Study Guidelines

by Ralph NAGK, Reporter General
Guillaume HENRY and Johanna FLYTHSTRÖM, Deputy Reporters General
Rafael ATAB, Klaudia BLAGH-MORYSINSKA, Mamta RANI JHA,
Yanfeng XIONG Assistants to the Reporter General

2026 – Study Question

Parody (and freedom of expression) as a defence to trade mark infringement

Introduction

1) The protection conferred by a trade mark allows its proprietor to prevent third parties from using identical signs for identical goods or services as well as identical or similar signs for identical or similar goods or services where such use is likely to cause confusion, or, in the case of reputed trade marks, where such use takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the mark or tarnishes the reputation of the reputed trade mark or its owner. For the purpose of this Study Question, claims related to infringement of trade mark rights and anti-dilution claims will be collectively referred to as “trade mark infringement”. This protection ensures the *inter alia* origin and quality functions of trade marks, safeguards investment, and prevents unfair competition.

2) However, in contemporary society, trade marks have evolved from purely commercial indicators to social and cultural symbols. They appear in art, politics, humour, and digital communication. The growing use of trade marks for parody—through memes, artistic reinterpretation, political campaigns, or satirical merchandise—raises the question of how far parody (and freedom of expression) can serve as defence to trade mark infringement.

3) Unlike copyright law, trade mark regulations seldom include an explicit "parody" exception. It is up to courts to decide if parody can justify the use of a trade mark. The challenge lies in balancing these competing interests: the trade mark rightsholder's to protect the origin and reputation functions of the mark, and third parties' right to engage in humorous, artistic, or political commentary or critique.

4) This Study Question explores how national laws and courts address parody and freedom of expression as defences to trade mark infringement and whether there is a need for international harmonisation.

Why AIPPI considers this an important area of study

5) Parody sits at the interface of intellectual property and fundamental rights. The issue is particularly relevant in a digital environment where brand references have become part of everyday discourse and where parodic uses can reach global audiences instantly.

6) The increasing tension between trade mark protection and parody affects a wide range of stakeholders: trade mark rightsholders, creators, activists, and consumers. For trade mark rightsholders, parodies may risk dilution, damage to the distinctive character, or reputational harm; for creators, they may be an essential form of commentary and social critique. Courts worldwide have struggled to reconcile these interests consistently, often arriving at divergent outcomes.

7) AIPPI considers that greater clarity and possibly harmonisation are needed to:

- Define what qualifies as a parody in the trade mark context;
- Determine when expressive or humorous use should find safe harbour from liability; and
- Establish guiding principles for balancing exclusive rights over a trade mark and freedom of expression.

Relevant treaty provisions

8) There is no international treaty provision that expressly recognises parody as a defence to trade mark infringement.

9) The TRIPS Agreement in Art. 17[1] permits limited exceptions to trade mark rights, provided that they take account of the legitimate interests of both the trade mark owner and third parties. Parody may be considered one such "*limited exception*."

10) Also, while Art. 8 of TRIPS Agreement does allow Members to "*adopt measure necessary (...) to promote public interest in sectors of vital importance to their socio-economic (...) development*", such measures must be "*consistent with the provisions of [TRIPS] Agreement*".

11) The Paris Convention contains no equivalent rule. However, article 10 *bis* of Paris Convention does provide for the need for "*effective protection against unfair competition*", indicating that "*any act of competition contrary to honest*

[1] Article 17 – Exceptions: Members may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

practices in industrial or commercial matters constitutes an act of unfair competition". The following examples are listed in such article:

"(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods."

Scope of this Study Question

12) This Study Question aims to examine how parody (as a form of freedom of expression) operates as a defence, and under which circumstances, in relation to trade mark infringement, both in use (e.g. parody merchandise, art, political or humorous expression, online content) and in registration (applications for parody marks).

13) The use of parodies in the domain of copyrights, designs and any other intellectual property rights is out of the scope of this Study Question.

14) Parody (and freedom of expression) should be analysed primarily within trade mark law, while acknowledging and addressing the role of unfair competition only insofar as they affect the effectiveness of parody as a defence to trade mark infringement in practice. Criminal law is outside the scope of this Study

Question. This Study Question does not address private international law issues.

Previous work of AIPPI

15) AIPPI has addressed related topics in several Resolutions:

16) According to Resolution on Q245[2] (Rio de Janeiro, 2015), the protection afforded to the trade mark rightsholder should not be absolute. Limitations and defences should be available in accordance with trade mark law generally, and at least in parody and/or freedom of expression case. The burden of proof for such limitations and defences should be on the party invoking the limitation or defence.

17) The Resolution on Q168 (Lisbon, 2002)[3], relating to "use as a trade mark" provides that "*use of trade marks in parody should be subject to the same analysis as other trade mark use*".

18) The Resolution on Q188 (Berlin, 2005), which generally addressed the balance between trade mark protection and freedom of expression, states that "*it should be possible, in principle, to invoke freedom of expression as defence in trade mark cases in exceptional circumstances*".

