JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

BALANCING FREE EXPRESSION AND BRAND RIGHTS THROUGH TRADEMARK PARODY LAW

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Abstract : This research study analyses the complex relationship between parody and trademark law in major jurisdictions—India, the United States, and the United Kingdom—while providing comparative observations from the European Union and Canada. This examines the intersection of parody, as an artistic and social critique, with trademark restrictions aimed at preventing consumer confusion and safeguarding corporate reputation. This paper conducts a thorough analysis of statutory frameworks, significant judicial rulings (including Tata v. Greenpeace, Mattel v. MCA Records, and Louis Vuitton v. Haute Diggity Dog), and constitutional principles such as freedom of expression, to critically assess the degree to which trademark regimes permit parody. The research examines the difficulties presented by commercial parodies, digital media, and "gripe sites," emphasizing significant legal disputes and justifications. It finishes by advocating for doctrinal and legislative reforms to establish a balanced framework that safeguards both brand integrity and the essential right to satire, humor, and critique in a contemporary democratic society.

Keywords : Trademark law, Parody, Freedom of expression, Brand dilution, Consumer confusion, Trademark infringement, Fair use doctrine, Satire in law, Tata vs. Greenpeace, Louis Vuitton v. Haute Diggity Dog, Jack Daniel's case, Rogers test, Commercial parody, Comparative trademark analysis, First Amendment, Article 19(1)(a), UK Trade Marks Act 1994, Non-commercial use, Digital trademark parody, Free speech and IP law.

Introduction

Parody occupies a unique intersection between free expression and trademark protection[1], often putting trademark law to the test. A parody of a brand – whether a satirical logo, a spoof advertisement, or a tongue-in-cheek product – can be a powerful form of social or artistic commentary. Yet it also involves the use of someone else's trademark, raising the specter of infringement, dilution, and reputational harm to brand owners. This research paper examines how trademark law treats

[1] Tim VanBockel, Trademark Parody: Balancing Free Speech and Brand Protection - Attorney Aaron Hall, Attorney Aaron Hall (2023).

parody in three primary jurisdictions – India, the United States, and the United Kingdom – with comparative insights from the European Union and Canada. By analyzing statutory frameworks, landmark cases, and scholarly commentary, we explore how each legal system balances the right to parody as free expression against the trademark owner's interest in avoiding consumer confusion and brand dilution. We further discuss major controversies (such as parody in commercial products and online "gripe" sites) and defenses available to parodists. Finally, we offer recommendations for achieving an appropriate balance between brand protection and free expression in today's digital and commercial landscape.

Defining Parody in the Trademark Context

In general, a **trademark parody** is the use of a well-known mark *in a humorous or satirical way*[2] to evoke the original brand while making some comment on it[3]. Courts have described parody in this context as a form of entertainment that **juxtaposes an irreverent imitation of a trademark with the original image** created by the brand's owner[4] [5]. In other words, a successful parody sends **two simultaneous messages**: that it is the original trademark, but also that it is *not* the original and is instead a joke[6]. This dual message is crucial – the parodist *borrows* just enough of the trademark's identity to remind the audience of the brand, but also **alters or exaggerates it** so that no reasonable consumer would think the brand owner is actually behind the parody. For example, calling a dog chew toy "Chewy Vuiton" and adorning it with a play on the Louis Vuitton pattern immediately brings the luxury brand to mind, but also signals to the public that it's an obvious spoof[7].

The **legal challenge** is that trademark law traditionally aims to prevent consumer confusion and protect a brand's goodwill[8], whereas parody often deliberately mimics a mark (risking confusion) and sometimes pokes fun in a way that could harm the mark's reputation (implicating dilution laws). Parody is not a **statutorily enshrined defense** in most trademark regimes – unlike copyright law, which in some countries (e.g. UK/EU) explicitly exempts parodic uses[9]. Thus, whether a parody infringes a trademark or is permissible often depends on how courts interpret existing doctrines like **likelihood of confusion**, **trademark "fair use"**, **freedom of expression** and **the scope of trademark rights**. We will now survey how the United States, United Kingdom, and India approach these issues, before turning to broader thematic analysis and comparative contexts.

United States: Legal Framework and Case Law

Statutory framework: U.S. trademark law is governed primarily by the Lanham Act. Trademark infringement under 15 U.S.C. § 1114/§ 1125(a) requires a showing that the defendant's use of a mark is likely to cause confusion as to the source or sponsorship of goods or services. Trademark dilution (for famous marks) is addressed in 15 U.S.C. § 1125(c), which protects famous marks against uses that **blur their distinctiveness or tarnish their image**, even absent confusion. The U.S. has a relatively well-developed body of law on parody within trademark doctrine. Notably, the **Trademark Dilution Revision Act (TDRA) of 2006** includes an *explicit exclusion* for certain parodic and expressive uses: "[a]ny fair use… of a famous mark by another *other than as a designation of*

[2] Marcella, TRADEMARK LAW: Parody and the Fine Line Between Humor and Trademark Infringement - Pardalis and Nohavicka Attorneys, Pardalis and Nohavicka Attorneys (2023).
[3] 102jw45-Do we need a parody exemption in UK and EU trade mark law?, Marks-clerk.com (2016).
[4] Compatibility and, InfoLawGroup LLP, InfoLawGroup LLP (2021).
[5] TFL, A Successful Parody: Louis Vuitton Malletier v. Haute Diggity Dog - The Fashion Law, The Fashion Law (2012).
[6] Id.
[7] Id.
[8] Lou, Qiqi. (2024). Consumer Confusion: The Sole Focus of Trademark Law. Lecture Notes in Education Psychology and Public Media. 69. 45-49. 10.54254/2753-7048/69/20240157.
[9] supra

source for the person's own goods or services, including for purposes of… parody, criticism, or commentary," as well as "noncommercial use," is not actionable as dilution[10]. This means that if someone uses a famous mark to parody or comment upon it (rather than as their own brand), and especially if the use is non-commercial, they have a statutory defence to a dilution claim[11]. There is no parallel statutory parody defence to *infringement* claims, but U.S. courts have developed **First Amendment**-based doctrines that often protect parodic trademark uses.

Freedom of expression and the Rogers test: In the U.S., the First Amendment's guarantee of free speech plays a critical role in trademark parody cases, especially where the parody has artistic or expressive value. Courts often apply the test from *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)[12], when trademarks are used in the titles or content of artistic works. Under the **Rogers test**, use of a trademark in an expressive work (like a song, movie, or book title) does not infringe unless it has **no artistic relevance** to the work or explicitly misleads consumers as to source[13]. This test was not initially created for parody, but it has been influential in cases like those involving parody songs or movies. For example, the Ninth Circuit in *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894 (9th Cir. 2002), applied a Rogers-like First Amendment analysis to the song "Barbie Girl" by the band Aqua[14]. In that case, toy company Mattel sued MCA Records over the pop song which poked fun at the Barbie doll brand. The court held that the song's title and lyrics were **expressive speech** protected by the First Amendment and did not imply any endorsement by Mattel; thus, Mattel's trademark claims (including dilution by tarnishment) failed [15]. In a famous quip, Judge Kozinski concluded the opinion with: *"The parties are advised to chill."*[16], signaling that no legal action was warranted against this form of pop culture parody. The *Barbie Girl* case is a landmark in affirming that trademarks cannot be used to quash artistic parodies and commentary in the U.S. [17]

Parody and likelihood of confusion: For traditional trademark infringement (which hinges on likelihood of confusion), U.S. courts consider parody as one factor in the analysis. A genuine parody, by its nature, *acknowledges* the original mark (to make the joke), but also typically **makes it clear that the parody is not the original**. As the Fourth Circuit explained, a parody "mimics the famous mark" *but simultaneously* "communicates… that it is not the famous mark, but is only satirizing it." [18]. This built-in signal reduces the likelihood that consumers will actually believe the parody is from the mark owner. Thus, although parody is *not an automatic defense*, it can substantially mitigate the risk of confusion. In *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F.3d 252 (4th Cir. 2007), the producer of "Chewy Vuiton" dog toys[19] was sued for infringement and dilution by luxury fashion house Louis Vuitton. The dog toys resembled miniature Louis Vuitton handbags, featuring a **playful twist on the name and logo** (e.g. "Chewy Vuiton" with a monogram "CV" pattern) [20].The Fourth Circuit held that the dog toys were a **"successful parody"**: no reasonable

[10] Michael R Graif, Supreme Court: Parody Not a Shield from Trademark Infringement, Natlawreview.com (2023).
[11] Overview of Trademark Law, Harvard.edu (2025).
[12] Contributors to, *American legal case*, Wikipedia.org (2015), https://en.wikipedia.org/wiki/Rogers_v._Grimaldi
[13] Michael R Graif, Supreme Court: Parody Not a Shield from Trademark Infringement, Natlawreview.com (2023).
[14] REVERA, I'm a Barbie girl, in an IP disputes world: how the Barbie brand protected IP — REVERA, REVERA (2023).
[15] Id.
[16] Id.
[17] Id.
[18] Louis Vuitton v. Haute Diggity Dog, No. 06-2267 (4th Cir. 2007), Justia Law (2025).
[19] The Line Between Trademark Infringement and Parody | Gordon E. R. Troy, PC, Webtm.com (2017).
[20] TFL, A Successful Parody: Louis Vuitton Malletier v. Haute Diggity Dog - The Fashion Law, The Fashion Law (2012).

consumer buying a plush chew toy would think Louis Vuitton made or endorsed it[21]. After weighing the standard likelihood-of-confusion factors (such as mark similarity, product proximity, intent, etc.) in light of the obvious parody, the court agreed that consumer confusion was not likely[22]. In fact, the parodic elements *differentiated* the product enough from the original. The court also noted that an effective parody **conveys two contradictory messages** – it imitates the original but also signals it's not the original[23]– and that second message (the "joke" that it's a parody) is what prevents confusion [24]. U.S. cases thus indicate that when analyzing confusion, the context of parody is crucial: it often *assuages* confusion rather than increases it [25].

