Study Guidelines

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2026 – Study Question

Parody (and freedom of expression) as a defence to trade mark infringement

Introduction

1) The protection conferred by a trade mark allows its proprietor to prevent third parties from using identical signs for identical goods or services as well as identical or similar signs for identical or similar goods or services where such use is likely to cause confusion, or, in the case of reputed trade marks, where such use takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the mark or tarnishes the reputation of the reputed trade mark or its owner. For the purpose of this Study Question, claims related to infringement of trade mark rights and anti-dilution claims will be collectively referred to as "trade mark infringement". This protection ensures the *inter alia* origin and quality functions of trade marks, safeguards investment, and prevents unfair competition.

2) However, in contemporary society, trade marks have evolved from purely commercial indicators to social and cultural symbols. They appear in art,

politics, humour, and digital communication. The growing use of trade marks for parody—through memes, artistic reinterpretation, political campaigns, or satirical merchandise—raises the question of how far parody (and freedom of expression) can serve as defence to trade mark infringement.

3) Unlike copyright law, trade mark regulations seldom include an explicit "parody" exception. It is up to courts to decide if parody can justify the use of a trade mark. The challenge lies in balancing these competing interests: the trade mark rightsholder's to protect the origin and reputation functions of the mark, and third parties' right to engage in humorous, artistic, or political commentary or critique.

4) This Study Question explores how national laws and courts address parody and freedom of expression as defences to trade mark infringement and whether there is a need for international harmonisation.

Why AIPPI considers this an important area of study

5) Parody sits at the interface of intellectual property and fundamental rights. The issue is particularly relevant in a digital environment where brand references have become part of everyday discourse and where parodic uses can reach global audiences instantly.

6) The increasing tension between trade mark protection and parody affects a wide range of stakeholders: trade mark rightsholders, creators, activists, and consumers. For trade mark rightsholders, parodies may risk dilution, damage to the distinctive character, or reputational harm; for creators, they may be an essential form of commentary and social critique. Courts worldwide have struggled to reconcile these interests consistently, often arriving at divergent outcomes.

7) AIPPI considers that greater clarity and possibly harmonisation are needed to:

- Define what qualifies as a parody in the trade mark context;

- Determine when expressive or humorous use should find safe harbour from liability; and
- Establish guiding principles for balancing exclusive rights over a trade mark and freedom of expression.

Relevant treaty provisions

8) There is no international treaty provision that expressly recognises parody as a defence to trade mark infringement.

9) The TRIPS Agreement in Art. 17[1] permits limited exceptions to trade mark rights, provided that they take account of the legitimate interests of both the trade mark owner and third parties. Parody may be considered one such "*limited exception*."

10) Also, while Art. 8 of TRIPS Agreement does allow Members to "*adopt measure necessary (…) to promote public interest in sectors of vital importance to their socio-economic (…) development*", such measures must be "*consistent with the provisions of [TRIPS] Agreement*".

11) The Paris Convention contains no equivalent rule. However, article 10 *bis* of Paris Convention does provide for the need for "*effective protection against unfair competition*", indicating that "*any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition*". The following examples are listed in such article:

"(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

[1] Article 17 – Exceptions: Members may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."

Scope of this Study Question

12) This Study Question aims to examine how parody (as a form of freedom of expression) operates as a defence, and under which circumstances, in relation to trade mark infringement, both in use (e.g. parody merchandise, art, political or humorous expression, online content) and in registration (applications for parody marks).

13) The use of parodies in the domain of copyrights, designs and any other intellectual property rights is out of the scope of this Study Question.

14) Parody (and freedom of expression) should be analysed primarily within trade mark law, while acknowledging and addressing the role of unfair competition only insofar as they affect the effectiveness of parody as a defence to trade mark infringement in practice. Criminal law is outside the scope of this Study Question. This Study Question does not address private international law issues.

Previous work of AIPPI

15) AIPPI has addressed related topics in several Resolutions:

16) According to Resolution on Q245[2] (Rio de Janeiro, 2015), the protection afforded to the trade mark rightsholder should not be absolute. Limitations and defences should be available in accordance with trade mark law generally, and at least in parody and/or freedom of expression case. The burden of proof for such limitations and defences should be on the party invoking the limitation or defence.