19) The Resolution on Q195 (Singapore, 2007), on "Limitations of Trade mark Rights", states that trade mark right limitations should be allowed only to the extent that the use of another's trade mark by a third party does not cause dilution of the mark. On its turn, the requirements and extent of protection associated with dilution are addressed by the Resolution on Q214 (Paris,

[2] Taking unfair advantage of trade marks: parasitism and free riding
[3] Use of a mark "as a mark" as a legal requirement in respect of acquisition, maintenance and infringement of rights

2010)[4]. This Resolution sets out that "trade marks having recognition or fame" should be protected against dilution by blurring and dilution by tarnishment.

20) The Resolution on Q291 (Hangzhou, 2024) addresses defence of parody in copyright and recognizes "parody as a form of freedom of expression", in the copyright context. It also sets forth certain criteria to determine when a valid defence is available for the author of the parody.

21) The present Study Question builds upon these principles in the specific context of trade mark law.

Discussion

22) Comparative analysis reveals clear divergence among national approaches to parody as a defence to trade mark infringement. The differences arise from varying constitutional traditions, statutory wording, and judicial assessment on the balance between freedom of expression and property rights. While the underlying conflict is universal — balancing exclusive trade mark rights with expressive freedoms — the solutions adopted across jurisdictions range from explicit constitutional protection to near-total absence of a parody defence.

23) In the European Union, parody is not expressly codified as a defence under trade mark legislation. However, Recital 27 of the 2015 Trade Mark Directive (EU) 2015/2436 and Recital 21 of the EU Trade Mark Regulation (EU) 2017/1001 provide interpretative guidance, stating that trade mark protection should not interfere with the exercise of freedom of expression, particularly artistic expression, provided the use accords with "*honest practices in industrial or commercial matters*."

[4]Protection against the dilution of a trade mark

24) In practice, courts in Member States have relied on this principle and on concepts such as use in the course of trade, use as a trade mark, due cause, and honest practices to assess whether parody is permissible. Where use occurs outside the course of trade — for example, in political, artistic, or satirical expression — it may fall entirely outside the scope of trade mark protection, therefore avoiding an infringement finding.

25) Nevertheless, when the parody is used in commerce, courts must balance freedom of expression against the trade mark's core functions. In Deckmyn C-201/13[5], concerning copyright parody, the CJEU emphasised that parody requires a fair balance between the rights of the right holder and the freedom of expression of the user. This reasoning has indirectly influenced trade mark analysis.

26) The pending IKEA/Vlaams Belang C-298/23[6] reference before the CJEU is expected to clarify the scope of permissible political parody in trade mark use. The case concerns the use of the "IKEA" mark and visual identity by a Belgian political party in a campaign advertisement. The CJEU's forthcoming ruling may define the limits of freedom of expression and political speech under EU trade mark law and could set a benchmark for balancing fundamental rights and trade mark protection within the internal market. In the Opinion of Advocate General Szpunar[7], the key issue is reconciling freedom of expression, including political and parodic expression, with the protection of well-known trade marks. The Advocate General emphasizes that the concept of *due cause* can serve as a flexible mechanism for balancing these rights, taking into account criteria such as the nature of the expression (commercial vs. non-commercial), competitive

[5] Judgment of the Court (Grand Chamber), dated 3 September 2014, Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others, ref. no.: C-201/13, ECLI:EU:C:2014:2132

[6] Request for preliminary ruling dated Ma y8, 2023, ref. no.: C-298/23 - Inter IKEA Systems

[7] Opinion of Advocate General Szpunar delivered on 13 November 2025, IKEA/Vlaams Belang C-298/23

motives, public interest, the intensity of the use, and the impact on the trade mark's reputation. Additionally, the assessment of whether the use of the trade mark falls within the "course of trade" or "in relation to goods and services" may influence the extent of protection granted to the trade mark in the context of parody.

27) Germany operates within the EU legal framework and also under strong constitutional protection of free expression (Article 5 of the Grundgesetz). German courts have generally distinguished between artistic or political expression, which enjoys broad protection, and commercial parody used as a trade mark, which typically infringes.

28) In PUMA/PUDEL case[8], the defendant registered “PUDEL” (German for “poodle”) together with a leaping-dog logo closely imitating PUMA’s famous leaping-cat mark for clothing. The Federal Court of Justice held that, despite the humorous intent, the registration took unfair advantage of PUMA’s reputation and was likely to dilute its distinctiveness. The court reasoned that freedom of expression does not encompass the right to register another’s mark as a source indicator for similar goods.

[8] Judgement of the German Federal Court of Justice (BGH) dated 2 April 2015, ref.no.: I ZR 59/13

29) French courts distinguish between non-commercial parody in public-interest expression, which can be lawful, and commercial parody on goods, which is generally infringing. In Esso vs. Greenpeace France[9], Cour de cassation upheld lower decisions rejecting Esso's claims over the altered "E$$O" logo used in environmental campaigns, holding that such use fell within freedom of expression and did not amount to trade mark infringement. This judgement confirms that French law permits parody where the use serves a critical or artistic purpose and does not mislead consumers as to commercial origin.

30) The United States recognize parody through First Amendment jurisprudence and the Lanham Act. Pursuant to 15 US Code § 1125(c)(3) explicitly exempts "any fair use, including ... parody, criticism, or commentary" provided the use is not as a designation of source. Under Rogers v Grimaldi[10] case, 875 F.2d 994 (2d Cir. 1989), use of a trade mark in an expressive work is lawful unless it a) has no artistic relevance to the work, or b) explicitly misleads consumers as to source.

