

Looking a Certain Way: How Defunct Subjective Standards of Media Regulation Continue to Affect Black Women

Jessica M. Williams*

Regulatory enforcement is only as good as the standards to be enforced. I argue here that subjective standards formerly in place at the Motion Picture Producers and Distributors of America (MPPDA) and the United States Patent & Trademark Office (PTO) were imbued with the White-centric beliefs of its designers and enforcers.¹ Drawing on critical race theory and starting from an intersectional lens, I describe how subjective rules ostensibly intended to protect those depicted in film and trademark images were not applied evenly, making it possible for denigrating representations of Black women to proliferate. Integrating media consumption theories, I explain how the harmful negative stereotypes that came out of these regulatory eras affect the White people who continue to be in the majority in media industries. And, more importantly, I demonstrate how these stereotypes affect Black women and the ways in which systemic racism compounds the psychological effects to produce physiological ones.

DOI: <https://doi.org/10.15779/Z38348GH3Z>

Copyright © 2023 Jessica M. Williams.

* J.D., 2021, University of California, Berkeley, School of Law. Thank you to Professor Victoria Plaut for her Psychology of Diversity and Discrimination in American Law course and for her feedback on early drafts. My gratitude, too, to the editors of the *California Law Review* for their hard work and enthusiasm. For Nicholas H. Alexander (1988 - 2016), Note & Comment Editor of the *Arkansas Law Review*, Vol. 65.

1. I capitalize “White” as it applies to a racial category throughout to “call attention to White as a race [and] to understand and give voice to how Whiteness functions in our social and political institutions and our communities.” Ann Thúy Nguyễn & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize “Black” and “White,”* CTR. FOR THE STUDY OF SOC. POL’Y (Mar. 23, 2020), <https://cssp.org/2020/03/recognizing-race-in-language-why-we-capitalize-black-and-white/> [<https://perma.cc/K25J-3WDA>].

Introduction	248
I. Regulatory Agencies, Their Stated Goals, and Approved Products ...	250
A. MPPC: An Unofficial Code with a Distinct Perspective.....	250
B. PTO: An Official Code with a Distinct Perspective	260
C. Systems of Power Remain Largely Unchanged to Present Day.....	266
II. Effects of Racial Stereotypes on Black Women.....	268
A. Popular Theories of Media Consumption Do Not Include Black Women	268
B. Theories of Media Consumption Do Not Consider How White People View Others	270
C. How Media Affects Black Women.....	272
III. An Intersectional Approach to the Future.....	280
Conclusion.....	284

INTRODUCTION

Picture Betty Boop. You see a big-headed 1920s New Woman cartoon wearing a sweetheart minidress with a flirty hemline that reveals the garter on her upper left thigh. Boop became an icon through film shorts centered on her bold and risqué activities that screened as opening acts before feature films during the 1930s.² Onscreen, Boop was known for her sexuality and adaptability, playing everything from presidential candidate to racecar driver.³

But regulation changed all of that. Throughout the 1930s and 1940s, cultural anxieties around women's increasing independence and conservative social mores became institutionalized through the creation of guidelines for images intended for popular consumption. With the implementation of Hollywood's morality code in 1934, Boop was no longer allowed to be a sex symbol.⁴ Accordingly, her signature dress expanded to cover her shoulders and garter, and her storylines became entirely domestic.⁵ Not every subject received equal attention, however: code enforcers did little to nothing to protect depictions of Black women, in particular.

The production and reproduction of images, both moving and static, are still regulated through official and unofficial means today. Regulatory bodies that oversee these images and their production impart a particular perspective, informed by a specific viewpoint. This matters because television and film

2. Emily Wishingrad, *The Evolution of Betty Boop*, SMITHSONIAN MAG. (Mar. 9, 2022), <https://www.smithsonianmag.com/arts-culture/the-evolution-of-betty-boop-180979666> [<https://perma.cc/3FA2-RNF3>].

3. *Id.*

4. *Id.*

5. *Id.*

present images as capsules of beliefs at a particular moment, and trademark regulation makes images' commercial value clear. Governing agencies, whether in Hollywood or Washington, D.C., and official guidelines are frequently designed to support the perspective of their founders. Both the Motion Picture Production Code (MPPC, 1934-1968) and the United States Patent and Trademark Office (PTO), were founded by White men, and worked to institutionalize their founders' perspectives. The Motion Picture Producers and Distributors of America (MPPDA), founded in 1922, tasked with enforcing the MPPC, did the same for its White founders. I argue in this Note that the enforcers of these perspectives, abiding by MPPC and PTO examination guidelines, approved stereotypes of Black women that continue to affect viewers today. The MPPDA's and PTO's subjective guidelines did little to nothing to prevent negative stereotypes of Black women. Though neither the MPPDA nor PTO continues to apply an offensiveness standard today, the cultural products that came out of their enforcement continue to occupy our collective memory.

Neither the MPPC nor the PTO examining guidelines was designed with women or Black people at the helm, and both populations remain largely excluded from entertainment and intellectual property industries. For these reasons, I center my analysis on how the approval of stereotypes—despite morality and offensiveness standards—affects the group living at the intersection of those marginalities: Black women.⁶ Through the actions of both regulatory offices, Black women have been discriminated against in specific anti-Black, racist, and misogynistic ways that have made possible what Moya Bailey calls misogynoir, defined as “the particular venom directed at Black women through negative representations in media.”⁷ Studies show that, although racist stereotypes abound, many Black women possess high self-worth.⁸ I argue that because these stereotypical images of Black women are not new—and because Black women are aware of their historical production context—we are often able to process them without internalizing them, though they continue to affect identity development. Many Black women, however, in casting off certain stereotypes, feel the need to overcompensate for these stereotypes'

6. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) (“Because the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated.”).

7. Moya Bailey & Trudy, *On Misogynoir: Citation, Erasure, and Plagiarism*, ROUTLEDGE TAYLOR & FRANCIS GRP. (Mar. 13, 2018), <https://www.moyabailey.com/2018/03/13/on-misogynoir-citation-erasure-and-plagiarism/> [<https://perma.cc/85Y6-S3G9>]; see MOYA BAILEY, *MISOGYNOIR TRANSFORMED: BLACK WOMEN'S DIGITAL RESISTANCE*, at xiii (2021).

8. See, e.g., Jared G. Bachman, Patrick M. O'Malley, Peter Freedman-Doan, Kali H. Trzesniewski & M. Brent Donnellan, *Adolescent Self-Esteem: Differences by Race/Ethnicity, Gender, and Age*, 10 SELF IDENTITY 445 (2011); Susan Sprecher, James E. Brooks & Winfred Avogo, *Self-Esteem Among Young Adults: Differences and Similarities Based on Gender, Race, and Cohort (1990–2012)*, 69 SEX ROLES 264 (2013).

shortcomings, therein exacerbating the systemic inequalities that first allowed such stereotypes to proliferate.

In this Note, after outlining the establishment and missions of the MPPC and PTO, I describe the racist stereotypes of Black women that the respective agencies approved. I bring in cultural and film theorists' explanations of viewer psychology with a focus on Black woman spectatorship to bridge gaps between what viewers see and how they receive those images. From there, I engage with psychological research explaining the physiological effect of these images and how they affect Black women's sense of self and coping mechanisms. While negative representations in media are not exclusively responsible for these outcomes, their effects on all viewers—regardless of ethnicity—play an important role in maintaining systems of power. Before concluding, I present ideas for how individuals and groups can take those systems apart.

I.

REGULATORY AGENCIES, THEIR STATED GOALS, AND APPROVED PRODUCTS

Creative products have been regulated through formal and informal means since the founding of the United States. When governing bodies are formed, unofficial perspectives become codified, enshrining a particular approach to media to be carried forth.⁹ Although U.S. agencies present these guidelines as working in service of the dignity of all, their respective subjective standards and their output make it clear that officers' attentions were focused on the dignity of White people alone. The perspectives of the MPPDA and PTO were distinctly White, leaving Black women and our protections unconsidered and resulting in harmful stereotypes.

A. MPPC: An Unofficial Code with a Distinct Perspective

Hollywood images exist in our collective cultural memory and play a key role in preserving ideas and mythologies their creators deem important. For example, despite ample historical evidence discrediting its accuracy, *Gone with the Wind* endures as a snapshot of the Old South as a time and place filled just as much with magnolias, hoop skirts, and gentility as it was with content and incompetent enslaved persons. Though films are now regulated through a rating system that simply notes the presence of particular content,¹⁰ previous regulatory schemes prevented certain content from being included in films at all. In pre-MPPC Hollywood, film regulation came in the form of state and city level

9. See, e.g., Andrew Cumbers, *The BBC's Biggest Problem? The Public Has No Control over It*, CONVERSATION (May 17, 2016), <https://theconversation.com/the-bbcs-biggest-problem-the-public-has-no-control-over-it-59497> [<https://perma.cc/GS3U-G5WA>] (explaining that the BBC founder's paternalist views and distrust of the masses made the network, at first, a promoter of the "great and the good").

10. *Film Ratings*, MOTION PICTURE ASS'N, <https://www.motionpictures.org/film-ratings/> [<https://perma.cc/L52X-RABD>].

censors combined with the self-imposed censorship film executives had put in place.¹¹ In 1915, the Supreme Court of the United States held that, because movies were a business like any other, the government was within its power to regulate, license, and censor them in the interest of public morals and welfare.¹² In order to facilitate distribution of films to every locale nationwide, the MPPDA, which later became the Motion Picture Association (and the film industry's trade-and-lobbying group), recruited the conservative former Postmaster General Will H. Hays to serve as the organization's leader.¹³ The MPPC did not begin to lose its force until 1952, when the Supreme Court granted films protection under the First Amendment by striking down a New York regulation that allowed censors to refuse licenses to films deemed "sacrilegious."¹⁴

In 1927, Hays implemented general guidelines known as "Don'ts and Be Carefuls" based on censor boards' regulations around the country.¹⁵ This list of eleven "Don'ts" and twenty-five "Be Carefuls" included among the list of "Don'ts" a prohibition against "willful offense to any nation, race, or creed."¹⁶ In 1929, Jesuit priest Daniel A. Lord and Catholic layman Martin Quigley replaced that list with official standards based on Catholic theology and practice, which became the MPPC.¹⁷ The MPPC, which studios signed onto voluntarily, distinguished between "*Entertainment which tends to improve the race, or, at least, to recreate and rebuild human beings exhausted with the realities of life; and Entertainment which tends to degrade human beings.*"¹⁸ The seemingly

11. See, e.g., David Denby, *Sex and Sexier*, NEW YORKER (Apr. 25, 2016), <https://www.newyorker.com/magazine/2016/05/02/what-the-hays-code-did-for-women> [https://perma.cc/55BR-5MVQ].

12. Mut. Film Corp. v. Indus. Comm'n of Ohio, 236 U.S. 230, 244 (1915).

13. See Leonard J. Leff, *The Breening of America*, 106 PUBL'NS MOD. LANGUAGE ASS'N 432, 433 (1991).

14. See Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502–06 (1952). The statute was unenforceable for vagueness. See *id.* at 497.

15. Denby, *supra* note 11; Bob Mondello, *Remembering Hollywood's Hays Code, 40 Years On*, NAT'L PUB. RADIO (Aug. 8, 2008), <https://www.npr.org/templates/story/story.php?storyId=93301189> [https://perma.cc/GTY4-UCP5].

16. Ellen Scott, *Regulating "N*****": Racial Offense, African American Activists, and the MPPDA, 1928–1961*, 26 FILM HIST. 1, 2 (2014) (uncensored in original) (citing MOTION PICTURE PRODUCERS AND DISTRIBUTORS OF AMERICA, REPORT OF THE SUB-COMMITTEE ON ELIMINATIONS 2 (May 24, 1927), <https://mppda.flinders.edu.au/records/341> [https://perma.cc/9SLA-9ZKD] (navigate to Scan 3-1233 in Record 341)).

17. See Denby, *supra* note 11; Martin Quigley, *Wrote Film Code; Co-Author of Production Guide, a Publisher, Dies*, N.Y. TIMES, May 5, 1964, at 43, <https://www.nytimes.com/1964/05/05/archives/martin-quigley-wrote-film-code-coauthor-of-production-guide-a.html> [https://perma.cc/TSC7-MA3F]. The Code was created in collaboration with "educators, dramatists, church authorities and leaders in the field of child education and social welfare work." *Motion-Picture Films: Hearing Before a Subcomm. of the Comm. on Interstate and Foreign Com.*, 74th Cong. 21 (1936) (A Code to Maintain Social and Community Values in the Production of Silent, Synchronized and Talking Motion Pictures).

18. THOMAS DOHERTY, *PRE-CODE HOLLYWOOD: SEX, IMMORALITY, AND INSURRECTION IN AMERICAN CINEMA, 1930–1934*, at 348 (1999). It is worth noting that, while the MPPC prohibited the

innocuous transition from *any race* in the “Don’ts” and “Be Carefuls” to *the race* in the MPPC removed race-specific protections in favor of colorblind blanket protections for humankind in general. Colorblindness, as a framework that aspires toward race-neutrality, perpetuates preexisting group hierarchies because these hierarchies are not being proactively addressed¹⁹ and, as a policy, permits “a disassociation with the social significance of race . . . [and] a disassociation with racial history and the inertia of social structure.”²⁰ Ensuring the preservation of humans as a group without any attention to the nuances of how to respectfully depict each nation, race, and creed is an implicit invocation of colorblindness.

The MPPC’s stated purpose to avoid degradation aligned with the MPPDA’s belief in its own importance. Written directly in the MPPC, the MPPDA recognized that entertainment “enters intimately into the lives of men and women and affects them closely; it occupies their minds and affections during leisure hours, and ultimately touches the whole of their lives.”²¹ Indeed, the MPPC’s effects were not limited merely to audiences’ corporal pastimes, as the code referenced the importance of entertainment and its value in rebuilding the bodies and souls of human beings.²² From inception, this regulatory agency acknowledged the connection between the work its agents were doing through the MPPC and the effect this work would have on audiences.