17) The Resolution on Q168 (Lisbon, 2002)[3], relating to "use as a trade mark" provides that "*use of trade marks in parody should be subject to the same analysis as other trade mark use*".

18) The Resolution on Q188 (Berlin, 2005), which generally addressed the balance between trade mark protection and freedom of expression, states that "*it should be possible, in principle, to invoke freedom of expression as defence in trade mark cases in exceptional circumstances*".

19) The Resolution on Q195 (Singapore, 2007), on "Limitations of Trade mark Rights", states that trade mark right limitations should be allowed only to the extent that the use of another's trade mark by a third party does not cause dilution of the mark. On its turn, the requirements and extent of protection associated with dilution are addressed by the Resolution on Q214 (Paris, 2010)[4]. This Resolution sets out that "trade marks having recognition or fame" should be protected against dilution by blurring and dilution by tarnishment.

20) The Resolution on Q291 (Hangzhou, 2024) addresses defence of parody in copyright and recognizes "parody as a form of freedom of expression", in the copyright context. It also sets forth certain criteria to determine when a valid defence is available for the author of the parody.

21) The present Study Question builds upon these principles in the specific context of trade mark law.

[2] Taking unfair advantage of trade marks: parasitism and free riding
[3] Use of a mark "as a mark" as a legal requirement in respect of acquisition, maintenance and infringement of rights
[4] Protection against the dilution of a trade mark

Discussion

22) Comparative analysis reveals clear divergence among national approaches to parody as a defence to trade mark infringement. The differences arise from varying constitutional traditions, statutory wording, and judicial assessment on the balance between freedom of expression and property rights. While the underlying conflict is universal — balancing exclusive trade mark rights with expressive freedoms — the solutions adopted across jurisdictions range from explicit constitutional protection to near-total absence of a parody defence.

23) In the European Union, parody is not expressly codified as a defence under trade mark legislation. However, Recital 27 of the 2015 Trade Mark Directive (EU) 2015/2436 and Recital 21 of the EU Trade Mark Regulation (EU) 2017/1001 provide interpretative guidance, stating that trade mark protection should not interfere with the exercise of freedom of expression, particularly artistic expression, provided the use accords with "*honest practices in industrial or commercial matters*."

24) In practice, courts in Member States have relied on this principle and on concepts such as use in the course of trade, use as a trade mark, due cause, and honest practices to assess whether parody is permissible. Where use occurs outside the course of trade — for example, in political, artistic, or satirical expression — it may fall entirely outside the scope of trade mark protection, therefore avoiding an infringement finding.

25) Nevertheless, when the parody is used in commerce, courts must balance freedom of expression against the trade mark's core functions. In Deckmyn C-201/13[5], concerning copyright parody, the CJEU emphasised that parody requires a fair balance between the rights of the right holder and the freedom of expression of the user. This reasoning has indirectly influenced trade mark analysis.

[5] Judgment of the Court (Grand Chamber), dated 3 September 2014, Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others, ref. no.: C-201/13, ECLI:EU:C:2014:2132

26) The pending IKEA/Vlaams Belang C-298/23[6] reference before the CJEU is expected to clarify the scope of permissible political parody in trade mark use. The case concerns the use of the "IKEA" mark and visual identity by a Belgian political party in a campaign advertisement. The CJEU's forthcoming ruling may define the limits of freedom of expression and political speech under EU trade mark law and could set a benchmark for balancing fundamental rights and trade mark protection within the internal market. In the Opinion of Advocate General Szpunar[7], the key issue is reconciling freedom of expression, including political and parodic expression, with the protection of well-known trade marks. The Advocate General emphasizes that the concept of *due cause* can serve as a flexible mechanism for balancing these rights, taking into account criteria such as the nature of the expression (commercial vs. non-commercial), competitive motives, public interest, the intensity of the use, and the impact on the trade mark's reputation. Additionally, the assessment of whether the use of the trade mark falls within the "course of trade" or "in relation to goods and services" may influence the extent of protection granted to the trade mark in the context of parody.