31) In Louis Vuitton Malletier S.A. v Haute Diggity Dog[11], LLC, 507 F.3d 252 (4th Cir.
2007), the court held that "Chewy Vuiton" dog toys were a clear parody and

[9] Judgement of Cour de cassation dated 8 April 2008, ref.no.: 06-10.961,

[10] Judgement of Court of Appeals for the Second Circuit dated 5 May 1989, ref.no.: 875 F.2d 994;

[11] Judgement of Court of Appeals for the Fourth Circuit dated 13 November 2007, ref. no.: LLC, 507 F.3d 252

neither confusing nor dilutive. More recently, the U.S. Supreme Court in Jack Daniel's Properties Inc. v VIP Products[12] LLC, 599 U.S. 140 (2023), ruled that when an alleged parody itself serves as a brand identifier (e.g. "Bad Spaniels" dog toy), ordinary likelihood-of-confusion analysis applies; the Rogers threshold does not automatically protect it. However, the Court also stated that "a trade mark's expressive message – especially a parodic one . . . – may properly figure in assessing the likelihood of confusion." The pending litigation deals with a dog toy shaped similar to a Jack Daniel's whiskey bottle and label, but with parody elements, which Jack Daniel's asserted constituted trade mark infringement and dilution. On remand, the lower court held against Jack Daniel's on trade mark infringement because the parody created no likelihood of confusion. But it held in favour of Jack Daniel's on trade mark dilution, because the parody constituted dilution by tarnishment[13]. The decision is on appeal, which includes a constitutional challenge to the dilution by tarnishment statute.

[12] Judgment of United States Supreme Court dated 8 June 2023, Jack Daniel's Properties Inc. v VIP Products, ref.no.: LLC, 599 U.S. 140

[13] VIP Products LLC v. Jack Daniel's Properties, Inc., No. CV-14-02507-PHX-SMM, 2025 WL 275909 (D. Ariz. 1/23/25)

32) Indian courts have explicitly linked parody with constitutional free speech under Article 19(1)(a) of the Constitution. In Tata Sons Ltd v Greenpeace International[14], the court refused to enjoin Greenpeace's online game "Turtle v Tata," which used the Tata logo to criticise the company's environmental practices. The court held that the use was non-commercial, did not constitute trade mark use, and fell within protected expression. This decision remains the leading Indian precedent acknowledging parody as a form of legitimate commentary.

33) Japan's Trade Mark Act lacks any exception for parody or expressive use. The Intellectual Property High Court confirmed in Franck Muller v Frank Miura[15], that parody does not automatically shield use from infringement; similarity and likelihood of confusion are decisive. The court reinstated registration of "Frank Miura" after finding the marks not sufficiently similar, without recognising a general "parody defence."

34) In Brazil, in the Johnny Walker x Joao Andante case[16], the Superior Court of Justice recognized that a parody, which merely reflects a translation of famous mark and seeks to freeride the notoriety of the third party's brand should be recognized as an infringement of trade mark rights. On the other hand, this same court, when deciding upon a case referring to the use of a "play on words" on the name of a famous newspaper in connection with a non-commercial blog criticizing such news media[16], decided that such noncommercial use falls out from the scope of trade mark protection or unfair competition, being resolved under the principles of freedom of expression and copyright fair use and parody exception (as the mark was also the title of a news publication).

[14] Judgment of Delhi High Court dated 28 January 2011 Tata Sons Ltd. v. Greenpeace International & Anr., ref.no.: CS(OS) No. 1407/2010

[15] Judgement of The Intellectual Property High Court dated 12 April 2016, ref. no.: Heisei 27 (gyo-ke) 10095;

[16] REsp 1881211/SP, 14/09/2021

[16] REsp 1548849/SP, 20/06/2017

35) Bearing above in mind, across all jurisdictions, three decisive dividing lines seem to emerge from various court assessments on parody-related disputes:

a) Commercial vs. non-commercial use: may parody be tolerated in art, commentary, or activism but not when the altered mark is used to sell goods?

b) Expressive vs. trade-mark use: does liability depend on whether the trade mark functions as an indication of origin?

c) Reputation and dilution: while some jurisdictions seem to recognise statutory fair-use exemption, others appear to rely on “due cause” balancing, with some civil-law systems apparently protecting reputation more strictly.

Across these systems, proportionality has become a guiding principle: courts aim to prevent genuine consumer confusion and unfair exploitation while avoiding undue restrictions on artistic or political expression.

You are invited to submit a Report addressing the questions below. Please refer to the ‘Protocol for the preparation of Reports’

Questions

I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law.

1) Does your law or case law recognise parody or freedom of expression as a defence to trade mark infringement. YES or NO. Please comment, addressing, in particular, if such defence is:

a) statutory,
b) judicially developed,
c) based on general principles such as honest practices or constitutional rights?

YES.

The defence is to some degree (a) **statutory**.