Parody and dilution in the U.S.: In *Louis Vuitton v. Haute Diggity Dog*, the court also addressed dilution. Louis Vuitton argued that even if consumers weren't confused, the "Chewy Vuiton" toy **whittled away the distinctiveness** of its famous mark and **tarnished** its luxury allure. The Fourth Circuit rejected the dilution claim. It reasoned that because the defendant's use was a parody, it was unlikely to impair (blur) the distinctiveness of Louis Vuitton's mark in the eyes of the public. Importantly, the court observed that **parody inherently depends on the strength and recognition of the original mark** – indeed, "because the famous mark is particularly strong and distinctive, it becomes more likely that a parody will not impair the distinctiveness of the mark" [26] . In other words, when a mark is extremely well-known, consumers are even less likely to think a parody of it is actually from the brand owner, and the parody won't *blur* the link in consumers' minds between the real mark and the brand[27]. As for tarnishment, the "Chewy Vuiton" parody was not conveying any gross or obscene association with Louis Vuitton – it was a gentle joke, not something that would truly harm the mark's reputation. Moreover, under the TDRA's statutory exemption, parody and satire *not used as actual trademarks* are shielded. Since Haute Diggity Dog used "Chewy Vuiton" *as a joke name for a product it clearly labeled as its own*, and not to pass off its goods as Louis Vuitton's, the use fell into a protected category. (One caveat: the TDRA's exemption has an important condition – it *does not apply if the parody mark is used as a designation of source for the defendant's own goods*[28]. In this case, "Chewy Vuiton" was arguably the name of the defendant's product line – i.e. used as a mark – but the court still found no dilution, effectively because the parody was obvious and non-harmful.[29]

Recent developments – the Jack Daniel's case: The Supreme Court's decision in *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. ___ (2023), has added nuance to U.S. parody law[30]. VIP Products sold a dog toy called "Bad Spaniels" that mimicked a Jack Daniel's whiskey bottle, complete with funny taglines ("The Old No. 2 On Your Tennessee Carpet" in place of Jack Daniel's slogan).[31] VIP argued this was a nominative, expressive parody protected by the First Amendment and Rogers test, and that its humorous use of Jack Daniel's trade dress was non-confusing and shielded from dilution as noncommercial commentary. The Ninth

[21] Id.
[22] TFL, A Successful Parody: Louis Vuitton Malletier v. Haute Diggity Dog - The Fashion Law, The Fashion Law (2012).
[23] Id.
[24] Id.
[25] Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC, 507 F.3d 252 (4th Cir. 2007).
[26] Id.
[27] Id.
[28] Michael R Graif, Supreme Court: Parody Not a Shield from Trademark Infringement, Natlawreview.com (2023).
[29] supra
[30] efelle creative, IP & Technology Law Trends | What Lies Ahead for Jack Daniel's and for the Rogers Test? | Miller Nash LLP, Millernash.com (2023).
[31] supra

Circuit had agreed, treating the toy as an expressive work and invoking Rogers to bar the infringement claim[32], and finding the dilution claim defeated by the parody/fair-use exemption. However, the Supreme Court **reversed**, holding that when a trademark is used *as a trademark* (i.e., to identify the source of a product), no special threshold test (like Rogers) applies – the case should be evaluated under normal infringement standards[33]. The Court emphasized that **parody is not a free pass**: if the parody is itself being used as a brand name or trade dress of a commercial product, it can still infringe or dilute if it meets those criteria.[34]That said, the Court acknowledged that obvious parodies *will often not be confusing* in practice[35]. Justice Kagan noted that consumers seeing a dog toy that "openly mocks" a famous whiskey *"will not necessarily believe"* the whiskey company made it[36]– parody *can* diminish likelihood of confusion, but it doesn't get an *automatic* First Amendment shield when used on a product line. On the dilution point, the Supreme Court highlighted that the Lanham Act's fair use exclusion for parody has its own limitation: it **does not shield uses of a famous mark as a designation of source for the person's own goods**[37]. Because VIP used the "Bad Spaniels" imagery as branding for its toy, it could not claim the dilution exemption. The *Jack Daniel's* ruling thus refines U.S. law: comedic or parodic intent alone does not trigger any heightened test if the use is trademark-like, but the parody nature should be considered in the standard analysis of confusion or dilution. This ensures that *purely expressive* parodies (like the song "Barbie Girl" or a parody in a film) remain strongly protected by the First Amendment[38], while *product parodies* get a fair but not free ride.

In summary, U.S. law provides significant breathing room for parody. Through **case law** and the TDRA's exemptions, American courts have generally sided with parodists when their work is non-commercial or clearly expressive. Key cases like *Mattel v. MCA* and *Louis Vuitton v. Haute Diggity Dog* illustrate that a well-executed parody – one that communicates it's a joke – is unlikely to be found infringing or dilutive.[39] However, U.S. law stops short of a blanket immunity: each case turns on whether consumers would be confused or whether the parody unfairly undermines the value of a mark. The First Amendment acts as a crucial check, ensuring trademark rights are not interpreted so broadly as to silence humorous or critical speech[40]. The balance struck in the U.S. is therefore relatively pro-parody, especially compared to other jurisdictions, but it continues to evolve as new scenarios (like parody brands on commercial goods) emerge.

United Kingdom: Legal Framework and Case Law

Statutory framework: The UK's trademark law is rooted in the *Trade Marks Act 1994* (TMA 1994), which implemented EU trademark directives. Under Section 10 of the TMA 1994, trademark infringement occurs if a sign is used **in the course of trade** in a manner that either confuses consumers (Sections 10(1) and 10(2)) or, in the case of famous marks, **takes unfair advantage of or**

[32] supra
[33] supra
[34] supra
[35] supra
[36] supra
[37] supra
[38] Rogers Test for Lanham Act Claims Does Not Require that Expressive Work's Title Reference Senior Mark: Ninth Circuit | Practical Law, Westlaw.com (2017).
[39] supra
[40] supra

is detrimental to the distinctive character or repute[41] of the mark (Section 10(3))[42]. Unlike U.S. law, the UK (and historically the EU) does *not* explicitly list parody as an exception or defense to infringement[43]. The law does contain general exemptions (Section 11) for descriptive use, use of one's own name, etc., and a requirement that most infringing uses be in a commercial context (the "course of trade" requirement). But there is currently **no specific "fair use" or parody exception** in UK trademark statutes.[44]

That said, certain features of UK/EU law provide *implicit* space for parody. First, if a parody use is **non-commercial** (for example, an activist's protest poster or a purely artistic work sold *at most* at cost), it might not be considered use "in the course of trade," and thus would not even trigger infringement under Section 10. This was similarly reflected in EU law: the EU Trade Mark Directive (and now UK law post-Brexit, which still mirrors it) require use in commerce for infringement, inherently excluding purely private or non-commercial parodic expression. Second, to infringe under Section 10(2) (similar goods/services), the use must cause a **likelihood of confusion**. A true parody, as courts have noted, tends *not* to confuse – *"an absence of confusion is an essential characteristic of a successful parody"*. If the parody goes so far that consumers actually confuse source, it's arguably not a successful parody (or at least, the parodist failed to differentiate it enough). Thus, in principle a parody that clearly signals itself as a joke would avoid confusion and therefore avoid infringement under Section 10(2).[45]

For famous marks, Section 10(3) (akin to dilution protection) is more challenging for parodists: it doesn't require confusion, only that the use of a similar mark without due cause causes unfair advantage or detriment to the mark's distinctiveness or reputation. A parody by definition *takes advantage of the mark's recognition* (to make the joke) and sometimes *casts the mark in a negative light*, which could be framed as a "detriment to repute." The UK/EU law does allow a defense if the use has "due cause" – one might argue that **expressive or humorous use is due cause** – but this is not clearly settled in case law. A recent EU directive (Directive (EU) 2015/2436) even added a supportive recital. **Recital 27** acknowledges that use of trademarks **"for the purpose of artistic expression"** should be considered fair as long as it is in accordance with honest practices and respects freedom of expression. This suggests an intention to accommodate parody/artistic uses within trademark law's limits. However, Recital 27 is not an operative provision, and its caveat is important: if a use **"discredits or denigrates"** the mark, it may fail the "honest practices" condition. Indeed, the Court of Justice of the EU (CJEU) in *Gillette v. LA-Laboratories* (2005) held that any use of a mark that is dishonest – such as one that tarnishes the mark's image – would not be protected. This means an *aggressive* parody that truly insults or damages a brand's reputation might still be infringing in the UK/EU context. In short, UK law currently provides no explicit parody safe harbor; instead, a parodist's fate lies in persuading the court that their use either falls outside the scope of infringement (no confusion, no commercial use) or should be excused in light of free expression principles.

