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A COMPARATIVE DOCTRINAL STUDY OF TRADEMARK DILUTION IN THE CONTEXT OF SEMIOTIC DISOBEDIENCE

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ABSTRACT

Trademark dilution, a legal concept involving the unauthorized use of a trademark, has become increasingly relevant in the realm of intellectual property law. This concept has been traditionally viewed through the lens of commercial factors, but now it intersects with semiotic disobedience, which involves the subversive manipulation of symbols, logos, and cultural artifacts to convey alternative messages. This practice challenges intellectual property rights and the limits of freedom of speech. This paper aims to examine the evolving landscape of trademark dilution in the context of semiotic disobedience, focusing on Indian jurisdiction and statutory and juriprudential understanding of trademark dilution in relation to forms of semiotic disobedience like parodies.

INTRODUCTION

"Semiotic freedom is part of intellectual freedom. Freedom of thought produces extensions, not only of knowledge but also of artistic forms."

- ***Noam Chomsky***

Trademark dilution is a legal concept that has gained increasing prominence in the world of intellectual property law. It revolves around the idea that the unauthorized use of a famous trademark can weaken its distinctiveness and harm its owner's brand equity. Traditionally, trademark dilution has been assessed through a lens focused on commercial factors, such as market competition and consumer confusion. However, a new dimension has emerged, one that intersects with the realms of culture, art, and freedom of expression – semiotic disobedience.

Semiotic disobedience refers to the subversive manipulation of symbols, logos, and cultural artifacts to convey alternative messages, often in defiance of established norms or conventions. This practice challenges the boundaries of intellectual property rights, particularly trademarks, and tests the limits of freedom of speech. In a rapidly evolving digital age where memes, parodies, and cultural critique abound, understanding the interplay between trademark dilution and semiotic disobedience is crucial.

This paper embarks on a comparative doctrinal study, delving into the evolving landscape of trademark dilution in the context of semiotic disobedience. By examining legal frameworks and seminal cases from multiple jurisdictions, it aims to shed light on the various approaches adopted by different legal systems to reconcile the protection of intellectual property with the preservation of freedom of expression. The paper will discuss conceptual underpinngs interlinked with semiotic disobedience ranging from cultural jamming, anti-branding, the theory of consumer autonomy to the evolution of and distinction between traditional parody and brand pardody, to enable a better grasp of why semiotic disobedience as a phenomenon is unavoidable and necessarily required to be encouraged.

The paper will primarily focus on Indian jurisidiction and statutory and juriprudential understanding of trademark dilution in the context of forms of semiotic disobedience like parodies. In the subsequent sections, we will dissect key legal principles, landmark cases, and emerging trends in the intersection of trademark dilution and semiotic disobedience. Through this comparative analysis, it seeks to offer insights into how different legal traditions navigate the complex terrain where intellectual property rights meet the vibrant realm of cultural critique and artistic expression. Ultimately, this study aims to contribute to a deeper understanding of the challenges and opportunities posed by semiotic disobedience in the context of trademark dilution.

DOCTRINE OF TRADEMARK DILUTION

Trademark dilution dates all the way back to 1927. Frank I. Schechter introduced the idea of trademark dilution in his work titled "The Rational Basis of Trademark Protection". In his article, Schechter stated that a trademark's protection should go beyond addressing concerns of public dishonesty and also include stopping someone from "vitiating the originality and uniqueness of the mark." Because of his writings that established the foundation for the idea of dilution, Frank

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Schechter is referred regarded as the "father of dilution" in popular culture.[1]

Dilution is a drastic and contentious departure from consumer confusion, which has traditionally been India's yardstick for determining whether a trademark has been violated. Dilution is widely defined as injury to a trademark caused by diminishing its ability to identify goods or services in the market. The notion of specificity traditionally determined the extent of protection, which was restricted to the goods and services stated in the registration specification, whereas dilution expands this protection to goods that are not identical. In order to determine which trademarks will be eligible for the additional protection under trademark dilution, it takes into account the significance of the threshold inquiry relating to distinct goods or services and the fame criterion. The theory of dilution of trademarks is a rule in trademark law that guards against any kind of disintegration of a brand. According to the doctrine, in order to prove that a trademark has been diluted, the plaintiff must show both (1) that the infringer used the junior mark, which is noticeably similar to the well-known mark, to suggest or establish a connection between the well-known brand and the infringer's brand, and (2) that this use has financially harmed the well-known mark's value by reducing it.[2]

However, here are several circumstances in which the infringing mark will not be seen as diluted. This includes instances in which the mark is utilised for satire, news reporting, commentary, entertainment, or educational reasons. Such circumstances might be covered by descriptive or nominal fair use, so they cannot be regarded as trademark dilution. Additionally, advertising or marketing activities that enable customers of a brand to compare products or services are acceptable and won't give rise to legal action for trademark dilution.[3]

Trademark dilution, whether by blurring or tarnishment, involves actions that diminish the distinctive quality or positive associations of a famous or well-known trademark. Dilution by blurring occurs when a third party uses a famous trademark in a way that makes consumers associate the mark with unrelated products or services, thereby diminishing its distinctiveness. Dilution by tarnishment occurs when a third party uses a famous trademark in connection with

[1] T.G.Agitha, Trademark Dilution: Indian Approach, Journal of the Indian Law Institute , JULY-SEPTEMBER 2008, Vol. 50, No. 3 (JULY-SEPTEMBER 2008), pp. 339-366.
[2] Gangjee, Dev S., The Polymorphism of Trademark Dilution in India (September 25, 2008). Transnational Law & Contemporary Problems, Vol. 17, 2008.
[3] Graeme W. Austin, Tolerating Confusion about Confusion: Trademark Policies and Fair Use, 50 ARIZ. L. REV. 157 (2008).