• Recital 21 of the EU Trade Mark Regulation (EU) (2017/1001) and Recital 27 of the 2015 Trade Mark Directive (EU) (2015/2436) state that "Use of a trade mark by third parties for the purpose of artistic expression should be considered as being fair as long as it is at the same time in accordance with honest practices in industrial and commercial matters. Furthermore, this Directive / Regulation should be applied in a way that ensures full respect for fundamental rights and freedoms, and in particular the freedom of expression." This provision may be used as interpretative guidance in assessing whether the use of a mark constitutes an acceptable parody or not, in connection with the relevant provisions or case law (see below).

• Also, the registration or use of a mark infringing a trademark with a reputation is justified if there is 'due cause' (Articles 8(5) and 9(2)(c) of the EU Trademark Regulation and pg. 85 of the Governmental Prop. 201/2018

concerning the Finnish Trademark Act). Parody can fall under this category (see also below the IKEA/Vlaams Belang case).

The defence is also to some degree (b) **judicially developed**.

- According to the EU Court of Justice (CJEU), a trademark owner's right to prohibit the use of an identical or similar mark on the basis of likelihood of confusion requires i.a. *that it must affect or be liable to affect the essential function of the trade mark*, which is to guarantee to consumers the origin of the goods or services, by reason of a likelihood of confusion on the part of the public (C 533/06, O2, June 2008, para 57). It can be argued that, *when the trademark owner's infringement claim is based on likelihood of confusion*, use of a mark in the context of parody may be allowed as the essential origin function of a trademark is not liable to be affected. In accordance with the Recitals mentioned under (a), whether the use is in accordance with 'honest practices in industrial and commercial matters' may also be taken into account. The CJEU has in Gillette (C-228/03, December 2004) provided insight on the concept of honest practices.

- *Insofar the trademark owner's infringement claim is based on a reputed trademark*, the Advocate General's opinion in the pending IKEA/Vlaams Belang case (C-298/23) before the CJEU stated that the concept of 'due cause' "may serve as a mechanism for satisfying the requirements of protection of freedom of expression". On the other hand, the opinion stated that 'due cause' does not cover such a situation when the earlier mark is used in an attempt to ride in the wake of a reputed trademark to disseminate and promote a political programme; the opinion provided certain criteria how to assess this. The eventual judgment will hopefully provide further insight when parodical use may constitute a 'due cause'.

- In the Finnish Market Court's WUNDERBAUM trademark infringement case from 2016 (MAO:374/16), the defendants had argued that their use of the mark WUNDERBOY in connection with a song and music video constituted a trademark parody. The Court understood this as referring to the concept of 'due cause' as a defence against an infringement claim of a reputed trademark. Because the WUNDERBOY mark had not been used in the lyrics of the song and since the WUNDERBOY mark had been used in a figurative format which resembled the spruce tree logo of the plaintiff, the Court considered that there was no need to assess whether the defendant's use constituted an allowed trademark parody.

Finally, the defence is also (c) **based on general principles such as honest practices or constitutional rights**. As mentioned under (a), artistic expression should be considered as fair if in accordance with honest practices in industrial and commercial matters. The applicable statutes need also be interpreted to ensure full respect for fundamental rights and freedoms.

2) Does your law or case law define or characterise “parody” in the framework of trade mark infringement? YES or NO. Please explain, indicating how “parody” is understood (e.g. must it be humorous, critical, or transformative?) and by whom (legislature, courts, or doctrine).

NO.

There is no explicit definition of the meaning or scope of parody as a defence to trade mark infringement in Finnish or EU trade mark law.

Although the concept of "parody" has not been defined in a trademark infringement context, the CJEU has stated in a copyright context in the Deckmyn judgment that "*the essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it, and, secondly, to constitute*

an expression of humour or mockery (C-201/13, September 2014, para 20). The CJEU also stated that *the concept of parody is not subject to the following conditions*: that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; could reasonably be attributed to a person other than the author of the original work itself; should relate to the original work itself or mention the source of the parodied work (para 21).

These characteristics and considerations can be taken into account when attempting to define parody in a trademark infringement context. The opinion of the Advocate General in the pending IKEA/Vlaams Belang case (C-298/23) before the CJEU has defined parody by referring to the Deckmyn judgment.

Parody may be construed to be recognized by legislature, courts and doctrine, see what has been stated under question 1).

3) Do any of the following aspects impact whether a parody of a trade mark may or may not be considered **a trade mark infringement** (please explain):

a) The parody constitutes an expression of humour or mockery;

Finnish trademark law does not contain specific provisions addressing parody, humour, or mockery as such. Nor is there Finnish case law directly addressing humour as a standalone factor in trademark infringement assessments. However, EU case law has recognised that humorous or parodic elements may be relevant to the overall assessment, in particular when evaluating whether the use creates a likelihood of confusion or affects the functions of the trade mark.

b) The parody has a critical intent (i.e. the parody is intended to express criticism or commentary, and not merely to entertain or to promote goods or services.);

The critical intent of a parody is not assessed as an independent criterion under current trademark legislation.

c) The parody is directed at the original mark, and is used to criticize, disparage or discredit the original trade mark, or otherwise affect its reputation;

There is no separate legal relevance attached to the fact that a parody is directed at the original mark or aims to criticise or discredit it. Such considerations may, however, indirectly become relevant if the use is liable to harm the reputation or distinctive character of a trade mark with a reputation.