Freedom of expression in UK trademark cases: The UK, as a party to the European Convention on Human Rights, has embedded freedom of expression (Article 10 ECHR) in its law via the Human Rights Act 1998. Courts are obligated, as far as possible, to

[41] Guide to Trade Mark Litigation in the UK, D Young & Co (2021).
[42] M. Bohaczewski, *Conflicts Between Trade Mark Rights and Freedom of Expression Under EU Trade Mark Law: Reality or Illusion?*, 51 IIC 856 (2020), https://doi.org/10.1007/s40319-020-00964-5.
[43] 102jw45-Do we need a parody exemption in UK and EU trade mark law?, Marks-clerk.com (2016).
[44] supra
[45] supra

interpret and apply legislation[46] in a manner compatible with free expression. In practice, however, *direct* conflicts between trademark enforcement and free speech have been relatively rare in reported UK cases. There isn't a deep roster of UK case law where a defendant explicitly prevailed by invoking free expression to justify a trademark parody. More often, parodic or satirical uses of marks have been resolved on the **traditional trademark elements** – e.g., by finding no confusion or that the use was not truly commercial – without a court needing to squarely confront Article 10.

One often-cited dictum in UK trademark lore is the "**moron in a hurry**" test, originating from *Morning Star Cooperative Society v. Express Newspapers* (1979). In that passing-off case, Justice Foster dismissed any likelihood of confusion between the stodgy *Morning Star* newspaper and the tabloid *Daily Star*, remarking that *"only a moron in a hurry"* would confuse the two[47]. This colorful phrase encapsulates a judicial intuition that trivial similarities or obvious spoofs should not be overestimated in terms of consumer confusion. While not an official legal test, British judges and lawyers sometimes invoke the "moron in a hurry" standard when dealing with parody or satire – essentially to say that the average, reasonable consumer is not so gullible as to mistake a clear parody for the real thing[48]. Thus, in analyzing a parody, a UK court might similarly conclude that *no one but a very careless or foolish person* would think, for example, that a "McDiabetes" fast-food skit actually came from McDonald's.[49]

Notable examples and case studies in the UK: The UK has had relatively few high-profile published decisions purely on trademark parody, but a couple of instances shed light on the approach:

- *Laugh It Off Enterprises v. South African Breweries* (a South African case but influential abroad) is illustrative. There, the defendant sold T-shirts parodying the plaintiff's "Black Label" beer logo with the text "Black Labour, White Guilt". The South African Constitutional Court ultimately upheld this as *free speech*, despite the trademark owner's tarnishment claim. While not a UK/EU case, it was noted by commentators in common law jurisdictions as a robust affirmation of free expression in trademark parody disputes. It highlighted that where the expressive content (social commentary) is strong, it can outweigh the brand owner's interest in reputation – a principle UK courts might find persuasive when applying Human Rights considerations.
- In the UK context, the **Banksy "Dismaland"** exhibition (2015) can be mentioned. Famed street artist Banksy created a pop-up art installation mimicking a dystopian theme park, explicitly parodying Disney's Disneyland (even the name "Dismaland" and a distorted image of Disney's Little Mermaid were used). Disney, notably, did not sue, perhaps to avoid bad publicity, but legal analysts noted that Disney *could* have had a prima facie trademark case since their marks and imagery were used commercially (visitors paid admission) without permission. The fact that Disney stayed its hand might suggest that, practically, **brand owners in the UK sometimes tolerate parodies** to avoid PR backlash – and it also left unanswered how a court would have balanced Banksy's artistic/political expression against Disney's rights.

[46] Teresa Harris, *The Role of the Supreme Court in Interpreting Laws - Legal Issues That Matter Today*, Legal Issues That Matter Today (2023), https://thanniti.com/the-role-of-the-supreme-court-in-interpreting-laws/
[47] Moron in a Hurry | Technology and IP Law Glossary, Ipglossary.com (2013).
[48] Id.
[49] supra

- A recent case touching on these issues is the **Odee Fridriksson (Samherji)** case in 2024 (High Court, England and Wales). An activist, Odee Fridriksson, set up a fake website and press release[50] impersonating an Icelandic fishing company (Samherji) to apologize for an actual corporate scandal. He used the company's name and logo, essentially a *false attribution* parody aimed at shaming the company[51]. The stunt crossed from parody into deception – indeed, one news outlet reported the fake apology as if it were real. Samherji sued for trademark infringement (passing off) and other claims. The High Court granted summary judgment for the company[52], finding that this use went beyond fair satire into the realm of *misrepresentation*. The court found clear **passing off and trademark infringement**[53], noting that one cannot use another's mark in a way that confuses the public and damages the company's goodwill, even if the motive is expressive or political. The activist's defense was freedom of expression (Article 10 ECHR), especially since his was a protest about a matter of public interest. But the court held that impersonating the company's own communications was not justified by free speech – especially as the hoax was *too effective*, causing actual confusion in media reports. This case underscores that UK courts *will* enforce trademark rights against a parodist if the parody isn't clearly identified as such and actually fools consumers. It draws a line: **parody must not masquerade as the genuine article**. A subtle, misleading parody has weak protection, whereas a *overt* parody (e.g. a comedy sketch that no reasonable person would think is official) would have a much stronger position.[54]

Overall, the UK position on trademark parody is cautious. The law as written offers no automatic privilege for parody; instead, it relies on the **elasticity of existing concepts** like confusion, "due cause," and the courts' equitable sensibilities. *De facto*, non-commercial or obviously satirical uses tend to avoid legal liability – either because the brand owner doesn't sue, or because a judge finds no confusion or simply exercises restraint knowing free expression is at stake. However, the lack of a clear parody defense means there is always a risk in the UK that a parody could be deemed infringing if a court views it as crossing into the territory of unfair advantage or tarnishment without sufficient justification. Scholars and practitioners have debated whether the UK and EU *ought* to introduce a formal parody exception to align with copyright law's parody exception and to prevent trademark owners from using IP to stifle criticism. Advocates say this would level the playing field for free speech, while critics worry it would become a loophole for pirates and counterfeiters who simply claim "parody". As of now, the UK leans toward protecting trademark owners unless a parody clearly falls outside the core scope of infringement or can be defended on general principles. Each dispute is thus resolved on its facts, with a watchful eye on whether the parody is **funny but harmless – or harmful and unfair** to the brand's rights.[55]

[50] Rosie Burbidge, *Is an artist's fake website protected by freedom of expression?*, Rosie Burbidge (2024).
[51] High Court delivers judgment considering the limits to artist's freedom of expression and the defences of pastiche and parody - Wiggin LLP, Wiggin LLP (2024).
[52] Samherji HF v. Oddur Fridriksson - Global Freedom of Expression, Global Freedom of Expression (2024),
[53] Passing Off Trademark Infringement and Remedies - Pymes law firm and SMEs in America and Europe, Pymes law firm and SMEs in America and Europe (2024).
[54] supra
[55] 102jw45-Do we need a parody exemption in UK and EU trade mark law?, Marks-clerk.com (2016).

India: Legal Framework and Case Law

Statutory framework: India's trademark law is principally governed by the *Trade Marks Act, 1999*. Similar to the UK, it provides for infringement when a mark is used in the course of trade in a manner likely to deceive or cause confusion (Sections 29(1) and 29(2)), and it also protects well-known trademarks against dilution-like harm (Section 29(4) forbids use of a mark that, without due cause, takes unfair advantage of or is detrimental to the distinctive character or repute of a famous mark). The Indian Act does not explicitly mention parody or satire as a defense or exception. However, Indian jurisprudence and constitutional principles have carved a space for parody through the lens of **freedom of speech and expression**.

Constitutional backdrop: Article 19(1)(a) of the Constitution of India guarantees the fundamental right to freedom of speech and expression to all citizens. While this right is subject to reasonable restrictions (Article 19(2)), those restrictions are specific – e.g., sovereignty and integrity of India, security of the state, public order, decency or morality, defamation, etc. Notably, protection of trademark rights *per se* is not an enumerated ground to restrict speech (though "defamation" and "incitement to an offence" can sometimes be implicated in IP cases). This constitutional environment means that if the enforcement of trademark law were to unduly curtail a person's speech (for instance, political or artistic parody), Indian courts are attentive to the **balance** between private IP rights and the public constitutional right of expression.

Tata Sons Limited v. Greenpeace International (2011): The leading Indian case on trademark parody is *Tata Sons Ltd. v. Greenpeace International*, decided by the Delhi High Court[56]. The facts are illustrative: Tata Sons, an industrial conglomerate, sued the environmental NGO Greenpeace for trademark infringement and defamation after Greenpeace used the "TATA" name and logo in a critical online **game** called "Turtle vs. Tata". The game parodied the classic Pac-Man, depicting small turtles and a maze, where the Tata logo was portrayed as the opponent – as a commentary on Tata's construction of a port that allegedly endangered Olive Ridley turtles. Tata sought an injunction to take down the game, claiming unauthorized use of its trademark and harm to its reputation. Greenpeace argued that its use of the Tata mark was a **non-commercial, communicative use** aimed at criticism and raising public awareness, thus protected by free speech.