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products or services that are of low quality, offensive, or morally objectionable, thereby harming the positive image and reputation of the mark. In semiotic disobedience, blurring may challenge commercial and societal norms by transforming a trademark's associations. Tarnishment, on the other hand, often aims to provoke thought or discussion about ethical or quality-related issues associated with the mark.[4]

SEMIOTIC DISOBEDIENCE

THEORY OF SEMIOTICS

Semiotics, the study of signs and symbols and their interpretation, plays a pivotal role in the world of trademarks. Trademarks are more than just logos; they are symbols that convey information about products or services. Understanding the theory of semiotics in the context of trademarks is crucial as it sheds light on how these symbols communicate meaning, evoke emotions, and influence consumer behavior. Semiotics acknowledges that signs are not universal but are culturally bound. Different cultures attribute varying meanings to symbols.[5]

In trademark law, this has profound implications for global brands. A logo that represents one thing in one culture may signify something entirely different elsewhere. Understanding these cultural codes is essential to create effective and culturally sensitive trademarks. The semiotic account of trademark law is valuable because, as a normative matter, it recommends practical and reasonable improvements in the doctrine that other accounts are unable—or unwilling—to recommend, and because, as a descriptive matter, it explains many areas of trade mark doctrine better than other accounts. Simply put, the goal of this research is to make the case that the semiotic account is an essential addition to the economic account, if only because it advances the same goal of the economic account—a more "efficient" legal system. Although perhaps not entirely consciously, trademark commentary has historically viewed a trademark as a three-legged stool made up of a signifier—the perceptible form of the mark—a signified—the semantic content of the mark, such as the goodwill or affect to which the signified refers—and a referent—the good or service to which the mark refers.[6]

[4] Mark P. McKenna, Testing Modern Trademark Law's Theory of Harm, 95 IOWA L. REV. 63 (2009).
[5] Cheng-chi Chang, The Clash of Theories: Semiotic Democracy and Personality Theory in Intellectual Property Law, 26 LAW & WORLD 14 (2023).
[6] Barton Beebe, Search and Persuasion in Trademark Law, 103 MICH. L. REV. 2020 (2005).

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Source distinctiveness, which corresponds to the semiotic connection of "signification," describes how distinctive a trademark's signifier is from its signified. Differential distinctiveness, which corresponds to the semiotic relation of "value," describes how different a trademark's signifier is from other signifiers in the trademark system. In contrast to trademark dilution, which is the diluting of differential distinctiveness—a trademark signifier's set of relations of difference with all other signifiers in the trademark system—trademark infringement entails the infringement of source distinctiveness. The dedication to absolute, systematic, and global protection of those relations of difference is necessary for antidilution protection. It necessitates, as Frank Schechter acknowledged, a commitment to the "uniqueness" of the mark, to safeguarding the degree to which the mark is, in Schechter's words, "actually unique and different from other marks."

Trademark dilution happens when two signifiers' differentiated distinctiveness is weakened by their similarity. That the junior signifier lessens the senior signifier's individuality, but properly speaking, both signifiers experience dilution; they are at odds with one another. The plaintiff's and defendant's signifiers are typically very similar, if not identical, on the signifier dimension, but because their referents are sufficiently dissimilar, consumers are not perplexed as to source, so no infringement action will be viable. In this respect, trademark dilution is more like a non-trespassory annoyance as it relates to the plaintiff's signifier than it is a trespass on the plaintiff's signified. The trademark dilution action is intended to stop such annoyances and, in doing so, to maintain the plaintiff's signifier's differentiated distinctiveness, regardless of the referent to which it is attached. As a result, the prohibition against dilution forbids interfering with the value relationships between the plaintiff's sign and all other signs in the trademark system.

SEMIOTIC DEMOCRACY AND SEMIOTIC DISOBEDIENCE

Trademark dilution, a concept embedded in intellectual property law, intersects with semiotic democracy, a theoretical framework rooted in the study of signs and symbols. Trademarks are more than commercial identifiers; they are semiotic constructs that convey meaning, emotions, and cultural associations. Semiotic democracy posits that the interpretation and appropriation of signs and symbols are not controlled by a singular authority but are democratic processes involving various stakeholders, including consumers, communities, and cultures. In the context of trademarks, semiotic democracy recognizes that consumers collectively contribute to the meaning and significance of a brand's symbol or name. Semiotic democracy highlights that the meaning of a trademark is not fixed; it evolves through cultural and societal contexts. Trademarks become embedded in cultural narratives, reflecting societal values and aspirations. The dynamic

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nature of semiotics means that a trademark's significance can shift over time. The tension arises between semiotic democracy's emphasis on freedom of interpretation and trademark dilution's need to protect brand identity. Striking a balance is crucial. While consumers should have the freedom to interpret trademarks, brands must also safeguard their semiotic integrity.[7]

A semiotic democracy, according to Lawrence Lessig, for instance, needs to be fostered, safeguarded, and exempted from the authorial control of intellectual property ownership. In agreement with this viewpoint, Terry Fisher has described semiotic democracy as the logical extension of political democracy: if "political democracy" refers to a system in which individual citizens can participate in the exercise of political power, then "semiotic democracy" refers to a system in which individual citizens can participate in the creation of cultural meaning.[8]

A democratic culture is a participatory culture, according to Balkin, and it is the culture of a democracy, a variety of factors—"institutions, practises, customs, mannerisms, speech, and dress"—participate in the process of democratisation. All of these factors involve aspects of social life that enable "ordinary people to gain a greatersay over the institutions and practises" that rule and mould them. A semiotic democracy decreases the monopolistic authority of an author by enabling access to these many forces, allowing the audience to reply using the same symbols and channels as the original owner. The interactive and appropriative aspects of freedom of expression have been made clear by digital technology; in doing so, it implicates both individual liberty and group self-governance.

