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The Legal Defense Against Trademark Parody: A Comparative Analysis of Judicial Practices in the United States, European Union, and the United Kingdom

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Abstract. Trademark parody has long sparked fierce legal disputes as it sets trademark owners' rights to protect their exclusive trademark rights and goodwill in conflict with actors' expressive freedoms for artistic creation, satire and social commentary. This makes it a tough issue to balance in global intellectual property law and highlights the urgent research significance of clarifying its legal boundaries. This study aims to explore whether trademark law should explicitly provide legal defenses for trademark parody, which is a core issue crucial to improving intellectual property adjudication rules and reconciling the inherent tension between trademark protection and expressive freedoms. Adopting a comparative analysis method, it takes typical trademark parody cases in the US, the European Union and post-Brexit UK as research objects for in-depth analysis. The research finds divergent judicial attitudes among the three jurisdictions: the US balances trademark rights and free speech, the EU prioritizes trademark functionality with partial national exceptions, and the UK combines EU legal principles with localized judicial innovation, thus providing targeted references for reconciling relevant conflicts in different legal contexts.

Keywords: Trademark parody, Trademark rights, Expressive freedoms, likelihood of confusion, Subjective bad faith

1. Introduction

Trademark parody stands at a contentious crossroads of intellectual property protection and fundamental expressive freedoms. Existing academic research has probed its legal connotations and boundary issues, yet critical research gaps remain: most studies focus on single jurisdictions, lacking in-depth comparative analysis of how common and civil law systems balance trademark rights with artistic and speech freedoms, leading to an incomplete understanding of cross-regional judicial application divergences. This study explores whether trademark law should explicitly allow defenses for trademark parody. Although parody is widely adopted in art, political satire, and social commentary, current trademark rules protect goodwill and prevent confusion but typically restrict these expressions, creating legal tension. Through a case-driven comparative approach, this research selects the US, EU, and post-Brexit UK as research subjects, as they represent a typical common law system, a unified civil law framework with national judicial divergences, and a hybrid jurisdiction

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undergoing legal transition, respectively. By analyzing their typical landmark cases, this method effectively reveals the different adjudication logics and balancing strategies in addressing the trademark parody dilemma. This study aims to fill the cross-jurisdictional research gap, provide concrete theoretical and practical references for legal practitioners adjudicating similar cases, and offer insights for the legislative improvement of trademark parody defenses. However, this study focuses primarily on landmark cases involving famous marks and traditional commercial contexts, excluding small-brand and emerging digital parody scenarios, and covers only three jurisdictions. Future work could expand case scope to digital and non-famous trademark parodies, include more legal systems, and conduct in-depth studies on statutory codification of parody defenses to enhance the effect of judicial application.

2. Legal frameworks for first amendment and trademark interaction

The U.S. judicial system attempts to draw legal boundaries by distinguishing whether a trademark is used "as a mark," but in practice, this framework has produced inconsistent precedents, resulting in a judicial tension between shielding non-commercial, critical parodies and restricting profit-oriented commercial parodies.

For instance, in Jack Daniel's v. VIP Products, the Supreme Court held that VIP Products' use of the parody mark on its dog toy constituted "use as a mark," effectively rendering the previously protective Rogers test inapplicable. The case was remanded for a traditional likelihood-of-confusion analysis [1]. On retrial, the district court found that while the "Bad Spaniels" toy was a successful parody and unlikely to cause confusion, it nonetheless constituted dilution by tarnishment, and issued a permanent injunction against its sale. This illustrates a strong judicial tendency to prioritize trademark rights in commercial contexts. Once a commercial design is presumed "use as a mark," even highly expressive or satirical works may struggle to secure First Amendment protection under traditional trademark law, effectively narrowing the scope of expressive freedom. In Punchbowl, Inc. v. AJ Press, LLC, the Ninth Circuit followed the Supreme Court's reasoning, holding that the plaintiff's use of "Punchbowl" as a source identifier for its news product rendered the Rogers test inapplicable and remanding the case to the district court [2,3]. Although the defendant prevailed, the case illustrates a tightening of judicial standards: free-expression defenses are increasingly assessed through market-focused trademark analysis, raising litigation risks and costs.