27) Germany operates within the EU legal framework and also under strong constitutional protection of free expression (Article 5 of the Grundgesetz). German courts have generally distinguished between artistic or political

[6] Request for preliminary ruling dated Ma y8, 2023, ref. no.: C-298/23 - Inter IKEA Systems
[7] Opinion of Advocate General Szpunar delivered on 13 November 2025, IKEA/Vlaams Belang C-298/23

expression, which enjoys broad protection, and commercial parody used as a trade mark, which typically infringes.

28) In PUMA/PUDEL case[8], the defendant registered "PUDEL" (German for "poodle") together with a leaping-dog logo closely imitating PUMA's famous leaping-cat mark for clothing. The Federal Court of Justice held that, despite the humorous intent, the registration took unfair advantage of PUMA's reputation and was likely to dilute its distinctiveness. The court reasoned that freedom of expression does not encompass the right to register another's mark as a source indicator for similar goods.

29) French courts distinguish between non-commercial parody in public-interest expression, which can be lawful, and commercial parody on goods, which is generally infringing. In Esso vs. Greenpeace France[9], Cour de cassation upheld lower decisions rejecting Esso's claims over the altered "E$$O" logo used in environmental campaigns, holding that such use fell within freedom of expression and did not amount to trade mark infringement. This judgement confirms that French law permits parody where the use serves a critical or artistic purpose and does not mislead consumers as to commercial origin.

[8] Judgement of the German Federal Court of Justice (BGH) dated 2 April 2015, ref.no.: I ZR 59/13
[9] Judgement of Cour de cassation dated 8 April 2008, ref.no.: 06-10.961,

30) The United States recognize parody through First Amendment jurisprudence and the Lanham Act. Pursuant to 15 US Code § 1125(c)(3) explicitly exempts "*any fair use, including … parody, criticism, or commentary*" provided the use is not as a designation of source. Under Rogers v Grimaldi[10] case, 875 F.2d 994 (2d Cir. 1989), use of a trade mark in an expressive work is lawful unless it a) has no artistic relevance to the work, or b) explicitly misleads consumers as to source.

31) In Louis Vuitton Malletier S.A. v Haute Diggity Dog[11], LLC, 507 F.3d 252 (4th Cir. 2007), the court held that "Chewy Vuiton" dog toys were a clear parody and neither confusing nor dilutive. More recently, the U.S. Supreme Court in Jack Daniel's Properties Inc. v VIP Products[12] LLC, 599 U.S. 140 (2023), ruled that when an alleged parody itself serves as a brand identifier (e.g. "Bad Spaniels" dog toy), ordinary likelihood-of-confusion analysis applies; the Rogers threshold does not automatically protect it. However, the Court also stated that "a trade mark's expressive message – especially a parodic one . . . – may properly figure in assessing the likelihood of confusion." The pending litigation deals with a dog toy shaped similar to a Jack Daniel's whiskey bottle and label, but with parody elements, which Jack Daniel's asserted constituted trade mark infringement and dilution. On remand, the lower court held against Jack Daniel's on trade mark infringement because the parody created no likelihood of confusion. But it held in favour of Jack Daniel's on trade mark dilution, because the parody constituted dilution by tarnishment[13]. The decision is on appeal, which includes a constitutional challenge to the dilution-by-tarnishment statute.

[10] Judgement of Court of Appeals for the Second Circuit dated 5 May 1989, ref.no.: 875 F.2d 994;
[11] Judgement of Court of Appeals for the Fourth Circuit dated 13 November 2007, ref. no.: LLC, 507 F.3d 252
[12] Judgment of United States Supreme Court dated 8 June 2023, Jack Daniel's Properties Inc. v VIP Products, ref.no.: LLC, 599 U.S. 140
[13] VIP Products LLC v. Jack Daniel's Properties, Inc., No. CV-14-02507-PHX-SMM, 2025 WL 275909 (D. Ariz. 1/23/25)

32) Indian courts have explicitly linked parody with constitutional free speech under Article 19(1)(a) of the Constitution. In Tata Sons Ltd v Greenpeace International[14], the court refused to enjoin Greenpeace's online game "Turtle v Tata," which used the Tata logo to criticise the company's environmental practices. The court held that the use was non-commercial, did not constitute trade mark use, and fell within protected expression. This decision remains the leading Indian precedent acknowledging parody as a form of legitimate commentary.

