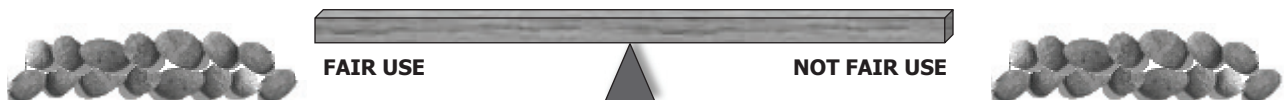


## Fair Use Factor #3: Did the Honda Commercial Affect the Market for James Bond Movies?



Directions: You must decide whether this factor weighs for or against the argument that Honda made "fair use" of the James Bond idea. Answer the questions and pile stones on the seesaw to decide.

- 1) Based on the evidence, do you think people would buy copies of the Honda commercial instead of buying James Bond DVDs?
  - No, the Honda commercial is not a substitute for a James Bond movie.  (Draw 2 stones on the "fair use" side.)
  - Yes, people will start watching this commercial instead of James Bond movies.  (Draw 2 stones on the "not fair use" side.)
  
- 2) Does the Honda commercial merely duplicate James Bond in order to make money?
  - Yes.  Not fair use
  - No.  Fair use
  
- 3) Would the makers of an expensive car be less likely to pay to use the James Bond character in an advertisement if James Bond was already associated with Honda cars?
  - Yes, James Bond would have little value to a company like BMW or Mercedes if people already associate James Bond with Honda cars.  Not fair use
  - No, a company like BMW or Mercedes might still buy the right to use James Bond in an ad even if people already think of James Bond and Honda cars.  Fair use



<p>When MGM demanded that Honda not air the ad, Honda changed the ad so the music and the characters' accents would be less like a James Bond movie.</p>	<p>The ad agency named the project "James Bob" at one point.</p>	<p>The ad agency employee admitted thinking that "James Bob" was a play on words for "James Bond."</p>
<p>The nickname "James Bob" was dropped very soon into the project.</p>	<p>The casting director told talent agencies he was looking for actors who looked like James Bond.</p>	<p>In the James Bond film "The Spy Who Loved Me," a helicopter chased a car. In the Honda commercial, a helicopter chased a car.</p>
<p>In the James Bond film "Dr. No," the villain had metal hands. In the Honda commercial, the villain's hands make clanging noises as they scrape the car.</p>	<p>James Bond movies feature expensive cars (such as a BMW or an Aston Martin) that have special features like torpedoes or submarine capability. Hondas are everyday cars that are not unusually expensive.</p>	<p>The advertising agency VP said he got the idea for the ad from the movie "Aliens."</p>
<p>The advertising agency VP who got the idea for the film had seen bits and pieces of James Bond movies.</p>	<p>In his deposition before the trial, the advertising agency VP kept referring to the ad's actor as "James."</p>	<p>Honda's executive testified they told the casting director to get actors who looked like characters from the movie "The Avengers"</p>
<p>Honda's executive said the villain did not have metal hands. He was wearing gloves.</p>	<p>Honda's expert, a longtime fan of James Bond films, testified that the action elements in the ad were generic elements present in any action film.</p>	<p>MGM's expert, a university professor who teaches a class about James Bond films, testified that the ad has the same unique pace, mood, and other elements that only James Bond movies have.</p>
<p>MGM's expert, who wrote a book about JB and appears on radio and television, testified that parts of Honda's ad were exactly the same as parts of various JB movies.</p>	<p>The actor in Honda's ad had blonder hair than the actors that actually played James Bond.</p>	<p>The Honda ad has a more sepia tone than real James Bond films do.</p>

## VERDICT

We, the jury, find that Honda

- Did copy the James Bond idea
- Did not copy the James Bond idea

On the question of fair use, we find the following:

- Factor #1 weighs in favor of fair use
- Factor #1 does not weigh in favor of fair use
- Factor #2 weighs in favor of fair use
- Factor #2 does not weigh in favor of fair use
- Factor #3 weighs in favor of fair use
- Factor #3 does not weigh in favor of fair use

We therefore find that Honda

- Did make fair use of the James Bond idea
- Did not make fair use of the James Bond idea

Juror Names:

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- Factor #3 weighs in favor of fair use
- Factor #3 does not weigh in favor of fair use

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