By contrast, My Other Bag illustrates the opposite extreme of judicial inconsistency. The Second Circuit upheld the parody of the Louis Vuitton mark, highlighting its social commentary and low risk of confusion [4]. However, following the establishment of the "use as a mark" standard in Jack Daniel's, this permissive approach has come under pressure, with several circuits now applying stricter rules that subject more expressive parodies to traditional trademark analysis. This shift not only increases legal uncertainty but also highlights the ongoing tension in U.S. courts between First Amendment protections and intellectual property rights.

3. Trademark safeguarding and judicial divergence

The Court of Justice of the European Union (CJEU) has not yet issued a definitive ruling on purely trademark-based parody. Its approach is largely informed by copyright law, particularly Deckmyn v. Vandersteen, which established two key criteria for parody: the work must evoke an existing work while remaining noticeably different, and it must convey humor or satire. Importantly, the CJEU stresses that a fair balance must be maintained between intellectual property protection and freedom of expression, instead of placing intellectual property rights above all else. Though the EU Trade

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Mark Directive allows for artistic and satirical uses, the lack of CJEU guidance in the trademark context means there is no consistent standard for assessing parody. However, the EU now allows a parody exception in design law, permitting commentary, criticism, or parody that respects fair trade and does not unduly harm the design, though some types of humorous imitation remain excluded.

At the member-state level, courts have taken divergent approaches under Article 11 of the EU Charter of Fundamental Rights. In France, the Cour de Cassation has protected parody based on constitutional free-expression rights rather than trademark exceptions, as in the Greenpeace v. Esso and Greenpeace v. Areva cases, where altered logos conveying social or public-interest commentary were deemed proportionate and non-infringing [5]. Similarly, the Italian Supreme Court in Zorro clarified that parody involves humor or satire, need not be independently original, and must respect a fair balance between the original author's rights and expressive freedom, while emphasizing that use of a well-known mark in economic activities is unlawful if it exploits the mark's distinctiveness or reputation, even when used narratively [6].

Although the CJEU has not established a principle prioritizing trademark functions, national courts in France and Italy have afforded limited protection to political and artistic parodies under constitutional rights. This has created a fragmented judicial landscape. Commercial parodies remain legally risky at the EU level, while non-commercial expressive uses may still be protected under free-expression principles. These divergences highlight the urgency and complexity of establishing a unified EU standard for trademark parody [7].

4. Post-brexit evolution of trademark parody defense

Following Brexit, the UK maintains EU-based trademark principles, while enabling domestic courts to reconcile trademark protection with freedom of expression. In assessing trademark infringement, UK courts continue to apply the EU-influenced "likelihood of association" test to protect brand reputation. In Thatchers Cider Company v. Aldi Stores, the appellate court found that although the High Court initially found no infringement, Aldi had deliberately designed its product to resemble Thatchers' mark, creating a "similar but cheaper" association that infringed the trademark [8,9].

Meanwhile, the UK has shown a clear trend toward a localized interpretation of parody defenses. In Swatch AG v. Apple Inc., the High Court rejected the trademark examiner's determination that Swatch's applications for "ONE MORE THING" and "SWATCH ONE MORE THING," intended as a parody of Apple's iconic product launch phrase, were submitted in bad faith. The examiner argued that the applications were intended to parody Apple while the two companies were in a competitive dispute. The High Court, however, found that although Swatch's applications aimed to annoy Apple, there was insufficient evidence to demonstrate an intent for parody use. Importantly, the court emphasized that even if parody intent exists, as long as the parody is not offensive, the mere intention to parody does not constitute bad faith. The court further noted that using a mark that may remind some consumers of another brand for harmless or humorous parody is not inherently dishonest. This conclusion is supported by principles of freedom of expression [10].

From a legal-technical perspective, Brexit ended the direct application of EU law, granting UK courts greater discretion in interpreting key trademark concepts such as subjective bad faith and likelihood of confusion. Thus, the UK may adopt a hybrid approach, keeping EU-style protection for well-known marks while allowing safe parody and other expressive uses. This approach allows UK trademark law to achieve greater flexibility and balance between brand certainty and creative expression. However, Thatchers confirms that courts strictly curb commercial copying, narrowing parody defenses in commerce.