33) Japan's Trade Mark Act lacks any exception for parody or expressive use. The Intellectual Property High Court confirmed in Franck Muller v Frank Miura[15], that parody does not automatically shield use from infringement; similarity and likelihood of confusion are decisive. The court reinstated registration of "Frank Miura" after finding the marks not sufficiently similar, without recognising a general "parody defence."

34) In Brazil, in the Johnny Walker x Joao Andante case[16], the Superior Court of Justice recognized that a parody, which merely reflects a translation of famous mark and seeks to freeride the notoriety of the third party's brand should be recognized as an infringement of trade mark rights. On the other

[14] Judgment of Delhi High Court dated 28 January 2011 Tata Sons Ltd. v. Greenpeace International & Anr., ref.no.: CS(OS) No. 1407/2010
[15] Judgement of The Intellectual Property High Court dated 12 April 2016, ref. no.: Heisei 27 (gyo-ke) 10095;
[16] REsp 1881211/SP, 14/09/2021

hand, this same court, when deciding upon a case referring to the use of a "play on words" on the name of a famous newspaper in connection with a non-commercial blog criticizing such news media[17], decided that such non-commercial use falls out from the scope of trade mark protection or unfair competition, being resolved under the principles of freedom of expression and copyright fair use and parody exception (as the mark was also the title of a news publication).

35) Bearing above in mind, across all jurisdictions, three decisive dividing lines seem to emerge from various court assessments on parody-related disputes:

a) Commercial vs. non-commercial use: may parody be tolerated in art, commentary, or activism but not when the altered mark is used to sell goods?
b) Expressive vs. trade-mark use: does liability depend on whether the trade mark functions as an indication of origin?
c) Reputation and dilution: while some jurisdictions seem to recognise statutory fair-use exemption, others appear to rely on "due cause" balancing, with some civil-law systems apparently protecting reputation more strictly.

Across these systems, proportionality has become a guiding principle: courts aim to prevent genuine consumer confusion and unfair exploitation while avoiding undue restrictions on artistic or political expression.

You are invited to submit a Report addressing the questions below.

[17] REsp 1548849/SP, 20/06/2017

Questions

I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law.

1) Does your law or case law recognise parody or freedom of expression as a defence to trade mark infringement. YES or NO. Please comment, addressing, in particular, if such defence is:
a) statutory,
b) judicially developed,
c) based on general principles such as honest practices or constitutional rights?

2) Does your law or case law define or characterise "parody" in the framework of trade mark infringement? YES or NO. Please explain, indicating how "parody" is understood (e.g. must it be humorous, critical, or transformative?) and by whom (legislature, courts, or doctrine).

3) Do any of the following aspects impact whether a parody of a trade mark may or may not be considered a trade mark infringement (please explain):

   a) The parody constitutes an expression of humour or mockery;

   b) The parody has a critical intent (i.e. the parody is intended to express criticism or commentary, and not merely to entertain or to promote goods or services.);

   c) The parody is directed at the original mark, and is used to criticize, disparage or discredit the original trade mark, or otherwise affect its reputation;

   d) The parody is noticeably different from the original trade mark;

e) The parody is not directed at the original mark (i.e. targeting at society or other aspects unrelated to the original mark);

f) The parody is non-commercial and purely artistic;

g) The parody is non-commercial and used to draw attention to political or social message;

h) The parody is used "in the course of trade" and is used to sell competing, similar and/or related goods or services;

i) The parody is used "in the course of trade" and is used to sell non-competing and unrelated goods or services;

j) The parody involves monetisation (e.g. sales or advertising revenue);

k) The trade mark being parodied is considered to be well-known or famous;

l) Other.