Even though the MPPDA adopted the MPPC in 1930, it was not until President Roosevelt, who was making overtures about federally regulating film, was inaugurated in 1933 that the agency grew serious about enforcing it.²³ To lead the charge, it recruited Joseph Breen, a Catholic layman and former newspaper reporter who had been reporting Hollywood’s hedonistic and—what he considered to be—immoral activities to Hays since 1931.²⁴ In July of 1934, Breen was named the director of the newly established Production Code Administration.²⁵ To provide an opportunity to control films’ explicit and

depiction of White slavery, “[t]here didn’t seem to be anything wrong with depicting good old-fashioned *black* slavery.” DONALD BOGLE, *BRIGHT BOULEVARDS, BOLD DREAMS: THE STORY OF BLACK HOLLYWOOD* 138 (2005).

19. Theodore R. Johnson, *How Conservatives Turned the ‘Color-Blind Constitution’ Against Racial Progress*, ATLANTIC (Nov. 19, 2019), <https://www.theatlantic.com/ideas/archive/2019/11/colorblind-constitution/602221/> [<https://perma.cc/4MW4-LUUV>] (summarizing political theorist Iris Marion Young’s conclusion about colorblind rule-making).

20. OSAGIE OBASOGIE, *BLINDED BY SIGHT: SEEING RACE THROUGH THE EYES OF THE BLIND* 116, 118–19 (2013) (emphasis omitted) (contextualizing the origin of colorblindness as an approach from Justice Harlan’s dissent in *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) and noting that “the very idea of colorblindness originated in a context in which Harlan assumed—and indeed celebrated—White supremacy”).

21. DOHERTY, *supra* note 18, at 348.

22. *Id.* at 347.

23. Denby, *supra* note 11.

24. Leff, *supra* note 13, at 435.

25. *Id.*

implicit content, Breen began to play a role in getting a film to production.²⁶ In this pre-censorship regime, Breen's office would "read screenplays before they went into production, demand[] changes, and issue[] a seal of approval to the finished product only if it met Code standards."²⁷ Breen's and Hays's Catholic perspectives wielded a controlling influence over filmic images and narratives.

Given the interconnectedness of Whiteness and Christianity in the U.S. and Europe,²⁸ it follows that during Breen and Hays's tenure at the MPPDA, race received special attention. Much has been said elsewhere about the MPPC's anti-miscegenation rules,²⁹ but its unique relationship to the regulation of Black women's appearance is worth noting here. In multiple instances where scripts called for a Black woman to be in a relationship with a White man, White women were cast—even when well-known Black actresses such as Lena Horne and Dorothy Dandridge were available and interested in the part.³⁰ This provision ensured Black actresses were denied roles exploring the complexity of interracial relationships. It also meant that, even when her experience was critical to the work, authentic insight into a Black woman's experience or voice was regulated out. While the MPPC was in effect, Black women with subjectivity—defined as the capacity for introspection, input, or ideation—were too inconceivable to be seen onscreen.

Film professor Susan Courtney's analysis of the MPPDA's file on the 1934 version of *Imitation of Life* is useful for examining the agency's preoccupation and deep involvement with the construction of race.³¹ The tragic mulatto³² film follows two mother-daughter pairs, one Black and one White, wherein the Black daughter, Peola, passes for White.³³ Records from the MPPDA's review of the script reveal that agents struggled with how to racially identify Peola, cycling through at least eleven different descriptors, including "the White child of a colored mother [with] negro blood in her veins" and "the white skinned negro girl."³⁴ The concern for these censors, of course, was that even if the miscegenation occurred offscreen—Peola's father is never seen, and thus we do

26. Denby, *supra* note 11.

27. *Id.*

28. See, e.g., RICHARD DYER, WHITE, 14–18 (1997).

29. See, e.g., SUSAN COURTNEY, HOLLYWOOD FANTASIES OF MISCEGENATION: SPECTACULAR NARRATIVES OF GENDER AND RACE, 1903–1967 (2004).

30. Rebecca Sun, *From the Hays Code to 'Loving': Hollywood's History with Interracial Romance*, HOLLYWOOD REP. (May 22, 2016), <https://www.hollywoodreporter.com/news/hays-code-loving-hollywood-s-896342> [<https://perma.cc/7TBW-KJH4>].

31. Susan Courtney, *Picturizing Race: Hollywood's Censorship of Miscegenation and Production of Racial Visibility Through Imitation of Life*, GENDERS 1998-2013 (May 1, 1998), <https://www.colorado.edu/gendersarchive1998-2013/1998/05/01/picturizing-race-hollywoods-censorship-miscegenation-and-production-racial-visibility> [<https://perma.cc/U6AT-8L5R>].

32. See David Pilgrim, *The Tragic Mulatto Myth*, FERRIS STATE UNIV.: JIM CROW MUSEUM (2012), <https://www.ferris.edu/HTMLS/news/jimcrow/mulatto/homepage.htm> [<https://perma.cc/AVA3-QFAK>].

33. Courtney, *supra* note 31; IMITATION OF LIFE (Universal Pictures 1934).

34. Courtney, *supra* note 31.

not know at which point interracial sex occurred—the presentation of a Black person as White would “violate[] the . . . clause covering miscegenation in spirit, if not in fact.”³⁵ If interracial mingling were survivable, it could also be deemed acceptable. These internal documents illustrate how the MPPDA attempted to parse through and regulate cultural and psychic identifications, in part because of a misguided belief that race is primarily identifiable through physical manifestations.³⁶ It is here, then, that the direct connection the MPPDA knew existed between film representations and lived experiences is brought to the fore. To present a Black girl as White would undermine the power Whiteness wields in the world.³⁷ Without physical indicators of which race a person belonged to, social hierarchies could be undermined: anyone could have proximity to power. Such a prospect was too dangerous for the MPPC and its enforcers to allow.

In the end, it is not clear what persuaded the MPPDA to permit the film to be released. It may be that because miscegenation was “not the main theme of the story” and was “a matter of policy more than of Code,” the MPPC enforcers moved on.³⁸ Courtney speculates that the issues of Peola’s identification with Whiteness and the implied miscegenation may have been rendered permissible by the presentation of Peola’s mother, Delilah, as a picture-perfect Mammy.³⁹ Indeed, the trailer quoted a review of the film from *Minneapolis Shopping News*, which described the portrayal of Aunt Delilah as “the greatest screen role ever played by a colored actress,” implying that, for a Black actress, performing a Mammy role was as good as it would get.⁴⁰ It is possible the MPPDA approved the film because it visually and narratively tells audiences what to focus on. Narratively, Peola is tortured by her Blackness while Delilah cannot bear the thought of leaving her White mistress. Visually, Peola is offscreen for much of the film, while Delilah becomes nearly omnipresent: her image is commercialized on a box of Aunt Delilah’s Homemade Pancakes and even made into a towering neon sign. At the end of the film, Delilah dies a martyr while Peola is full of remorse for denying her Blackness and for trying to live as a White woman. For attempting subjectivity, Peola is to be pitied; Delilah, meanwhile, delighting in the safe, objectified role of Mammy, is to be revered. In permitting *Imitation of Life* to proceed to production and release, the MPPDA

35. *Id.* (quoting Breen’s memo with the initial rejection of the project).

36. See, e.g., Hamilton Cravens, *What’s New in Science and Race Since the 1930s?: Anthropologists and Racial Essentialism*, 72 HISTORIAN 299 (2010) (describing the prevalence of racial essentialism in the 1930s).

37. See generally Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (presenting Whiteness as a form of status property that confers privilege and power in public and private).

38. Courtney, *supra* note 31, at n.29 (quoting Memo from James Wingate, MPPDA Director of Studio Relations (June 26, 1934), MPPDA Production Code Administration Case Files, Academy of Motion Picture Arts and Sciences).

39. Courtney, *supra* note 31.

40. YouTube Movies & Shows, *Imitation of Life (1934)*, YOUTUBE, <https://www.youtube.com/watch?v=xg5jU8Q5RJk> [https://perma.cc/9VU6-XZC6].

enforcers made clear which performances of Black womanhood were acceptable, even when they did not strictly adhere to the MPPC itself. So long as Black womanhood was only depicted as possible within the stereotypical roles allowed under the MPPC, the MPPDA would permit filmmaking to proceed.

At the same time this official and regimented control over the presentation of Black women was occurring, casting directors were participating in unofficial ways, such as only casting Black women in roles that fit a particular aesthetic or conformed to societal expectation. While “[l]ight-skinned African Americans [like Horne and Dandridge] were literally labeled ‘off-types’ in the files of Central Casting . . . Casting directors usually sought large women for maids and mammies.”⁴¹ Such casting further erased miscegenation from American reality: by denying light-skinned Black women opportunities to be seen onscreen, casting directors denied their existence, essentially ignoring the way they came to be lighter in the first place. Instead of a full spectrum of brown hues onscreen, depictions of large, dark-skinned Black women dominated. When studios cast Black women to play Mammies, for example when Louise Beavers was cast as one in *Imitation of Life*, the actresses were encouraged to keep their weight up because “the studio could not imagine a motherly black woman who was not overweight, looking as if she could literally carry the weight of the world on her shoulders.”⁴² When Hattie McDaniel, who won an Academy Award for the archetypal role of Mammy in *Gone with the Wind*, was cast in another film, the studio both put her in padding to make her larger and darkened her skin.⁴³ Had the MPPDA been concerned with the representation of Black women, or at least with the authenticity of their depictions, these images would have been regulated. By making every Black woman in these caretaking roles appear the same, directors—and the MPPDA by not interfering—supported a vision of Black women as mammoth and monolithic. The MPPC, in omitting specific protections for each nation, race, or creed, made it possible for members of the MPPDA to shirk their responsibility to proscribe entertainment that degraded Black women. Due to a combined failure of the Code to consider Black women and of its enforcers to consider Black women worth protecting, Black women with subjectivity were largely absent from the silver screen while Mammies loomed larger than life.

41. Alyssa Rosenberg, *Hollywood Can't Move Toward Equality Until It Confronts Its Ugly Racial History*, WASH. POST (Mar. 26, 2015) (quoting JILL WATTS, HATTIE MCDANIEL: BLACK AMBITION, WHITE HOLLYWOOD 83 (2005)), <https://www.washingtonpost.com/news/act-four/wp/2015/03/26/hollywood-cant-move-toward-equality-until-it-confronts-its-ugly-racial-history/> [https://perma.cc/4YNQ-JTWV].

42. *Id.* (quoting BOGLE, *supra* note 18). Bear in mind the truth at the foundation of this stereotype, as described in Zora Neale Hurston's *Their Eyes Were Watching God* (1937): “De n***** woman is de mule uh de world so fur as Ah can see.” True as this statement may be, it is not *all* Black women are.

43. *Id.*

Despite the MPPDA's purported goal of uplifting the human race, cinemagoers of the era only encountered Black women onscreen as stereotypes that can generally be categorized into at least one of three categories: Mammies, Jezebels, or Sapphires. Each of the stereotypes established during the all-White regulatory agency's⁴⁴ lifetime has survived to the modern cinema age, though sometimes reinterpreted. There is a clear throughline from Hattie McDaniel's Mammy to Viola Davis's Aibileen in *The Help*.⁴⁵ McDaniel won an Oscar for her performance, and Davis was nominated for one.⁴⁶ Hollywood has been rewarding Black actresses from as early as 1940 to as recently as 2012 for their part in perpetuating the myth of Black people "as submissive, self-effacing, loyal, pacified and pacifying."⁴⁷

Mammies are not always gentle, of course, and throughout the 1930s, the MPPDA sometimes permitted them to be sassy.⁴⁸ In the 1950s, the stereotype of the sassy Black woman came to have a name: Sapphire.⁴⁹ In 1951, *Amos 'n' Andy* made the leap from minstrel radio show to minstrel television show,⁵⁰ all the while featuring an emasculating, angry, and unfeminine woman named Sapphire.⁵¹ This single caricature eventually splintered into two stereotypes: the Angry Black Woman and Strong Black Woman.⁵² The Strong Black Woman, "advances the notion that Black women can handle mistreatment because they

44. See *MPPDA First Meeting Photographs, 1922*, IND. STATE LIBR., <https://indianamemory.contentdm.oclc.org/digital/collection/p16066coll64/id/107395> [<https://perma.cc/NN6Y-ARYE>].

45. See Todd Boyd, *Gone with the Wind and the Damaging Effect of Hollywood Racism*, GUARDIAN (June 13, 2020), <https://www.theguardian.com/film/2020/jun/13/gone-with-the-wind-hollywood-racism> [<https://perma.cc/2QHA-NJLQ>]; Amy Wallace, *Viola Davis as You've Never Seen Her Before: Leading Lady!*, N.Y. TIMES MAG. (Sept. 12, 2014), <https://www.nytimes.com/2014/09/14/magazine/viola-davis.html?src=me> [<https://perma.cc/CZS7-2R27>] (quoting Viola Davis: "I have been given a lot of roles that are downtrodden, mammy-ish.").

46. Boyd, *supra* note 45.

47. Michael Twitty, Opinion, *Aunt Jemima and Uncle Ben Deserve Retirement. They're Racist Myths of Happy Black Servitude*, NBC NEWS: THINK (June 21, 2020), <https://www.nbcnews.com/think/opinion/aunt-jemima-uncle-ben-deserve-retirement-they-re-racist-myths-ncna1231623> [<https://perma.cc/LV5Z-RCP2>] (describing the Mammy stereotype's personality as embodied in Aunt Jemima).

48. David Pilgrim, *The Sapphire Caricature*, FERRIS STATE UNIV.: JIM CROW MUSEUM (2012), <https://www.ferris.edu/HTMLS/news/jimcrow/antiblack/sapphire.htm> [<https://perma.cc/K39J-R4PC>].

49. *Id.*

50. *The Amos 'n' Andy Show*, IMDB, <https://www.imdb.com/title/tt0043175/> [<https://perma.cc/E848-2CK6>].

51. Pilgrim, *supra* note 48; Code Switch, *Anger: The Black Woman's Superpower*, NPR (May 25, 2019), <https://www.npr.org/transcripts/723322372> [<https://perma.cc/2AFT-6WAT>] (downloaded using Podcasts). I am using traditional notions of feminine and masculine here to make the point, not to indicate support of a gender dichotomy.

