

The Conditions for Applying Parody Defense and the Legal Framework in Trademark Law

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Abstract. This paper examines the enduring conflict between the trademark protection and freedom of expression, with an emphasis on whether parody can be considered a separate defense under modern trademark law. Thus, it comes into direct conflict with anti-dilution rules aimed at preserving the distinctiveness and commercial reputation of trademarks. Yet, existing legal frameworks offer no coherent solution. Through an examination of the legal systems of the United Kingdom, the European Union, and the United States, it becomes clear that different jurisdictions adopt distinct regulatory approaches. In particular, the UK and EU emphasize the preservation of trademark identity, while US law, influenced by the First Amendment, gives greater protection to artistic and critical expression. Despite these differences, no jurisdiction provides a coherent parody defense, and current outcomes rely on fragmented doctrines such as fair use or free-speech balancing. The results indicate that these cross-jurisdictional differences reflect broader structural developments, including the expanding communicative functions of well-known marks and the increasing privatization of cultural symbols. Furthermore, it proposes a limited and structured parody defense to prevent abuse, safeguard the core economic interests of trademark owners, and preserve a predictable space for cultural commentary within the public domain.

Keywords: Parody Defense, Trademark Law, Dilution Doctrine, Freedom of Expression

1. Introduction

In modern market economies, the expansion of trademark protection has progressively exposed the structural tensions between trademark law and freedom of expression. This implies that well-known trademarks not only indicate commercial origin but act as cultural symbols embedded in advertising, media, and public discourse. Thus, parodic use, which relies on the recognisability of such symbols to convey humour, criticism, or social commentary, occupies a particularly contentious position in contemporary trademark law. Due to its reliance on famous marks, parody is frequently subjected to anti-dilution regimes that prioritise the preservation of distinctiveness and commercial reputation [1]. Current academic discussions have examined trademark dilution, brand value, and the symbolic dimension of well-known marks, particularly within the context of the United States' constitutional protection of free speech. Moreover, comparative studies has further identified divergent regulatory orientations among the United States, the United Kingdom, and the European Union. However, parody is often addressed only indirectly, either as a marginal application of the dilution doctrine or

as an incidental aspect of fair use. The study of parody as a distinct legal issue is still developing, and further analysis is needed to understand the institutional foundations behind cross-jurisdictional differences. In this context, the legal status of parody within trademark law gives rise to a number of interrelated issues. It is crucial to examine how various legal systems permit or constrain parodic expression in practice, how the functional broadening of trademark law redefines the boundaries of permissible use, and whether existing doctrines can distinguish real cultural expression from brand misuse. These issues matter as well-known trademarks grow in cultural and commercial value. This study explores the United Kingdom, European Union, and United States comparatively, blending doctrinal analysis with theoretical reflection. By tracing judicial reasoning, statutory structures, and underlying normative commitments, it identifies the institutional logic governing parody disputes. On this basis, the possibility of a limited and structured parody defence is examined to preserve the core economic functions of trademarks while preventing the overextension of dilution doctrine into the domain of cultural expression.

2. The cross-jurisdictional comparison of the parody defense in trademark law

2.1. The UK and EU approach: parody within the logic of dilution

In the United Kingdom and the European Union, no independent doctrinal framework has yet been established to recognize trademark parody as a protected form of expression, nor do their statutory regimes explicitly acknowledge its communicative or critical value. Consequently, the parodic use of trademarks is generally assessed within the structure of anti-dilution law, rather than through a speech-oriented analytical lens. This institutional choice places parody at an inherent disadvantage, as it almost inevitably depends on the recognisability of a well-known mark and therefore readily triggers dilution review [2].

At the legislative level, Article 10(3) of the UK Trade Marks Act 1994 and Article 9(2)(c) of the EU Trade Mark Regulation (EUTMR) both permit owners of well-known marks to limit third-party use even without consumer confusion, provided that such use recalls the mark and causes blurring, tarnishment, or an unfair benefit [3,4]. Within this framework, the decisive inquiry is not whether the use contributes to public discourse, but whether it interferes with the mark's distinctiveness or reputation. The expressive intention of parody thus operates, at most, as a marginal consideration. In terms of judicial practice, this structural orientation is reflected in court decisions, albeit with differences in emphasis. EU courts generally adopt a rights-holder-centered interpretation, treating the presence of free-riding as sufficient to exclude expressive considerations from dilution analysis. By contrast, UK courts sometimes recognize the creative context of parody, especially in cultural or entertainment settings, yet they ultimately give precedence to preserving the distinctive character and economic value of well-known marks. In practice, defendants bear a heavy burden to show that no dilution has occurred, so parody is permitted only in limited and uncertain cases. More broadly, neither system has developed speech-protective filters comparable to those in US law. Without such mechanisms, parody is frequently evaluated as a potential threat to brand value rather than as a form of cultural critique, resulting in a persistent conflation of expressive and commercial use. Taken together, the UK and EU approaches illustrate a regulatory model in which anti-dilution protection predominates, while parody lacks an independent pathway to legal legitimacy.