d) The parody is noticeably different from the original trade mark;

If the parody is sufficiently different from the original trade mark, a finding of infringement is less likely. Clear differences may reduce the risk of confusion and make it less likely that the essential functions of the trade mark are adversely affected.

e) The parody is not directed at the original mark (i.e. targeting at society or other aspects unrelated to the original mark);

Whether the parody is directed at the original trade mark or at broader societal or other issues is not, in itself, a decisive factor under current law and practice.

f) The parody is non-commercial and purely artistic;

For trademark infringement to arise, the use must constitute use in the course of trade. Where a parody is purely non-commercial and artistic, it may not meet this requirement and therefore may not constitute trademark infringement.

g) The parody is non-commercial and used to draw attention to political or social message;

As with purely artistic use, a non-commercial parody used solely to convey a political or social message may not constitute use in the course of trade and therefore may fall outside the scope of trademark infringement.

h) The parody is used “in the course of trade” and is used to sell competing, similar and/or related goods or services;

Use in the course of trade is a prerequisite for infringement. Where the parody is used commercially in relation to competing, similar, or related goods or services, this will be relevant to the infringement assessment, in particular when evaluating the likelihood of confusion and potential harm to the trade mark’s functions.

i) The parody is used “in the course of trade” and is used to sell non-competing and unrelated goods or services;

Yes, in certain circumstances. Under the Finnish Trademarks Act, trademarks enjoying a reputation are afforded extended protection. Accordingly, use in the course of trade may be prohibited even in relation to non-competing and dissimilar goods or services where the use takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the mark, without the need to establish a likelihood of confusion.

j) The parody involves monetisation (e.g. sales or advertising revenue);

Monetisation, such as through sales or advertising revenue, generally indicates use in the course of trade. As such, monetised parody may fall within the scope

of trademark infringement, subject to the substantive conditions for infringement being met.

k) The trade mark being parodied is considered to be well-known or famous;

See h). If the trade mark enjoys a reputation, it benefits from enhanced protection under Finnish and EU trademark law. Enhanced protection means that it extends across different categories of goods and services. Thus, parody may be considered infringing even in the absence of confusion, if it exploits or harms the mark's distinctive character or reputation.

l) Other.

-

4) Does the function in which the trade mark is used have an impact on liability — in particular, does liability depend on whether such use constitutes use in the function of indicating the origin of goods or services? YES / NO. Please explain.

YES, when it comes to so-called ordinary trademarks and assessing whether there is likelihood of confusion between the marks.

In Arsenal Football Club (C-206/01), the CJEU confirmed that the essential function of a trade mark is to guarantee to consumers the identity of the origin of goods or services bearing the mark, enabling them to distinguish those goods or services from those of a different origin. The CJEU concluded that the exclusive right may be relied upon only where a third party's use of the sign is liable to affect the functions of the trade mark — and in particular its origin function.

Accordingly, the key issue may not be whether the sign is used in the course of trade, but rather whether it is used as a trade mark. What matters is whether a

proximity is created between signs that is such as to have an impact on the perception, by the consumer, of the messages communicated by the trade mark for which protection is sought. If that is the case, the parody at hand should be regarded as constituting trade mark infringement.

However, for well-known trademarks, the traditional function of indicating the origin of goods or services - which requires a likelihood of confusion among consumers - is not relevant or necessary for finding infringement.

5) Is the parodic nature of the use, including the specific type of parody (e.g. commercial, artistic, political or satirical), taken into account as a relevant factor in the assessment of the likelihood of confusion? YES / NO. Please explain.

YES, but indirectly.

Finnish trademark law contains no express parody exception and no named "parody factor" within the likelihood of confusion assessment. However, the parodic nature of use, and especially its type, enters the analysis through few structural gateways.

First, there is the threshold question of whether the use takes place "in the course of trade" at all. Purely non-commercial artistic, political, or satirical use may fall outside the scope of trademark protection before any confusion analysis is reached. Commercial parody carries the highest legal risk while non-commercial, artistic or political parody may be more defensible.

Second, within the confusion assessment itself, parodic intent may influence how the average consumer perceives the sign. A clearly absurd or humorous alteration can signal distance from the original and may reduce the likelihood of confusion. This, however, is a factual consideration rather than a separate legal criterion.

6) Does your law or case law address conflicts between parody and the protection of well-known, reputed or famous trade marks? YES / NO. Please explain in particular, does your jurisdiction recognize a statutory fair-use exemption, apply a “due cause” balancing test, or afford stricter protection to reputation?

YES.

Finnish case law does address this conflict, though the answer is quite straightforward. Current trademark legislation contains no explicit statutory parody exemption. The Market Court has stated this in unambiguous terms.

The Market Court in MAO:374/16 (Julius Sämann Ltd. v. Jiffel Entertainment Oy) stated expressly that trademark legislation does not recognize a so-called permitted parody exception that would authorize the unauthorized use of another's trademark or a sign confusable with it in commercial activity. This represents a clear and authoritative position: Finnish trademark law has no parody defense codified in statute.