52. Ninochka McTaggart, Vanessa Cox, Caroline Heldman, Rebecca Cooper, Nathan Cooper-Jones, Meredith Conroy, Camryn Brennan, Emma Burrows, Pamela Campos, Sofie Christensen, Cameron Espinoza, Milena Fava-Pastilha, Melanie Lborisdóttir, Romeo Perez, Hannah Phillips, Sarah Trinh, Jenna Virgo & Jeremy Yoder, *Representations of Black Women in Hollywood*, GEENA DAVIS INST. ON GENDER IN MEDIA 2 (2021), <https://seejane.org/wp-content/uploads/rep-of-black-women-in-hollywood-report.pdf> [<https://perma.cc/YKK5-RVJB>].

are tough and can endure pain”⁵³ while the Angry Black Woman, because she is “angry, loud, aggressive, ill-tempered, illogical, potentially violent, and hostile,” makes viewers believe “Black women’s anger cannot be legitimate, therefore any expression of such is inherently irrational and overwrought.”⁵⁴ Over the years, the stereotype evolved from the supporting role of nagging housewife to the star bad-woman role. Strong and Angry Black Women were heroines of Blaxploitation films by the 1970s, using their anger as fuel to avenge injustices to their men or their community, putting their strength on full display.⁵⁵ Many leading women of Blaxploitation films were sexual and angry, embodying a certain kind of “villainous black woman[]” energy.⁵⁶ These same stereotypes have survived into the present day through fictionalized depictions of Angry or Strong Black women, whether heroine or villainess, as seen with Taraji P. Henson on television in *Empire* and in movie theaters in *Acrimony*,⁵⁷ and dramatized depictions of real life, as in reality television series.⁵⁸

Where the Mammy is nurturing and chaste, the Jezebel embodies stereotypes of Black women as hypersexual and perpetually sexually available.⁵⁹ Jezebel as a name for “an impudent, shameless, or morally unrestrained woman”⁶⁰ has biblical origins,⁶¹ thereby justifying to some a moralistic vision of women. The stereotype as applied to Black women is rooted in the White Puritanical response to Africans’ partial nudity in their homelands when colonizers first encountered them.⁶² In the United States, the stereotype worked to justify the regular rape of enslaved women who, when deemed a Jezebel, must have seduced the rapist due to her irrepressible sexuality.⁶³ While some scholars

53. *Id.*

54. *Id.*

55. See Cedric J. Robinson, *Blaxploitation and the Misrepresentation of Liberation*, 40 RACE & CLASS 1, 6 (1998).

56. Terrian L. Williamson, *From Blaxploitation to Black Macho: The Angry Black Woman Comes of Age*, in BLACK CULTURAL PRODUCTION AFTER CIVIL RIGHTS 183, 186 (Robert J. Patterson ed., 2019).

57. See Hettie V. Williams, *The Angry Black Woman “It Girl,”* MEDIUM (Feb. 24, 2020), <https://hettie-williams.medium.com/the-angry-black-woman-it-girl-a5cc784afe8f> [<https://perma.cc/89CU-MFZF>]; Jarrett George-Ballard, *Discourse About Misogynoir in Media Takes Center Stage at the Black Motivated Women Club*, MINN. DAILY (Oct. 26, 2021), <https://mndaily.com/269471/arts-entertainment/discourse-about-misogynoir-in-media-takes-center-stage-at-the-black-motivated-women-club/> [<https://perma.cc/CH7P-G3RL>].

58. Shannon B. Campbell, Steven S. Giannino, Chrystal R. China & Christopher S. Harris, I Love New York: *Does New York Love Me?*, 10 J. INT’L WOMEN’S STUD. 20, 23 (2008).

59. David Pilgrim, *The Jezebel Stereotype*, FERRIS STATE UNIV.: JIM CROW MUSEUM (2012), <https://www.ferris.edu/HTMLS/news/jimcrow/jezebel/index.htm> [<https://perma.cc/G3BH-29RG>].

60. *Jezebel*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/Jezebel> [<https://perma.cc/45MR-RXCF>].

61. See *id.*; *Jezebel*, BRITANNICA, <https://www.britannica.com/biography/Jezebel-queen-of-Israel> [<https://perma.cc/8W4Y-ST6S>].

62. See TAMURA LOMAX, JEZEBEL UNHINGED: LOOSING THE BLACK FEMALE BODY IN RELIGION AND CULTURE 13–33 (2018).

63. See *id.*; see also ANGELA Y. DAVIS, WOMEN, RACE & CLASS 175–76 (1981) (“One of racism’s salient historical features has always been the assumption that white men—especially those

have posited that the Jezebel is an outgrowth of the tragic mulatto trope⁶⁴—likely due to a White senator’s mulatto mistress Lydia Brown in D. W. Griffith’s 1915 *Birth of a Nation*⁶⁵—this is too limiting. Black Jezebels need not be mixed or light-skinned, so long as they are “alluring,” sexually arousing, and “seductive.”⁶⁶ Jezebels appeared throughout the MPPC’s existence, and survived into the 1970s, flourishing during the Blaxploitation film era. Films of this era glamorized life in the ghetto and centered a new Black hero: the pimp.⁶⁷ His natural complement was the Jezebel. *Sweet Sweetback’s Baadasssss Song*, generally considered to be the first Blaxploitation film, was released in 1971 and “debased the black woman, depicting her as little more than a whore.”⁶⁸ Today, in film,⁶⁹ television,⁷⁰ and music videos,⁷¹ Black women continue to be more sexualized than other female characters, through nudity, revealing clothing, and camera angles.⁷² The Jezebel and her effects live on.

The survival of these stereotypes despite MPPDA regulation is, in the end, unsurprising. *Hallelujah*, an all-Black film about a sharecropper named Zeke and his relationship with a Jezebel named Chick,⁷³ serves as a useful case study. The film was released in 1929, during the age of “Don’ts” and “Be Carefuls,” when “any . . . race” was to be treated with respect.⁷⁴ When the head of the MPPDA’s Studio Relations, Colonel Jason Joy, read the script, he expressed concerns about the use of the N-word.⁷⁵ Whether choosing his battles or not feeling invested

who wield economic power—possess an incontestable right of access to Black women’s bodies. . . . Such [sexual] assaults have been ideologically sanctioned by politicians, scholars and journalists, and by literary artists who have often portrayed Black women as promiscuous and immoral.”).

64. K. SUE JEWELL, FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES AND THE SHAPING OF US SOCIAL POLICY 46 (1993).

65. Pilgrim, *supra* note 32.

66. Pilgrim, *supra* note 59.

67. DONALD BOGLE, TOMS, COONS, MULATTOES, MAMMIES, AND BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS 236 (2001).

68. *Id.*

69. McTaggart et al., *supra* note 52, at 5.

70. *Id.*

71. Ikamara Larasi, *Why Do Music Videos Portray Black Women as Exotic Sex Objects?*, GUARDIAN (Sept. 2, 2013), <https://www.theguardian.com/lifeandstyle/the-womens-blog-with-jane-martinson/2013/sep/02/music-video-black-women-sex-objects> [https://perma.cc/U3D2-DVSM].

72. McTaggart et al., *supra* note 52, at 8.

73. See *Hallelujah*, IMDB, <https://www.imdb.com/title/tt0019959/> [https://perma.cc/37TT-FXPR]; Manohla Dargis, *The Glory of Nina Mae McKinney, an Early Black Star in White Hollywood*, N.Y. TIMES (Nov. 10, 2021), <https://www.nytimes.com/2021/11/10/movies/nina-mae-mckinney.html> [https://perma.cc/3H28-4ZQX].

74. JUDITH WEISENFELD, *Taint What You Was, It’s What You Is Today*: *Hallelujah and the Politics of Racial Authenticity*, in HOLLYWOOD BE THY NAME: AFRICAN AMERICAN RELIGION IN AMERICAN FILM, 1929–1949, at 26 (2007).

75. *Id.* at 27 (Eva Jessye, the film’s musical director, wrote an exposé on the original script’s language after its release that evidenced the Black cast and crew’s feelings about the inclusion of racist slurs: “[S]ince the ‘Hallelujah’ case was all Negro, it is difficult to understand why it was necessary to use any references whatever to race. Yet, it was done, and what is more, with utter disregard for the feelings of the cast, they were handed scripts that any worthy Negro would resent.” *Id.* at 27 (quoting

enough, Joy did not press the issue, so the actors took it upon themselves to prevent the word's inclusion.⁷⁶ Joy did assert his authority, however, to thwart the male lead's expression of passion and sexuality, which he believed was sure to offend White audiences.⁷⁷ Its offensiveness lay not in the impassioned depiction of Black men, but rather in how it would inevitably lead real Black men, stereotypically depicted as sexual and violent,⁷⁸ to rape White women.⁷⁹ The effects of stereotypes on regulators are evident in Joy's wrong-headed belief in Black men's desire to rape White women. In the same memo where he pushed back against the treatment of Black male virility, he instructed that "the passion shown by Chick, a small negress, will not be deleted because of its treatment."⁸⁰ While the MPPDA spared Black men in order to save White women, harmful depictions of Black women evidently would not inflict negative repercussions on anyone worth saving.

Even when charged with the protection of all races, the MPPDA focused exclusively on White people. This was nowhere more evident than in MPPDA Censor Lamar Trotti's correspondence about the 1929 film *Hallelujah*, in which he stated, "[I]f the characters were whites, I would think very definitely that [director King] Vidor was treading on very dangerous grounds"⁸¹ and that he did not "think it matter[ed] whether the negroes like[d] the picture or not"⁸²—a curious sentiment given the film was all-Black and was therefore likely to attract Black viewers.⁸³ His language makes it unclear whether he is referring to Black actors or spectators, while also rendering obvious the permissible distinct approaches to assessing the treatment of White and Black characters. Coupled with the double standard for depictions of men versus women, it is obvious Black women had no advocates in the MPPDA. Chick suffered a specific kind of discrimination, not because she is Black, but because she is a Black woman. When *Hallelujah* was released, the Jezebel Chick stayed in, even though her treatment would certainly be considered "willful offense to [a] . . . race," which

KANSAS CITY CALL, July 11, 2020, in Tuskegee Institute News Clipping File). In the end, the resisters succeeded, and the word did not make it to the released film.).

76. See *id.*

77. See *id.*

78. See, e.g., PATRICIA HILL COLLINS, BLACK SEXUAL POLITICS: AFRICAN AMERICANS, GENDER, AND THE NEW RACISM 56 (2004).

79. See WEISENFELD, *supra* note 74, at 27.

80. *Id.* (quoting Memo from Colonel Jason Joy, MPPDA Director of Studio Relations (Oct. 4, 1928), MPPDA Production Code Administration Case Files, Academy of Motion Picture Arts and Sciences).

81. *Id.* at 28–29 (quoting Letter from Lamar Trotti, MPPDA Censor, to Maurice McKenzie, Executive Assistant to William H. Hays (Oct. 19, 1928), *Hallelujah*, MPPDA Production Code Administration Case Files, Academy of Motion Picture Arts and Sciences).

82. Scott, *supra* note 16, at 22 n.7 (quoting Letter from Lamar Trotti, MPPDA Censor, to Maurice McKenzie, Executive Assistant to William H. Hays (Oct. 19, 1928), *Hallelujah*, MPPDA Production Code Administration Case Files, Academy of Motion Picture Arts and Sciences).

83. Even the studio that made the film, MGM, believed, "The whites will stay away." Dargis, *supra* note 73.

was meant to be forbidden under the “Don’ts and Be Carefuls.”⁸⁴ Where film censorship was concerned, allowing harmful depictions of Black women to proliferate was simply the cost of doing business.

By the time the MPPC was discontinued in 1968, Black women had been depicted on large and small screens in a scant number of roles that could be categorized into even fewer stereotypes.⁸⁵ Although the MPPDA regulated images for moral uplift, the Code and its enforcers were unable or unwilling to consider the effects of depicting Black women in such one-dimensional and negative ways, resulting in a warped and inaccurate presentation of Black women. In doing nothing, the MPPDA deemed these harmful stereotypes inoffensive and implicitly condoned their distribution and perpetuation. Studios became accustomed to presenting Mammies, Jezebels, and Sapphires as the full spectrum of Black womanhood, and audiences of all races became accustomed to seeing them.

B. PTO: An Official Code with a Distinct Perspective

The MPPDA was not the only organization regulating images. While Hays and Breen were “lifting men to higher levels,”⁸⁶ the federal government was developing its standard for protecting brands and their potential for financial rewards through trademark registrations.

The power to regulate patents, trademarks, and copyrights comes from the Constitution of the United States, which requires that the legislative branch “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”⁸⁷ A trademark is “any word, phrase, symbol, design, or a combination of these things that identifies . . . good or services” in the marketplace.⁸⁸ When an application for a trademark is filed, PTO examining attorneys ensure the submission meets the prerequisites established in the Lanham Act, the federal statute regulating trademarks, which Congress passed in 1946.⁸⁹ The standards against which PTO examiners measure trademarks are laid out in the Trademark Manual of Examining Procedure (TMEP), which explains that “[t]he meaning imparted by a mark must be determined in the context of current attitudes of the day” to a “substantial composite of the general public.”⁹⁰ From 1946 to 2017, PTO agents denied registrations for marks that

84. Scott, *supra* note 16, at 2.

85. See generally BOGLE, *supra* note 67 (distilling the various, albeit limited roles for Black actors in Hollywood into five categories, with two reserved for women).

86. DOHERTY, *supra* note 18, at 348.

87. U.S. CONST. art. I, § 8, cl. 8.

88. *What Is a Trademark?*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/trademarks/basics/what-trademark> [https://perma.cc/7GLA-YRV7].

89. 15 U.S.C. § 1051 (1946).

