

CB 799-829; supp 105-116

UDRP: Things you need to know:

- Learn the 3 things that P has to prove.
- Learn D's defenses.

WWF v. Bosman [806]

The arbitrator in this case is a leading TM practitioner and was involved in UDRP writing (although not the WIPO pre-history of the UDRP)

Domain name is the same as the TM. D. tried to sell it to P. D. has no claim of other use.

Odd feature of case: Arbitrator claims that US law is not relevant to his determination as to what constitutes "use". This touches a much larger issue--to what extent is the UDRP

- uniform and transnational
- non-uniform and reflecting variations in national trademark law
- a common-law-like body of law that the arbitrators can shape as they go along

I believe that the reference to "rights and legitimate interests" *must* import national law ideas (e.g. fair use, free speech), especially as the *stated* (but probably not covert) goal of the UDRP was a "better, faster, cheaper" version of national court outcomes -- but not everyone agrees. Some disagree violently. (WIPO wishes the answer were that the UDRP creates new law.)

Even if I'm right about the above, does it follow that "use" is defined by national law? If not, is there an increased danger of forum shopping?

Sallen v. Corinthians (1st Cir. 2002) [Supp 105]

TM holder wins UDRP against domain name registrant. Registrant brings suit in D. Mass seeking declaration that he has right to retain domain name. [Note: this is loosely called an 'appeal' of the UDRP, but it is not in fact an appeal as such, and the UDRP decision has NO precedential value in the federal court.]

TM holder's lawyer applies brilliant legal jujitsu: he tells the court that his client has no intention of ever bringing a TM complaint against Sallen based on any fact at issue in the case. In other words, there's now in his view no 'case or controversy'. If that's right, the DCT has to dismiss the case...and the UDRP decision stands...transferring the domain name to the TM holder.

The DCT falls for it. The CTA does not. Had it ruled the other way, there would be no way to get jurisdiction in federal court to stop a UDRP decision from going into effect unless the registrant started the suit before the UDRP tribunal ruled (and it voluntarily stayed its decision --

something it is not required to do).

Side note: the facts were messy. Sallen did seem to be a cybersquatter, as he switched to putting up bible verses only after getting the demand letter.

Barcelona.com v. Excelentismo Ayuntamiento de Barcelona (4th Cir. 2003) [Supp 109]

Barcelona's claim to a TM in its name was pretty shaky since Spanish law doesn't have common law TM. But they convinced the UDRP arbitrator. The DCT issued a horrific opinion in which it said that a US court should apply Spanish law rather than US law in adjudicating the rights of a Spanish citizen (and US corporation run from abroad) to a domain name registered in the US.

Note bottom of p. 110 -- UDRP panelists will accept things as "bad faith" that wouldn't get past 10(b)(6) in the US courts. Compare the next-to-last paragraph on p. 116 which does a proper Lanham Act analysis!

CTA4 says -- which should have been obvious but wasn't -- that US courts apply US law under ACPA, since ACPA refers to the Lanham Act and not some other law. Note esp. pp. 115-16, which discuss the role of the Paris convention, and the concept of "territoriality" under the Paris Convention

Shirmax Retail v. CES Marketing Group [809]

[Arbitrator is a leading TM & computer law professor]

Thyme is generic for the herb, but not for clothing. P has (Canadian) TM's for Thyme for clothing.

CES registered thyme and a large bunch of other generic-sounding names.
No claim CES knew of P at time of registration.
CES is a domain banker, re-seller.

Query: is that a per se form of "cybersquatting"?

Issue: does CES have "rights or legitimate interests" in a name bought for resale purposes?
Arbitrator says that when name is generic, P's claim on such facts is weak, and D has "tenable" claim to rights and legitimate interests. Distinguishes this case from case of a "coined" mark. (Similar analysis for bad faith prong.)

CRS Tech Corp v. Condenet [812]

Case is interesting because (1) it states that absence of 4(c)(ii) factors is not itself evidence of

lack of legitimacy.; (2) it takes the strength of P's mark into account.

Query: where does the UDRP take the strength of P's mark into account?

Hewlett-Packard Co. v. Bulgar [814]

[Arbitrator is a troublemaker]

Bulgar was a notorious cybersquatter. His contact details flirted with falsity (each was to Something Club and a PO Box, where "something" was the domain name). However, unlike most of his domain names, this one had been challenged under the pre-UDRP policy administered by Network Solutions Inc. Under that policy, when a 3rd party issued a challenge the registrant had to supply NSI with evidence that it had a registered trademark, or else NSI "froze" the name -- NSI would no longer serve an IP#, so that the domain name would always fail if used for email, the web, or anything else. As a result, although Bulgar had kept up the registration of the name, he had never been able to use it for anything.

Two preliminary issues in the case don't appear in the casebook excerpts of the decision:

First, whether Bulgar was subject to the UDRP given that his registration pre-dated it. We all agreed that he was, as the old rules allowed NSI to change them on notice, and -- although P failed to brief this issue or even allege it -- it seemed certain that the registrant of 1,300 names had to know of the change

Second, Bulgar challenged the jurisdiction of the panel, including the impartiality of one of the arbitrators, and said that we lacked the authority to decide this issue, hence we should refuse to decide the case. We all agreed that -- following traditional rules of arbitration -- the panel had the competence to rule on its own jurisdiction.

