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Intellectual Property Law

First Case Applying Trademark Dilution Revision Act Finds No Dilution, Does Find Parody

In *Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC, et al.*, No. 1:06cv321(JCC) (E.D. Va. Nov. 3, 2006), the U.S. District Court for the Eastern District of Virginia rendered the first opinion under the recently enacted Trademark Dilution Revision Act (“TDRA”). Louis Vuitton Malletier S.A., the manufacturer of fine leather goods such as luggage and handbags, brought suit against Haute Diggity Dog, LLC (“HDD”), a company that markets plush dog toys under parodic names, including “Dog Perignon” and “Chewnel #5.” This suit relates to HDD’s use of “Chewy Vuitton” and related marks and designs for its line of dog products. On the issue of trademark infringement, the court concluded that the similarities between Vuitton’s HDD’s trade dress were an obvious parody. Accordingly, summary judgment was granted to HDD on the issue of trademark infringement. Regarding the issue of dilution, the court applied the TDRA and the new “likelihood of dilution” standard. The court concluded that HDD’s use of “Chewy Vuitton” did not constitute dilution by blurring (the “whittling away” of the distinctive character of the mark).

Even though the TDRA attempted to provide courts with several factors to consider in making a determination whether something constitutes dilution by blurring, the court did not analyze those factors. The court stated that, “the success of [HDD’s] parodic use depends upon the continued association with Louis Vuitton.” Moreover, the court determined that Vuitton’s claim of dilution by tarnishment (the association of the mark with unsavory or negative contexts) was without merit. The court stated that, “[w]hen the association is made through harmless or clean puns or parodies, ... tarnishment is unlikely.” Therefore, the court entered summary judgment in favor of HDD on the issue of dilution as well. This case has been appealed. The outcome of this case turned on whether the court found HDD’s parody to be effective. Because the determination of whether something is an effective parody is a subjective determination that will change depending on the particular person, it is uncertain whether the outcome of future cases, even those similar to this one, will be consistent with this outcome. For questions regarding trademark dilution, contact Rita E. Kline at (216) 621-2234 x 121 or ritakline@tarolli.com.