2.2. The United States approach: structuring space for expressive use

The United States has developed a more differentiated framework for addressing the relationship between trademark law and parody, grounded in both the Lanham Act and the First Amendment. Importantly, US law does not fully incorporate parody into dilution analysis; instead, it structurally limits the reach of the dilution doctrine when expressive interests are at stake.

At the legislative level, Section 1125(c)(3) of the Lanham Act explicitly excludes from dilution liability uses that are non-commercial or constitute commentary, criticism, or other protected forms of expression. Importantly, US courts adopt a functional understanding of these categories, holding that the presence of commercial distribution does not preclude protection when the chief purpose of the use is expressive rather than competitive. Consequently, expressive intent and commerciality are assessed together as part of a contextual inquiry [5]. In judicial practice, this structure is manifested in a relatively consistent analytical approach that prioritises expressive purpose while maintaining safeguards against consumer confusion and commercial free-riding. For example, in *Mattel, Inc. v. MCA Records, Inc.* (also known as the "Barbie Girl" case), the Ninth Circuit held that parody, as a form of cultural commentary, falls outside the scope of dilution law and emphasized that trademark rights cannot be used to block criticism or satire. And the case illustrates that the dilution doctrine must give way when expressive use is dominant [6]. Compared with the UK and EU, the US model establishes a clearer institutional distinction between expression and branding. While parody is not granted absolute immunity, freedom of expression is accorded structural priority, subject to limits where confusion, bad-faith use, or serious reputational harm can be shown. This offers a valuable benchmark for the more in-depth theoretical analysis conducted in the following chapter [7].

3. The in-depth examination of institutional disparities in trademark law

The differing treatment of parody in trademark law arises from doctrinal techniques and judicial attitudes and deeper institutional differences across legal systems. In the UK and the EU, parody is largely subsumed within the logic of dilution and brand control, whereas the U.S. has developed a structurally differentiated framework that gives priority to expressive use. These differences cannot be fully explained by case-by-case adjudication; they reflect distinct understandings of the functions of trademarks, the scope of proprietary control, and the role of freedom of expression within private law. This chapter examines how the functional expansion of trademark law reshapes the legal status of parody, how conflicts between trademark protection and freedom of expression are handled, and how these differences affect the viability of parody as a defense in different jurisdictions.

3.1. The functional expansion of trademark law and the cultural symbolisation

To understand the institutional differentiation underlying parody-related disputes, it is necessary to begin with an examination of the functional transformation of modern trademark law. Traditionally, trademarks served a relatively narrow purpose by identifying the commercial source of goods and protecting consumers from confusion. But since the late twentieth century, this source-identifying function has gradually been expanded and, in some respects, displaced by a broader understanding of trademarks as carriers of brand value and commercial reputation. As a result, well-known marks are no longer viewed solely as indicators of origin but are increasingly treated as intangible assets capable of independent economic exploitation [8].

At the same time, this shift has been accompanied by a corresponding expansion in the scope of trademark protection. Distinctiveness is no longer valued solely for its role in source identification,

but is instead seen as a prerequisite for maintaining the exclusivity of the brand. Besides, goodwill and brand image have become core interests that the law prioritizes protecting. In some jurisdictions, the symbolic and cultural meanings associated with well-known marks are increasingly framed as interests deserving legal protection. As such, trademarks now operate simultaneously in commercial markets and in cultural spaces, circulating constantly through advertising, media, entertainment, and artistic expressions. This process of cultural symbolisation renders famous marks especially visible and communicatively powerful, while also placing them at the center of the conflict between private control and public reuse [9].

3.2. The structural conflict between trademark protection and freedom of expression

The expansion of trademark law's functions has inevitably pushed legal control into the realm of public expression. As trademarks gain cultural significance, forms of expression like parody, satire, and social commentary increasingly de on these symbols to achieve their communicative effect. As such, a structural conflict has emerged between trademark protection and freedom of speech. While trademark law seeks to protect the stability of brand meanings and their commercial value, freedom of speech emphasizes the unrestricted interpretation, critique, and reuse of cultural symbols.

This conflict is addressed in different ways by different legal systems. In the UK and the EU, the protection of famous trademarks is closely linked to the control over brand image and its economic value. And the anti-dilution regime is designed to prevent the weakening, disparagement, and unjust exploitation (i.e., "free-riding") of a brand. In this context, expressive factors are often marginalized and considered only in limited circumstances, with more focus on protecting the uniqueness and commercial reputation of the brand. In contrast, the United States adopts a different legal approach, largely influenced by the First Amendment of the Constitution. U.S. law regards freedom of speech as an external constitutional constraint on trademark protection. Through statutory exclusions in the Lanham Act and speech-oriented judicial principles, U.S. courts tend to view parody as a legitimate form of expression and exclude it from the scope of trademark protection. This emphasizes the primacy of expressive freedom, limiting the expansion of trademark law, especially in the realms of cultural commentary and artistic creation.