Semiotic disobedience challenges conventional interpretations of symbols and signs. It asserts that individuals and communities possess the agency to subvert or reinterpret established meanings, disrupting dominant narratives and power structures. This concept thrives in the realm of cultural critique and resistance. Semiotic disobedience often finds expression in branding and marketing. Subversive advertising campaigns or artistic expressions can challenge and reinterpret brand symbols, leading to questions about whether such acts constitute trademark dilution. The intersection of semiotic disobedience and trademark dilution blurs the lines between cultural critique and legal protection. Courts face the challenge of distinguishing acts of critique from

[7] Sonia K. Katyal, Between Semiotic Democracy and Disobedience: Two views of Branding, Culture and Intellectual Property, 4 Wipo J. Intell. Prop. 50 (2012)
[8] S.U. Kucuk, Brand Hate, A Semiotic Analysis of Consumer-Generated Antibranding." Marketing Theory, June 2015, Vol. 15, No. 2, SAGE, pages 243–264.

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those genuinely diluting a trademark's distinctiveness.

Although semiotic disobedience and semiotic democracy may share some objectives, there are also significant contrasts between the two ideas. Some forms of semiotic disobedience are largely substitutive, in contrast to semiotic democracy's willingness to put consumers and corporations on an equal footing: it tries to occupy and "recode" corporate space in an effort to bring back a sort of crucial balance between them. The resistance to the extension of intellectual property rights over facets of culture is one indication of the widespread and growing scepticism towards conventional notions of ownership. Semiotic disobedience appears to take issue with the fundamental notion of ownership of symbols entirely, in contrast to semiotic democracy, which seeks access to symbols. By focusing on and contesting the "sovereignty" of advertising, semiotic disobedience activists' strategies offer an intriguing intersection of property and speech. These activists are well aware that there is limited legal protection for acts like trespassing, vandalism, defacing, cyber-squatting, and property possession or modification; the goal is protest rather than legal protection.[9]

PARODY

A practical definition of parody has been the focus of ongoing judicial research. Parody is described as "a simple form of entertainment conveyed by juxtaposing the irreverent representation of the trademark with the idealised image created by the trademark owner" by the court of appeals in Louis Vuitton v. Haute Diggity Dog. In order to achieve the desired result and set itself apart from the original trademark, a parody relies on a witty and critical remark. An essential component of a great parody is its ability to "conjure up the original."

Parodies are scrutinised under the trademark dilution concept because a parodist typically has no interest in causing customer confusion. While only well-known marks are shielded against dilution, parodies frequently draw on the mark's notoriety to drive home their argument. In fact, according to Professor Lemley, parodies can be used as a barometer for a brand's notoriety. Therefore, even though the limits of parody are constantly being explored, the original mark's fame is a crucial component in producing a successful parody.[10]

[9] Ann Bartow, Barbie in Bondage: What Orly Lobel's Book "You Don't Own Me: How Mattel v. MGA Entertainment Exposed Barbie's Dark Side" Tells Us About the Commoditization of the Female Body, 29 Fordham Intell. Prop. Media & Ent. L.J. 435 (2019).

[10] William McGeveran, The Imaginary Trademark Parody Crisis (and the Real One), 90 Wash. L. REV. 713 (2015).

TRADITIONAL PARODY

In popular culture, parodies and satires are frequently used. Additionally, enraged trademark owners have sued those parodies. Numerous of these incidents feature well-known instances of branding-based social criticism. However, courts have used a range of diverse theories in these cases. The realms of semiotic disobedience and parody are not confined to cultural critique and humor; they extend their subversive influence into the complex terrain of trademark dilution.

Trademark dilution refers to the unauthorized use of a famous trademark in a manner that blurs or tarnishes its distinctive quality, even if there's no likelihood of confusion. Semiotic disobedience in trademark dilution often involves recontextualizing well-known brand symbols. This subversion can challenge the brand's image and significance. Transformative parodies, while drawing on trademarked elements, use them in a way that fundamentally alters their meaning and message[11]. In trademark dilution cases, the fair use defense often plays a central role when semiotic disobedience or parody is claimed. Courts evaluate whether the use qualifies as commentary, criticism, or transformative work. Semiotic disobedience and parody, while often regarded as tools of cultural critique, have found a meaningful place in the realm of trademark dilution. They challenge the sanctity of trademarks, encourage a critical examination of corporate influence, and redefine the boundaries of intellectual property protection. As trademarks continue to pervade our visual and cultural landscape, semiotic disobedience and parody remind us that even the most iconic brands are not beyond the reach of subversion, critique, and transformation. In doing so, they contribute to the ongoing dialogue about the intersection of commerce, culture, and creative expression.

The determining factors that should be employed for assessing traditional parodies in the context of trademark dilution is the focus of this paper and is covered subsequently.

BRAND PARODY

Brand Parodies are parodies that serve as brands, logos, or taglines for commercial products. It is driven by the desire to make a statement or criticism, and it's unlikely to cause any confusion regarding the origin of the parody-branded item. However, because the parody is being utilised as a source identifier, parody as a brand varies from parody as a product in other respects.

[11] Rita Heimes, Trademarks, Identity, and Justice, 11 J. Marshall REV. INTELL. PROP. L. [i] (2011).

According to some observers, creating a brand name based on someone else's trademark appears to be a classic example of "free riding," where the parodist takes use of the desirable qualities of the targeted brand. Unsurprisingly, trademark owners detest the practise and file lawsuits to stop it.