Local trademark legislation explicitly protects the reputation of well-known marks from harm, and courts have applied this rigorously. The protection available under trademark legislation in force in Finland prohibits use without due cause that takes unfair advantage of, or is detrimental to, the distinctive character or repute of the mark. In our view, the reference to "due cause" in the legislation opens the door to a balancing test that could, in principle, accommodate parody considerations, though no such balancing has yet been expressly articulated in Finnish case law.

In MAO:374/16 the Market Court held that the conduct of the defendants caused harm to the reputation of the well-known trademarks, given that the trade marks were presented in a demeaning manner on the music video and because the

music video and the song lyrics featured alcohol use combined with driving, sexual references directed at minors, and violence.

This reflects the tarnishment limb of the well-known marks protection, which affords stricter protection to the reputation of well-known marks than to ordinary trademarks.

7) Does your law or case law allow a trade mark parody to be registered as a trade mark? YES / NO Please explain, also addressing how local practice deals with such applications.

YES.

The Finnish or EU trademark legislation contains no express provision specifically addressing trade mark parody. A parody-based sign is neither automatically permitted nor automatically barred from registration. It is assessed under the same statutory framework as any other sign, covering both absolute and relative grounds for refusal.

On absolute grounds, a parody mark can be registered provided it is distinctive, capable of being represented clearly in the register, and does not fall within any of the standard bars to registration, such as being descriptive, deceptive, or contrary to public policy.

The more significant obstacles in practice are the relative grounds. Because parody by its nature tends to imitate or reference an existing mark, an application is likely to be refused if consumers may be confused into thinking the parody mark is connected to the original, or if the parody takes unfair advantage of the reputation of a well-known mark. If the owner of the earlier mark consents, however, in Finland the application can proceed provided no other grounds for refusal remain.

There is no separate procedure for parody-based applications at the Finnish Patent and Registration Office (PRH) or at the EUIPO. Such applications are examined and processed in the same way as any other trade mark application.

II. Policy considerations and proposals for improvements of your Group's current law

8) Could your Group's current law or practice relating to parody defences to trade mark infringement be improved? YES / NO. Please explain.

NO.

In our group's view, the Finnish and EU trademark law currently provides a functional framework through existing tools such as the honest practices standard, the in-course-of-trade threshold, and the due cause defence for reputed marks. Hence, the prevailing view is that no immediate legislative amendments are necessary.

In particular, although current trademark legislation does not currently include an express parody provision, unlike the Copyright Act, which was amended in 2023 to introduce a mandatory parody exception (Section 23a) implementing the DSM Directive, we consider it preferable to allow the boundaries of permissible parody to develop through case law. This approach reflects the evolving nature of parody and avoids overly rigid statutory definitions.

At the same time, forthcoming guidance from the CJEU, including in the pending C-298/23 (IKEA/Vlaams Belang) reference, is expected to further clarify the relevant criteria. Such developments may, in due course, inform whether more explicit legislative intervention would be warranted, including in relation to the significance of the commercial or non-commercial character of the use.

9) In your Group's view, what policy objective (such as free speech, or another objective) would a defence of parody promote and help accomplish? Does the policy objective drive the types of expression that should be allowed under a parody defence? YES / NO. Please explain.

A defence of parody should promote the policy objective of **freedom of expression**, particularly the ability to criticize, comment on, and engage with different cultural and political ideas. Parody enables creators to reinterpret existing works in order to expose, question, or humorously reflect on societal issues and public figures. Protecting parody therefore supports open public debate and encourages creative expression.

YES, the policy objective should influence the types of expression allowed under a parody defence. Because the purpose of the defence is to protect expressive critique and commentary, it should apply to uses that meaningfully transform or engage with the original work. At the same time, the defence should remain sufficiently broad to accommodate different forms of cultural and societal commentary.

10) Are there any police considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question? YES / NO. Please explain.

NO.

III. Proposals for harmonisation

11) Do you believe that there should be harmonisation in relation to exceptions and defences to trade mark infringement based on parody? YES / NO. Please explain.

If YES, please respond to the following questions without regard to your Group's current law or practice.

YES, a certain degree of harmonization would be desirable. A harmonized approach could enhance legal certainty and predictability for right holders, users, and courts, particularly in cross-border situations where parodic uses may circulate widely.

At the same time, harmonization in this area is challenging. The assessment of parody is closely linked to linguistic nuances, cultural references, humour, and societal context, all of which may vary significantly between jurisdictions. These factors are often central to determining whether a sign will be perceived as humorous, parodic, or critical, and how it is understood by the relevant public.

Accordingly, while harmonization could be beneficial at the level of general principles, any harmonized framework should retain sufficient flexibility to allow national courts to take into account linguistic and cultural differences when applying those principles in practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

12) Should different standards apply when assessing whether a parody infringes a trade mark, depending on the nature of the parody (e.g. commercial use, artistic expression, brand criticism, or political parody)? YES / NO. Please explain.

YES, different standards should apply when assessing whether a parody infringes a trade mark, because the context and purpose of the parody is essential in assessing the balance between trade mark protection and freedom of expression.

