

Legal Alert

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QUESTION: HAS LOUIS VUITTON GONE TO THE DOGS?

ANSWER: NO, BUT LOUIS VUITTON SUED HAUTE DIGGITY DOG, LLC ALLEGING TRADEMARK INFRINGEMENT BY THE “CHEWY VUITON” LINE OF DOG TOYS!

Haute Diggity Dog made pet chew toys and beds such as Chewy Vuiton, Chewnel No. 5, Furcedes, Jimmy Chew, Dog Perignonn, Sniffany & Co., and Dogior. “The chew toys and pet beds are plush, made of polyester, and have a shape and design that loosely imitate the signature product of the targeted brand.” LOUIS VUITTON decided to mark its turf! *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC*, 507 F. 3d 252 (4th Cir. 2007).

Louis Vuitton said, doggone it, they can’t do that! Louis said Chewy stole its trademarks and copyrights for luxury luggage, handbags, and accessories. Haute Diggity Dog refused to roll over and the Court of Appeals doggedly refused the claim by Louis Vuitton. Instead, the Court said that Haute Diggity Dog’s products, marks and trade dress are permissible parodies of Louis Vuitton’s marks and trade dress.

The Court said that a “parody is defined as a simple form of entertainment conveyed by juxtaposing the irreverent representation of the trademark with the idealized image created by the mark’s owner.” In considering whether Chewy Vuiton’s imitation violated Louis Vuitton’s intellectual property, the Court analyzed the likelihood of confusion between the products.

The Court said that the “Chewy Vuiton” dog toys are successful parodies of Louis Vuitton handbags and the marks and trade dress used to sell those handbags. “First, the pet chew toy is obviously an irreverent, and indeed intentional, representation of an LVM handbag, albeit much smaller and coarser. The dog toy is shaped roughly like a

handbag; its name “Chewy Vuiton” sounds like and rhymes with LOUIS VUITTON; its monogram CV mimics LVM’s LV mark; the repetitious design clearly imitates the design on the LVM handbag; and the coloring is similar. In short, the dog toy is a small, plush imitation of an LVM handbag carried by women, which invokes the marks and design of the handbag, albeit irreverently and incompletely. No one can doubt that LVM handbags are the target of imitation by Haute Diggity Dog’s “Chewy Vuiton” dog toys.”

The Court bagged the idea that a \$10 dog toy made in China would be confused with a \$1,190 LOUIS VUITTON handbag. “The furry little “Chewy Vuiton” imitation, as something to be *chewed by a dog*, pokes fun at the elegance and expensiveness of a LOUIS VUITTON handbag, which must *not* be chewed by a dog.” Indeed, “[t]he dog toy irreverently presents haute couture as an object for casual canine destruction.”

But the Court sniffed that just because “Chewy Vuiton” is a successful parody doesn’t necessarily mean the products wouldn’t be confused. The Court barked that “an effective parody will actually diminish the likelihood of confusion, while an ineffective parody does not.”

To make its decision, the Court relied on such notable precedents as *Jordache Enterprises, Inc. v. Hogg Wyld, Ltd.*, where the use of “Lardashe” jeans for larger women was found to be a successful and permissible parody of “Jordache” jeans. The Court also noted the *Tommy Hilfiger Licensing, Inc. v. Nature Labs, LLC* case, allowing the use of the name “TIMMY HOLEDIGGER” as a novelty pet perfume.

As you can see, promotional parodies can be hilarious and very effective marketing ploys. You need to be very careful about infringing established trademarks and copyrights, however. Step in the wrong place and you might slip. Whether or not a specific parody will be allowed is specific to the facts and difficult to predict. You don’t want to be barking up the wrong tree. It could cost you a lot of bones!

If you need help protecting your intellectual property, or if you want advice as to how far you can go in making fun of someone else’s intellectual property, please call me.

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