90. *Trademark Manual of Examining Procedure § 1203.01: Immoral or Scandalous Matter*, U.S. PAT. & TRADEMARK OFF. (Jan. 2017),

“consist[ed] of or comprise[d] immoral, deceptive or scandalous matter; or matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.”⁹¹

Prior to the Lanham Act, trademark registrations were subject to morality and scandalousness standards from the Trade-Mark Acts of 1905 that were just as subjective.⁹² In a 1938 case where the PTO denied a wine company’s registration of MADONNA for scandalousness, the Court of Customs and Patent Appeals supported the Office’s determination because the dictionary definition of “scandalous” included the terms “disgraceful; offensive; [and] disreputable.”⁹³ The court looked to the dictionary definition of the word “Madonna,” and noted that its connotation in the United States as referring to the Virgin Mary or an image of the Virgin Mary was different to its denotation in Italian to mean “my lady.”⁹⁴ The court also considered the affiliation such a trademark registration would make between the Virgin Mary and wine that was not limited to religious use.⁹⁵ “The Virgin Mary stands as the highest example of the purity of womanhood,” the court opined, and the mark of MADONNA on a bottle of wine would offend both wine drinkers and non-wine drinkers alike, in part due to the evils associated with excessive wine-drinking.⁹⁶ The court upheld the denial by using a form of what Professor Sonia K. Katyal calls trademark intersectionality, taking into consideration the cultural connotations of the mark alongside its economic, political, and commercial ones.⁹⁷ Not only did the court consider the meaning of the mark itself, but also the effects of linking the word to the good. This contextualization was not common unless, as here, dominant notions of morality and Whiteness were at issue. In marrying “offensive” with its standard for “scandalousness,” as seen with its assessment of MADONNA, federal courts established a precedent of upholding White or popular mores.

The PTO’s focus on protecting Whiteness was illustrated in another disputed trademark case from the same year involving the mark QUEEN MARY. The PTO refused to register the mark for a line of women’s underwear due to the mark’s connection to the White Dowager Queen of England, a connection that was, according to the examiner’s statement, “shocking to the sense of

<https://tnept.uspto.gov/RDMS/TMEP/current#/Jan2017/TMEP-1200d1e3042.html>
[<https://perma.cc/38SJ-T8F8>] (navigate to “Jan2017” in the dropdown menu).

91. 15 U.S.C. § 1052(a) (2006) (repealed by *Matal v. Tam*, 137 S. Ct. 1744 (2017)).

92. Stephen R. Baird, *Moral Intervention in the Trademark Arena: Banning the Registration of Scandalous and Immoral Trademarks*, 83 TRADEMARK REP. 661, 666 (1993).

93. *In re Riverbank Canning Co.*, 95 F.2d 327, 328 (C.C.P.A. 1938). The federal Court of Customs and Patent Appeals only existed from 1929 to 1982. *U.S. Court of Customs and Patent Appeals, 1929–1982*, FED. JUD. CTR., <https://www.fjc.gov/history/courts/u.s.-court-customs-and-patent-appeals-1929-1982> [<https://perma.cc/F8A3-QUA5>].

94. *In re Riverbank Canning Co.*, 95 F.2d at 328.

95. *Id.*

96. *Id.* at 329.

97. Sonia K. Katyal, *Trademark Intersectionality*, 57 UCLA L. Rev. 1601, 1601–02 (2010).

propriety.”⁹⁸ This intersectional approach, this time taken by the PTO rather than the federal court, considered the White Anglo-Saxon Protestant and colonial history of the U.S. in order to preserve the purity of the queen’s name. Upon review, the assistant commissioner agreed with the examining attorney’s conclusion and noted that the mark “consist[ed] merely in the name of an individual,”⁹⁹ but did not specify which. Another plausible lens, drawing from the above analysis of MADONNA during the same year, recognizes the religious connotations associated with the term “Queen Mary,” a name Catholics and some Christians use to refer to the Virgin Mary.¹⁰⁰ In 1938, when Catholics made up just over 15 percent of the U.S. population,¹⁰¹ such a title would have been familiar to those working in the PTO, especially since by the “late 1940s and 1950s, when Gallup began regularly measuring religious identity, over nine in ten American adults identified as Christian—either Protestant or Catholic.”¹⁰² As referenced earlier, there is an established link between Whiteness and Christianity in the U.S. and Europe.¹⁰³ As the federal court would understand her, Mary embodies the ideal for womanhood, in part due to her purity.¹⁰⁴ To have permitted the registration of QUEEN MARY would have been to permit association between women and undergarments, ergo sex and sexuality. Such an association would have been “shocking to the sense of propriety” of White, likely Christian, PTO examiners. In refusing the registration, the office successfully protected Whiteness and White womanhood.

That contextual analysis must not have occurred when AUNT JEMIMA was registered just one year earlier, in 1937.¹⁰⁵ The name Aunt Jemima comes from minstrel shows featuring a White man in drag and blackface popularized in

98. *Ex Parte Martha Maid Mfg. Co.*, 37 U.S.P.Q. 156, 156 (1938).

99. *Id.*

100. See, e.g., Pope John Paul II, *Christians Look to Mary Queen*, EWTN (Jul. 30, 1997), <https://www.ewtn.com/catholicism/library/christians-look-to-mary-queen-8076> [https://perma.cc/LWS9-MQHV]; see also, e.g., Edward Sri, *Why Call Mary Queen?*, SIMPLY CATHOLIC, <https://www.simplycatholic.com/why-call-mary-queen/> [https://perma.cc/VG6G-VCC3] (referencing the divide between non-Catholic Christians and Catholics in calling her Queen Mary).

101. *Timeline: 110 Years of Statistics in America Magazine*, AMERICA: JESUIT REV. (Apr. 5, 2019), <https://www.americamagazine.org/politics-society/2019/04/05/httpswwwamericamagazineorgpolitics-society20190405timeline-110-years> [https://perma.cc/D9L2-Z5J7]; *U.S. Population from 1900*, DEMOGRAPHIA, <http://demographia.com/db-uspop1900.htm> [https://perma.cc/5JQN-WMK7].

102. Frank Newport, *Five Key Findings on Religion in the U.S.*, GALLUP (Dec. 23, 2016), <https://news.gallup.com/poll/200186/five-key-findings-religion.aspx> [https://perma.cc/Z5JZ-TNDP].

103. See DYER, *supra* note 28, at 16–17.

104. See *In re Riverbank Canning Co.*, 95 F.2d 327, 329 (C.C.P.A. 1938) (“The Virgin Mary stands as the highest example of the purity of womanhood, and the entire Christian world pays homage to her as such. Her representation in great paintings and sculpture arouses the religious sentiments of all Christians.”).

105. Marissa Fessenden, *In 2014, Descendants of Woman Who Played Aunt Jemima Sued Quaker Oats*, SMITHSONIAN MAG. (Oct. 7, 2014), <https://www.smithsonianmag.com/smart-news/descendants-real-aunt-jemima-are-suing-brand-bearing-her-name-180952964/> [https://perma.cc/699A-R4AH].

the 1880s,¹⁰⁶ a context then-examining agents found neither immoral nor scandalous when reviewing the trademark application. The mark's design shows a heavy Black woman in a kerchief with a broad smile,¹⁰⁷ a Mammy image that by 1937 would have been familiar to audiences, in part thanks to film. According to the registration certificate, Quaker Oats had been using the mark AUNT JEMIMA since 1889, "and the picture of a negress ha[d] been used by the applicant and its predecessors in business since July 11, 1917."¹⁰⁸ It is precisely this level of familiarity and repeated exposure that made the stereotype a desirable image for a brand to capitalize upon.¹⁰⁹ The frequent depiction of Black women in film as Mammies also made it unlikely for an examiner to have perceived this stereotype as offensive, a court-recognized subcategory of immoral or scandalous.¹¹⁰ Indeed, the MPPDA's own agents had already approved it as being uplifting to the race. Film had solidified Mammies as objects in the cultural imagination, useful for taking care of White people without asking anything—whether subjectivity or consideration from reviewing agents—in return. More specifically, *Imitation of Life* had fortified the link between Mammies and pancakes just three years before the AUNT JEMIMA application was submitted. Knowing the image would be disseminated wherever pancake mix was sold, the PTO examiners upheld this imagining of Black women by approving the Mammy as presented in the AUNT JEMIMA mark for registration.¹¹¹

The PTO's official policy that permitted the objectification of Black women is evident in previous iterations of the TMEP's model case law. In order to illustrate certain standards, the TMEP provides examples so examining attorneys can better discern between what is registrable and what is not. To instruct on the immoral or scandalous standard, the January 2017 TMEP pointed to *In re Mavety Media Group Ltd.*¹¹² The case addressed the trademark filing of an adult magazine entitled BLACK TAIL, which featured "photographs of both naked and scantily-clad African-American women."¹¹³ The PTO denied the application. The applicant, Mavety Media Group, appealed to the Trademark Trial and Appeal Board (TTAB), which upheld the denial because the mark conveyed, "in vulgar terms, the idea of African-American women as sexual

106. See *id.*; M. M. MANRING, SLAVE IN A BOX: THE STRANGE CAREER OF AUNT JEMIMA 60–61 (1998).

107. AUNT JEMIMA, Registration No. 344,873.

108. *Id.*

109. Katyal, *supra* note 97, at 1610.

110. See *In re Riverbank Canning Co.*, 95 F.2d at 328.

111. See Deseriee A. Kennedy, *Marketing Goods, Marketing Images: The Impact of Advertising on Race*, 32 Ariz. L.J. 615, 641 (2000) (explaining that, post-emancipation, advertisements "commodified demeaning and stereotypical images of Blacks as a means of attracting a market for consumer goods").

112. *Trademark Manual of Examining Procedure* § 1203.01: *Immoral or Scandalous Matter*, *supra* note 90.

113. *In re Mavety Media Group Ltd.*, 33 F.3d 1367, 1368–69 (1994).

objects” and stated that the “innuendo [wa]s an affront to a substantial composite of the general public.”¹¹⁴ Not only does the mark BLACK TAIL separate a Black woman’s identity from her body parts by essentializing her identity to her race alone, but TAIL is generally used to refer to “the hindmost part of an animal,” as the TTAB stated in its original refusal.¹¹⁵ The mark both essentialized and dehumanized Black women. In making its original determination, the TTAB contextualized the material, recognizing that this magazine was fetishizing not just women, but Black women specifically, and that it was capitalizing on the Jezebel stereotype. Acknowledging the offense such a registration would cause, the PTO refused to approve the mark. Mavety Media Group appealed the TTAB decision to federal court.

The U.S. Court of Appeals for the Federal Circuit reversed the TTAB’s finding, explaining that “the record [was] devoid of factual inquiry by the Examiner or the Board concerning the substantial composite of the general public, the context of the relevant marketplace, or contemporary attitudes.”¹¹⁶ The federal court ignored the TTAB’s finding that “women in general and African-American women in particular would be especially offended by the mark, [and their accompanying finding that] others, including a substantial number of men, likewise would be offended.”¹¹⁷ Instead, the federal court looked to previous cases where applications for BUBBY TRAP and BULLSHIT had been denied because every relevant dictionary definition noted that the words were “often considered” or “usu[ally] vulgar” and no alternate definition existed.¹¹⁸ Here, the court ignored the vulgar definitions of “tail” in order to justify the registration. The court therein removed from its consideration the word and meaning of BLACK, focusing with colorblind determination only on the definition of TAIL. The court defended its approach by suggesting the name might be a “reference to a type of evening coat or the full evening dress worn by men at formal occasions,”¹¹⁹ even though this is more commonly described as “black tails” in the plural¹²⁰—and even though Mavety Media’s application “concede[d] that, in its view, the primary meaning of the mark would be the rear end or buttocks of an African-American woman.”¹²¹ Through this line of reasoning, the court found BLACK TAIL registrable. Trademark intersectionality, used more than once to protect potentially negative associations

114. *Id.* at 1370 (citing the Trademark Trial and Appeal Board’s decision).

115. *In re Mavety Media Group Ltd.*, No. 74/0066,893, 1993 TTAB LEXIS 25, *7 (Trademark Trial & App. Bd. May 5, 1993) [hereinafter *Mavety TTAB*]. Note that this was the first of six dictionaries the court cited to find “tail” to be a vulgar term. *Id.* at *7–*10.

116. *In re Mavety Media Group Ltd.*, 33 F.3d at 1372.

117. *Mavety TTAB*, *supra* note 115, at *12.

118. *In re Mavety Media Group Ltd.*, 33 F.3d at 1372.

119. *Id.* at 1369 (“Such a connotation would suggest the quality, class and experience of an expensive lifestyle, consistent with the familiar genre of adult entertainment magazines such as *Playboy* and *Penthouse*.”).

120. *Mavety TTAB*, *supra* note 115.

121. *Id.* at *6.

with White women, was nowhere to be found to prevent acknowledged offense to all women and many men, but more specifically Black women. The TMEP codified as its standard one that regarded Black women as incapable of being a substantial composite of the general public, and therefore ineligible for having our needs considered.

In one sense, *Mavety* shows that the PTO, because of its focus on commerce rather than constitutionality, does account for the interests of Black consumers since the examiners identified the potentially offensive sexualization of Black women in the registration of BLACK TAIL. Because the PTO must accept court standards, however, colorblind, decontextualized reasoning became the standard for determining a trademark's scandalousness as related to the disparagement clause. The PTO's subordinate positioning to federal courts makes it possible for consumers to feel the effects of a legal system that reproduces race and racial dynamics in support of White supremacy, especially as carried out through the construct of colorblindness in legal jurisprudence.¹²² As critical race theorists note, minoritized and subordinated groups feel the effects of these colorblind policies most acutely, regardless of which government agency is carrying them out.¹²³

It is worth pointing out, however, that the PTO provided protection for women generally, and that it was only Black women who were left without guards. In *In re Shearer*, the applicant appealed when the TTAB refused an application to register PUSSY for an energy drink.¹²⁴ The non-precedential decision, as the majority of TTAB decisions are, first recounted *Mavety*'s logic from above, including the standpoint of a substantial composite of the general public and the context of contemporary attitudes.¹²⁵ It then examined evidence from the PTO examiner, including four dictionary definitions, cultural references, and online comments discussing use of the word "pussy" sufficient to meet the *Mavety* standard.¹²⁶ The sexualization of women and reference to their private parts was found to have a "vulgar, offensive sexual meaning" to a "substantial composite of the public, in particular women."¹²⁷ Taking the denied application for PUSSY in tandem with BLACK TAIL, the purpose of the court's colorblind standard becomes evident. Without race—read, when the decision-maker can conceptualize the affected group as White—women and genitalia are deemed worthy of protection. When the affected group is Black, however, there is insufficient evidence or concern for decision-makers to give those same

122. See K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER, SOC. POL'Y & L. 365, 367 (2008) (citations omitted).

123. See, for example, *id.* for a summary of four core tenets of critical race theory.

124. *In re Shearer*, Serial No. 78690531 (T.T.A.B. 2009) (available at TTAB READING ROOM, <https://ttab-reading-room.uspto.gov/efoia/efoia-ui/#/search/decisions> [https://perma.cc/QMM3-PBPV] (enter "78690531" into Refine by field; select Proceeding / App. No. with the same number)).