The Delhi High Court *denied the injunction*, in a decision that strongly affirmed freedom of expression in the context of trademark use.The court held that **when balancing intellectual property rights against free speech, several factors tipped the scales in favor of speech** in this case: Greenpeace's use was *primarily communicative, not commercial*, and the context was clearly one of **parody and criticism** of Tata, not trade rivalry. The court observed that mere use of a trademark in a satirical or critical manner does not automatically amount to infringement – particularly when the use is **non-commercial and there is no consumer confusion** about source. Indeed, Greenpeace was not selling goods or services under the Tata mark; it was using the mark to refer to Tata itself as the object of criticism (akin to nominative fair use, though that term isn't formally used in Indian law). Justice Ravindra Bhat (as

[56] Tata Sons Limited v. Greenpeace International - Global Freedom of Expression, Global Freedom of Expression (2024).

he then was) went further to say that whether one could have conveyed the message by other means, or whether the parody was in good taste or not, are *irrelevant* considerations. What mattered is that **the expression was genuine criticism** and not a disguised commerce. In ringing terms, the Court held that *"when the expression is primarily communicative rather than commercial,"* and especially when it is not made by a competitor, trademark law should not be stretched to **stifle commentary or criticism**. The court also labeled the Tata lawsuit as a form of SLAPP (Strategic Litigation Against Public Participation) – implying it was an attempt to bully a critic into silence under cover of IP law. In the absence of any **false statement of fact** (defamation) or evidence of actual malice, an interim gag order was deemed an unconstitutional restraint on speech . This case set an important precedent in India that **parodic or satirical uses of trademarks can be protected as free expression**, especially in advocacy or political contexts.

Following *Tata v. Greenpeace*, the "defense of parody" in India has gained recognition in commentary as well. It demonstrated that Indian courts are willing to read the Trademark Act in light of constitutional values – effectively reading in a parody defense on free speech grounds even though the black-letter statute doesn't list it[57]. The Tata decision stressed that trademark rights are not absolute and **cannot be used as a pretext to quash criticism**, particularly when the use of the mark is not for trade.

Other Indian cases touching on parody are scarce, but Indian courts have historically been mindful of free speech in IP contexts. For example, in the context of copyright (which has a statutorily enumerated fair dealing defense), Indian courts have allowed political caricatures and parodies under free expression principles. By analogy, trademark parodies – while not explicitly exempted – are likely to receive sympathy if they are part of discourse on issues of public interest or artistic expression.

One can analogize the Greenpeace case to a hypothetical scenario: if an Indian comedian uses a well-known brand's name in a skit to make a social point, or an artist creates a pop-art piece mimicking a corporate logo as satire, Indian courts – following the Tata precedent – would examine whether that use is truly *communicative and non-commercial*. If yes, the courts would be inclined to protect it, absent any misleading of consumers. Of course, if someone in India attempted a "parody" merely as a pretext to sell look-alike goods (for instance, selling "Coca-Cola" with a slight twist and calling it parody), that would find no shelter and be regular infringement.

In sum, **India's trademark regime** has shown flexibility to accommodate parody, mainly through constitutional adjudication. The **Trade Marks Act 1999** by itself lacks a parody clause, but the judiciary has filled that gap by emphasizing *substance over form*: if the use of the mark serves an informative, critical or joke purpose and doesn't function as a trademark for the user's goods, it may be allowed. This approach aligns with India's democratic free speech tradition. However, it is worth noting that the analysis might change if the parody crosses into *commercial exploitation*. Indian courts have yet to fully address a situation like a parody merchandise sold for profit – that would raise the question of whether it remains "primarily communicative" or becomes commercial. It's likely the courts would then scrutinize if consumers could be confused or if the parody dilutes the mark's goodwill unjustifiably.

[57] Parody: Fair Use Or Infringement?, Mondaq.com (2018).

The fundamental stance, though, as reflected in *Tata v. Greenpeace*, is that **satire and critique are legitimate**, and trademark law should not be misused to chill such expression[58].

European Union and Canadian Perspectives

While our focus is on the U.S., UK, and India, it is illuminating to consider how other jurisdictions, notably the **EU and Canada**, handle trademark parodies as a comparative backdrop.

European Union: Historically, EU trademark law (as embodied in regulations and directives) did not list parody as a defense. The EU followed a similar framework to the UK: infringement required use "in the course of trade" and a likelihood of confusion (or, for famous marks, unfair advantage or detriment to repute/distinctiveness without due cause). As mentioned, the 2015 EU Trademark Directive introduced Recital 27, acknowledging artistic and satirical use as potentially fair[59] . The CJEU has not yet definitively ruled on a pure trademark parody case under this recital. However, there are analogous developments: in the field of copyright, the CJEU's *Deckmyn v. Vandersteen* (2014) decision defined the contours of a parody exception, requiring a parody to evoke an existing work while being noticeably different and expressing humor or mockery. By analogy, one might expect the EU to apply similar reasoning to trademark parodies: the use should **remind the public of the mark** but also be sufficiently transformed or offset by humor that it's not confused with normal use of the mark. Additionally, EU fundamental rights (Article 11 of the EU Charter of Fundamental Rights covers freedom of expression) play a role. Some national courts in Europe have been receptive to parody on free speech grounds.

A prominent example came from **France**. In the early 2000s, oil company ExxonMobil (Esso in France) sued Greenpeace over the activist group's **"STOP Esso"** campaign, which featured a parody of the Esso logo with the letters "SS" in Esso replaced by dollar signs visually alluded to the Nazi "SS" symbol)[60] . However, on appeal, the French *Cour de Cassation* (Supreme Court) in 2008 overturned the injunction and **allowed Greenpeace's parody** as a form of free expression and legitimate criticism[61]. The French court recognized that trademark rights have limits, and that **"brand-jamming"** or caricaturing a logo for non-profit protest can be lawful, so long as it's clear the use is satirical and not a competing trade use. This French case resonates with the spirit of the EU Recital 27 – it suggests that **denigrating or unflattering parodies might be tolerated** if they are part of political or artistic discourse, though this remains a case-by-case determination.[62]

Elsewhere in Europe, outcomes vary. In Germany, for instance, freedom of expression is strongly protected by the Basic Law, but German courts have also upheld trademark claims against certain parodies (especially where a parody on a product might be seen as commercially unfair). The evolving EU trademark regime, post-Brexit, gives individual countries some latitude, but also encourages respect for expression. It is likely that **EU courts would strive for a fair balance**: if a parody clearly doesn't confuse

[58] Tata Sons Limited v. Greenpeace International - Global Freedom of Expression, Global Freedom of Expression (2024).
[59] 102jw45-Do we need a parody exemption in UK and EU trade mark law?, Marks-clerk.com (2016).
[60] The Memory Hole > ExxonMobil Suppresses Parody Logo Created by Greenpeace, Elastic.org (2025).
[61] Can brand-jamming trigger IP infringement claims?, IP Helpdesk (2023).
[62] Id.

consumers and is seen as an artistic or critical use, they might find "due cause" and no liability, whereas a parody that is essentially a sneaky commercial free-ride would be stopped.

Canada: Canadian trademark law, like the UK's, does not explicitly exempt parody. Under Canada's *Trademarks Act*, infringement requires use of a confusing mark in the normal course of trade, and there is also a unique provision (Section 22) against "depreciation of goodwill" (similar to dilution/tarnishment) of a registered mark by unauthorized use. Canada also has the **Charter of Rights and Freedoms** guaranteeing freedom of expression (Section 2(b)), which can influence the interpretation of statutes, though Canadian courts have been somewhat conservative in directly applying the Charter to private IP disputes.

One of the most notable Canadian cases is *Compagnie Générale des Établissements Michelin v. CAW (1997)*, concerning **union parody and protest**. The Michelin tire company sued a union (CAW) that, during a labor dispute, distributed leaflets featuring Michelin's famed Bibendum (Michelin Man) mascot **depicted with a snarl, crushing workers** – an obvious critique of Michelin's labor practices[63]. Michelin claimed both copyright infringement (of the mascot image) and trademark infringement/tarnishment. The Federal Court of Canada ruled that the union's use, while it *did* infringe Michelin's copyright (since Canada at the time had no fair dealing exception for parody), did *not* infringe the trademark or depreciate goodwill[64]. The reasoning was that the union was not using the Michelin mark **"as a trademark" or in association with goods/services for profit** – it was a *non-commercial, expressive use* in a labor dispute context. Essentially, the court found no use in the normal course of trade, and also that there was no likelihood of confusion: viewers of the leaflet wouldn't think Michelin endorsed a graphic that attacked its own image.[65] Thus, the trademark claim was dismissed (though Michelin still won on copyright, forcing the union to cease using the exact image). This case foreshadowed a pattern: **non-commercial parody in Canada might avoid trademark liability due to the "use" and confusion requirements**, even absent an explicit parody defense.

