



PLAYING WITH BRANDS: A DANGEROUS GAME OR PERMISSIBLE IRONIC STATEMENTS?

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The practice of spoofing famous brands is not new. Who hasn't seen an "Adihash" t-shirt, with the famous Adidas logo re-imagined as a cannabis leaf? What started as simple parodies or mockeries of brands more recently has become a trend of transforming well-known and famous trademarks into distorted trademarks with a commercial purpose under the guise of conveying socially conscious messages, often through the use of irony.

This distorting of famous brands creates what can be characterized as ironic marks, where "ironic" in this context may be used to convey a meaning that can easily take on satiric or sarcastic dimensions. In the present article, the expression "ironic mark" will be used to refer to a mark resulting from the mutation or denigration of a trademark, usually consisting of a brand or name that enjoys a certain amount of fame, interpreted in a satirical or ironic way in order to give it a new meaning, while maintaining the recognized or famous design elements that enable consumers to associate the ironic mark with the original famous brand.

Ironic marks originated in the fashion industry as a reaction to the growing resentment towards capitalism and consumerism that embody famous marks (Una Mullally, "How the fake fashion label meme got cool (again)", *The Irish Times* (February 18, 2013)). Ironic marks are a clear threat to some of the most famous trademarks in the world. What may have started as an attempt to ridicule the targeted marks or to show discontent that the products bearing these marks are of lesser quality than promised, has become a worldwide trend.

Irrespective of the reasons behind the success of this trend, there are legal implications and potentially serious consequences for the owners of famous brands targeted by creators of ironic marks.

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Manifestation of Ironic Marks in Canada

Undeniably, the fashion industry is the biggest target of ironic marks. The fashion industry sits at the confluence of music and pop culture, thereby reaching a large consumer market with loads of creativity and wide appeal for youth. According to Valeria Nekhim: “Proponents of the trend argue it allows individuals, particularly younger generations who otherwise can’t afford luxury wares to emotionally engage with their favorite brands in a way that’s cheeky and cool.” (Valeria Nekhim, “Designer Parodies And The Law: That Funny Homiés Sweatshirt Might Not Be Legal”, *StyleCaster Fashion* (August 29, 2013))

One of the ironic fashion houses that appears to have garnered the most media attention is the ironic brand HOMIÉS, a satire of the HERMÈS logo, created by Brian Lichtenberg, a Los Angeles based designer specializing in contemporary women’s and menswear.

The individuals creating the ironic fashion houses are well aware of the fact that they are piggybacking on the goodwill of famous marks. While defending such actions on the grounds of engaging in anti-establishment rebellion, this argument becomes undermined when the ironic fashion house becomes a mainstream brand adorned by many and no longer a part of a counter-culture initiative.

While ironic fashion seems to have taken center stage, when it comes to capitalizing on famous fashion houses, consumer brands have also seen their fair share of satirical renditions. For example, the creators of the satirical “Dumb Starbucks” defended their ironic mark on the basis of freedom of speech and the “fair use” doctrine in the United States.

Nathan Fielder, a popular Canadian comedian and the creator of a Dumb Starbucks location in Los Angeles, California, called it a “parody art project” that mimicked the look and feel of a typical Starbucks location. Not surprisingly, Dumb Starbucks caught the attention of the real Starbucks who did not accept the argument that by adding the word “dumb,” the infringers were merely “making fun” of Starbucks and that use of the famous trademark was justified or defended by parody law. Although the legal case would have been interesting, this matter never made it to a U.S. court, as Dumb Starbucks was served by the Los Angeles County Department of Public Health with a notice of closure for operating without a valid public health permit.



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