

Parody Exception: Why trade mark owners should get the joke

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BACKGROUND

- Trade mark parody concerns the reproduction of a protected sign. This includes commenting upon the registered trade mark, or relying upon the values epitomised by the sign for comic or critical purposes.
- The parody exception in UK copyright law is a recent addition. This has led to calls for a similar parody exception in EU trade mark law.

METHODOLOGY

- Analysis of the legal issues and policies behind trade mark parodies under UK law. This is followed by a critical evaluation of how this current legal framework balances the rights of trade mark owners and the interests of the wider public.
- France is used as a comparison as French courts have progressively acknowledged a parody defence without any parody exception being present in its trade mark legislation.

KEY FINDINGS

- Altering the current legal system would reduce the problems between trade mark and copyright paradigms. Not only would it re-establish public legitimacy for the trade mark system while preserving right-holders' interests, it would also avoid discrepancies between overlapping intellectual property rights.
- The evolution of EU trade mark law involved increased protection for trade mark owners to secure the investment, communication and advertising purposes of their trade marks at the expense of the public interest.
- In order to determine whether a parody should be authorised or not, it is important to focus on whether the consumer could be led to believe that the trade mark owner

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either endorses the parody or that the parody originates from the trade mark owner. Essentially, absence of confusion is fundamental.

POLICY ISSUES

- A stronger EU framework is required to best preserve freedom of expression. The potential risks that may arise from having inadequate legislative limitations includes the trade mark protection against dilution becoming 'absolute'. The trade mark rights or freedom of expression are not absolute, consequently there must be a balance between the interests at stake.

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