

Jack Daniel's in Legal Battle Over Hilarious Parody Dog Toy - U.S. Supreme Court Weighs In



The U.S. Supreme Court recently heard arguments in a case that pits Jack Daniel's whiskey brand's trademark rights against legal protections for creative expression. The dispute centers around a parody dog toy called "Bad Spaniels," designed to look like a Jack Daniel's whiskey bottle with humorous changes, including a label that reads "the Old No. 2, on your Tennessee Carpet." VIP Products LLC, a Phoenix-based company, sells the toy, which Jack Daniel's claims infringes on its trademark.

Jack Daniel's appealed a lower court's ruling that the "Bad Spaniels" toy is an "expressive work" protected by the First Amendment of the U.S. Constitution. The lower court applied the Rogers test, which allows artists to use another's trademark when doing so has artistic relevance to their work and would not mislead consumers about its source. VIP Products won the case after the court found that the toy did not mislead consumers and was not a commercial trademark.

At the Supreme Court hearing, justices expressed mixed opinions about whether the Rogers test is the appropriate legal standard in parody and trademark infringement cases. Some justices were wary of eliminating the test, which has provided an early off-ramp from costly litigation when parody items draw trademark infringement challenges. Other justices acknowledged the imperfections of the test and searched for alternatives.

Conservative Justice Samuel Alito raised concerns about the First Amendment implications of Jack Daniel's position, asking whether any reasonable person would think that the whiskey brand had approved the use of its trademark. Liberal Justice Ketanji Brown Jackson asked a lawyer for VIP Products whether the Rogers test was too permissive of "expressive works" that confuse. Jackson suggested that products that risk confusing consumers should be subject to a more rigorous test under which the nature of the product is just one of several factors under review.

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A lawyer for the Biden administration urged the Supreme Court to discard the Rogers test in favor of the likelihood-of-confusion test, which looks squarely at whether the use of a trademark is likely to cause marketplace confusion. The lawyer argued that this test could adequately account for lawsuits involving parodies.

The Supreme Court's recent hearing in the Jack Daniel's "Bad Spaniels" case has raised questions about the appropriate legal standard in parody and trademark infringement cases. While some justices expressed concern about eliminating the Rogers test, which has provided a way to avoid costly litigation, others acknowledged its imperfections and searched for alternatives. The arguments made by both sides, as well as the suggestion by the Biden administration to use the likelihood-of-confusion test, highlight the need to balance the protection of trademark rights with the First Amendment's protection of creative expression. The court's decision will be closely watched by artists, businesses, and consumers alike, as it could have significant implications for using trademarks in artistic works.