125. *Id.* at 4 (citing *Mavety*, 33 F.3d at 1370–71).

126. *Id.* at 9–17.

127. *Id.* at 26.

protections their full power. In approving the registration of BLACK TAIL, Black women were discriminated against, not because they were women, but because they were Black women.

Until 2017, the PTO's subjective standard remained in place. Only after the Supreme Court's ruling in *Matal v. Tam* did the PTO remove disparagement as a basis for registration denials on grounds it violated the First Amendment.¹²⁸ When Simon Tam, an Asian-American man, applied to register THE SLANTS for his band, his application was denied for offensiveness under the PTO's two-part test that considered the denotation and connotation of the matter in question as well as "whether that meaning may be disparaging to a substantial composite of the referenced group."¹²⁹ The Court reversed, explaining that such a standard was unconstitutional as viewpoint discrimination because the disparagement standard was subjective and, therefore, vulnerable to the mores of the day.¹³⁰ Though the subjective standard was no more, the long-term repercussions of surviving registrations such as AUNT JEMIMA and BLACK TAIL had already been guaranteed.

C. *Systems of Power Remain Largely Unchanged to Present Day*

Although the regulation of images to preserve morality and inoffensiveness through the MPPDA and PTO has been discontinued, we continue to live with their effects. The stereotypes the MPPDA approved for distribution found a long afterlife both as trademarks and common figures in film and television. In failing to regulate offensive stereotypes about Black women, these agencies exerted a controlling influence, implicitly assuring filmmakers and branding executives that Black women were merely sites for projections of White imaginations. Had regulatory agencies been concerned with preserving the dignity of all people, rather than just White people, the cultural products would likely have looked different.

The stereotypes imagined and approved long ago remain prevalent today. A 2021 analysis of television and film media released in 2019 found that "Black women are commonly reduced to a few dominant stereotypes in entertainment media instead of being depicted as complex human beings with varied lived experiences."¹³¹ It makes sense that 83 percent of Black Americans and 66 percent of all Americans "believe Hollywood perpetuates negative stereotypes of Black people."¹³² Modern media continues to promote the same stereotypes of Black women as Mammies, Jezebels, and Sapphires, be she Angry or Strong,

128. 137 S. Ct. 1744, 1756–57 (2017).

129. *Id.* at 1753–54 (citing TMEP § 1203.03(b)(i) (Apr. 2017)).

130. *Id.* at 1762–63.

131. McTaggart et al., *supra* note 52, at 2.

132. NAT'L RSCH GRP., #REPRESENTATIONMATTERS: CONTENT AS A MIRROR TO CULTURE 3 (2020), https://assets.ctfassets.net/0o6s67aqvwnu/59RCfIKXRC6P6JYxba07tt/af575c2cc81e4fc5601acd02bc2ce09/NRG_RepresentationMattersReport.pdf [https://perma.cc/CD8G-887K].

because—for more than a century—regulatory agencies told us they did not degrade human beings and were not disparaging. This practice continued even though the Supreme Court, in *Brown v. Board of Education*, cited negative psychological outcomes as part of its reasoning for overturning segregation.¹³³ In citing Kenneth B. Clark's study showing Black children preferred White dolls, the Court tacitly acknowledged the effects of learning an inferior status, whether through home, school, or other social institutions,¹³⁴ which media surely is. While courts have continued to address inequality in education, Hollywood and the PTO have removed subjective standards without doing much to change the power dynamics that established them.

The concentration of power in the MPPDA and PTO remains largely unchanged and has led to certain perspectives becoming dominant and accepted. The systems that approved the promulgation of those images made it possible for 91 percent of Hollywood chairs and chief executive officers to be White and 82 percent male in 2020,¹³⁵ even decades after the MPPC era ended. In terms of onscreen representation, Black women make up 6.5 percent of the country but have been leads or co-leads in only 3.7 percent of the one hundred top-grossing films from 2009 to 2019.¹³⁶ A 2020 review of the 1,300 top-grossing films from 2007 to 2019 found that although fifty-seven were directed by women, only six of those fifty-seven were Black women.¹³⁷ This, coupled with only 5.5 percent of all film directors being Black,¹³⁸ means Black women rarely control how we appear onscreen. Advertising departments do not fare much better, with a 2018 survey of the Association of National Advertisers' member companies showing males make up 54 percent of senior level positions, and Black people make up 7 percent across the entire industry, regardless of level.¹³⁹ Despite years of progress, control over narratives and images remains largely in the hands of White decisionmakers. Further, there has never been an explicit acknowledgment from either office of its role in entrenching these stereotypes in the cultural imagination. Subjective standards, whether enforced through official

133. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483, 494 n.11 (1954).

134. See *Appendix to Appellants' Briefs: Statement by Social Scientists*, 2 Soc. Probs. 227, 229 (1955); MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* 60 n.3 (2011).

135. DARNELL HUNT & ANA-CHRISTINA RAMÓN, UCLA COLL. OF SOC. SCIENCES, *HOLLYWOOD DIVERSITY REPORT 2020: A TALE OF TWO HOLLYWOODS* 9 (2019), <https://socialsciences.ucla.edu/wp-content/uploads/2020/02/UCLA-Hollywood-Diversity-Report-2020-Film-2-6-2020.pdf> [https://perma.cc/4QA8-467P].

136. McTaggart et al., *supra* note 52, at 4.

137. Stacy L. Smith, Marc Choueiti & Katherine Pieper, *Inequality in 1,300 Popular Films: Examining Portrayals of Gender, Race/Ethnicity, LGBTQ & Disability from 2007 to 2019*, ANNENBERG INCLUSION INITIATIVE 3 (2020), http://assets.uscannenberg.org/docs/aii-inequality_1300_popular_films_09-08-2020.pdf [https://perma.cc/LQ32-VPU4].

138. HUNT & RAMÓN, *supra* note 135, at 19.

139. ASS'N OF NAT'L ADVERTISERS & ALL. FOR INCLUSIVE & MULTICULTURAL MKTG., *A DIVERSITY REPORT FOR THE ADVERTISING/MARKETING INDUSTRY* 8–9 (2018).

or unofficial means, remain in existence, even when the rules themselves have been expunged.

II.

EFFECTS OF RACIAL STEREOTYPES ON BLACK WOMEN

The purpose of image regulation is varied, having both economic and cultural effects. Studios enforced the MPPC not just because other studios were doing it, but because of a belief in “[m]otion pictures [being] very important as [a]rt.”¹⁴⁰ As the MPPC asserted, “no art has so quick and so widespread an appeal to the masses [as motion pictures]. It has become in an incredibly short period, *the art of the multitudes*.”¹⁴¹ The PTO, meanwhile, concerned itself with developing “effective mechanisms that protect new ideas and investments . . . of American inventors and entrepreneurs.”¹⁴² Both offices either explicitly or implicitly acknowledged the power of ideas and set on their respective paths to protect them. The offices asserted control over relationships to those ideas, whether consumers were taking in art or purchasing products, knowing the images they approved would be taken in over and over again.

Media consumption theories, though presented as a model for all viewers, do not account for Black women viewers nor do they account for White people viewing “Others.”¹⁴³ In only focusing on majority viewers and representations of majority cultures, these models fail to consider the harmful repercussions for Black women who are by turns hypervisible and invisible.¹⁴⁴ This hypervisible-invisible duality is reproduced through the juxtaposition of stereotypical depictions of Black women in media and the lack of Black women in positions of power. Media affects Black women in specific ways that, when taken in tandem with political systems that do not protect us, have negative effects on Black women’s psychology and physiology.

A. *Popular Theories of Media Consumption Do Not Include Black Women*

The cultivation theory of media consumption posits that “repeated exposure, over time, to a consistent set of media messages gradually leads

140. DOHERTY, *supra* note 18, at 348 (emphasis omitted).

141. *Id.* at 249.

142. *About Us*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/about-us> [<https://perma.cc/6NPU-VLLJ>].

143. I borrow from EDWARD W. SAID, *ORIENTALISM* (1978), who coined the term “Other” to describe the result of the ways Western colonial discourse imagined and presented Eastern cultures as uncivilized and as existing in opposition to Western ones. I am applying the term here to encompass the same methodology toward cultures that are not White.

144. We are made hypervisible through objectifying stereotypes perpetuated in commercial and noncommercial imagery alike while simultaneously rendered invisible for having no subjectivity: We are to be consumed but never considered.

viewers to accept those messages and portrayals as reality.”¹⁴⁵ In conceptualizing various forms of media as pure entertainment, cultivation theory accounts for neither the perspectives of the people creating the media images¹⁴⁶ nor a viewer’s inclination to critique both the presented image and the system that produced it.

Laura Mulvey was one of the first film theorists to conceptualize the woman viewer’s relationship to onscreen images. Mulvey’s groundbreaking essay *Visual Pleasure and Narrative Cinema* argued that women spectators assume the position of a man when regarding women onscreen.¹⁴⁷ The pleasure for women spectators stems from both looking and being looked at: “curiosity and the wish to look intermingle with a fascination with likeness and recognition.”¹⁴⁸ Mulvey’s theory of spectatorship and visual pleasure is part of a long line of theorization that, in not discussing race, normalizes the White experience and pushes Others to the margins. Her approach is founded in Jacques Lacan’s mirror theory of psychoanalysis, which asserts that a child learns to recognize themselves by seeing their image in a mirror.¹⁴⁹ The image in the mirror, free as it is from pain and vulnerabilities, presents an ideal self toward which the child will continue to strive for life.¹⁵⁰ Extending Lacan’s theory by adding gender works naturally for Mulvey’s viewers, who are White and therefore accustomed to seeing a broad array of White performances and identities onscreen. Combining cultivation theory with Mulvey and Lacan’s ideas, the more exposure a viewer has to screen images, the more real those images appear, or, perhaps more accurately, the more they appear as the ideal toward which an individual must strive. In sum, a White spectator has ample models against which to measure themselves.

While these theories may be accurate for majority group consumers, they fall short when applied to those in underrepresented populations since they account for neither the perspectives of the people creating the media images¹⁵¹ nor any viewer’s motivation to critique the presented image and the production system behind it. Sociologist and cultural theorist Stuart Hall fills this gap, explaining how Black viewers know entertainment and governing agencies “ha[ve] the power to make us see and experience *ourselves* as ‘Other.’”¹⁵² bell hooks likewise explains that Black people regard images in this way because we

145. Morgan C. Jerald, L. Monique Ward, Lolita Moss, Khia Thomas & Kyla Day Fletcher, *Subordinates, Sex Objects, or Sapphires? Investigating Contributions of Media Use to Black Students’ Femininity Ideologies and Stereotypes About Black Women*, 43 J. BLACK PSYCH. 608, 614 (2017).

146. Valerie N. Adams-Bass, Howard C. Stevenson & Diana Slaughter Kotzin, *Measuring the Meaning of Black Media Stereotypes and Their Relationship to the Racial Identity, Black History Knowledge, and Racial Socialization of African American Youth*, 45 J. BLACK STUD. 367, 386 (2014).

147. LAURA MULVEY, *VISUAL AND OTHER PLEASURES* 14 (1989).

148. *Id.* at 807.

149. See JACQUES LACAN, *ÉCRITS: THE FIRST COMPLETE EDITION IN ENGLISH* 93–101 (Bruce Fink, Héloïse Fink & Russell Grigg trans., 2006).

150. See *id.*

151. Adams-Bass et al., *supra* note 146, at 386.

152. STUART HALL, *IDENTITY: COMMUNITY, CULTURE, DIFFERENCE* 222, 225 (1990).

are “fully aware that mass media [i]s a system of knowledge and power reproducing and maintaining white supremacy.”¹⁵³ Understanding the system and the stereotype means Black viewers know what we see was not designed for us and that White systems of power and production are working to establish Black culture as lascivious and lazy,¹⁵⁴ though it never was. Our acculturation to a society that is uninterested in acknowledging our humanity necessitates our constant awareness of the historical systems of oppression that are embedded in images we see as well as how they came to be. Context is therefore always top of mind for Black viewers.

B. Theories of Media Consumption Do Not Consider How White People View Others

Though this Note is concerned with the effect of regulation on Black women, it is important to consider, too, how depictions of Black people affect White viewers since they continue to control most advertising and media, not to mention government positions.

Several studies have exposed the media’s role in perpetuating long-held stereotypes of Black people. Priming, meaning activating particular cultural constructs in a viewer’s recent memory, only affects how the viewer perceives the group depicted, provided the viewer is not a member of that group.¹⁵⁵ In one study, White viewers were shown negative racial stereotypes of Black people from television series like *Good Times* and *Sanford and Son*.¹⁵⁶ Although the study took place in 1997, it used shows from the 1970s. This is significant for two reasons: first, because it makes clear the continued relevance and potency of out-of-date stereotypes; and second, because these series were created by White showrunners at White networks. The creation of a cultural imagination is at work in both senses. Unsurprisingly, the results of this study were that White people’s assessment of Black people was more negative after exposure to the images.¹⁵⁷ Though most film theories consider the effects on White people of seeing themselves onscreen—in depictions designed by White people—they generally do not account for the effects on White viewers of seeing White people’s onscreen renderings of Black life. This research makes clear that harmful images perpetuate the false narratives Hall and hooks referenced in their arguments. Not

153. BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* 117 (1992).

154. See David Pilgrim, *The Coon Caricature*, FERRIS STATE UNIV.: JIM CROW MUSEUM (2012), <https://www.ferris.edu/HTMLS/news/jimcrow/coon/homepage.htm> [<https://perma.cc/ZV6E-ZCNK>] (explaining the history of stereotypes depicting Black people as lazy); Charlton D. McIlwain & Stephen M. Caliendo, *Mitt Romney’s Racist Appeals: How Race Was Played in the 2012 Presidential Election*, 58 AM. BEHAV. SCIENTIST 1157, 1159–61 (2014); *id.* at 1157–68 (tracing the history of stereotypes of Black people as lazy from Reconstruction and showing how they persist today).

