

THE BLACK LABEL: TRADE MARK DILUTION, CULTURE JAMMING, AND THE NO LOGO MOVEMENT

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Abstract

This article considers the ongoing debate over the appropriation of well-known and famous trade marks by the No Logo Movement for the purposes of political and social critique. It focuses upon one sensational piece of litigation in South Africa, *Laugh It Off Promotions v. South African Breweries International (Finance) B.V. t/a Sabmark International*, in which the trade marks of the manufacturers of Carling Beer were subjected to parody and social satire by a group called Laugh It Off Promotions. The beer slogan "Black Label" was turned into a T-Shirt entitled "White Guilt/ Black Labour". In the ensuing litigation, the High Court of South Africa and the Supreme Court of Appeal were of the opinion that the appropriation of the mark was a case of hate speech. However, the Constitutional Court of South Africa disagreed, finding that the parodies of a well-known, famous trade mark did not constitute trade mark dilution. Moseneke J observed that there was a lack of evidence of economic or material harm; and Sachs J held that there is a need to provide latitude for parody, laughter, and freedom of expression. The decision of the Constitutional Court of South Africa provides some important insights into the nature of trade mark dilution, the role of parody and satire, and the relevance of constitutional protections of freedom of speech and freedom of expression. Arguably, the ruling will be of help in the reformation of trade mark dilution law in other jurisdictions - such as the United States. The decision in *Laugh It Off Promotions v. South African Breweries International* demonstrates that trade mark law should not be immune from careful constitutional scrutiny.