These differences reflect divergent policy orientations and highlight the fundamental distinctions between property rights and freedom of expression within legal systems. The UK and the EU place greater emphasis on the protection of brand control and commercial value, whereas the U.S. tends to view freedom of expression as an external boundary to trademark protection. These varying legal systems provide diverse solutions to the structural conflict between trademark law and freedom of speech, while also influencing the viability of parody as a legitimate defense [10].

3.3. The impact of systemic differences on the applicability of parody as a defense

The systemic differences directly influence the applicability and conditions of the parody defense. In legal systems where the protection of brand value and symbolic exclusivity is prioritized, parody is often regarded as dilution or improper use of a trademark, regardless of its expressive purpose. These legal systems prioritize the market function and economic value of trademarks, therefore making it easy to classify parody as an action that diminishes the distinctiveness or reputation of the trademark, especially in the case of famous trademarks. In contrast, in legal systems that emphasize and prioritize freedom of expression, parody may be recognized as a legitimate form of expression that limits trademark rights, though this principle must still be applied within certain boundaries, such as not causing consumer confusion or being used in bad faith [11].

The expansion of trademark functions largely determines the conditions under which the parody defense can be applied. As trademarks increasingly take on multiple roles, not only identifying the source of goods but also embodying brand value and cultural symbols, the legal status of parody varies significantly across different jurisdictions. In legal systems that focus on the property rights of famous trademarks and brand control, the scope of parody is narrow, and it is difficult to obtain clear legal protection, as it may be viewed as damaging the commercial value or reputation of the brand. In systems that distinguish more clearly between commercial activity and cultural expression, parody, as a form of cultural expression, has a greater chance of being granted principled protection, provided it does not cause actual harm to the trademark's distinctiveness or economic value. These institutional differences determine whether creators can successfully assert the parody defense and also affect how trademark law balances intellectual property protection with freedom of expression. Thus, clear standards need to be established across different jurisdictions to define the conditions under which the parody defense can be applied [12].

4. The path to constructing a structured parody defense system

By drawing on the legal systems of the UK, EU, and US, it can be seen that the core of the parody issue lies in distinguishing between "expressive use" and "commercial use," and in establishing a standardized distinction between the two in practice. Based on this, it is proposed to create a limited, structured, and standardized parody defense system, aimed at helping courts review related disputes in a consistent and predictable manner.

In particular, parody must have a genuine and legitimate expressive purpose. Instead of masking commercial marketing intentions, true parody should be aimed at conveying humor, satire, cultural commentary, or artistic creation. When determining whether an act constitutes parody, the court should focus on whether the work has independent expressive value, whether it can generate artistic or critical meaning independent of the original trademark, and whether it can convey criticism of society, culture, or the brand. This standard can effectively exclude actions that, under the guise of "parody," actually conceal commercial motives [13].

In addition, parody must not cause substantial harm to the distinctiveness or reputation of the trademark. This requirement does not mean denying the trademark dilution theory but incorporates it into a more nuanced analytical framework, thus helping the court distinguish between "expressive symbol transformation" and "actual brand harm." For "dilution," the court needs to assess whether the parody weakens the distinctiveness of the trademark. For "tarnishment," it should determine whether the parody has established a lasting association with vulgar or harmful content. And for "free-riding," it should evaluate whether the parody seeks to profit from the reputation of the brand. This standard allows for the preservation of cultural expression while preventing abuse [14]. Also, parody must not cause substantial damage to the distinctiveness or reputation of the trademark. The public should be able to clearly distinguish the parody as satire or commentary, and not confuse it with an endorsement or involvement by the trademark owner. If the visual, linguistic, or contextual characteristics of the parody fail to clearly differentiate it from traditional commercial use, it could cause public confusion, resulting in the rejection of the parody defense. Therefore, the court should ensure that the parody has enough distinction to avoid damaging the source-identifying function of the trademark.

This three-element system prevents the abuse of the parody defense while providing necessary institutional safeguards for freedom of expression. It avoids the risk of overly broad exemptions in the American style and compensates for the institutional deficiency of "absence of expressive use" in traditional dilution rules in the UK and EU, forming a more feasible and predictable compromise.

Through typified and structured design, courts can maintain the stability of the trademark system while ensuring that cultural expression and social criticism are not excessively restricted, achieving a balance between the trademark protection function and the public interest in expression.

5. Conclusion

As the protection of well-known trademarks continues to expand, the institutional tension between freedom of expression and trademark rights is becoming increasingly prominent. The UK and the EU, with their highly stringent dilution mechanisms, make it difficult for parody to gain sufficient legal legitimacy; the U.S., through both constitutional and statutory mechanisms, provides a more lenient space for parody. However, none of the three have developed a fully mature and integrated system for defending parody. That said, the institutional experiences of the U.S. and the ongoing discussions within the EU regarding freedom of expression offer valuable insights for potential future reforms. Parody, as a key mode of social critique, public discourse, and cultural expression, should not be seen merely as an infringement matter, while trademarks, as valuable economic assets, should also receive proper protection. Therefore, constructing a limited and typified defense against parody, without weakening the basic functions of trademarks or suppressing cultural expression, can not only clarify the boundaries of trademark law but also help improve the overall legitimacy and social adaptability of the legal system.

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