But eliminating all types of free riding is not - and never has been - the goal of trademark law. The goal of trademark law has been to prevent injury to the trademark proprietor, the public, or occasionally both, even as it has been enlarged to prevent dilution. The appeal of a well-known brand may benefit those who create brands-as-parody, but if their use is successful parody, it doesn't cause the kind of harm that trademark law is intended to remedy. Additionally, these brands-as-parody provide an important medium for societal commentary. The subversive use of a parody as a brand prompts critical thought on the role of brands in society and the extent to which people define themselves through them—even more so than non-commercial forms of parody.[12]

So brands that spoof provide a special venue for speech while posing no threat to the fundamental principles of trademark law. However, as a matter of jurisprudence, the trademark analysis is made more difficult by the fact that a parody is also a brand. It serves more than just as a noun; it also serves as a brand in and of itself, and if it is memorable, it may perform the traditional role of helping people remember the other brand. The analysis is the same for any other trademark case where a parody is also a brand, according to a number of courts: "whether confusion or dilution is likely, and if it is, the use is unlawful." In other words, parody is neither treated favourably or as a defence in those courts.

In addition to referencing the trademark itself, brand parodies also appropriate the branding mechanism and use it to provoke critical thought about the place of brands in our culture. As an illustration, the dog chew toy from Louis Vuitton "pokes fun at the elegance and expensiveness of a LOUIS VUITTON handbag" while simultaneously "irreverently presenting haute couture as an object for casual canine destruction."[13] Commentary on both brands and branding is an issue of public attention given the prominence of branding and its economic and social impact. Furthermore, these parodic companies are likely to flourish in the market if they do so because

[12] Stacey L. Dogan & Mark A. Lemley, Parody as Brand, 47 U.C.D. L. REV. 473 (2013).
[13] Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC, 507 F.3d 252, 261 (4th Cir. 2007).

they provide some value to customers and because a sizable portion of the population finds their message to be compelling. Similar to how premium brands add value to customers who want to convey exclusivity, brand parodies are useful to customers who wish to convey a more rebellious or satirical attitude.[14]

Therfore it has been argued that Brand parodies should also be seen as part of the social conversation and not as trademark dilution.[15] The availability of this new sort of goods probably improves social welfare, barring any damage to the underlying trademark's informational function. Additionally, brand parodies enable others to join in on the dialogue with a different, unapproved message if brands are a part of it and customers are involved as well as trademark owners. By doing this, it aids in our self-definition. It's difficult to see how brand parodies represent any discernible threat to the informational objectives of trademark law, especially if the parody is successful and consumers get the joke. The public may perceive the trademark holder negatively as a result of the criticism, but trademark law has never specifically addressed that form of harm. Contrarily, the defendant's use of the plaintiff's mark to disparage the plaintiff, even in exchange for payment, is a defence to infringement. Thus, brand parodies are a necessary and desirable component of the social discourse that results from the phenomenon of branding. Owners of trademarks gain from that discussion, but they are not the only parties with a voice.

COLLUSION AND ANTI-BRANDING

Collusion involves two or more parties secretly cooperating for mutual benefit. In the context of trademark dilution, collusion may occur among competitors or infringers seeking to exploit a famous mark's reputation. Collusion can be a strategic tool to dilute a famous mark's distinctiveness. Competitors may work together to blur the lines between their products and the famous mark, causing consumer confusion.[16]

In its traditional conceptualisation, dilution is "the competition between the famous mark owner and other parties." Who these "other parties" may be is not entirely clear. A competitor corporation is implicitly perceived as the exclusive source of a brand in this traditional definition

[14] Irina D. Manta, Hedonic Trademarks, 74 OHIO St. L.J. 241 (2013).
[15] David Tan, The Semiotics of Alpha Brands: Encoding/Decoding/Recoding/Transcoding of Louis Vuitton and Implications for Trademark Laws, 32 CARDOZO Arts & ENT. L.J. 225 (2013).
[16] Mark Bartholomew, Advertising and Social Identity, 58 BUFF. L. REV. 931 (2010).

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of dilution; alternative creators and/or influencers, such as consumers, are disregarded. With the recent development of the Internet, consumers might now be considered "other parties" in this scenario. Modern customers are actively changing and reshaping brand meanings and associations thanks to the Internet.[17]

Consumers typically reinforce their identities by choosing brands that align with how they see themselves. However, some customers opt to reject brand meanings created by marketers if they conflict with how they see themselves or the company. Consumer counterculture resistance writing, anti-consumption literature, and anti-branding literature all describe this confrontation between consumer-generated anti-brand meanings and corporate brand meanings.[18]

Anti-branding is a counter-movement that challenges the dominance of corporate brands and their symbols.[19] It thrives on subversion and the deconstruction of established semiotic codes. -branding often employs semiotic disobedience as a tactic. Through parody, satire, or subversive aesthetics, it aims to disrupt the traditional branding narrative. In consumer-controlled digital spaces (such websites, blogs, and social network spaces), anti-branding is described as the outright rejection of corporate brands and brand meanings by consumers. This rejection is demonstrated by targeted businesses being mocked and attacked in order to generate negative Internet-based attention. Because they are losing control of their own brand meanings, which are occasionally worth more than the firm is worth on paper, several corporations find this disconcerting and concerning. Since anti-branders make references to the targeted brand in their speeches, the debate about anti-branding dilution eventually developed from this problem.[20]

In most situations of brand dilution, the corporation is accused of trying to imitate another brand in order to unfairly profit from consumer misunderstanding. On the other hand, anti-branding dilution concentrates on imitations or emulations of a brand and/or its associations that consumers created in order to profit (indirectly, through the satisfaction of expressing their identities and disagreements) from the dismantling of the company identity and/or showcasing corporate

[17] Tan, David, Cultural (Re)Codings: Copyright, Trademarks and the Right of Publicity (April 1, 2018). NUS Law Working Paper No. 2018/010.
[18] Kucuk, S.U. Exploring the Legality of Consumer Anti-branding Activities in the Digital Age. J Bus Ethics 139, 77–93 (2016).
[19] Kucuk, S. U. (2015). A semiotic analysis of consumer-generated antibranding. Marketing Theory, 15(2), 243-264.
[20] Sonia K. Katyal, Stealth Marketing and Antibranding: The Love that Dare Not Speak Its Name, 58 BUFF. L. REV. 795 (2010).