4) Does the function in which the trade mark is used have an impact on liability — in particular, does liability depend on whether such use constitutes use in the function of indicating the origin of goods or services? YES / NO. Please explain.

5) Is the parodic nature of the use, including the specific type of parody (e.g. commercial, artistic, political or satirical), taken into account as a relevant factor in the assessment of the likelihood of confusion? YES / NO. Please explain.

6) Does your law or case law address conflicts between parody and the protection of well-known, reputed or famous trade marks? YES / NO. Please explain in particular, does your jurisdiction recognize a statutory fair-use exemption, apply a "due cause" balancing test, or afford stricter protection to reputation?

7) Does your law or case law allow a trade mark parody to be registered as a trade mark? YES / NO Please explain, also addressing how local practice deals with such applications.

II. Policy considerations and proposals for improvements of your Group's current law

8) Could your Group's current law or practice relating to parody defences to trade mark infringement be improved? YES / NO. Please explain.

9) In your Group's view, what policy objective (such as free speech, or another objective) would a defence of parody promote and help accomplish? Does the policy objective drive the types of expression that should be allowed under a parody defence? YES / NO. Please explain.

10) Are there any police considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question? YES / NO. Please explain.

III. Proposals for harmonisation

11) Do you believe that there should be harmonisation in relation to exceptions and defences to trade mark infringement based on parody? YES / NO. Please explain.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

12) Should different standards apply when assessing whether a parody infringes a trade mark, depending on the nature of the parody (e.g. commercial use, artistic expression, brand criticism, or political parody)? YES / NO. Please explain.

13) Should there exist exceptions or limitations to trade mark protection for the purpose of parody or freedom of expression? YES / NO. Please explain.

14) Should any of the following aspects impact whether a parody defence for trade mark infringement should be available (please explain):

a) The parody constitutes an expression of humour or mockery;

b) The parody has a critical intent;

c) The parody is noticeably different from the original trade mark;

d) The parody is not directed at the original mark (i.e. targeting at society or other aspects unrelated to the original mark);

e) The parody is non-commercial and purely artistic;

f) The parody is non-commercial and used to draw attention to political or social message;

g) The parody is directed at the original mark, and is used to criticize, disparage or discredit the original trade mark, or otherwise affect its reputation;

h) The parody is used "in the course of trade" and is used to sell competing, similar and/or related goods or services;

i) The parody is used "in the course of trade" and is used to sell non-competing and unrelated goods or services;

j) The parody involves monetisation (e.g., sales or advertising revenue);

k) The trade mark being parodied is considered to be well-known or famous;

l) Other. Please explain.

15) Should the function in which the trade mark is used have an impact on liability — in particular, should liability depend on whether such use

constitutes use in the function of indicating the origin of goods or services? YES / NO. Please explain.

16) Should the availability of a parody defence be subject to the demonstration of the following (please explain):
   a) Absence of likelihood of confusion or association as to source, affiliation, sponsorship?
   b) That the parody does not take unfair advantage of, or cause undue detriment to, the reputation or distinctiveness of the mark?
   c) That use of the parody is consistent with honest commercial practices?

17) Should well-known, reputed or famous trade marks benefit from additional protection against trade mark parody? YES / NO. Please explain.

18) What approach best balances parody and freedom of expression with the protection of well-known, reputed or famous trade marks, should the law provide for:
   a) a statutory fair-use exemption, under which parody would not constitute trade mark infringement if specific legal conditions are met;
   b) a "due cause" balancing test, under which parody could justify the use of a trade mark on a case-by-case basis, following a judicial assessment; or
   c) stricter protection of trade mark reputation in cases involving parody?

19) Should a sign which parodies a third-party's trade mark be allowed to be registered as a trade mark? YES / NO. Please explain, also addressing how TM Offices should deal with the situation.

20) Please comment on any additional issues concerning exceptions and limitations to trade mark protection related to parody you consider relevant to this Study Question.

21) Please indicate which industry sector views provided by in-house counsels are included in your Group's answers to Part III.