The purpose of trademark law is to prevent consumer confusion and protect the reputation of a mark, but parody, by its nature, often serves expressive functions such as artistic creativity, social commentary, or political criticism. Therefore, when a parody is clearly artistic or political in nature, the risk of confusion is

usually lower and greater weight should be given to freedom of expression. By contrast, when a parody is used primarily for commercial purposes, stricter standards may be justified because the use may exploit the goodwill of the trade mark or harm its reputation. Therefore, considering the nature and context of the parody allows courts to strike a clear and appropriate balance between protecting trade marks and safeguarding legitimate forms of expression.

13) Should there exist exceptions or limitations to trade mark protection for the purpose of parody or freedom of expression? YES / NO. Please explain.

YES. These purposes may be used to e.g. criticize in a humourous manner the trademark, its owner or business activities, which should be accepted. To enable the "parody exception / limitation" to have full effect, it is preferable that this were explicitly recognized in case law, although with sufficiently open-ended wordings to prevent the limitations or exceptions from being applied too restrictively.

14) Should any of the following aspects impact whether a parody defence for trade mark infringement should be available (please explain):

a) The parody constitutes an expression of humour or mockery;

These factors could impact the assessment. EU case law has recognised that humorous or parodic elements may be relevant to the overall assessment, in particular when evaluating whether the use creates a likelihood of confusion or affects the functions of the trade mark.

b) The parody has a critical intent;

No. The assessment of critical intent is subjective and it is dependent on the socio-cultural context, and it should not have an impact on the assessment.

c) The parody is noticeably different from the original trade mark;

Yes. If the parody is sufficiently different from the original trade mark, a finding of infringement is less likely. Clear differences may reduce the risk of confusion and make it less likely that the essential functions of the trade mark are adversely affected.

d) The parody is not directed at the original mark (i.e. targeting at society or other aspects unrelated to the original mark);

Whether the parody is not directed at the original trade mark or at broader societal or other issues should not, in itself, be a decisive factor.

e) The parody is non-commercial and purely artistic;

Yes. For trademark infringement to arise, the use must constitute use in the course of trade. Where a parody is purely non-commercial and artistic, it may not meet this requirement and therefore it may not constitute trademark infringement.

f) The parody is non-commercial and used to draw attention to political or social message;

Yes. As with purely artistic use, a non-commercial parody used solely to convey a political or social message is unlikely to constitute use in the course of trade and therefore it is likely to fall outside the scope of trademark infringement.

g) The parody is directed at the original mark, and is used to criticize, disparage or discredit the original trade mark, or otherwise affect its reputation;

Yes, if the trade mark enjoys a reputation and it is considered to be well-known, it should benefit from enhanced protection, and therefore the question whether the parody is detrimental to the distinctive character or reputation of the earlier mark, should be essential.

h) The parody is used “in the course of trade” and is used to sell competing, similar and/or related goods or services;

Yes it should impact the assessment. Use in the course of trade is a prerequisite for infringement. Where the parody is used commercially in relation to competing, similar, or related goods or services, this will be relevant to the infringement assessment, in particular when evaluating the likelihood of confusion and potential harm to the trade mark's functions.

i) The parody is used "in the course of trade" and is used to sell non-competing and unrelated goods or services;

It should impact the assessment, in certain circumstances. If the trademark enjoys a reputation or it is considered to be well-known, it is afforded extended protection. Accordingly, use in the course of trade may be prohibited even in relation to non-competing and dissimilar goods or services where the use, without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or reputation of the mark, without the need to establish a likelihood of confusion.

j) The parody involves monetisation (e.g., sales or advertising revenue);

Monetisation, such as through sales or advertising revenue, generally indicates use in the course of trade. As such, monetised parody may fall within the scope of trademark infringement, subject to the substantive conditions for infringement being met and this should impact the assessment.

k) The trade mark being parodied is considered to be well-known or famous;

See h). If the trade mark enjoys a reputation and it is considered to be well-known, it benefits from enhanced protection. In such cases, parody may be considered infringing even in the absence of confusion, if it exploits or harms the mark's distinctive character or reputation and this should impact the assessment.

l) Other. Please explain.

-

15) Should the function in which the trade mark is used have an impact on liability — in particular, should liability depend on whether such use constitutes use in the function of indicating the origin of goods or services? YES / NO. Please explain.

YES. The essential function of a trade mark is to guarantee to consumers the identity of the origin of goods or services, enabling them to distinguish those goods or services from those of a different origin. The exclusive right should be capable of being relied upon only where a third party's use of the sign is liable to affect the functions of the trade mark — and in particular its origin function. Trade mark protection should cover use in the course of trade; purely private use intended solely to satisfy personal needs, without economic significance, should fall outside the scope of the exclusive right. However, the question should not merely be whether the sign is used in the course of trade, but rather whether it is used as a trade mark — that is, whether a proximity is created between signs that is such as to have an impact on the perception, by the consumer, of the messages communicated by the trade mark for which protection is sought.

16) Should the availability of a parody defence be subject to the demonstration of the following (please explain):

a) Absence of likelihood of confusion or association as to source, affiliation, sponsorship?

