

# Bad Dog! Toy Maker in the Trademark Dog House Over “Bad Spaniel’s” Parody



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On June 8, 2023, the U.S. Supreme Court issued a unanimous ruling that a dog chew toy in the shape of a JACK DANIEL'S whiskey bottle and marketed under the name BAD SPANIEL'S, intended as a parody, would not be afforded heightened protections typically granted to certain artistic works under the First Amendment. Despite containing artistic or expressive elements, the fair use and noncommercial defenses to trademark infringement and dilution claims did not apply since BAD SPANIEL'S was used as a trademark to indicate the source of the chew toys.

**This case does not significantly alter the landscape of U.S. trademark law or trademark defenses. Rather, it serves as a reminder for companies contemplating the parody of another company's trademark that they must proceed with caution and ensure such parodies are executed in a non-trademark manner.**

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In the case of [Jack Daniel's Properties, Inc. v. VIP Products LLC](https://www.supremecourt.gov/opinions/23petitions/23-451), the Supreme Court was asked to decide whether the First Amendment protects a company's comical use of another company's well-known trademark on its own products, thereby shielding it from trademark infringement and trademark dilution claims arising from such use.

Trademark infringement refers to the unauthorized use of another's trademark or a confusingly similar mark on competitive or related goods or services. Trademark dilution, on the other hand, refers to the unauthorized use of a

famous trademark on noncompetitive goods or services in a manner that is likely to weaken the famous mark's distinctiveness. In the U.S., the "Rogers test" determines if certain unauthorized uses of trademarks that possess artistic or expressive qualities are shielded against claims of infringement and dilution under the freedom of speech provisions of the First Amendment. These protected uses include commentary, criticism, news reporting, education, and research, even if they would typically be considered trademark infringement or dilution. This is commonly referred to as the "fair use" of the trademark. Additionally, current U.S. law provides a defense against trademark dilution claims if the unauthorized use of the trademark is "noncommercial" in nature.

In the case at hand, the BAD SPANIEL'S dog toys humorously imitated the JACK DANIEL'S trademark and trade dress, including the renowned JACK DANIEL'S name (trademark) and the square-shaped whiskey bottle and font (trade dress). VIP Products argued that its BAD SPANIEL toy utilized a "pretend" trademark for a "pretend" product, asserting that such use was noncommercial and qualified for protection as a parody under fair use. Based on these arguments, VIP further contended that the BAD SPANIEL toy did not constitute trademark infringement or dilution.

However, the Court disagreed and concluded that VIP was not solely parodying Jack Daniel's marks but was also employing those parodies as its own "brand" for an actual product. The Court determined that VIP utilized an altered version of the Jack Daniel's name, label, and bottle not only for humor, but also to identify the origin of the dog toy. This finding was supported by the fact that while VIP had not registered BAD SPANIEL'S as a federal trademark, the company possessed registrations for other alcohol-inspired dog toys based on well-known brands, such as SMELLA ARPAW beer can-inspired squeaker toys that resemble the widely recognized STELLA ARTOIS beer. The Court considered this evidence as an indication that VIP was utilizing the parody marks as their own trademarks, leading to the determination that neither the Rogers test nor the fair use or noncommercial defenses applied to such use. From here, unless the parties reach a settlement, the lower court will determine whether the BAD SPANIEL'S toy constitutes infringement or dilution of the JACK DANIEL'S marks.



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If you have questions about this case or how it could impact your business, please contact a member of our [intellectual property](#) team to ensure proper protection of your brand's assets.