PARODY AS A DEFENSE UNDER TRADEMARK LAW: AN INDIAN AND INTERNATIONAL PERSPECTIVE

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Introduction

Comedy may lead to lawsuits, but parody might just dodge them. In a time where comedy can lead to lawsuits, parody is still one of the forms of satire that can be protected under trademark law. The art of mimicking a brand for satire or critique, parody serves as a medium for creators to push boundaries without infringing trademarks as long as it does not dilute the brand identity or lead to consumer confusion.

While a trademark protects the identity of a brand thereby preventing a consumer from being confused or diluted, parody fosters freedom of expression, propelling a tug-of-war between IP rights and creativity. In India, the Trade Marks Act, 1999, does not explicitly mention a parody as a defense; however, the courts have considered it a recognition under free speech principles. Internationally, the United States and United Kingdom have different approaches, molded by the fair use doctrines and statutory framework.

What is Parody?

Parody is a humorous or satirical imitation of a work, often intended to comment on, critique, or provide social commentary. It seeks to invoke a reaction where the audience can recognize the original work while appreciating the differences.

Parody, as a form of artistic expression, often finds itself intersecting with trademark law. The use of trademarked materials in a parody can raise significant legal questions regarding infringement and dilution.

Parody as a Defense under different jurisdictions

Trademark laws regarding parody show considerable differences when compared between different jurisdictions. The First Amendment provides strong protection to parody in the United States through court applications of either the Rogers test or the modified likelihood of confusion analysis for parody situations. The Louis Vuitton v. Haute Diggity Dog case confirmed that the dog toy "Chewy Vuiton" functioned as legitimate parody without causing confusion to consumers. The EU acknowledges parody as part of its fair use guidelines while considering trademark owners' protections. Parody protections are not explicitly defined in Indian trademark legislation. The U.S. Trademark Dilution Revision Act includes an exemption for parody in dilution cases while India's Trade Marks Act 1999 lacks any similar exceptions.

Trademark law protects the marks distinctiveness, uniqueness of a brand and prevents consumer confusion and dilution (blurring or tarnishment) of the mark. Parody, by mimicking a trademark to comment on it, inherently creates confusion but is often defended as fair use or protected speech. Free speech is guaranteed in India under Article 19(1)(a) of the Constitution, and in the United States it is guaranteed under the First Amendment. Important tests of legality include whether the parody is non-commercial, is transformative by adding new meaning, and is unlikely to confuse consumers. The difficulty, in this case, is determining intention (was the use expressive, or was it outright exploitation?), the extent to which the mark was used, and public perceptions: these could vary greatly. In other words, a parody must reference the original without appropriating its goodwill.

Most parodies are unlikely to confuse consumers or to dilute the singularity of a famous trademark. Black Bear customers who buy Charbucks coffee presumably understand that they are not buying coffee at a Starbucks; they also seem unlikely to think that Starbucks has authorized a new, self-parodying blend and let Black Bear sell it. Nor does Charbucks make Starbucks less distinctive as a brand of its own; to the contrary, it only enhances Starbucks' fame. The same goes for The Greatest Snow on Earth and Ringling Brothers, or Chewy Vuiton dog toys and Louis Vuitton.

Parody under Indian Trademark Law

Parody as a defense under India trademark law is still developing. The Trademarks Act 1999 focuses on the infringement, passing off, and dilution, without substantiating exceptions for parody use. The conventional likelihood of confusion test is applied by courts without accounting for the specific nature of parodic expression. Indian courts focus more on preventing consumer confusion and protecting business reputation than on allowing parodic expression compared to jurisdictions that have strong free speech protections. Artists and commentators face uncertainty because there are no established guidelines to assess parody defenses which they use for critical commentary or humorous expression. The difference stands out because digital creators and social commentators now mostly use parody elements from recognizable brands.

In ***Tata Sons Ltd. v. Greenpeace International (2011)***[1], Tata Sons, a large Indian company belonging to TATA Group, sued Greenpeace for defamation and trademark infringement regarding an internet game, "Turtle v. Tata." The game, a Pac-Man imitation, had Tata's logo pursuing turtles in protest against the Dhamra Port project, a joint project purportedly endangering Olive Ridley turtles. Tata objected on the ground that the unauthorized use of its "TATA" mark and "T within a circle" logo sullied its reputation. Greenpeace objected that the use was non-commercial, parodic, and covered by free speech (Article 19(1)(a)). The Delhi High Court, applied the rule of Bonnard v. Perryman, rejected Tata's interim injunction, holding that Greenpeace's use was one of a denominative (criticizing Tata's conduct) and hyperbolic (e.g., "Tata demons") character and was not infringing under Section 29(4) of the Trade Marks Act, 1999. The court emphasized free speech and public interest and found no obvious defamation or confusion. This case established precedent for parody defense in India, emphasizing the weighing of trademark rights and freedom of expression.

In the case of ***Independent News Service Private Limited & Anr. v. Ravindra Kumar Chaudhary & Ors. 2024***[2]**,** the Delhi High Court ruled in favor of India TV and journalist Rajat Sharma in a case involving trademark and personality rights. The plaintiffs had alleged that the defendant, Ravindra Kumar Chaudhary, a self-proclaimed political satirist, was "damaging and infringing" their trademarks by using a logo similar to India TV's and the name "Baap Ki Adalat," in allusion to Sharma's show "Aap Ki Adalat," on platforms like YouTube and X. This, they maintained, caused confusion in the minds of the viewers and infringed CBS's personality rights.