For marks with ordinary distinctiveness, the starting point is naturally confusion-based analysis: the assessment begins with the likelihood of confusion, and a parody that eliminates any such risk may, in principle, be permitted. However, regarding well-known trademarks, requiring the absence of confusion as the sole gateway to a parody defense would be too

permissive. A parodist who deliberately evokes a famous brand does so precisely because audiences recognize it and thus, the mental link is intentional. Confusion as to origin is beside the point. The real harm lies elsewhere: in free-riding, tarnishment, or dilution.

b) That the parody does not take unfair advantage of, or cause undue detriment to, the reputation or distinctiveness of the mark?

A parody that makes a clever, critical point without riding on the brand's goodwill or damaging its image should, in principle, be acceptable. The trademark system exists to protect commercial interests, not to insulate brands from social commentary. However, where a parodist is borrowing the reputation of a well-known mark to sell their own products or to associate themselves with that mark's image, the interest of the well-known trademark's holder should be protected. This condition operates as the correct filter: genuine parody that causes no real harm should be permitted and damaging use dressed as parody should not.

c) That use of the parody is consistent with honest commercial practices?

As a matter of general principle rather than any specific national provision, whether the manner of use, including the deliberate evocation of another's mark for commercial purposes, meets the relevant standard is in most parody cases involving trade marks very doubtful. A parodist typically exploits the recognition value of a well-known mark for their own commercial benefit, whereas honest competitors earn market recognition through their own independent efforts rather than by associating themselves with another's brand.

That said, it is clear that certain forms of competitive conduct that reference another brand should remain permissible up to a point. Comparative advertising, and competitive marketing campaigns that allude to a competitor's mark are a normal and legitimate feature of market competition. Prohibiting all such references in the name of honest commercial practices would go too far and would protect well-known brands from normal competition which is not the aim of trademark law.

17) Should well-known, reputed or famous trade marks benefit from additional protection against trade mark parody? YES / NO. Please explain.

NO.

We agree that well-known, reputed or famous trademarks should benefit from enhanced protection, and this is the reason why well-known marks enjoy broader protection beyond their registered classes. However, we do consider that no additional protection against trade mark parody is needed but the current protection is sufficient. The current law already provides protection when someone is for instance taking unfair advantage of distinctiveness or reputation of the well-known mark.

Parody is, by its very nature, a form of expression that depends on recognition. For a parody to succeed — for the joke to land — the audience must first be able to identify what is being parodied. Without that underlying recognition, the humour, the critique, or the commentary simply falls flat. This is precisely why well-known trade marks make such compelling targets for parody. It follows, therefore, that well-known trade marks must be prepared to tolerate what might be called genuine parody. When the parody is genuine artistic parody without commercial purpose, it is most likely falling outside the scope of trademark protection.

18) What approach best balances parody and freedom of expression with the protection of well-known, reputed or famous trade marks, should the law provide for:

a) a statutory fair-use exemption, under which parody would not constitute trade mark infringement if specific legal conditions are met;

b) a “due cause” balancing test, under which parody could justify the use of a trade mark on a case-by-case basis, following a judicial assessment; or

c) stricter protection of trade mark reputation in cases involving parody?

A or B

19) Should a sign which parodies a third-party’s trade mark be allowed to be registered as a trade mark? YES / NO. Please explain, also addressing how TM Offices should deal with the situation.

YES.

A sign that parodies a third party's trade mark should be eligible for registration as a trade mark, provided it satisfies the ordinary registrability requirements. There is no basis for treating parody based signs as a special category warranting either automatic refusal or automatic acceptance.

On absolute grounds, a parody mark can be registered provided it is distinctive, capable of clear representation in the register, and does not fall within any of the standard grounds for refusal, such as being descriptive, deceptive, or contrary to public policy.

In practice, the more significant obstacles tend to arise from the relative grounds. Because parody by its nature imitates or references an existing mark,

an application is likely to be refused where consumers may be confused into thinking the parody mark is connected to the original, or where the parody takes unfair advantage of the reputation of a well known mark. Where the owner of the earlier mark consents to registration, the application can proceed provided no other grounds for refusal remain.

TM Offices should allow the application to proceed through the standard procedure. Parody based applications should be examined and processed in the same way as any other trade mark application. It would also be unrealistic to expect TM Offices to assess in each individual case whether a sign constitutes a parody. That determination is better left to rights holders themselves, who can file an opposition if they consider that the sign conflicts with their trade mark rights or gives rise to a likelihood of confusion.

20) Please comment on any additional issues concerning exceptions and limitations to trade mark protection related to parody you consider relevant to this Study Question.

Beyond the core assessment of trade mark infringement, parody raises several unresolved questions concerning the scope of exceptions and limitations to trade mark protection. A key difficulty lies in the line-drawing between permissible parody and infringing commercial use, particularly where the parody is used “for fun” but nevertheless generates economic benefit. The distinction between commercial and non-commercial use is not always clear-cut, and parody often occupies a grey area in which expressive elements coexist with commercial objectives.

This leads to an open interpretative question as to how trade mark law should balance fundamental interests: the trade mark proprietor’s exclusive rights on the one hand, and freedom of expression, artistic freedom and social commentary on the other. Until clearer guidance emerges, parody will remain a context-dependent limitation to trade mark protection, with legal certainty still developing on where the boundaries ultimately lie.

21) Please indicate which industry sector views provided by in-house counsels are included in your Group's answers to Part III.