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wrongdoing. Other terms for anti-branding dilution include "anti-branding dilution by blurring" and "anti-branding dilution by tarnishment." Consumer-generated anti-branding activities are often linked to dilution via tarnishment since they openly and publicly portray and associate the targeted brand with a "lack of quality and prestige." Anti-branders may face legal action if they represent the targeted company as being inferior in quality and prestige, despite the fact that they do not compete with it. This is especially true if anti-branding campaigns confuse consumers and/or use dishonest or misleading tactics.

Collusion and anti-branding, each with its unique motives and methods, intersect in a complex dance within the realm of trademark dilution. This intersection challenges the traditional notions of brand protection and artistic expression. As courts grapple with the legal complexities, they must strike a delicate balance between safeguarding famous marks and preserving the right to engage in artistic critique and subversion. In doing so, they will shape the future landscape of trademark dilution in an age of collusion and anti-branding.

CULTURAL JAMMING

In the ever-evolving landscape of consumer culture, the concepts of cultural jamming, semiotic disobedience, and trademark dilution have emerged as powerful tools for social commentary and artistic expression. Cultural jamming is an activist tactic that subverts mainstream narratives and challenges the status quo. It often involves manipulating or appropriating recognizable symbols and logos. At its core, cultural jamming critiques consumerism, brand dominance, and the persuasive power of advertising. It seeks to expose hidden agendas and encourage critical thinking.

The use of culture jamming methods has been referred to as "semiotic disobedience" by Sonia Katyal. Cultural jamming and semiotic disobedience share a subversive spirit. When they converge, they create a potent force that challenges not only brands but also societal norms. Trademarks become the canvas for these subversive acts. They are repurposed to convey alternative messages, question authority, and provoke critical thought.[21]

The relationship between cultural jamming and trademark dilution is complex. On one hand,

[21] Matthew Rimmer, The Black Label: Trade Mark Dilution, Culture Jamming and the No Logo Movement, 5 SCRIPTed 70 (2008).

cultural jamming often involves the manipulation of logos and symbols associated with prominent brands. This can potentially lead to trademark infringement or dilution claims by brand owners. Cultural jammers usually operate in a legal gray area. Their activities may infringe on trademark rights, but they often argue that their actions fall under the umbrella of free expression and social critique. Courts have struggled to strike a balance between protecting intellectual property rights and Freedom of Speech and expression.

In regards to American Jurisprudence, the Ninth Circuit Court of Appeals has talked about the universally coded narrative of Barbie several times—both the doll and the trademark. In particular, the court determined in Mattel Inc. v. Walking Mountain Productions[22] that "Barbie, and all the associations she has acquired through Mattel's impressive marketing success, conveys these messages in a particular way that is ripe for social comment." When determining likelihood of confusion for trademark infringement or assessing the availability of the non-commercial use exception in a trademark dilution claim for the purposes of parody, satire, or political speech, US decisions have generally shown a willingness on the part of the courts to accept a semiotic reading of trademarks as cultural signs. US Courts have consistently declined to find liability against defendants who engaged in non-illegal cultural jamming: Thomas Forsythe's Barbie photographs,[23] Aqua's Barbie Girl,[24] Haute Diggity Dog's Chewy Vuiton dog toy[25] and My Other Bag's tote bags depicting drawings of Louis Vuitton bags[26].

The Constitutional Court of South Africa defended "adbusters," "culture jammers," and the No Logo movement against claims made by trade mark owners in the case of Laugh It Off Promotions v. South African Breweries International[27]. The importance of levity and humour having constitutional protection is discussed by Sachs J in his ruling. He observes that a culture that takes itself too seriously runs the risk of suppressing its resentments and viewing any display of irreverence as a threat to its survival. One of the best democratic solvents is humour. It allows the complexities and inconsistencies of daily life to be expressed in non-violent ways. This encourages diversity. It makes it possible for a variety of resentments to be expressed in a variety

[22] Mattel Inc v Walking Mountain Productions, 353 F.3d 792, 802 (9th Cir. 2003)
[23] Mattel Inc v Walking Mountain Productions, 353 F.3d 792 (9th Cir. 2003).
[24] Mattel Inc v MCA Records Inc, 296 F.3d 894 (9th Cir. 2002).
[25] Louis Vuitton Malletier SA v Haute Diggity Dog LLC, 507 F.3d 252 (4th Cir. 2007).
[26] Louis Vuitton Malletier SA v My Other Bag Inc., 674 Fed. Appx. 16, No. 16-241-cv (22 Dec 2016).
[27] Laugh It Off Promotions CC v South African Breweries International (Case CCT 42/04) [2005] (27 May 2005), the Constitutional Court of South Africa, [109].

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of unplanned ways. It is a constitutional health elixir.

The decision of the South African Constitutional Court supports the reforming of trade mark law to provide culture jamming practises more leeway. When it comes to trade mark dilution, a high level of proof should be sought; the Supreme Court of the United States' actual harm standard is preferred to lower standards. Smarter, more self-critical, more involved, and less mesmerised consumers are less likely to be easily confused, according to Graeme Austin. As a result, consumer perceptions of "confusion," "deception," "blurring," and "tarnishment" should also be rethought.