The two opinions speak for themselves, although there's one funny (?) thing. The majority opinion gives examples of "domain names" Bulgar registered (on p. 815)...but these names ending in -DOM and *not* domain names...they are "handles" (nicknames) set by NSI. There were in fact plenty of good examples the majority could have cited, but they were not clued up enough to know the difference.

Springsteen v. Bulgar [817]

[Disclosure: I was the 3rd panelist in this case, and voted with the majority].

The drafters of UDRP clearly did not intend to protect non-trademarked personal names -- I

know, I was there! By the time this case came up, there had been a number of (inconsistent) celebrity domain name cases (see p. 822 for some of them).

Is "Bruce Springsteen" a trademark? How does one tell? Is the panel in a position to know?

Majority says that issue is "legitimate non-commercial use" or "fair use". It finds that use is not misleading, infringing or tarnishing. It suggests that conduct doesn't support the bad-faith-cybersquatter facts [had I written the opinion I might not have said that, since .com was considered by far the most valuable of the TLDs]

Dissent seems to think there would be sufficient initial interest confusion to be actionable [Query: does the UDRP protect against this? I'd say 4(b)(iv) does only if the confusion is *intentional*]

Note Q3. Another area where arbitrators have given inconsistent answers...although I think the results should turn on who registered the name, why, and what they did with it. A counter-argument says non-registration is simple abandonment.

Q4. There are also a fair number of 'fan site' cases. What result if the case were brought in federal court?

Direct Line Group v. Purge [825]

[Arbitrator is a leading UK IP professor]

If Cornish ever found for a defendant, I haven't heard about it. He seems to think "sucks" names are inherently confusing -- because they could fool non-native English speakers! He also thinks that criticism is a form of bad faith.

I think of this as one of the all-time bad UDRP decisions.

Postscript: WIPO has been purging its list of arbitrators, and got rid of those it thought were too friendly to defendants. What does that tell us about the system?

Trademarks as Speech

* CB 570-583, 830-851

A basic principle of trademark law is that it must comply with the First Amendment. Easy in principle, complex in practice.

A. Comparative Advertising

Many countries (e.g. Germany) basically ban comparative advertising.

Smith v. Chanel (9th Cir. 1968) [570]

Note posture: it's not claimed there is any misleading or confusion packaging or labeling. Nor is it disputed that the copies are perfect (this is appeal of a preliminary injunction).

Query: if the copies were not perfect, would that change the result? Would it matter if the ad said the copies were "perfect" or "close to"?

Held,

OK to market copies of *unpatented* products with close reference to perfume they are copying.

Why? cf. Holmes in *Saxlehner v. Wagner* [571]: you can tell people things in a way that will be understood, so long as there's no confusion as to source.

But, doesn't this add to the danger of genericide? [575] Court says these facts don't do that. [Even if they did, I'd ask, so what? That's life.]

Query: What result today under the FTDA?

Be sure to look at question 2 on pp. 576-77 & q, 3 on p. 578.

August Stork v. Nabisco (7th Cir. 1995) [578]

Packaging refers to competitor's product in BIG letters: "25 percent lower in calories than {competitor}"

Appeals court (finding fact? because it's a preliminary injunction on which DCT made no factual findings? or ignored reality?) says "It is hard to see how anyone could think that " the two products could be confused.

(Note aside on p. 581 -- disclaimers have little use in preventing confusion!)

Note important discussion on pp. 582-83 of how you go about comparing products. You do look at elements, but the total effect is even more important.

San Francisco Arts & Athletics (US 1987) [831]

There are a number of special TM statutes, but the one that's most litigated is surely the protection of "Olympic" [see fn.4 for quote]

Issues:

- 1) Is "Olympic" generic, and if so can congress constitutionally grant a TM in a generic word
- 2) Does the 1st Amendment prohibit granting a TM right in a word absent confusion?

Held, this is a commercial speech issue, so in context of "attenuated" 1st Am. protections. Dissent [836] reads the statute as intruding far into non-commercial speech.

(Core issue in dispute is whether USOC is public or private-- those parts are not in casebook)

Dreyfuss essay discusses the 'generic' and meaning issues ducked (or not understood?) by the Supreme Court.

Query: What does this mean: "The process of producing a word is expensive" [840]

New Kids on the Block v. News America Publishing (9th cir. 1992) [841]

A leading 'nominative fair use' case.

USA ran a pay-poll 900-number asking people to vote on favorite New Kids on the Block member.

DCT held for D on summary judgment, citing first amendment.

CTA says it should investigate non-constitutional basis for upholding decision first.

[843] discusses reasons for limiting reach of a TM. Note that some words have good alternatives, and some don't [thus when inventing a really new product, it's smart to invent a generic name and a brand name...]

