***Jack Daniel's Properties, Inc.* v. *VIP Products LLC*, No. 22-148**

Today, the Supreme Court held in a unanimous decision that a dog toy parodying the Jack Daniel's whiskey bottle does not receive special protections against trademark claims. The Court rejected arguments that the humorous use of a trademark always receives heightened First Amendment-related protection from infringement claims and that a parody is always a permissible non-commercial use.

Background: VIP Products makes a "Bad Spaniels" dog toy that resembles a Jack Daniel's whiskey bottle, but with words and graphics that make dog-related jokes parodying the distinctive, trademarked Jack Daniel's bottle. After Jack Daniel's demanded that VIP stop selling the toy, VIP sued and sought a declaratory judgment under the Lanham Act. VIP argued that it did not infringe Jack Daniel's trademarks because its humorous use of the marks was entitled to special First Amendment protection. VIP also argued that its toy fell within the Lanham Act's safe harbor for non-commercial use of a trademark because it was a parody. The district court rejected those arguments and held that the toy infringed Jack Daniel's trademarks. The Ninth Circuit reversed, agreeing with VIP on both of its arguments.

Issue: Whether humorous use of another's trademark receives heightened First Amendment-related protection from trademark infringement claims, and whether a humorous parody of another's trademark is a non-commercial use that is not subject to trademark dilution claims.

Court's Holding: In a unanimous opinion written by Justice Kagan, the Court held that VIP's dog toy was not entitled to heightened First Amendment-related protection from trademark claims, and was not a non-commercial use of Jack Daniel's trademarks.

On the infringement issue, the Court held that use of another's trademark does not receive special First Amendment-related protections simply because it is humorous or expressive. The key question is whether a product uses another's trademark in order to designate the product's source or maker, which is the traditional function of trademarks. The Court explained that when that is the case, as it was here with VIP's toy, a product is subject to normal trademark infringement analysis—even if the use of the trademark is humorous or expressive. The Court left open the possibility that principles derived from the First Amendment might afford heightened protections to use of another's trademark in other circumstances.

On the trademark dilution issue, the Court recognized that the Lanham Act exempts non-commercial uses from dilution claims, but it held that VIP's toy did not fall within that exception. The Court explained that non-commercial use does not include every parody or humorous commentary on a trademark. Rather, the exception applies only when the humor or parody does not use a trademark to indicate a product's source. The Court reasoned that when a product uses another's trademark to designate where the product comes from, it is subject to trademark dilution claims, even if it is a parody.

Justice Sotomayor authored a concurrence, in which Justice Alito joined, stating that courts evaluating trademark claims involving parodies should take special caution against relying on surveys as evidence of consumer confusion. Justice Gorsuch authored a concurrence, in which Justices Thomas and Barrett joined, expressing skepticism on whether the First Amendment ever provides special protections against trademark infringement claims.

Read the opinion here.