CONSUMER AUTONOMY

Courts have been both more and less concerned with the knowledge, interpretive skills, and intellectual capability of the relevant consumer, which is the basis of whether the challenged usage is "likely to cause confusion" in them. However, treating the consumer as sophisticated does not change the reality that she is still viewed as someone who "consumes"—one who is only entitled to a minimal positive freedom from confusion without the benefit of any positive theory that specifically acknowledges her place in the trademark discussion.[28]

Trademark law would benefit from adopting a consumer vision based on an autonomy theory in order to establish this space. This theory would acknowledge that consumers have a significant, and possibly dominant, role to play in the creation of trademark meaning and that the law should favour restraint when the meaning relates to the trademark's persuasive value—an area in which genuine "deception" plays a much smaller role. Autonomy recognises that the interpretive process should be as free from interference as feasible; hence, it is reasonable that trademark law play some part in removing noise from rivals that cause source confusion. Beyond this, however, this theory also suggests that the consumer be allowed to associate whatever associations she chooses with the marks she comes across, even if those associations are not those the mark holder would prefer or those that would be best from the standpoint of the person's intellectual or personal growth.[29]

[28] Dustin Marlan, Is the Word "Consumer" Biasing Trademark Law?, 8 TEX. A&M L. REV. 367 (2021)
[29] Laura R. Bradford, Emotion, Dilution, and the Trademark Consumer, 23 BERKELEY TECH. L.J. 1227 (2008

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Consumer autonomy theory can serve as a counterbalance to aggressive trademark enforcement. While protecting trademark distinctiveness is important, it should not come at the expense of consumers' ability to access information, engage in critique, or make independent choices.[30] One area where consumer autonomy theory comes into play is in cases involving parody. Parodies often rely on the use of well-known trademarks to convey a satirical message or critique a brand's practices. Trademark owners may argue that these parodies dilute their brand's distinctiveness, while proponents of consumer autonomy argue that they are essential forms of expression.[31]

In the case of Louis Vuitton v My Other Bag,[32] My Other Bag produced tote bags featuring parodies of luxury brand logos, including Louis Vuitton. Louis Vuitton claimed trademark dilution, while My Other Bag argued that their parodies were a form of consumer commentary. The case highlighted the clash between trademark protection and consumer autonomy.[33]

COMPARATIVE STUDY OF FACTORS FOR ANALYSING A CASE OF SEMIOTIC DISOBEDIENCE AS DILUTION

WELL KNOWN MARK

Under Indian law that is Trademarks Act, 1999, if the registered trademark has a "reputation" in India and the use of the mark unfairly benefits from or harms the distinctive character or repute of the registered trademark, a trademark may be infringed under Section 29 (4) of the Trademarks Act even when it is used in relation to goods or services that are not similar to those for which the trademark is registered. This clause is based on the idea of "dilution" rather than the standard "likelihood of confusion" test.

Section 29 (4)[34] is clearly an exception to the Act's general design and only applies to trademarks with a reputation in India. The plaintiffs do not need to demonstrate the defendants' dishonesty or the likelihood that a customer will be misled as a result of their use of the contested trademark if it is prima facie obvious or it is demonstrated through evidence that the concerned trademark enjoys and commands a reputation in India. Even if the sold commodities are not comparable or

[30] Mark Bartholomew, Trademark Morality, 55 WM. & MARY L. REV. 85 (2013).
[31] Sonia K. Katyal, Trademark Cosmopolitanism, 47 U.C.D. L. REV. 875 (2014).
[32] Louis Vuitton v My Other Bag (MOB) 156 F. Supp. 3d 425 (2016).
[33] Jeremy N. Sheff, The (Boundedly) Rational Basis of Trademark Liability, 15 TEX. INTELL. PROP. L.J. 331 (2007).
[34] Section 29(4), The Trade Marks Act, 1999.

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belong to the same class or category, relief would still be possible.

The three independent grounds listed in Section 29(4),[35] include blurring, harm to distinctive character, harm to reputation (Tarnishment), and taking unfair advantage (misappropriation). Trademark dilution is covered in Section 29(4) of the Trade Marks Act, 1999. However, the Act doesn't provide a definition for the word "dilution." Therefore, section 29(4) lists that use of a mark that is identical to or confusingly similar to a well-known registered mark on products and services that are not covered by the registration may constitute trademark infringement in the form of dilution. Additionally, infringement in the form of dilution may occur when an infringer unfairly exploits the well-known mark's distinctive character and when the infringer's mark may damage the well-known mark's reputation. The case of ITC v. Philip Morris Products SA and Ors[36] also clarified the prerequisites for establishing trademark dilution. The evidence in the case shows that use of the contested mark could constitute infringement through dilution if it is confusingly similar to the well-known mark, that mark is recognised in India, that use of the contested mark occurred without authorization, and that use harms the contested mark's distinctiveness.

In Section 29(4),[37] the phrase "reputation in India" means that the in question mark must be a "well-known mark." The Ford Motors case[38] had acknowledged parliamentary debates, and the court noted that the Trademark Act "seeks to extend protection for well-known trademarks."
Although the phrase "reputation in India" in Section 29(4), seems clear enough on its own, it should be emphasised that the act neither defines the phrase nor offers any tools for evaluating this reputation. However, a well-known trademark is one that is "..so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade." according to Section 2(1)(zg).[39] Additionally, Section 11(6) specifies a number of elements that the registrar must take into account when considering whether a trademark is well-known.[40]

[35] Section 29(4) of Trade Marks Act 1999.
[36] ITC LIMITED VS. PHILIP MORRIS PRODUCTS SA & ORS., 2010 (42) PTC 572 (Del.).
[37] Section 29(4), The Trade Marks Act, 1999.
[38] Ford Motor Company & Anr. vs Mrs. C.R.Borman & Anr., 2008 SCC. Online Del 1211
[39] Section 2(1)(zg), The Trade Marks Act, 1999.
[40] Section 11(6), The Trade Marks Act, 1999.