155. Thomas E. Ford, *Effects of Stereotypical Television Portrayals of African-Americans on Person Perception*, 60 SOC. PSYCH. Q. 266, 268 (1997).

156. *Id.* at 267.

157. *Id.* at 271.

only do they make their continuance evident to Black viewers, but they continue to obfuscate the systems of White control for White viewers who have not been trained to deconstruct messages embedded in media. It is interesting to note, too, that the study found White people's assessment of White people did not change after exposure,¹⁵⁸ indicating that the effects of these stereotypes serve primarily to denigrate Black people. While stereotypes had been approved as uplifting the race, this study suggests that their primary means of doing so was to subordinate those who were not White.

Even in majority Black series, because White people continued to wield control over their images, harmful stereotypes abounded. Though these television series were broadcast more than forty years after *Hallelujah!*, the issues remained unchanged: White systems of power reproduced false, racist depictions of Black people in order to serve their own ends. Moreover, the viewers watching at least twenty years after the series original release did not watch with a critical eye: despite shifting social standards around race and representation between the 1970s and 1990s, White viewers became no more circumspect about racist representations of Black people. These White viewers, accustomed to seeing varied representations of themselves onscreen, and therefore able to choose which models to aspire toward, had no lens through which to regard those unlike them. Thanks to their certainty the system that produced the images both looked like them and had their interests at heart, White viewers assumed equal amounts of accuracy in depictions of Black characters and White. Unfounded beliefs about Black people encoded in racist stereotypes are more easily adopted by White viewers because they have not been forced by default to cultivate resistant media consumption habits.

While the stated purpose of image regulation was to prevent offensiveness and to improve human beings, the true effects of the continued barrage of harmful racist stereotypes the MPPDA and the PTO approved persist. When a regulatory agency exists in part to ensure people's protections, it is logical for the people who are protected by the agency to trust the agency's decisions. This is true for both official and unofficial organizations when they are imbued the necessary power to carry out their task. Both the MPPDA and the PTO, however, only took steps to protect those in the majority, those who already had power: White people. White people, whether conscious or unconscious of their privileged positions in this dynamic, have not had to develop ways of seeing themselves or others in media in a manner that interrogates origin. This has made it possible for those same White people who viewed those harmful images in the 1970s to grow up and continue to perpetuate those same stereotypes when they come into power in various media industries. These myths about Black people

158. *Id.*

can also prime White viewers' approaches to social and political issues.¹⁵⁹ Protections for White people are thereby preserved while those for Black people remain unenforced.

C. *How Media Affects Black Women*

Black people in the U.S., on the other hand, must develop identities in a national culture that does not value us and rarely puts us in positions of power. Despite the array of negative representations available in branding and media, Black Americans consume more media than any other ethnic group.¹⁶⁰ Given the already discussed active model of spectatorship that Black viewers must employ when looking, it should not be surprising that studies show "Black youth are highly aware of the negative perceptions associated with their racial group."¹⁶¹ Perception, however, does not necessarily mean reception. Although Black viewers can recognize the stereotypes, they may not adopt them or recognize themselves within. Seeing that a creator is perpetuating stereotypes about Black people as a whole—particularly a stereotype the viewer knows to be untrue—encourages that active viewership model. In some ways, it is possible such a depiction would ignite a collective identification that is directly oppositional to the stereotype onscreen. That is not to say that an individual's identity is entirely tethered to the collective. Though distinct, individual identity may overlap with collective identity when an individual self-identifies as part of their racial group.¹⁶² A positive link between individual and collective identity can promote strong self-image and insulate young Black viewers from the effects of racist stereotypes.

For young Black people, a strong sense of self can come from a firm grounding in Black history. For Black people, knowing our history also means acknowledging the negative stereotypes those in power constructed about us. One study showed young Black people with more knowledge of history were more likely to not only identify negative stereotypes, but also to not endorse them.¹⁶³ This is Hall's and hooks's viewer engagement theories in action.

Their conclusions bear out in research on young Black women specifically. Studies show young Black women with strong Africentric values and racial

159. See generally Jack Glaser, Katherina Spencer & Amanda Charbonneau, *Racial Bias and Public Policy*, 1 POL. INSIGHTS FROM BEHAV. & BRAIN SCI. 88 (2014) (documenting how conscious and unconscious racial biases affect individual interactions and public policy).

160. See NUMERATOR, PATH TO UNDERSTANDING: DO CPGs KNOW THEIR CUSTOMERS? 28–29 (Mar. 9, 2021), https://www.numerator.com/sites/default/files/files/2021-03/N_Path%20to%20Understanding%20030821.pdf [https://perma.cc/5E47-AJA4].

161. Rabiati E. Barrie, Kimberly Langrehr, Gihane Jérémie-Brink, Nickecia Alder, Amber Hewitt & Anita Thomas, *Stereotypical Beliefs and Psychological Well-Being of African American Adolescent Girls: Collective Self-Esteem as a Moderator*, 29 COUNSELING PSYCH. Q. 423, 425 (2016).

162. See *id.* at 427.

163. See Adams-Bass et al., *supra* note 146, at 384.

identity who use Africentric coping mechanisms have better health outcomes¹⁶⁴ as well as higher levels of self-esteem and life satisfaction than those who do not.¹⁶⁵ Africentric values include non-materialism, interdependence, and spirituality,¹⁶⁶ which support a strong collective identity. West African beauty standards, which celebrate a broader spectrum of body types, also fall under this umbrella.¹⁶⁷ One study examining the effect of collective identity on self-esteem concluded that “having a general sense of personal pride and value in their shared identity as African American girls was enough to effectively combat the harmful effect of the endorsement of stereotypes on impression management as well as the indirect effect on perceived stress levels.”¹⁶⁸ This finding nearly elides the additional effort Black girls must exert—wading through misogynoir onscreen and in real life—in order to establish that shared identity. Eventually, though, by finding strength in a collective but marginalized identity, young Black women can process negative stereotypes without necessarily internalizing them.

Black women’s identity formation includes an inculcation of intersecting oppressive systems that omit our existence.¹⁶⁹ One study of contextual factors that influenced Black women’s identity development found that self-determination was just as important as being able to share those experiences with other Black women.¹⁷⁰ The specific experience of being Black was something Black women felt they had to explain to White peers and peers of color, but which could be expressed and validated with Black women.¹⁷¹ This is important for another way media depictions of Black women are out of sync with reality. For decades, the majority of depictions of Black women cast them as supporting

164. See, e.g., Enrique W. Neblett, Jr. & Sierra E. Carter, *The Protective Role of Racial Identity and Africentric Worldview in the Association Between Racial Discrimination and Blood Pressure*, 74 PSYCHOSOMATIC MED. 509 (2012) (finding Africentric values and strong racial identity correlated with healthy blood pressure for Black people in the U.S.).

165. See Maysa Akbar, John W. Chambers, Jr. & Vetta L. Sanders Thompson, *Racial Identity, Africentric Values, and Self-esteem in Jamaican Children*, 27 J. BLACK PSYCH. 341 (2001); Madonna G. Constantine, Peter C. Donnelly & Linda James Myers, *Collective Self-Esteem and Africultural Coping Styles in African American Adolescents*, 32 J. BLACK STUD. 698 (2002).

166. Neblett & Carter, *supra* note 164, at 509–10.

167. Madonna G. Constantine, Vanessa L. Alleyne, Barbara C. Wallace & Deidre C. Franklin-Jackson, *Africentric Cultural Values: Their Relation to Positive Mental Health in African American Adolescent Girls*, 32 J. BLACK PSYCH. 141 (2006).

168. Barrie et al., *supra* note 161, at 435.

169. See Crenshaw, *supra* note 6.

170. Anita Jones Thomas, Denada Hoxha & Jason Daniel Hacker, *Contextual Influences on Gendered Racial Identity Development of African American Young Women*, 39 J. BLACK PSYCH. 88, 93 (2013).

171. *Id.* at 96.

characters,¹⁷² often as a token minority friend.¹⁷³ These lone Black friends are a mashup of Mammies and Sapphires, both constantly available as support systems and ready with a sassy comeback. Their lack of subjectivity, meaning their own storylines outside of their relationships to White characters, and freedom to express emotions continues tropes of both.¹⁷⁴ Further, this marginalized status in media and in the real world means Black women “lack opportunities for accurate, affirming recognition of the self and yet must contend with hypervisibility imposed by their lower social status.”¹⁷⁵ This hypervisibility was exacerbated through PTO- and MPPDA-approved depictions of stereotypes that allowed narrow representations of Black women as Mammies, Jezebels, and Sapphires, so out of sync with the full spectrum of the Black woman experience.

Exceptions exist, of course, as seen in *Waiting to Exhale* and *Girls Trip to Living Single* and *Insecure*. These films and television series showed Black women as lead characters, rather than supporting: we had subjectivity. This was likely possible because each had at least one Black woman involved in production.¹⁷⁶ By contrast, countless historically approved images of Black women reinforce the Mammy, Jezebel, and Sapphire stereotypes. This was true when production was all White, but also remained true when Black men were at the helm as seen in the aforementioned *Acrimony* by Tyler Perry.¹⁷⁷ Because

172. See Smith et al., *supra* note 137, at 19 (stating 5 percent of leads from 2007 to 2019 were underrepresented women and explaining there has been meaningful increase, while also noting that “[p]roportional representation was rarely achieved in 2019 for Black, Hispanic/Latino, and Asian speaking or named characters on screen and the complete erasure of girls and women of color was rampant”).

173. See, e.g., Greg Braxton, *Buddy System*, L.A. TIMES (Aug. 29, 2007), <https://www.latimes.com/archives/la-xpm-2007-aug-29-et-bff29-story.html> [<https://perma.cc/G3FT-Q28A>]; see Vanessa Willoughby, *What I Learned from Token Black Characters in Teen Movies*, VICE (Sept. 21, 2015), <https://www.vice.com/en/article/yvxn7j/what-i-learned-from-the-token-black-characters-in-teen-movies-921> [<https://perma.cc/2NZ7-FBY5>].

174. See also, e.g., Victoria M. Massie, *Want to Measure a Film's Diversity? Try "the DuVernay Test,"* VOX (Feb. 1, 2016), <https://www.vox.com/2016/2/1/10888212/duvernay-test-movie-diversity> [<https://perma.cc/2LNA-9PJS>] (describing a test similar to the Bechdel Test, which measures women's subjectivity, for assessing people of color's subjectivity in films).

175. HARRIS-PERRY, *supra* note 134, at 77–78.

176. *Waiting to Exhale*, IMDB, https://www.imdb.com/title/tt0114885/fullcredits/?ref_=tt_cl_sm [<https://perma.cc/KK4W-2SGN>] (crediting Terry McMillan as writer of the novel, screenplay co-writer, and executive producer); *Girls Trip*, IMDB, https://www.imdb.com/title/tt3564472/fullcredits/?ref_=tt_cl_sm [<https://perma.cc/SU3D-8JZY>] (crediting Tracy Oliver as story co-writer and Shayla Cowan as associate producer); *Living Single*, IMDB, https://www.imdb.com/title/tt0106056/fullcredits/?ref_=tt_cl_sm [<https://perma.cc/N3US-ZFNR>] (crediting Yvette Lee Bowser as creator, producer, and writer, among others; Kim Fields as director and actor; Eunette T. Boone as writer, producer, and executive story editor); *Insecure*, IMDB, https://www.imdb.com/title/tt5024912/fullcredits/?ref_=tt_cl_sm [<https://perma.cc/4GUM-Y8XW>] (crediting, among others, Issa Rae as creator, writer, executive producer, and actor; Syreeta Singleton as writer, story editor, and executive story editor; Natasha Rothwell as writer, director, story editor, executive story editors, and actor).

177. *Acrimony*, IMDB, https://www.imdb.com/title/tt6063050/fullcredits/?ref_=tt_cl_sm [<https://perma.cc/252D-8F2Z>] (crediting no Black women involved in writing, directing, or producing Tyler Perry's film).

each of these stereotypes lacks subjectivity, she is denied the opportunity to be in community with other Black women. These stereotypical depictions have made it clear there is something undesirable about each of these women, be she subservient, hypersexual, angry, or nagging. Black women spectators, however, are aware of the media systems producing these negative stereotypical images that would repel meaningful connections and draw strength from relationships with other Black women.

Collective ethnic identity can be a bulwark against believing stereotypical images are accurate. Family, like media, plays a significant role in identity formation. Parents, siblings, cousins, and more “model for youth how to consider, manage, and resolve racial and ethnic dynamics through verbal and nonverbal interactions and communications.”¹⁷⁸ Older family members are important as young Black people develop the skills needed to make meaning of racial stereotypes.¹⁷⁹ Black youth, like youth of all backgrounds, are taking in media messages alongside those from many other inputs, including familial, religious, and educational. Young Black women who encounter racist stereotypical depictions of themselves that were fortified through MPPDA and PTO approvals turn to parents, grandparents, and other adults to help them process these images.¹⁸⁰ Women relatives, who themselves developed identities in resistance to those images, can serve as a strong counter to the Mammies, Jezebels, and Sapphires the next generation will confront in media. Intergenerational conversations can be a first opportunity to distinguish between what is portrayed onscreen—a White imagining of the truth—and the Black woman viewer’s lived experience. Again, Black women must fend for themselves.