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5. The comparative evaluation of judicial approaches to trademark parody

Through a comprehensive comparison of judicial practices in the US, EU, and UK, distinct value orientations, adjudicative standards, and practical effects in addressing trademark parody defenses are revealed, along with common challenges. At the core of their divergences lies the prioritization of conflicting interests: the US centers on balancing First Amendment free speech with trademark protection, the EU prioritizes the unity and functionality of the internal market, and the UK pursues a hybrid model of legal continuity and judicial autonomy post-Brexit [11,12].

In terms of adjudicative standards, the US relies on the dual framework of "commercial use" and the applicability of the Rogers test, attempting to distinguish between expressive and profit-driven parodies. However, this framework leads to inconsistent rulings, such as the contrasting outcomes in Jack Daniel's, where the Supreme Court held that use "as a mark" rendered the Rogers test inapplicable, and My Other Bag, where the Second Circuit upheld the parody based on its social commentary and low risk of confusion. This judicial tension creates legal uncertainty for both trademark owners and parodists. The EU's approach, informed by copyright jurisprudence such as Deckmyn, requires that parody evoke an existing work while remaining noticeably different and conveying humor or satire, but the CJEU has not established a definitive standard for trademark parody. Member states like France and Italy have afforded limited protection to political and artistic parodies under constitutional free-expression rights, as seen in Greenpeace v. Esso and Zorro, but commercial parodies remain legally risky. The UK's post-Brexit approach uses the EU-influenced "likelihood of association" standard, as confirmed in Thatchers Cider Company v. Aldi Stores, while independently interpreting "subjective bad faith" in trademark registration. In Swatch AG v. Apple Inc., the court held that non-offensive parody intent does not constitute dishonesty.

Across jurisdictions, three issues persist: the blurred line between commercial and expressive parody, divergent views on "likelihood of confusion" versus "likelihood of association," and inconsistent standards for assessing bad faith. The US model strongly protects expression but lacks predictability due to the inconsistent application of the "use as a mark" standard. The EU ensures market unity and legal certainty through trademark functionality priority yet remains rigid, forcing member states to carve out narrow exceptions for non-commercial, public-interest parodies. The UK offers flexibility and continuity, though it risks inconsistency as domestic courts develop localized interpretations. Although no single model prevails, all jurisdictions prioritize trademark functions while attempting to accommodate legitimate expression. Future developments will likely require continued judicial refinement of the boundaries between commercial and expressive use, building upon existing frameworks such as the Rogers test in the US, the Deckmyn criteria in the EU, and the dual assessment of association and bad faith in the UK.

6. Conclusion

This study adopts a case-oriented comparative analysis to assess whether parody defenses should be expressly incorporated into trademark law, drawing upon judicial practice in the US, the EU, and the post-Brexit UK. The core findings indicate that the three jurisdictions adopt distinct frameworks. The US balances free speech and trademark rights through the dual framework of "commercial use" and the applicability of the Rogers test, as demonstrated by the contrasting outcomes in Jack Daniel's and My Other Bag. In contrast, the EU emphasizes trademark function, allowing only limited exceptions for public-interest or artistic parodies, while commercial parodies remain risky due to the lack of CJEU guidance. Meanwhile, the UK applies EU-based standards alongside its own interpretation of bad faith, balancing trademark protection with freedom of expression. Despite

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these differences, all jurisdictions share a common principle: parody is permitted only when it does not impair a trademark's essential functions, with trademark confusion, association, or impact on reputation serving as key criteria. Besides, they also face shared challenges, such as the unclear line between commercial and expressive uses and inconsistent interpretations of key concepts, which could be resolved through ongoing judicial refinement rather than new legislation. However, this study examines mainly landmark cases of famous marks in commercial settings, leaving out small brands, digital parodies, other jurisdictions, and detailed legislative changes. Future work could expand case scope to digital and non-famous trademark parodies, include more legal systems, and conduct in-depth studies on statutory codification of parody defenses.

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