The Hon'ble High court granted an ad-interim ex parte injunction restraining Chaudhary from using Sharma's name, image, or video as well as the name "Baap Ki Adalat" whether as a trademark, logo, or on social media. The social media sites YouTube, X and Facebook were ordered to disallow access to the infringing content. The judgment upheld trademark protection and personality rights over the defendant's satirical use by stressing the likelihood of confusion

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[1] Tata Sons Limited v. Greenpeace International, 2011 SCC OnLine Del 466
[2] Independent News Service (P) Ltd. v. Ravindra Kumar Choudhary, 2024 SCC OnLine Del 4380

and damage to reputation, notwithstanding the freedom of speech implications arising from parody.

Parody under International Trademark Law

A. USA

In the United States, parody is protected under doctrine of fair use and first amendment principles. In Campbell vs. Acuff-Rose Music, Inc. (1994), the U.S. Supreme Court addressed the issue in a case concerning copyright infringement by parody, affecting trademark law as well. The company Acuff-Rose Music was the copyright holder of the song "Oh, Pretty Woman," sung by Roy Orbison. This company sued the rap group 2 Live Crew for their parody version since it drew elements of the original song for humorous social commentary. Acuff-Rose argued that the usage was unauthorized and involved commercial use; therefore, it violated copyright law. The Supreme court held in favor of 2 Live Crew, as parody is protected under fair use given in Section 107 of the Copyright Act. The Court highlighted that when a parody is transformative, adding new expression or critique, it is exempt from the requirement to obtain permission even if commercial. The purpose of the parody being commentary on the original, the small use of it, and the fact that it did not significantly affect the market for Orbison's song were central considerations. First, it established that parodies need not avoid commerciality to be fair use, and second, it struck a balance between intellectual property rights and free expression which will reverberate in trademark parody defenses.

In Mattel, Inc. v. MCA Records, Inc. (2002), the Ninth Circuit Court of Appeals dealt with a trademark and copyright parody dispute. Mattel, the manufacturer of Barbie dolls, sued MCA Records for infringement on the grounds of the song “Barbie Girl” created by Danish band Aqua which humorously depicts Barbie's lifestyle in the lyrics of the song. Mattel claimed the song infringed and diluted its Barbie trademark and copyright, arguing it tainted the brand’s image with suggestive lyrics and constituted commercial exploitation.

The court in favour of MCA Records in its contention that "Barbie Girl" was protected as a parody by the First Amendment and the fair use doctrine. The expression conveyed by the song honoring Barbie was denounced as a mode of appealing to consumerism and gender stereotypes, not a mode of selling dolls. The court applied nominative fair use, wherein the lack of any confusion as to users of the mark stated that the song did make reference to Barbie without suggesting any kind of insinuation of endorsement by Mattel. The court, furthermore, rejected dilution claims as the song was based on transformation. This landmark decision establishes the strength of parody in trademark law when the latter is used for social criticism in a balance against IP rights.

B. South Africa

In the case of Laugh It Off Promotions CC v. South African Breweries International (Finance) BV t/a Sabmark International (2005), the Constitutional Court of South Africa addressed a issue regarding trademark dilution dispute involving parody. T-shirts parodying SAB's Carling Black Label trademark, replacing "Black Label" with "Black Labour" and "Carling Beer" with "White Guilt" were being sold by Laugh It Off Promotions to critique racial exploitation. SAB claimed the T-shirts tarnished its trademark under Section 34(1)(c) of the Trade Marks Act 194 of 1993.

The Cape High Court and Supreme Court of Appeal ruled against Laugh It Off, finding the parody commercially exploitative and potentially harmful. However, these decisions were unanimously set aside by the Constitutional Court on May 27, 2005. It held that SAB could not show that the trademark had been harmed substantially economically. According to the court, South African Breweries were unable to prove: that the trademark had suffered any substantial economic harm or harm with regard to its reputation or distinctiveness. The court prioritized free expression, as given under Section 16 of the South African Constitution, and viewed parody as a legitimate social critique. This judgment is landmark because it holds that parody shall be protected unless there is substantial economic harm, thus establishing a balance between trademark rights and free speech.

C. Portugal

The southern European countries, such as Portugal, have long embraced the notion of parody and accepted satire and irony in the context of arts. The parody has, however, evolved to new sectors of society and, in particular, to the commercial activities, questioning social, business standards and beliefs. The most conservative and strict Portuguese companies have been faced with a new type of trade mark parodies which directly collided with the commercial practices and the Portuguese legal framework offered no clear solution or limits for parody.

In fact, the Portuguese courts have commonly accepted the idea that the use of parody in the scope of trade marks doesn't fulfil the legal criteria of trade mark infringement, thus sanctioning the use of parody in a more intense and sometimes abusive manner.

The enforcement of trade mark rights have since been limited by fundamental rights and freedoms and in particular the freedom of expression.

Conclusion

Parody as a defense under trademark law is a fascinating intersection between creativity and legality. Parodists or satirists intended to use trademarks in a humorous, creative, or critiquing way for various reasons, whereas trademark owners want to safeguard their distinctive mark against unauthorized use. Different legal systems around the world show this dichotomy in different ways, with some providing comparatively adequate safeguards for parody while others grant little to no protection.

India's cautious approach does appear to be slowly evolving; nevertheless, trademark proprietors have the upper hand in the deck. The best irony may be that while parody may need to deal with the issue of exaggeration and humor, the protection of parody is itself an issue that nobody finds funny. While the courts attempt to strike a balance between commercial visibility and expression, one can only hope that the law still leaves just enough room for humor to have the last word without paying damages for the punchline.