Learning Black history from elders means learning the good with the bad: strong woman role models alongside objectified stereotypes. While that history can be a source of strength, it can also be a vivid outline of traits to rebel against. Although Black women do not necessarily endorse these stereotypes, there may be a desire to respond by overcompensating.

One coping mechanism Black women have developed is dedication to education. This choice has long-lasting effects that can even strengthen future offspring’s sense of self. High-achieving Black women have a positive effect on their daughters’ ability to interpret images: “The higher the education level of the student’s mother and age of the student, the more students reported frequently witnessing negative Black stereotype television messages.”¹⁸¹ This means that the ability to discern the meanings imbued in stereotypes develops as a Black viewer ages. Importantly, the study also found that those with higher family income, education, and participation in extracurricular activities “were less likely

178. Adams-Bass et al., *supra* note 146, at 371.

179. See Thomas et al., *supra* note 170, at 96.

180. See *id.* at 97.

181. Adams-Bass et al., *supra* note 146, at 381.

to endorse negative stereotype messages.”¹⁸² This indicates the ability to resist negative stereotypes comes from access to resources. It may also mean that critical viewing comes from having opportunities to discuss with parents or other community members, in essence nurturing critiquing as a skill. Black women play a central role in their children’s development of this muscle and are better able to do this when they have resources.

Of course, Black parents of all genders have a role in shaping their daughters’ expectations and self-image. Parents, aware of statistics about Black women’s negative health outcomes and low likelihood of marriage, “prepare [girls] for both psychological and financial independence,” with one study showing 25 percent of Black girls say their parents stress the importance of education and achievement to them.¹⁸³ Just as regulatory agencies failed to serve Black women, so too has the general culture. Black women know we must seek our own opportunities, and higher education is the clearest way to ensure our futures whether we take them on individually or with a partner. Additional education makes it more likely a Black woman will be able to support herself; it also makes Black girls less likely to endorse negative stereotypes.¹⁸⁴ In effect, as a Black woman defies stereotypes in her own life, she strengthens her defenses against adopting them. Both social and formal education play at least three roles in Black women’s lives: increasing Black women’s ability to survive life independently; increasing awareness of Black history; and increasing the ability to identify and resist negative stereotypes. Resistance to negative stereotypes, then, is self-perpetuating.

This drive to achieve may be read as a positive or negative response to social conditioning. Closely related to achievement as self-reliance is achievement as a means of proving oneself, which Black women admit is an impetus toward hard work.¹⁸⁵ Survival comes up frequently in conversations of Black womanhood, encouraging Black women to eschew help.¹⁸⁶ In an effort to live up to the Strong Black Woman stereotype, Black women may become modern Mammies who take on the troubles of others, tending to everyone but themselves. The stereotypes have converged, and Black women keep trying to fulfill all expectations.

Being everything to everyone is a learned behavior. Black women are socialized to “embrace independent and multiple role behaviors through dialogue, modeling, and vicarious conditioning” to compensate for low marriage

182. *Id.*

183. Thomas et al., *supra* note 170, at 89, 97.

184. See Adams-Bass et al., *supra* note 146, at 381.

185. See Tamara Nelson, Esteban V. Cardemil & Camille T. Adeoye, *Rethinking Strength: Black Women’s Perceptions of the “Strong Black Woman Role,”* 40 PSCYH. WOMEN Q. 551, 556 (2016).

186. See *id.*

rates.¹⁸⁷ Black women have learned to suppress emotions in response to racial discrimination and to exhibit traits more commonly associated with masculinity, such as independence, assertiveness, and strength, while also being the nurturer or caregiver.¹⁸⁸ With respect to traits associated with masculinity, that same survey of films from 2019 found that “Black female characters are more likely to be shown as violent than white female characters (29.3% compared to 24.6%) and twice as likely as other female characters of color (14.8%).”¹⁸⁹ This indicates that the Sapphire/Angry/Strong Black woman stereotype remains pervasive. At the same time, while film depictions of Black women in service jobs have gone down, over half of Black women on family television are portrayed as such, perpetuating the Mammy tradition.¹⁹⁰ While Black women are given nothing, we must be everything. This mandate to be both strong and nurturing as well as both boundlessly generous and without needs pulls Black women in oppositional directions as we develop our sense of self. The Africentric values of community that make it possible to sustain attacks on identity are at odds with the Eurocentric ideals of individualism needed for survival in the United States. We learn to walk this tightrope by watching women who nurtured their own self-esteem in the shadow of precisely the same stereotypes,¹⁹¹ but such an affront from every side begins to wear.

A great number of studies have put forth the idea that Black women, through ongoing endurance of social or economic adversity and political marginalization, experience what Dr. Arline T. Geronimus calls “weathering.”¹⁹² Put simply, the body’s biological responses to stress, as brought on by disenfranchisement and systemic injustices, have long-term physiological effects. Such treatment is justified when dominant representations of certain groups of people deny their dignity and needs. Many factors go into people’s perceptions of the world around them, including media. Media not only influences how the public perceives Black people, but it also affects how policymakers perceive reality and how they choose which policies to devote resources toward.¹⁹³ Seeing objectifying depictions of Black women that deny

187. Jasmine A. Abrams, Morgan Maxwell, Michell Pope & Faye Z. Belgrave, *Carrying the World with the Grace of a Lady and the Grit of a Warrior: Deepening Our Understanding of the “Strong Black Woman” Schema*, 38 PSYCH. WOMEN Q. 503, 505 (2014).

188. See Amani M. Allen, Yijie Wang, David H. Chae, Melisa M. Price, Wizdom Powell, Teneka C. Steed, Angela Rose Black, Firdaus S. Dhabhar, Leticia Marquez-Magaña & Cheryl L. Woods-Giscombe, *Racial Discrimination, the Superwoman Schema, and Allostatic Load: Exploring an Integrative Stress-Coping Model among African-American Women*, 1457 ANNALS N.Y. ACAD. SCI. 104 (2019).

189. McTaggart et al., *supra* note 52, at 6.

190. *Id.* at 6, 12.

191. See Abrams et al., *supra* note 187, at 509.

192. Ana Sandoiu, ‘Weathering’: What Are the Health Effects of Stress and Discrimination?, MED. NEWS TODAY (Feb. 26, 2021), <https://www.medicalnewstoday.com/articles/weathering-what-are-the-health-effects-of-stress-and-discrimination> [https://perma.cc/KB5Y-UEM9].

193. See Lama Bou-Karroum, Fadi El-Jardali, Nour Hemadi, Yasmine Faraj, Utkarash Ojha, Maher Shahrour, Andrea Darzi, Maha Ali, Carine Doumit, Etienne V. Langlois, Jad Melki, Gladys

our dignity make it less likely those in power will feel compelled to act on our behalf.

The Jezebel has serious repercussions for viewers without defenses. Studies show Black women who view and endorse the Jezebel stereotype are more likely to view sexuality as their primary source of identity¹⁹⁴ and engage in unsafe sexual behaviors.¹⁹⁵ Notably, Black women who endorse colorism (meaning stratification within Black communities based on skin color) are more likely to believe stereotypes and find self-worth in sexuality.¹⁹⁶ This suggests Black women still grapple with Jezebel's possible genesis in the tragic mulatto trope and Hollywood's casting of White women in roles for Black women, not to mention the effects of objectifying trademark registrations. Lack of subjectivity is the norm for commercial images of Black women, and Black women viewers who are regularly exposed to the Jezebel stereotype may consciously or subconsciously choose to act in ways that confirm her existence.¹⁹⁷ This can have hazardous effects on Black women who, having internalized negative images about themselves, experience greater levels of psychological distress, low self-esteem, chronic health conditions, and participate in risky sexual behaviors.¹⁹⁸ On the other hand, studies indicate that those with stronger feelings of belonging with their ethnic group were less likely to endorse the Jezebel stereotype.¹⁹⁹ As above, Black girls in this study who placed value on education—those who believed themselves capable of learning—were less likely to endorse Jezebel behaviors,²⁰⁰ therein underscoring the importance of developing an ability to critique. Historically approved images of sexually promiscuous Black women encourage modern viewers to find self-worth by exploiting their sexuality unless they can counteract such racist stereotypes through active spectatorship. Ongoing failures of media executives to nurture Black girls' self-worth, however, perpetuate Jezebel's negative effects.

As already discussed, none of these stereotypes has been forgotten, including the Mammy. In real life, caregiving and volunteering may lead to positive outcomes for health and longevity, but when these behavioral requirements are conducted in a “context of inadequate resources, perceived obligations to suppress emotion, and resistance to vulnerability,” the constant

Honein AbouHaidar & Elie A. Akl, *Using Media to Impact Health Policy-Making: An Integrative Systematic Review*, 12 IMPLEMENTATION SCI. 11–12 (2017).

194. Carolyn M. West, *Mammy, Sapphire, and Jezebel: Historical Images of Black Woman and their Implications for Psychotherapy*, 32 PSYCHOTHERAPY 458, 462–63 (1995).

195. Tiffany G. Townsend, Anita Jones Thomas, Torsten B. Neilands & Tiffany R. Jackson, *I'm No Jezebel; I Am Young, Gifted, and Black: Identity, Sexuality, and Black Girls*, 24 PSYCH. WOMEN Q. 273, 276 (2010).

196. *Id.* at 281–82.

197. Jerald et al., *supra* note 145, at 614.

198. Nelson et al., *supra* note 185, at 551.

199. Jerald et al., *supra* note 145, at 628.

200. Townsend et al., *supra* note 195, at 280.

pull on Black women's internal resources has harmful health effects.²⁰¹ In this way, the systems of power that consistently disenfranchise Black women—and which originally gave these stereotypes a platform—continue to assert their influence. Even if the subjective standard has been abandoned, the systems of power are nearly untouched. Black women, in living out the Mammy role, experience excessive fatigue and are unable to make time for self-care, including exercise and meal preparation, which can lead to chronic psychological distress and cardiometabolic diseases.²⁰² It is important to note that, very often, this role is not a choice. Rather, many Black women feel compelled to fill in the gaps of a failed safety net in order to ensure the survival of their community.²⁰³ The failing of agencies, from media regulation to social service, has acculturated Black women to putting ourselves last in order to safeguard the survival of our communities. This psychological training leaves physiological scars.

When Black women wear resilience as armor in order to emulate the Strong Black Woman stereotype—read as Sapphire's legacy—they also suffer physiologically. To counteract misogynoir inputs that devalue Blackness and Black culture, many Black women feel compelled to present themselves as strong and proud.²⁰⁴ Adopting such stereotypes has serious consequences for Black women, who, in fulfilling the Strong Black Woman stereotype, will suppress emotions, which can create a higher risk for depression,²⁰⁵ lead to binge-eating,²⁰⁶ inhibit the physical ability to respond to stress,²⁰⁷ and encourage other deleterious habits such as smoking, dysfunctional sleep patterns, and postponing self-care.²⁰⁸ Even when Black women do seek medical treatment, we often receive unnecessarily aggressive healthcare and disproportionately experience maternal mortality.²⁰⁹ This is due, in part, to false beliefs within the medical community that Black people have higher pain thresholds and that our bodies are biologically stronger.²¹⁰ These ongoing unjustified beliefs stem from a long history of medical research conducted on Black people, including Black

201. Allen et al., *supra* note 188, at 108.

202. *Id.*

203. Abrams et al., *supra* note 187, at 505.

204. Abrams et al., *supra* note 187, at 510.

205. See Tamara Beauboeuf-Lafontant, "You Have to Show Strength": An Exploration of Gender, Race, and Depression, 21 GENDER & SOC'Y 28, 31–47 (2007).

206. See Ellen F. Harrington, Janis H. Crowther & Jillian C. Shipherd, *Trauma, Binge Eating, and the "Strong Black Woman,"* 78 J. CONSULTING & CLINICAL PSYCH. 469, 496 (2010).

207. See Allen et al., *supra* note 188, at 104–05.

208. See Cheryl L. Woods-Giscombé, *Superwoman Schema: African American Women's Views on Stress, Strength, and Health*, 20 QUALITATIVE HEALTH RSCH. 668, 667 (2010).

209. See, e.g., Cynthia Prather, Taleria R. Fuller, William L. Jeffries, IV, Khiya J. Marshall, A. Vyann Howell, Angela Belyue-Umole & Winifred King, *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2 HEALTH EQUITY 249, 253 (2018).

210. See Kelly M. Hoffman, Sophie Trawalter, Jordan R. Axt & M. Normal Oliver, *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs About Biological Differences Between Blacks and Whites*, 113 PROCEEDINGS NAT'L. ACAD. SCIS. 4296, 4296–97 (2016).

women, possibly without consent and certainly without anesthesia.²¹¹ This is all in addition to the psychological effects of refusing emotional outlets for fear of appearing vulnerable²¹² or for fear of being deemed hysterical or hypochondriac, as many women are.²¹³ The continued belief that Black women do not need pain treatment—whether physical or emotional—may have its roots in racist and sexist medical treatment, but received reinforcement through approved depictions of Black women that denied subjectivity. Media images are not fully to blame for treatment of Black women; rather, they play a supporting role for racist ideologies that erased Black women’s humanity.

Rather than being loud and angry Sapphires, many Black women have become quiet and angry. Taking on others’ worries has become part of our strength, as opposed to a Mammy’s weakness. But if we do not create a strong identity as a Black woman, finding value in qualities that transcend our bodies, we may become Jezebels. The same images that affected Black women of yore continue to play a role in Black women’s identity formation today. The high self-esteem observed in Black women may occur because racial identity, self-esteem, and self-care have not been studied at once: thinking highly of yourself for being a Strong Black Woman does not necessarily translate to taking care of yourself. Black women viewers take in these racist stereotypes and may be able to resist them, but that resistance takes additional labor; and when combined with political systems that do not consider our needs, the negative psychological effects can combine to produce physiological ones. As much as Black women can care for ourselves and our community, we also need systems of power to support our existence and empowerment.

III.

