



Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

The Case of Trademark v. Parody

The Facts of Jack Daniel's Properties v. VIP Products LLC:

At first glance, this case is about [trademark infringement](#), and could be perceived as another [humdrum](#) case heard by the U.S. Supreme Court. But this case is anything but dull. This case pits one of the world's most famous whiskey manufacturers, Jack Daniel's, against a dog toy company, VIP Products LLC, whose line of "Silly Squeakers" toys [parodies](#) famous brand name products.

One of the toys in this line is called, "Bad Spaniels," and parodies the famous Jack Daniel's Whiskey bottle. Here's how:

Where the bottle says "Jack Daniel's" the toy says "Bad Spaniels"; instead of "Old No. 7" and "Tennessee Sour Mash Whiskey" it says "The Old No. 2 on your Tennessee Carpet"; and instead of "40% alcohol by volume" and "60 proof" the toy says "43% poo by volume" and "100% smelly."



While Jack Daniel's "loves dogs and appreciates a good joke as much as anyone, they like its customers even more, and doesn't want them confused or associating its fine whiskey with dog poop." ([Brief for the Petitioner](#), p. 3). Jack Daniel's sued VIP Products, LLC, in the U.S. District Court for the District of Arizona, claiming that its chewy dog toy violates its federal trademark rights.

In their Petitioner's Brief, Jack Daniel's argues that the dog toy parody "[dilutes](#)" their hard earned, high quality name and product reputation by associating it with dog poop. They also claim the dog toy parody may confuse consumers. In their view, the purpose of a trademark is to protect a company's reputation, and if the Court sides with VIP Products, trademark law would become useless, as any business could misuse a registered trademark and make it the [brunt](#) of a joke.

In their Respondent Brief, VIP Products, LLC argues that everything about this dog toy is parody. They argue their product is not in direct competition with Jack Daniel's, that they are not a rival of the whiskey company, that no one is confusing their product as a bottle of Jack Daniel's Whiskey, and that their product is not sold in the same market as Jack Daniel's. In plain terms, VIP Products, LLC explains there is no bottle of dog poop being sold. It is a pretend trademark on a pretend label on a pretend bottle of pretend product. Their entire product is a parody ([Respondent Brief](#), p. 1,10,13), and they contend that one company does not need permission from an individual or company to parody them.

The district court judge agreed with Jack Daniel's, finding that the Jack Daniel's look and bottle design are distinctive and [nonfunctional](#), and therefore entitled to trademark protection. VIP Products, LLC. was ordered to stop production of the toy. VIP Products, LLC appealed to the U.S. Court of Appeals for the Ninth Circuit.



Despite agreeing with some elements of the lower court's ruling regarding the issue of trademark, the Ninth Circuit found that the lower court erred when it did not take into consideration the [Rogers Test](#). Reversing the lower court's decision, "the Ninth Circuit court held that VIP's 'humorous' dog toy was an 'expressive work' warranting heightened First Amendment protection from infringement liability" ([Brief for the Petitioner](#), p. 4). Jack Daniel's appealed to the U.S. Supreme Court.

On November 21, 2022, the U.S. Supreme Court granted Jack Daniel's Properties, Inc. [certiorari](#). The Court is being asked to address two questions:

- "Whether humorous use of another's trademark as one's own on a commercial product is subject to the [Lanham Act's](#) traditional likelihood-of-confusion analysis, or instead receives heightened First Amendment protection from trademark-infringement claims"
- Whether humorous use of another's mark as one's own on a commercial product is "noncommercial" under 15 U.S.C. § 1125(c)(3)(C), thus barring as a matter of law a claim of dilution by tarnishment under the Trademark Dilution Revision Act"([Brief for the Petitioner](#), pg.1).

Supreme Court Precedent Used in this Case:

- [Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc](#) (1976): The First Amendment protects willing speakers and willing listeners equally, therefore protecting commercial speech. the same as noncommercial speech.
- [Campbell v. Acuff-Rose Music, Inc](#) (1994): A parody's commercial character is only one element to be weighed in a [fair use](#) inquiry
- [United States v. Alvarez](#) (2012): Content-based restrictions on speech are subject to [strict scrutiny](#) and are almost always invalid, except in rare and extreme circumstances such as threats and defamation.
- [Matal v. Tam](#) (2017): A federal law prohibiting trademark names that disparage others was unconstitutional because speech may not be banned on the grounds that it expresses ideas that offend.
- [Iancu v. Brunetti](#) (2019): Prohibition on the registration of "immoral" or "scandalous" trademarks infringes on the First Amendment's protection of free speech.

To Think and To Do: This case was originally about trademark infringement, but evolved to include considerations of First Amendment protections of parody and [expressive speech](#). For one side, "freedom of speech begins with the freedom to mock" (Respondent Brief, p. 1). For the other side, "the mere fact that a defendant claims an expressive, as opposed to a purely commercial, purpose does not give it a First Amendment right to appropriate to itself the harvest of those who have sown" (Petitioner's Brief, p. 30). Given the precedents used in this case and your understanding of it, how do you think the Supreme Court will rule? Explain.

to [Learn MORE](#) about this case, view Jack Daniel's [Petition for Certiorari](#) and VIP Product's [Respondent Brief](#).