Fast-forward to more recent times, Canada amended its Copyright Act in 2012 to add parody and satire as permitted fair dealing uses, but no such amendment was made to trademark law. This became pertinent in *United Airlines v. Jeremy Cooperstock* (2017 FC 616), a modern Canadian case dealing with a **gripe site**. Cooperstock, a dissatisfied customer, ran a website "Untied.com" (an anagram of "United") which harshly criticized United Airlines and logged customer complaints. He liberally used United's trademarks and logos on the site (often with subversive tweaks, like a frowny face on United's globe logo)[66]. He argued that this was an obvious parody or protest, not a commercial operation – he wasn't selling airline tickets or competing with United. However, the Federal Court found against him on trademark grounds. The court held that by operating a detailed website for the public with United's marks, Cooperstock was providing a **service** (information service, forum for complaints) and thus engaging in "commerce" to that extent[67]. It also found that his use of a domain name confusingly similar to United's and the heavy replication of United's

[63] Compagnie Générale des Établissements Michelin-Michelin & Cie v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW–Canada), [1996] F.C.J. No. 1685 (Fed. Ct.).
[64] Id.
[65] Compagnie Générale des Établissements Michelin-Michelin & Cie v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), [1997] 2 FC 306
[66] Tamara Céline Winegust, Untied tied up… United Airlines takes aim at complaint website (Part I), Lexology (2017).
[67] Id.

branding could mislead some consumers, at least initially (so-called initial interest confusion or confusion as to affiliation)[68]. The court thus ruled he infringed United's marks and caused depreciation of goodwill, rejecting parody as a defense. Cooperstock's attempt to invoke free expression did not override the Trademarks Act in the court's view, especially since less misleading ways to protest were available (indeed, he added a disclaimer after being sued, but the court found that insufficient to cure the mischief). The Cooperstock case shows the *flip side* in Canada: a parody or criticism site that isn't clearly distinguished from the official mark (using the mark itself in a manner that could confuse) will not be immune. In that sense, Canadian law tracked the reasoning of the UK's Samherji case – **parody ceases to protect when it deceives or very closely imitates the brand environment**. Cooperstock appealed, but the case ultimately settled[69], leaving the trial decision as the main word on the matter.

Interestingly, Canadian jurisprudence contrasts the Michelin case (union pamphlet – allowed) with Cooperstock (gripe site – not allowed). The difference largely comes down to how the use was implemented: the union's parody was on a pamphlet unlikely to be seen as coming from Michelin, whereas Cooperstock's website *masqueraded* as a United-themed site (even the domain "Untied.com" is one typo away from "United.com"). This underscores a pragmatic theme in many jurisdictions: **parody must clearly differentiate itself from the original source at some level**. If it does, some courts (even without a formal parody rule) will find no infringement; if it doesn't, even a humorous intent won't save it.

In Canada, there have been calls in academic circles for a more explicit recognition of parody rights in trademark law, akin to the copyright changes[70]. So far, the legislature hasn't done so, meaning Canadian parodists rely on the traditional confines of "use, confusion, and freedom of expression" to make their case. The Charter could, in theory, be invoked if someone argued the Trademarks Act's application in a given case unduly violates free expression, but that would be a high-stakes argument requiring constitutional override, and it hasn't yet produced a landmark ruling in trademark law.

Summary of EU/Canada: The EU appears to be inching toward *acknowledging* parody as a fair use, especially for artistic expression, but within limits of "honest practices" (which likely exclude truly maligning or very deceptive parodies). Individual European countries vary, with some courts giving more leeway when parody intersects with political speech (France's pro-Greenpeace stance) and others being stricter. Canada's approach, much like the UK's, lacks a clear exemption but in practice distinguishes between obvious non-commercial spoofs (which may be let off the hook) and more confusable or commercial ones (which result in liability). Both jurisdictions highlight the same core tensions we see elsewhere: *How to prevent consumer deception and brand harm while not suppressing legitimate critique or creativity.*

[68] When parody misses the mark, Worldtrademarkreview.com (2019).
[69] Parody Case Settles, Cippic.ca (2019).
[70] Michael Rosen, Fair Use After Bill C-11: The Development of the Parody and Satire Defense in Canadian, US, and International Copyright Law,

In the next sections, we delve into these tensions explicitly – examining the interplay between **parody, freedom of expression, consumer confusion, and brand dilution**, and then outlining major controversies and defenses. This comparative understanding will inform that analysis and our ultimate recommendations.

Parody, Freedom of Expression, and Trademark Enforcement

Parody is fundamentally a **vehicle of expression** – often social commentary, ridicule, or artistic humor. Thus, any legal discussion of parody in trademark law cannot escape the orbit of **freedom of expression**. All three primary jurisdictions under study recognize free expression to varying extents: the U.S. under the First Amendment, India under Article 19(1)(a) of its Constitution, and the UK via the Human Rights Act (ECHR Article 10). The key question is how these free speech principles mediate the application of trademark laws when a parody is at issue.

In the United States, **free speech is a dominant consideration**. U.S. courts explicitly frame many parody disputes as balancing trademark rights against First Amendment interests. We saw this in *Mattel v. MCA* ("Barbie Girl"), where the Ninth Circuit underscored that trademark laws "must be applied in a manner consistent with the First Amendment" – leading to use of the Rogers test to avoid suppressing a song's artistic content[71] . In dilution cases, the First Amendment is indirectly baked in via the statutory exclusion for noncommercial and parodic uses[72] (Congress intended to **"balance… the law"** by exempting parody and criticism from dilution[73]). Thus, in the U.S., there is a relatively clear mandate: if a trademark claim would penalize someone's expression (and that expression isn't purely a commercial advertisement with no expressive content), courts tilt toward protecting the expression. Even the Supreme Court in *Jack Daniel's v. VIP* – while removing an overly broad shield – reiterated that *obvious parody might not confuse consumers*, implicitly crediting the importance of humor and commentary in the analysis[74]. Scholarship in the U.S. has argued that while parody is protected, courts have perhaps leaned too much on parody as a *special case* instead of more broadly protecting speech – essentially, that *relying on parody as a safe harbor* has prevented a fuller reckoning with how free speech and trademark overlap[75]. For instance, Prof. Christine Farley observes that courts use parody as the paradigmatic example of permissible trademark use, but this focus might be distracting from the need to craft a *general First Amendment limiting principle* for trademark law[76]. Nonetheless, parody has been the wedge that opened the door for speech considerations in trademark jurisprudence.

In India, **freedom of expression is a constitutional fundamental right**, and Indian courts have directly applied it to trademark disputes (*Tata v. Greenpeace* being the prime example). Indian judges have explicitly said that *criticizing a trademark owner by using their mark* (in commentary or parody) engages 19(1)(a) rights, and thus any injunction or restriction must be carefully weighed so as not to violate the constitution. Because of this, Indian courts are reluctant to issue gag orders or removals of allegedly infringing

[71] REVERA, I'm a Barbie girl, in an IP disputes world: how the Barbie brand protected IP — REVERA, REVERA (2023).
[72] Michael R Graif, Supreme Court: Parody Not a Shield from Trademark Infringement, Natlawreview.com (2023).
[73] Deborah R. Gerhardt, The 2006 Trademark Dilution Revision Act Rolls out a Luxury Claim and a Parody Exemption, 8 N.C. J.L. & Tech. 205 (2007).
[74] supra
[75] Christine Farley, Trademark Fair Use is No Joke, 42 Cardozo Arts and Entertainment Law Review 725 (2025).
[76] Id.

parodic content without a full trial – doing so could be a **prior restraint on speech**, which is anathema in Indian free speech jurisprudence. The Delhi High Court's stance that **trademarks as objects of criticism do not create a presumption of illegality** when the use is noncommercial is a clear articulation of speech taking priority. Of course, if the parody were merely a cover for a competitor to confuse consumers or for someone to defame with false statements, then the speech protection would wane. But the baseline in India is that satire and parody are part of the **vibrant discourse** in a democracy, and trademark law shouldn't censor that.[77]

The United Kingdom and EU have a more muted integration of free expression in trademark analysis – it's often *implicit*. UK courts might not overtly invoke Article 10 in a decision, but they may use **common-law balancing tools** to similar effect. For instance, a judge could interpret the requirement of "honest practices" (in permitted comparative advertising or in Recital 27 context) in light of freedom of expression to permit a certain parody, or decide not to grant an interim injunction knowing that it would severely restrain speech on a debatable issue. The European Court of Human Rights (which hears cases on free expression violations by state bodies) has dealt with trademark-related speech in a roundabout way – for example, in *Anheuser-Busch v. Portugal* (2007) the issue was more about property in trademarks than parody, but it signaled that IP rights are possessions, whereas freedom of expression is a right, and a balance is needed. A hypothetical application: if a UK court enjoined a political parody of a corporate logo, the parodist could potentially appeal on human rights grounds that the injunction disproportionately restricted legitimate expression. There isn't a prominent UK case where this happened, but the potential operates in the background.

One can see an illustration in the *Samherji* activist case: the High Court judge acknowledged the activist's Article 10 rights but ultimately found the deception too egregious to tolerate[78]. Had the facts been a bit less deceptive – say the website clearly indicated it was a satire – perhaps the outcome might have differed with more weight given to free expression. In essence, UK/EU law **acknowledges freedom of expression as an important value**, but it is often balanced through the concept of proportionality and the specifics of the trademark use.

In **Canada**, the lack of an explicit parody defense means free expression arguments would have to be made under the Charter if at all. Canadian courts have rarely struck down or read down IP laws on Charter grounds. Instead, they often presume IP laws serve a valid objective and that any incidental restriction on expression (like not being able to use someone else's trademark freely) is justified in a free and democratic society. However, Canadian commentators have noted that trademark law *potentially conflicts with expression* when it prevents people from communicating messages involving brands (which are, after all, ubiquitous in modern dialogue)[79]. The Canadian Supreme Court hasn't directly addressed a Charter defense in a trademark parody case, but if one were to reach it, the court would likely consider factors similar to what other courts have: is the defendant conveying a meaningful expression (critique, art) or just trying to capitalize commercially? If the former, perhaps the court would employ a balancing

[77] Tata Sons Limited v. Greenpeace International - Global Freedom of Expression, Global Freedom of Expression (2024).
[78] High Court delivers judgment considering the limits to artist's freedom of expression and the defences of pastiche and parody - Wiggin LLP, Wiggin LLP (2024).
[79] M. P. Ram Mohan & Aditya Gupta, Litigating Barbie: Trademark Infringement, Parody and Free Speech, 47 Del. J. Corp. L. 1 (2023), https://ssrn.com/abstract=4164067.

approach to allow it with conditions (like clear disclaimer to avoid confusion). Until such a ruling comes, Canadian parodists operate somewhat in a gray zone.