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TEST OF CONFUSION AND SECONDARY USE

The confusion study looks at whether the typical relevant consumer or buyer of the in question good or service may be duped.[41] Sponsorship and post-sale are just two examples of the many types of actionable confusion that have gained prominence in academic and legal discourse. Traditional trademark law principles have centred on minimising and regulating consumer confusion. However, the dilution doctrine safeguards a trademark's commercial strength, making any study of consumer confusion within the dilution framework irrelevant. The explicit decoupling of the dilution paradigm from the conventional focus of trademark law has been countered with a number of statutory exceptions.[42]

INDIA'S DUE CAUSE AND CONSTITUTIONAL PROTECTION OF FREEDOM OF SPEECH AND EXPRESSION

The judicial and legislative advice on dilution in India is similar to that found in the American trademark system. The dilution protection in India has a "due cause" restriction on it. The "due cause" restriction would be triggered by a "justifiable or probable reason or a tenable explanation" for the secondary use. Use that is denominative and non-trademark would qualify as "due cause." It would be simple to satisfy the due cause requirement and exempt any secondary use from liability with an expressive secondary use for humour or criticism.

A court would evaluate this restriction while also taking into account issues with free speech and expression, which will help them decide in favour of "due cause." As a result, under the Indian dilution doctrine, any secondary use of the well known mark, even if it is for commercial purposes, would be immune from liability if it is expressive, amounts to a comment or criticism, or is otherwise not trademark use.

In Indian trademark law, the significance of expressive and parodic usage is well-established. The Delhi High Court's decision in Dr. Reddy's ruled that "entertainment, literature and other art forms should not be critiqued on by Courts or pertinaciously restrained from its release to the masses…the discomfort generated by an artist's expression cannot be ground for silencing ideas at the altar of maintaining corporate's goodwill."[43] Therefore, it is obvious that constitutional concerns and safeguards will play a substantial role in the court's reasoning, even though it is

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[41] Mark D. Janis & Peter K. Yu, International and Comparative Aspects of Trademark Dilution, 17 Transnat'l L. & Contemp. Probs. 603 (2008

[42] William G. Barber, Barton Beebe, Christine Haight Farley, and Michael Heltzer, Panel II: Trademark Dilution Revision Act Implications, 16 Fordham Intell. Prop. Media & Ent. L.J. 1093 (2006).

[43] Dr. Reddy's Laboratories Limited v. Eros International Media Limited, 2021 SCC OnLine Del 1298 24.

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uncertain whether an expressive secondary purpose would call for a novel confusion analysis in India.

The judiciary in India has frequently emphasised the value of trademarks' expressive secondary uses. For instance, the defendant in Tata v. Greenpeace[44] imitated a mark in a video game simulation.The plaintiff attempted to restrain the defendants' secondary use, which was intended to criticise an infrastructure project, by citing its trademark rights. The court developed the concept of the "Parody Paradox" by heavily drawing on international legal precedent. The Court emphasised that while the parody is unique from the original mark, it nonetheless heavily relies on the original mark to achieve its objective. The court also pointed out that a mark would be more open to a parodic reinterpretation the more well-known it is. The court said that section 29(4) made it illegal to use a trademark without authorization on goods that are not connected to it. The court determined that Greenpeace had a legitimate reason to exploit TATA's trademarks because their use of the mark was for parodic, non-commercial purposes that highlighted a social issue. The court further rejected TATA's claim that an expression should be deemed to be infringing simply because non-infringing alternatives existed to stress the same anti-project message. By pointing to a compromise between the trademark doctrine and constitutional protections, the judiciary has, in effect, restricted the authority of a trademark owner to govern the semiotic environment..

AMERICAN CONFUSION TEST AND COMMERCIAL USE DEFENSE

According to the Rogers balancing test, court intervention is justifiable "only where the public interest in avoiding consumer confusion outweighs the public interest in free speech." The Rogers test proposes a two-step analysis to determine whether there is confusion in an artistic and expressive secondary use. It states that no liability can be established unless: 1) the title has no artistic relevance to the underlying work at all; or 2) if it does, unless the title explicitly misleads as to the source or the content of the work.[45]

The non-commercial secondary use is a crucial safeguard within the American dilution concept. According to one interpretation, the exclusion applies to all constitutionally protected forms of expression and criticism.[46] One might get the conclusion that "a broad range of mixed

[44] Tata Sons Limited vs Greenpeace International & Anr, I.A. No.9089/2010 in CS (OS) 1407/2010.
[45] Rogers v. Grimaldi, 875 F.2d 994, 999 (2d Cir. 1989).
[46] David Tan, The Lost Language of the First Amendment in Copyright Fair Use: A Semiotic Perspective of the Transformative Use Doctrine Twenty-Five Years On, 26 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 311 (2016).

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communication those that contain both commercial and non-commercial element be deemed entirely non-commercial" based on the Barbie judgements from the United States. Therefore, it does not matter how much of the secondary use is commercial and does not merit protection when it comes to the secondary use of cultural icons. How much of the secondary use is expressive and merits constitutional protection is crucial. A defendant's use would be eligible for the non-commercial use defence if there was expressive use.[47]

The dilution of a trademark is not a valid basis for opposition under Canadian trademark law. A dilution claim is relatively challenging to establish in Canada due to the country's restrictive dilution doctrine. The Canadian dilution concept is restricted to secondary usage in connection with products and services, much like the non-trademark use exception in India. This means that unless the secondary use identifies products or services, the Canadian dilution doctrine cannot be used. Parodies are additionally covered under Canadian trademark protection.The Canadian Federal Court stated in 1996 that "the threshold of protecting expression is high."[48] The commerical character of secondary use plays a significant role in how well trademark rights are protected in Canada as well.