AN INTERSECTIONAL APPROACH TO THE FUTURE

The sheer number of factors affecting how Black women are presented in media and how we make meaning of those images makes clear that no individual response will solve the systemic and systematic marginalization described above. Any and all solutions to ongoing discrimination can and must be

211. Shankar Vedantam, Maggie Penman, Jennifer Schmidt, Tara Boyle, Rhaina Cohen & Chloe Connelly, *Remembering Anarcha, Lucy, and Betsey: The Mothers of Modern Gynecology*, NPR (Feb. 7, 2017), <https://www.npr.org/2017/02/07/513764158/remembering-anarcha-lucy-and-betsey-the-mothers-of-modern-gynecology> [<https://perma.cc/J7LU-F2H9>] (noting that when J. Marian Sims performed the same surgery on Black women and White women, only Black women were denied anesthesia); see also Berkeley Journal of Gender, Law & Justice, *Spring 2021 Symposium: Reclaiming Black Health*, YOUTUBE (May 2, 2021), <https://www.youtube.com/watch?v=yMOBWQpcRD8> [<https://perma.cc/XZ83-YMNJ>] (Dr. Zoë Julian positing that any surgery performed on an enslaved Black woman was inherently performed without her consent due to her enslaved status).

212. Allen et al., *supra* note 188, at 107.

213. Emily Paulsen, *Recognizing, Addressing Unintended Gender Bias in Patient Care*, DUKE HEALTH (Jan. 14, 2020), <https://physicians.dukehealth.org/articles/recognizing-addressing-unintended-gender-bias-patient-care> [<https://perma.cc/EQ64-RGAP>] (showing one in five women have had their health care provider ignore or dismiss their health concerns).

identified, developed, and carried out with our input and, ideally, with Black women at the helm. While Black women have begun to take the reins in politics and media, the surest and strongest approach to achieving improved outcomes for all populations will come from a collective effort. To be sure, given how stereotypes in media affect individuals of every nation, race, or creed—the MPPC, despite its flawed design and execution, gave the appropriate amount of weight to the power of images—what is good for representations of Black women, with our intersectional invisibility,²¹⁴ will be good for other minoritized groups as well.

For starters, individually and as a group, we must work intentionally to develop the tools necessary for media literacy, meaning the capacity to consume and analyze media and its messaging. By now, it is clear that the active spectatorship model is one that Black viewers already employ, but such a level of critical analysis is an important component for anyone navigating today's deluge of media images, from logo to billboard to phone screen to silver screen. This can occur both formally and informally, in the classroom and on the couch. Only when viewers of all identities take into account the structures of power that created the content we consume will stereotypes cease to have such pernicious effects.

While active spectatorship will address media reception, content creators can take on production. The entertainment industry is endeavoring to increase diversity in front of and behind the camera. One of the reasons that stereotypes of people of color are so frequently analyzed is because the lack of representation and diversity makes it simpler for audiences to identify common, played out threads. Unfortunately, it also means that actors who play these roles may end up accepting what they can get, thereby further solidifying the stereotype in our collective imagination, and that they suffer additional criticism simply by virtue of being the only one. It is, once again, the invisibility-hypervisibility dichotomy: by being virtually invisible at all other times, the power of one depiction becomes outsized. A media landscape that presents a wider variety of experiences is more likely to resonate with a broader swath of viewers. A token is not enough.

This underrepresentation is due to both the makeup of the industry and stakeholders' belief that commercial success requires catering to audiences with the most spending power: White ones. This dynamic formed via deeply entrenched policies that preserve segregation, making it so that White executives who run the advertising and entertainment industries rarely encounter people who do not look, think, or act like them.²¹⁵ Writers' rooms, too, overwhelmingly

214. Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 *SEX ROLES* 377, 378 (2008) (defining "intersectional invisibility" as "the distinctive forms of oppression experienced by those with intersecting subordinate identities").

215. Sandra P. Arévalo-García, *Racial Residential Segregation, Stereotypes, and Neighborhoods: Their Influence on Whites' Racial Attitudes and Blacks' Self Esteem*, (Apr. 2013)

White and male,²¹⁶ do, after all, write what they know. Many industry power holders believe, wrongly, that viewers only want to watch stories about people who look like them, even though one of the purposes of consuming media is escapism. The recent well-publicized success of nuanced portrayals of marginalized peoples is helping to change this, but continued recruitment, retention, and empowerment of storytellers and decisionmakers with underrepresented identities is the only way to continue this trend. Even though the subjective protections are no longer in place, the false narratives of which stories are worth telling and which images are worth depicting with care continue to loom large in the industry. By giving power to those previously without protections, the narrative transforms accordingly.

Interestingly, the recalibration of racial politics and industry demographics has been in lockstep with shifting perceptions of the Hollywood system and its awards.²¹⁷ Conversations about lack of representation and power imbalances in the industry were widespread during #OscarsSoWhite and #MeToo in the mid-2010s. This is the kind of critical engagement with popular culture—active spectatorship—that Black viewers have been engaged in since *Birth of a Nation* was the first film screened at the White House,²¹⁸ and which must become the norm in order for industries to respond. In the wake of #OscarsSoWhite, the Academy of Motion Picture Arts and Sciences diversified its membership²¹⁹ and nominees²²⁰ (albeit not consistently),²²¹ while #MeToo has led to more stereotype-defying opportunities for women and more women being hired.²²² The explosion of new media platforms has also made more roles available to a larger group of actors, writers, producers, and others, resulting in streaming

(Ph.D. dissertation, Northeastern University)
<https://repository.library.northeastern.edu/files/neu:1902/fulltext.pdf> [https://perma.cc/4PRT-8XLT].

216. WRITERS GUILD OF AM. W., WGAW INCLUSION REPORT 5 (2020), https://www.wga.org/uploadedfiles/the-guild/inclusion-and-equity/wgaw_inclusion_report_20.pdf [https://perma.cc/BW4B-U9F6].

217. See *The Rise and Fall of the Golden Globes*, N.Y. Times (Jan. 10, 2022), <https://www.nytimes.com/2022/01/10/podcasts/the-daily/golden-globes-awards.html> [https://perma.cc/EEN8-QN7S].

218. See Allyson Hobbs, *A Hundred Years Later, “The Birth of a Nation” Hasn’t Gone Away*, NEW YORKER (Dec. 13, 2015), <https://www.newyorker.com/culture/culture-desk/hundred-years-later-birth-nation-hasnt-gone-away> [https://perma.cc/58XW-N83Y].

219. See Lauren Huff, *Academy Invites 819 New Members and Hits Diversity Goals*, ENT. WKLY. (June 30, 2020), <https://ew.com/awards/oscars/academy-invites-819-members-hits-diversity-goals-2020-class/> [https://perma.cc/74SX-QDGF].

220. See David Cox, *Did #OscarsSoWhite Work? Looking Beyond Hollywood’s Diversity Drought*, GUARDIAN (Feb. 25, 2017), <https://www.theguardian.com/film/2017/feb/25/did-oscars-so-white-work-looking-beyond-the-diversity-drought-in-hollywood> [https://perma.cc/W5CE-8NTC].

221. See Morgyn Joubert & Eunice Esomonu, *Are the Oscars Still Too White? Data Shows Little Progress*, NEWS @ NE. (Mar. 25, 2022), <https://news.northeastern.edu/2022/03/25/oscars-diverse-representation/> [https://perma.cc/UV4F-8M9Z].

222. See Hong Luo & Laurina Zhang, *Measuring the Impact of #MeToo on Gender Equity in Hollywood*, HARV. BUS. REV. (May 19, 2021), <https://hbr.org/2021/05/measuring-the-impact-of-metoo-on-gender-equity-in-hollywood> [https://perma.cc/TS6X-NFVA].

television series and films featuring more diverse casts of characters than broadcast and cable.²²³ More is more, and decentralizing access to audiences opens formerly blocked avenues to finding community and strength through media.

Beyond Hollywood, corporations have started making moves to address past harms their stereotypical images caused. In the summer of 2020, following the police murder of George Floyd, conversations about racism and the many insidious ways it infiltrates social expectations, beliefs, and systems made individuals and organizations alike eager to show their commitment to racial justice. While the funds companies promised to equity and justice initiatives did not materialize,²²⁴ multiple corporations took long overdue measures to distance themselves from discriminatory ideologies by retiring trademarks with blatantly harmful racist notions baked in; for example, not only was Aunt Jemima retired, but also Uncle Ben, Eskimo Pie, and the Washington Redskins, among others.²²⁵ Some scholars argue that it is not only trademarks that use people of color to advertise their products that perpetuate racist mythologies, but that any use of a human being's likeness to sell product can play a role in propping up systems of racial power.²²⁶ Advertisers create brands to foster emotional connections between consumers and the good or services on offer, and therefore bear some responsibility for the unintended effects of broadly promoting certain words or images. Just as show business must diversify, so too must marketing and advertising.

It is worth remembering the power of the dollar in making any of these decisions. In a capitalist system, consumers' decisions have the most power. For example, it was only after trending on Twitter that Quaker Oats decided to leave Aunt Jemima to the annals of history.²²⁷ While it is true that consumers can advocate for ourselves or make conscientious decisions about where to spend our dollars, capitalism is surely not the answer for addressing problematic mythologies endemic to the American psyche. First, those with less money to spend or less time to research brands, go out of their way to buy different ones,

223. See NIELSEN, BEING SEEN ON SCREEN: DIVERSE REPRESENTATION & INCLUSION ON TV 22 (2020), <https://www.nielsen.com/insights/2020/being-seen-on-screen-diverse-representation-and-inclusion-on-tv/> [<https://perma.cc/4T97-HLAP>].

224. See Tracy Jan, Jena McGregor & Megan Hoyer, *Corporate America's \$50 Billion Promise*, WASH. POST (Aug. 24, 2021), <https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/> [<https://perma.cc/W5KL-JE6V>].

225. See Jemima McEvoy, *Eskimo Pie Becomes Edy's Pie: Here Are All the Brands That Are Changing Racist Names and Packaging*, FORBES (Oct. 6, 2020), <https://www.forbes.com/sites/jemimamcevoy/2020/10/06/eskimo-pie-becomes-edys-pie-here-are-all-the-brands-that-are-changing-racist-names-and-packaging/?sh=7ea63d4e56a7> [<https://perma.cc/9H45-ECSX>].

226. See Debbie Millman, *Redesigning Blatantly Racist Brands Is Not Enough*, PRINTMAG (June 19, 2020), <https://www.printmag.com/branding-identity-design/rethinking-blatantly-racist-brands-is-not-enough/> [<https://perma.cc/VNU5-ULRF>].

227. See *id.*

or protest will remain unaccounted for. Second, it is, borrowing from Audre Lorde, an attempt at using the master's tools to dismantle the master's house.²²⁸ While such an approach works within the system with the weapons we have, it does nothing to subvert it. It works for a while but not forever.

The systems of power at work in the United States as we know them today, steeped as they are in the imperialist White supremacist capitalist patriarchy²²⁹ that established them, are tightly interwoven. Such interconnectedness can make it feel impossible to begin to tug at the string of one without unraveling the entire tapestry. But, as is generally the case when trying to design equitable systems rooted in justice, re-forming is superior to reform.²³⁰ For anyone daunted at the specter, may they take comfort knowing that Black women have, from the start, created and defined space for ourselves where there had been none.

CONCLUSION

The regulation of images yielded a set of stereotypes that objectified Black women. Even as they professed to prevent offense and promote cultural uplift, the MPPDA's and PTO's subjective standards approved offensive stereotypes about Black women for distribution. These stereotypes grew out of racist histories that denied personhood by depicting Black women almost exclusively as Mammies, Sapphires, and Jezebels. Because cultural images are constantly reimagined and reinterpreted—and because the industries that produced these images remain largely unchanged—these stereotypes continue to function as intended. Black women's familiarity with the systems that approved the images makes it possible for critical viewers to engage with entertainment and commercial images without internalizing them. But this is not always the case.

The onus for protecting Black women from harmful depictions has always rested with the viewers, whether what we look at is regulated or not. It is telling that the only way to combat such negative stereotypes is through active spectatorship, therein perpetuating the Strong Black Woman stereotype of self-reliance and independence. In examining the ongoing White “strategy of domination,” bell hooks's theory of Black woman spectatorship reminds “that

228 AUDRE LORDE, ‘THE MASTER’S TOOLS WILL NEVER DISMANTLE THE MASTER’S HOUSE’ 26–27 (1984).

229. See George Yancy & bell hooks, *bell hooks: Buddhism, the Beats and Loving Blackness*, N.Y. TIMES (Dec. 10, 2015) <https://archive.nytimes.com/opinionator.blogs.nytimes.com/author/bell-hooks/> [<https://perma.cc/4UR9-BAVD>].

230. See Mariame Kaba, *Police Abolition*, CALL YOUR GIRLFRIEND (June 5, 2020), <https://www.callyourgirlfriend.com/episodes/2020/06/05/police-abolition-mariame-kaba> [<https://perma.cc/NTM2-QXAP>] (borrowing from Andre Gortz to describe, “Reformist reforms are reforms that actually you have to come back in five years to undo because they become obstacles to what your goal is. And what you want is non-reformist reforms, which are reforms that actually give you a path towards being able to get to your actual goal: not putting more obstacles, not legitimizing the system more, not growing the system . . . I always ask people to write down the word reform, and then put R-E-dash-form. Re-form. But if the form is, by design, set up to be violent, what are you re-forming? You’re re-forming violence. Meaning you’re creating it all over again.”).

white slaveowners (men, women, and children) punished enslaved black people for looking.”²³¹ In many ways, Black women continue to be punished for looking. To transform us into objects, Black women are punished first for not being White women—for not being worthy of protection. As spectators and consumers, we are punished once more for taking in media and branding that denigrate our humanity. Neither the foundational strategy of domination nor the system of political power that first instituted the PTO’s and MPPDA’s subjective standards has been dismantled.

On a personal level, in cultivating resistant ways of looking and directly bucking stereotypes, Black women have established an aspirational model of Black womanhood that is an amalgamation of Mammies, Sapphires, and Jezebels. As a collective, Black women have focused the drive to overachieve and overcompensate into asserting control over our representation, from media to medicine, politics to the judiciary. Regardless of self-esteem or regulatory agencies’ subjective standards, Black women must still fend for ourselves. Thanks to centuries of conditioning, we will.

231. HOOKS, *supra* note 153, at 115.