From a comparative perspective, **all jurisdictions struggle with the same tension**: trademarks by design restrict certain uses of words/images (which is a restriction on speech), but they do so for consumer protection and fairness in commerce. Parody sits at the edge of this – it *uses* the mark to say something *about* the mark or mark owner. If trademark law is applied too rigidly, it could become a tool of private censorship, allowing powerful brand owners to suppress critique or ridicule. If parody is left completely unchecked, on the other hand, it could erode trademark value and perhaps mislead consumers in some cases.

The intersection with free expression often leads to the principle that **trademark law should not trump bona fide commentary or humor**. The U.S. explicitly builds that principle in via judicial tests (Rogers) and statutory exemptions. India uses constitutional supremacy to similar effect. The UK/EU rely on flexible interpretation (what is "use in trade", what is "due cause") to accommodate speech where possible.

In practice, courts examine *why* the defendant is using the mark. If it looks like the defendant's primary goal is **expressive** (to make a point, to create art, to amuse), courts are more inclined to protect it; if the goal appears **exploitative** (to hitch a ride on brand goodwill without adding new expression), courts protect the trademark. This subjective evaluation can be tricky, but parody by its nature usually carries some expressive intent. The difficulty is when the parodist *also* has a commercial intent (e.g., selling a parody t-shirt). In those mixed cases, free expression might still apply but with slightly less force than in a purely non-profit parody.

Finally, it's worth noting that freedom of expression encompasses not just political or high-value speech but also **humor for its own sake**. Jokes and satire have cultural value. Courts sometimes articulate this by saying the public enjoys a good laugh and that trademark law isn't meant to be a **killjoy**. For example, in *Burnett v. Twentieth Century Fox* (C.D. Cal. 2007), where actress Carol Burnett sued over a crude parody of her trademarked cleaning lady character in the TV show *Family Guy*, the court recognized the parody as protected expression (in that case, it implicated copyright and trademark). The social value of parody can simply be entertainment – something courts and counsel have noted is not trivial. The **benefit to public discourse** from parodies – whether to mock the mighty or just to enrich culture – is the justification for leaning on free expression to allow these uses.

Parody, Consumer Confusion and Brand Dilution

Trademark law's core is preventing **consumer confusion**. Therefore, one of the first questions in any parody case is: does this parody risk **misleading consumers** about the source, sponsorship, or approval of the product or message? If the answer is yes, trademark law's traditional test would find infringement. If no (i.e., consumers aren't likely to be confused), then there is no infringement. Parodies often deliberately walk close to the line of confusion (by imitating branding elements), but their *aim* is usually to **signal a joke**, not to trick someone into buying the parody as if it were the original.

As discussed, many courts say that a hallmark of a legitimate parody is that it *minimizes confusion while evoking the original*. In U.S. jurisprudence, this is reflected in cases like *Cliffs Notes, Inc. v. Bantam Doubleday* (2d Cir. 1989), where a spoof of Cliffs

Notes study guides was packaged similarly but with clear humorous cues, leading the court to find no infringement due to lack of likely confusion. The Fourth Circuit's formulation in *Louis Vuitton v. Haute Diggity Dog* is especially useful: the parody carries an obvious **disclaimer in its satire itself** – "it is not the famous mark, but is only satirizing it."[80]. When consumers encounter the "Chewy Vuiton" dog toy, for example, they might at first see the LV-like design and think of Louis Vuitton, but almost immediately the absurdity (a cheap dog chew in a pet store with a punny name) tells them this isn't Louis Vuitton – it's making *fun* of Louis Vuitton. Thus any *initial confusion* is dissipated by a "moment of realization" that part of the pleasure of the parody is recognizing the target and then recognizing the joke. Courts have analogized this process to a *person of average intelligence and attentiveness* viewing the context – not a "moron in a hurry" who might not get the joke[81]. If only an unreasonable, careless observer would be confused, the law does not protect that level of confusion.

However, there can be situations where a parody is *so subtle or insufficiently distinguished* that consumers might actually be fooled. The **domain name** cases (like *PETA v. Doughney*, 4th Cir. 2001, involving PETA.org used for a parody site "People Eating Tasty Animals") show this problem. In PETA, the parody (a website mocking an animal rights group) was deemed infringement because an Internet user could type in peta.org expecting the actual organization and instead get the parody – the court found that initial confusion (even if resolved after a few seconds) was enough to count as infringement. Likewise, in the *Cooperstock* Canadian case, the gripe site's visual similarity to United's official materials caused confusion that wasn't cured despite a disclaimer, according to the judge[82]. The takeaway is that **clarity of source** is key: successful parodists often include disclaimers or absurd elements to ensure no one genuinely believes the parodist is the trademark owner. For example, satirical Twitter accounts are often labeled "parody" in the bio to avoid confusion. The law encourages this clarity; if a parodist clearly identifies the work as unaffiliated satire, that heavily reduces any confusion claim.

From the brand owner's perspective, confusion can also include confusion **as to endorsement or affiliation**. A consumer might realize a parody product is from someone else, but might wonder if it was *authorized* or officially licensed by the brand. This was an argument in the *Jack Daniel's* dog toy case – even if people didn't literally think Jack Daniel's made dog toys, Jack Daniel's contended they might think it was a licensed parody product, which could still constitute confusion about sponsorship. Courts have differed on this: some have said if the parody is obvious, consumers likely also assume it's not authorized (as many companies wouldn't lampoon themselves). But this depends on the context and how common licensed parody merchandise is. In the *Haute Diggity Dog* case, the court thought consumers wouldn't believe Louis Vuitton sponsored chew toys that make a pun of its name, given the incongruity. Generally, a factor in confusion analysis – the **defendant's intent** – is interesting in parody cases: the parodist *intentionally* evokes the mark (normally intent to copy suggests bad faith and likely confusion), but here the intent is to make a joke, not to confuse about source. Some courts weigh this by saying the parodist's intent was not to deceive but to parody, which can tilt against finding confusion.

[80] Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC, 507 F.3d 252 (4th Cir. 2007).
[81] Moron in a Hurry | Technology and IP Law Glossary, Ipglossary.com (2013).
[82] Tamara Céline Winegust, Untied tied up… United Airlines takes aim at complaint website (Part I), Lexology (2017).

Now, **brand dilution (blurring/tarnishment)** presents a different issue: **confusion is not required**. Dilution laws protect the trademark's economic and advertising value from uses that blur its distinct identity or tarnish its reputation, even if no consumer is misled about source. Parodies, by their nature, often involve a sort of *word play or image play* on the original mark – which could be characterized as "blurring" (making the mark serve two different associations: one with the original source and one with the parody). If the parody is edgy or critical, it could be seen as "tarnishment" (connecting the mark to something unsavory or negative). For example, a sexual or grotesque parody of a children's character brand might tarnish the brand's wholesome image, and a saturation of a famous logo in many spoof contexts could theoretically blur its distinctiveness.

Jurisdictions have addressed this with different emphasis. The U.S., as noted, directly carves out parody from dilution liability in most cases. The rationale is that the **First Amendment and fair use** should allow parody because parody typically *does not have the intent to siphon the mark's distinctiveness for a competing product; it's using the mark as a target, not as a brand*. Also, a well-done parody might *actually reinforce* the recognition of the famous mark (you need to recognize "Barbie" to get the Barbie Girl joke, which could even evidence Barbie's cultural strength). U.S. courts like in *Haute Diggity Dog* have said as much: the existence of Chewy Vuiton did not decrease the distinctiveness of Louis Vuitton – if anything, it reaffirmed how iconic Louis Vuitton is, since the parody relies on that fame. On tarnishment, U.S. law's parody defense similarly covers that if it's noncommercial commentary. However, if a parody is especially derogatory and in a commercial context, a brand owner might still try a tarnishment claim (e.g., a purveyor of adult toys using a children's brand name suggestively might not get a parody pass if it's just shock value to sell their goods).

In the UK/EU, dilution (Section 10(3) TMA / Art. 5(2) TMD) could ensnare parodies, but recall Recital 27 and the requirement of "without due cause." Many commentators think exercising free expression should qualify as "due cause" in some instances. The *Laugh It Off* case in South Africa (which had a dilution-like provision) is instructive: the Constitutional Court said mere "economic harm" in the form of tarnishment *cannot trump* the vital constitutional value of free expression, especially when the parody was clearly a social commentary (the Black Label->Black Labour t-shirt) and not an attempt at commerce. They set a high bar for the trademark owner to prove actual likely harm. If a similar case came in an EU context, one might see a court reasoning that criticism or social commentary is "due cause" for using the mark (why else use the mark if not to target the brand's practices) and thus not an infringement, despite technical tarnishment.

Still, brand owners worry about tarnishment from parodies because it can affect brand image. Consider a parody that, say, links a fast-food logo to obesity or a petroleum company's logo to environmental destruction – those hit the brand in ways that might affect consumer perception. The legal question becomes: should the brand have a right to stop that? If it's seen as *opinion or fair comment*, likely not – defamation law wouldn't even stop it if it's clearly opinion or satire. So trademark law shouldn't either, arguably, as that would circumvent free speech protections by using IP. This is the argument made by free speech advocates: *trademark dilution laws should not become "defamation-lite" tools for companies to avoid criticism*. Courts that are sensitive to this will either construe the parody as not truly causing "unfair" detriment (because it's fair commentary), or as having due cause.