FAIR USE DEFENSE

In India, the concept of "fair use" in the context of trademark dilution and parody is not as clearly defined as it is in copyright law. Trademark law in India primarily focuses on protecting the rights of trademark owners from infringement and dilution, and it may not explicitly recognize "fair use" in the same way copyright law does.However, there are certain principles and defenses that can be applied in the Indian context when dealing with trademark dilution and parody.

A registered "trademark" gives its owner the ability to forbid third parties from doing things like adopting, using, or registering a mark that is confusingly similar to theirs or identical to it. However, this privilege is not unqualified and is subject to the "fair use" limitation. Section 30 of the Trade Marks Act, 1999 (the "Act"),[49] which provides an affirmative defence available against a claim of infringement by the owner of a registered brand, encapsulates the notion of "fair use." The Act's Section 30(1) specifically establishes the following general conditions:

a) Use is in conformity with moral principles in business or industry [bona fide use];

b) Use is not so as to unfairly exploit or damage the reputation or distinctive character of

[47] Goyal, Narendra and Singh, Mukesh Kumar, Doctrine of Dilution Under Law of Trademarks - A Comparative Analysis of Law in United Kingdom and United States of America (January 5, 2011).
[48] Michelin & Cie v. CAW, [1997] 2 F.C. 306, 112 (Can. Van.).
[49] Section 30, The Trade Marks Act, 1999.

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According to Section 30(2)(a) of the Act,[50] "fair use" of a trademark by a party other than the owner can be broadly divided into two categories: Descriptive fair use, which relates to use of a registered trademark in relation to goods or services in a manner that describes the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services. [51]

Nominative fair use, as defined by Section 30(2)(d) of the Act,[52] is the use of a registered trademark by a person in relation to goods that have been modified to serve as parts of or accessories. This use must be "reasonably necessary" to convey that the goods that have been modified are compatible with the goods sold under the trademark. News, commentary, criticism, parody, comparative advertising, and other non-commercial uses of a registered trademark are all covered by the concept of nominative fair use. According to the precedent set in the cases Consim Info Pvt. Ltd vs. Google India Pvt. Ltd, courts must determine whether the following criteria have been met before nominative fair use can be asserted as a defence : (i) whether the usage was *bona fide* in nature (ii) whether the usage indicated any form of endorsement or sponsorship by the proprietor of the registered trademark (iii) whether the usage confused the public or deceived them about the source of origin and (iv) whether a similar style and font of the registered trademark was used.[53]

CONSTITUTIONAL FREEDOM OF SPEECH PROTECTION AND SEMIOTIC DISOBEDIENCE

The constitutional protection of freedom of speech under Article 19[54] is a fundamental pillar of democratic societies, safeguarding the right of individuals to express their thoughts, opinions, and ideas without censorship or restraint. In the context of trademark dilution, where semiotic disobedience can often come into play, this constitutional protection takes on added significance. Semiotic disobedience involves subverting or challenging conventional symbols, logos, or cultural artifacts to convey alternative or subversive messages. When applied to trademarks, it can give rise to concerns related to intellectual property rights and freedom of speech.

The Indian Constitution provides robust protection for freedom of speech, encompassing various forms of expression, including symbolic acts like semiotic disobedience. Courts have consistently

[50]Section 30(2)(a), The Trade Marks Act, 1999.
[51] William McGeveran, Rethinking Trademark Fair Use, 94 IOWA L. REV. 49 (2008).
[52] Section 30(2)(d), The Trade Marks Act, 1999.
[53] Consim Info Pvt Ltd v. Google India Private Limited & Ors. [2013 (54) PTC 578 (Mad)]
[54] Article 19, The Constitution of India, 1950.

recognized that this protection extends to parody, satire, and criticism, even when they involve the use of trademarks or branded symbols.However, it's important to note that trademark rights also hold significance in protecting consumers from confusion and maintaining the integrity of brand identities. Striking a balance between the constitutional right to freedom of speech and the protection of trademarks can be complex.

In conclusion, the constitutional protection of freedom of speech, when coupled with the principles of semiotic disobedience, plays a critical role in shaping the legal landscape around trademark dilution. This balance reflects the broader democratic values of free expression while also recognizing the importance of intellectual property rights and consumer protection.

CONCLUSION

In Conclusion, Semiotic disobedience is the canvas where branding's boundaries blur, revealing the untamed artistry of expression beyond logos and labels. Semiotic disobedience as a phenomenon is unavoidable and necessarily required to be encouraged in the digital Age in the commercial world. The paper's exploration has underscored the importance of recognizing that trademarks, while serving as symbols of commerce, are also part of our shared cultural lexicon. They can be vehicles for commentary, satire, and artistic expression. Semiotic disobedience challenges us to rethink the rigid boundaries we place around intellectual property and encourages a more nuanced approach that respects both creative innovation and established brand rights.

The Indian jurisprudence requires to be fine tined further and there is a lack of comprehensive adjudication in this regard. But the recent judgments like Greenpeace v. TATA, have highlighted that the Indian Courts are well aware of the interplay between trademark dilution and freedom of speech and expression and the underlying semiotic disobedience by consumers and other entities in creating meaning.

In closing, the comparative analysis has illuminated the multifaceted nature of trademark dilution and semiotic disobedience, offering valuable insights into their coexistence in our modern socio-legal landscape. As we move forward, it is imperative that we continue to explore this fascinating intersection, striving for a harmonious balance that upholds both the integrity of brands and the vibrancy of semiotic expression.