One nuance: some parodies might actually *enhance* a brand's appeal among certain audiences (by making it part of the joke culture). For example, the "Dumb Starbucks" parody coffee shop that opened briefly in Los Angeles (as a Comedy Central TV stunt) made headlines and Starbucks ultimately didn't suffer harm – in fact, Starbucks got free publicity and chose not to sue, possibly calculating that the parody did not truly dilute their brand's power. On the flip side, a parody that is extremely unflattering can affect brand willingness to license or partner (e.g., after "Barbie Girl," Mattel was initially very upset at the portrayal of Barbie, though they lost the case, they later ironically licensed a different version of the song – showing that over time even a tarnishing parody can be embraced).

In practice, **courts often conflate the confusion and dilution analysis in parody scenarios** – if they find the parody so obvious as to not confuse, they also often find it won't dilute (because the parody only works if the original mark remains well-known and distinctive). If they find it confuses, then it fails as parody anyway and there's no need to separately consider dilution. Thus, successful parodies typically avoid both confusion and dilution by being *clever enough* to distinguish themselves. And unsuccessful ones (from a legal perspective) tend to fail on both counts.

Major Controversies and Defenses in Trademark Parody

Despite evolving case law, several **controversies and open questions** persist in the realm of trademark parody:

- **Commercial Parodies vs. Non-commercial Parodies:** A recurring debate is whether the law should treat parodies differently depending on whether the parodist is *making money* from the parody. Non-commercial parodies (e.g., an activist campaign, a meme on social media, an editorial cartoon) generally receive greater protection. This is explicit in U.S. dilution law (noncommercial use exclusion) and implicit in UK/EU law ("in the course of trade" limitation). However, once a parody becomes a product sold for profit – a t-shirt, a parody brand, etc. – courts become more divided. Some, like the Ninth Circuit in *Mattel v. MCA*, said selling a parody song on a CD is still artistic expression, not pure commerce. Others, like the Supreme Court in *Jack Daniel's*, drew a line if the parody itself is used as a brand identifier for a product. The controversy here is essentially: *Is a commercial parody less worthy of protection?* Free speech advocates argue that making money does not strip speech of protection (newspapers sell their papers, artists sell paintings – their expression is still protected). Trademark owners counter that a commercial context increases the likelihood of confusion and harm, and that a parodist who is profiting is closer to a competitor (so should play by trademark rules). This debate is ongoing, and future cases (especially in the merchandising and online marketplace context) will likely refine where that line lies.
- **Intentional Satire vs. Trademark-Free Riding:** Not every claim of "parody" is genuine. A **bad-faith infringer** might try to mask itself as a parody to escape liability. For instance, a cheap knockoff brand might make a slight pun on a famous mark and call it parody, when in fact their goal is to trade off the brand's cachet. Courts are aware of this and scrutinize the *intent and presentation* of the use. If the "parody" has no clear humorous or critical message and just looks like a copy with a twist to avoid legal action, courts will likely find infringement. The UK's "honest practices" standard would certainly not cover a fake parody done to confuse or denigrate unjustly. Thus, one defense for brand owners is to show **lack of genuine parody** – i.e., the defendant wasn't really making a joke or commentary, but simply appropriating the mark. On the flip

side, parodists try to show they had *expressive intent*. The line can be blurry; humor is subjective, and one might ask: *does the law require the parody to be funny or good?* The answer is generally no – even a lame or unfunny parody is still a parody attempt. Courts won't judge the artistic merit ("we don't want trademark lawyers as comedy critics"), but they will judge obviousness of parody. A case in point: in *Dr. Seuss Enterprises v. Penguin Books* (9th Cir. 1997), a book that mimicked Dr. Seuss's style to tell the story of the O.J. Simpson trial was held not to be a fair parody but rather an infringement of Dr. Seuss's copyright/trade-dress – partly because the court felt it wasn't commenting on Dr. Seuss at all, just using his style to tell an unrelated story (so not a true parody of the mark). By analogy in trademark, if someone uses the form of a brand to say something unrelated, it may not count as parody of the brand.

- **Parody in the Digital Age:** The internet and social media have supercharged both the creation and dissemination of brand parodies. **Memes** often incorporate trademarks (think of countless memes using the Starbucks logo, the Nike slogan, etc. in satirical ways). These are typically non-commercial and created by anonymous users – far beyond the practical reach of trademark enforcement, and usually harmless to the brand (sometimes even beneficial as viral advertising). However, brands do sometimes react – e.g., sending takedown notices for unflattering parodic videos or images. This raises the issue of **overzealous enforcement vs. PR backlash**. The court of public opinion often disfavors a corporation that goes after a joke (the *Streisand effect* where attempting suppression only amplifies the attention). Many companies have thus become more strategic: tolerating or even embracing lighthearted parodies, and only acting against those that really threaten their reputation or confuse customers. Platforms like Twitter explicitly allow parody accounts but require clear labeling as parody. This is an interesting self-regulation that aligns with trademark goals (no confusion because it's labeled parody) and free speech (allowing the parody to exist). The **domain name context** also still sees battles: while "gripe sites" using *trademark+sucks.com* are often found legitimate (since "BrandX-sucks" clearly signals a criticism site), using just brandname.com for a parody is usually forbidden. WIPO domain arbitration panels, for instance, often order transfer of domains that exactly or closely match a brand if the site isn't clearly noncommercial commentary.
- **Defenses invoked in parody cases:** Aside from the overarching free expression defense, there are specific trademark doctrines that can protect parodists:
    - **Nominative Fair Use:** This U.S. doctrine (from *New Kids on the Block v. News America* (9th Cir. 1992)) allows use of a trademark to refer to the trademarked goods or owner when necessary to identify them, as long as there's no suggestion of sponsorship. Parodies often rely on nominative use because they need to *name* or depict the target to make the joke. For instance, a parody video might mention a brand by name to set up a satire. Nominative fair use would say that's fine if it's clear the brand isn't endorsing it. This defense has been successfully used in some parody contexts (especially where a product or company is being discussed or ridiculed by name).
    - **Descriptive Fair Use:** Less relevant to parody, as it covers using a word in its descriptive sense (e.g., using "apple" to describe the fruit even though Apple is a brand). Parodies usually are not using the mark in a descriptive sense, but rather as a symbol. However, some parody names might claim they're describing some attribute (unlikely).
    - **Statutory Exceptions:** As mentioned, U.S. dilution law's exception; and in some countries comparative advertising exceptions if the parody is arguably a comparative ad (though that's stretching it).

- **Lack of Use as a Mark:** A very important practical defense. The parodist can argue "I am not using the trademark *as a trademark* to identify my goods, I'm using it as part of a message." If a court agrees, then it falls outside infringement. This was used in the *Michelin* case: the union said they weren't selling tires or a service with the Michelin Man, they were just conveying a message. Similarly, Greenpeace in the Tata case argued the use was not "in the course of trade". In both instances, that resonated with the court. If a parody is clearly noncommercial or not connected to goods/services, this defense is strongest. For instance, an artist who makes one painting incorporating a brand logo in a satirical way can argue it's not a trademark use in commerce. But if prints are sold, at some point it enters commerce. It's a gray scale.
- **Constitutional/Human Rights Defense:** This is the broad shield in places like India (Article 19) and potentially Europe (Article 10 ECHR). It's not a traditional "defense" in the statute but can be raised to argue that an injunction would violate free speech. In *Tata*, we saw the court put heavy weight on this. In Europe, a defendant might invoke Article 10 in a pleading to encourage the court to interpret narrowly. These defenses essentially ask the court to perform a **proportionality test**: is stopping this parody necessary to achieve the goals of trademark law, or would it unduly censor speech? Often courts find it's not necessary to stop it, except in egregious cases of bad faith.

- **The Morality/Taste Factor:** Another subtle controversy is whether the *offensiveness or vulgarity* of a parody should matter legally. Some dilution laws (like in the U.S. pre-2006) focused on "tarnishment" especially when a mark is placed in an obscene context (e.g., a famous candy brand used as a name for an adult film). If a parody is in very bad taste, a court might be more sympathetic to the brand owner's plight. But there's danger there: courts shouldn't be arbiters of taste. The U.S. Supreme Court in *Campbell v. Acuff-Rose* (a copyright case on parody) noted that parody often needs to "conjure up" the original and sometimes do so in a biting way; it is by nature somewhat "biting". In trademark, similar logic applies. So while a particularly harsh parody might annoy a judge, they usually try to stick to legal principles (confusion, etc.) rather than punishing the parodist for being too mean. A cross-current: trademark offices sometimes refuse registration of parody marks if they are disparaging or scandalous (for instance, an application for "Google" with a twist might be denied as it conflicts with the real one or is seen as in bad faith). But after the U.S. Supreme Court's *Matal v. Tam* (2017) and *Iancu v. Brunetti* (2019) decisions, trademark registration can't be denied on the basis of disparagement or immorality due to the First Amendment. So even registering parody marks has gotten easier in the U.S., though maintaining them without being sued is another story.

In summation, trademark law surrounding parody is a field of **careful distinctions**. The controversies highlight the need to distinguish true parodic expression from attempts to trade on goodwill, and to discern harm that warrants legal intervention from harm that society will tolerate for the sake of free discourse. Courts and legislatures are gradually refining the tools for this – whether by codifying certain exceptions or by common-law evolution. The defenses available to parodists, while not fail-safe, are significant, and the trend in many democracies is to favor more freedom for parody (considering its cultural importance), provided brand owners still have recourse when a use genuinely confuses or substantially tarnishes without commentary.

Having canvassed the legal landscape and controversies, we now proceed to conclude with **recommendations** on balancing these interests in modern times.

Conclusion and Recommendations

Parody in trademark law sits at a delicate junction of **brand protection and free expression**[83]. Our comparative analysis reveals that the United States, United Kingdom, and India – along with the EU and Canada – all grapple with this balance, but with different calibrations. The United States offers perhaps the most parodist-friendly framework, explicitly shielding many parodies via statute and First Amendment doctrines, whereas the UK and EU rely on more implicit safeguards like lack of confusion and "honest practices," and India uses constitutional free speech principles to defend parody in the absence of statutory text[84]. Across jurisdictions, one constant emerges: **parodies that clearly signal themselves as such are far more likely to be allowed**; those that mislead or purely piggyback on brand prestige are not.

In India and the U.S., the trend has been to **expand expressive freedoms**. Indian courts in *Tata v. Greenpeace* made it clear that intellectual property rights cannot be used as an instrument to silence criticism[85]. U.S. courts likewise have repeatedly advised trademark owners to "chill" when confronted with tongue-in-cheek mimicry. The UK and EU are more conservative, but even there we see signs of movement – Recital 27 of the EU Directive and cases like the French *Greenpeace/Esso* decision suggest a growing recognition that trademark law must accommodate artistic and political expression. Canada's position, straddling British principles and Charter values, highlights the ongoing debate without a definitive legislative solution yet.

Given the above, what steps can be taken to better balance brand protection with free expression, especially in our digital, global marketplace?

1. Codify a Parody Defense or Clarification in Trademark Law: Jurisdictions like the UK (post-Brexit) and Canada should consider introducing a clear statutory defense for parody and satire in trademark use. This could be modeled on the U.S. approach for dilution or the UK's own copyright law exception. For example, an amendment could state: "It shall not constitute infringement to use a trademark in the course of trade for the purposes of parody, satire, or critique, provided such use is in accordance with honest practices and does not mislead as to commercial origin."[86] Such language would give courts a direct mandate to exempt genuine parodies, while still disallowing deceptive uses (retaining an obligation of honest practices and no confusion). By codifying it, legal outcomes become more predictable, reducing the chilling effect on creators who currently operate in uncertainty. As noted in scholarly commentary, the absence of a parody exception can create imbalance – copyright owners cannot stop a parody, but if

[83] Tim VanBockel, Trademark Parody: Balancing Free Speech and Brand Protection - Attorney Aaron Hall, Attorney Aaron Hall (2023).
[84] Tata Sons Limited v. Greenpeace International - Global Freedom of Expression, Global Freedom of Expression (2024).
[85] M. Bohaczewski, Conflicts Between Trade Mark Rights and Freedom of Expression Under EU Trade Mark Law: Reality or Illusion?, 51 IIC 856 (2020), https://doi.org/10.1007/s40319-020-00964-5.
[86] Guide to Trade Mark Litigation in the UK, D Young & Co (2021).

they have a trademark on the character or title, they might via trademark law. A statutory fix would close such loopholes and reinforce free expression uniformly.

2. Embrace a "Likely Confusion" Standard that Accounts for Parody Context: Courts should continue (or begin) to expressly factor the *parodic nature* of a use into the confusion analysis. Many U.S. circuits do this, and others can follow suit by, for instance, adding a **"parody" factor** in the multifactor test: e.g., the Second Circuit could formalize that if the defendant's use is a parody[87], which leans against confusion because consumers are alerted to a joke. UK courts, while not using multi-factor tests as rigidly, can explicitly mention in judgments that the average consumer today is accustomed to parody and that context can dispel confusion. This would guide future cases[88] and also guide brand owners to perhaps not overestimate public confusion. In essence, courts should articulate that **a reasonably prudent consumer** is expected to recognize obvious parodies – reinforcing the "moron in a hurry" baseline.

3. Recalibrate Dilution/Tarnishment Law to Exclude Parody: Even without full statutory overhaul, courts in dilution cases should interpret the "due cause" and "fair use" provisions to exempt parodic uses. For example, EU courts applying "unfair advantage or detriment" could find that a parody does not take "unfair"[89] advantage – any advantage (attention) it takes is fair because it's commentary or humor. Likewise, "due cause" can be read to include *expressive cause*. In the U.S., post-*Jack Daniel's*, lower courts on remand should still apply the TDRA parody exclusion whenever applicable, noting the Supreme Court didn't abolish it, only said it didn't apply to uses as one's own mark. For lawmakers, if dilution statutes ever reopen for amendment, they could make the parody exception even more explicit and perhaps remove ambiguity like the "designation of source" proviso when the context clearly is a joke.

4. Encourage the Use of Disclaimers and Transparency by Parodists: To address the brand owner's legitimate concern of confusion (especially initial confusion or affiliation confusion), parodists in the commercial realm should use *reasonable measures* to prevent confusion. This could be as simple as a prominent disclaimer ("This product is not affiliated with Brand X; it's a parody") on packaging or websites. Courts can consider the presence of such disclaimers as a sign of the defendant's good faith. Some courts already do; making it a best practice would help. In the Internet context, top-level domain rules could allow things like ".parody" or similar to immediately differentiate (though none exists yet; currently ".sucks" domains serve that to a degree). Social media platforms already mandate disclaimers for parody accounts – a model that has worked well to avoid confusion while allowing the parody. By formalizing this (even via guidelines or industry self-regulation), parodists can enjoy more security and brand owners get assurance that their customers won't be misled.

5. Brand Owner Restraint and Embracing Parody: Apart from legal rules, a practical recommendation is for brands to adopt more tolerant policies toward parodies that do not truly harm them. In many instances, parody can even **enhance brand recognition**

[87] Jack Daniel's™ Properties, Inc. v. VIP Products LLC, 599 U.S. (2023)
[88] Teresa Harris, The Role of the Supreme Court in Interpreting Laws - Legal Issues That Matter Today, Legal Issues That Matter Today (2023).
[89] Tata Sons Limited vs Greenpeace International & Anr on 28 January, 2011, Indiankanoon.org (2025).

and humanize the brand as being a good sport. Over-enforcement can backfire, drawing public sympathy toward the parodist and painting the brand as heavy-handed. Companies could update their IP enforcement guidelines to differentiate between malicious infringement and innocuous parody. For example, a company might decide internally not to pursue parodies that are clearly non-commercial or ones in fan art, etc., unless they go viral in a way that confuses consumers. Some companies have successfully run contests inviting parodies or interacted humorously with parody content on social media, turning a potential conflict into a marketing win. While this is outside the courtroom, it contributes to a culture where legal disputes are the last resort.

6. International Harmonization Considerations: In an interconnected world, a parody created in one country can be seen globally online. Yet, the legal outcome might differ wildly by jurisdiction. International forums like WIPO or the WTO (TRIPS Agreement) have not specifically addressed parody in trademarks, but perhaps it's time to share best practices. Countries could include exceptions for parody in their trademark statutes as a matter of aligning with freedom of expression norms recognized internationally (much like many did for copyright after seeing the benefit). This doesn't mean a treaty on parody, but soft harmonization could occur through guidelines or model laws via organizations like AIPPI or INTA acknowledging that parody is a legitimate use in many cases. Such guidance could support lawmakers and courts in countries currently lacking clear direction.

7. Ongoing Monitoring of Consumer Perception: One empirical angle is to keep assessing how consumers perceive parodic uses. As parody and meme culture grows, consumers – especially younger ones – may inherently understand that, say, a satirical Instagram post with a brand logo isn't from the brand. If surveys or studies show confusion is minimal in these contexts, that evidence can be used in litigation to argue that average consumer perception has evolved. Trademark law's standards (likelihood of confusion, dilution harm) hinge on consumer perception; thus, they should adjust as literacy in parodic communication increases.

In conclusion, **balancing brand protection with free expression** in the parody arena means ensuring that **trademark law protects its core functions** – preventing true confusion, source misrepresentation, and commercial harm – *but not at the expense of public discourse, artistic creation, or humor*. Trademark owners should rightly be shielded from imposters and counterfeiters, but not from comedians and commentators. Courts and legislatures are increasingly recognizing that a famous mark, as much as it is a piece of property, is also a part of the cultural lexicon – and parodies are a way society *talks back* to brands or incorporates them into creativity.

The recommended approach is a nuanced one: permit broad freedom to parody, *reining it in only when it crosses objective lines of confusion or significant unfair harm*. By adopting explicit parody defenses, encouraging clear labeling of parodic works, and maintaining a sense of humor in enforcement, the legal system can safeguard both **interests**: **brands can maintain their goodwill and consumers won't be misled, while satirists, artists, and the public can continue to engage with brands in meaningful (or just amusing) ways**. In a world where brands loom large in daily life, preserving the space to parody them is not just a legal technicality – it is essential to free expression and the healthy exchange of ideas (and laughs) in society. As one court wisely noted, intellectual property law should not be invoked to dissolve the *"fine line between the serious and the stupid"*; rather, it should allow society to recognize that line and enjoy the creativity that thrives upon it.

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