Thus, for example, the 'repair' line of cases (cf. 844) -- if you fix XTM, you can say so in your advertising. Ditto if you report on it. This is a "nominative" use of the mark -- you are talking *about* it, not offering for sale, or using in a source-identification kind of way. Key issue is lack of deception/confusion.

But note that in repair case, D uses the mark to refer to D's products (*we* fix X's). Here D uses the mark to refer to P's product.

Held, "where the defendant uses a trademark to describe the plaintiff's product, rather than its own, we hold that a commercial user is entitled to nominative fair use defense provided he meets" three tests:

1. product must be one "not readily identifiable without the use of the trademark"
2. only so much of the mark or marks may be used as is reasonably necessary to identify the product or service
3. user must not suggest sponsorship or endorsement by TM holder [844-45]

P's argue that there can't be nominative fair use where P & D compete (they both had 900 lines) CTA rejects this argument [845-46]. Note that this is not the unanimous view of courts...see notes after the case.

Patmont Moter Werks v. Gateway Marine (ND Cal 1997) [846]

Weird facts: D sold P's goods online, but wasn't an authorized dealer.
After P & D fell out, D started saying the goods were dangerous!
DCT applied *New Kids* and said that in disparaging the goods D ensured there could be no confusion.

The interesting question, though, is what an un-authorized dealer can do on a website if he's trying to promote, not disparage, the goods.

Note also the quite amazing footnote 8 on pp. 847-48!!!

Kassbaum v. Steppenwolf Prod. (9th Cir. 2000) [848]

'67 band formed

'68 Kassbaum joins, there's a partnership agreement and a recording contract

'71 Kassbaum kicked out of band

'80 Kassbaum signs agreement disclaiming ownership of Steppenwolf SM

'80-'96 K. performs as "lone wolf", describing self as "former member of ..."

'96-'00 K. performs as one of "World Classic Rockers" w/ various "former member, original founding member of, formerly of" monikers. [849]

Band manager sends cease & desist letters. K. files for declaration that he's ok. (Note tactical implications). Band counterclaims.

DCT finds for counterclaim. CTA finds for K.

Follows Terri Wells DCT decisions. (see below). Seems uncontroversially correct so long as there's no deceit, deception.

[Hypo: what if despite lack of deceit or deception there is genuine confusion on the part of fans?]

Playboy v. Terri Welles [supp @ 117]

The other leading nominative fair use case following *New Kids*.

Note that court objects to over-use of logo as her wallpaper, but is ok with her use of the 'Playmate title' -- how else to say it?

Most interesting part of the decision is allowing the meta-tags. This is somewhat controversial.

PACCAR v. Telescan (6th Cir. 2003) [Supp @ 124]

PACCAR has the PETERBILT mark for trucks. I has a website at paccar.com which allows searches of dealers in Peterbilt trucks.

Telescan has a site at trucksan.com which allows searches of truck dealers by brand. It also has peterbiltnewtrucks.com and peterbiltusedtrucks.com and peterbilttruckdealers.com (and many other similar mfg-specific sites)

It uses PETERBILT as part of the wallpaper on the Peterbilt-related sites, and has the mark in the metatags. And it has a disclaimer.

CTA6 says this is *not* nominative fair use, both because it rejects the CTA9 theory, and also because even if you adopted it the uses don't qualify (is that right? For all 3 uses?)

Court says that using "peterbilt" as part of a domain name is not referring to the trucks, which might be nominative fair use, but to the webpage. [What do you think of that argument? If it's valid, under what circumstances can a person use a term trademarked by another in a domain name? Hint: there are some.] Furthermore the court thinks that the domain names suggest sponsorship or a relationship with Peterbilt [Does it? How would one know?]

Compare *Interactive Products Corporation v. a2z Mobile Office Solutions* (CTA6, 2003), which held that filenames in a URL do not signify source and hence "it is unlikely that the presence of another's trademark in the post-domain path of a URL would ever violate trademark law." Do consumers make the subtle decision between the domain name and the post-domain path? [Post domain path is the stuff to the right of the first slash in a URL]

[NOTE: other than the cases above, pp. 851-874 will not be on the exam]

B. Promotional Goods

Boston Prof. Hockey Assn. v. Dallas Cap & Emblem (5th Cir. 1975) [851]

Issue: Whether the unauthorized, intentional duplication of sports team logo, to be sold as a patch for attaching to clothing violates the team's rights?

DCT: No. CTA: Yes.

Argument for Dallas Cap: it's not a source identifier. It's fandom. And the "good" here *is* the logo, it's not ID-ing some other good. [shades of the post-modern vision of TM law???]. The right that NHL seeks to protect here is the sort of right the copyright law protects, not the Lanham Act.

Argument for NHL: it's a reproduction, unauthorized, in commerce, in connection with the sale of goods (although it *is* the good...), and is likely to cause confusion [the issue?]

DCT held that there was no likelihood of confusion b/c usual purchaser would not

think that D's emblems have a connection to NHL.

CTA says,

the district court overlooked the fact that the act was amended to eliminate the source of origin as being the only focal point of confusion. The confusion question here is conceptually difficult. It can be said that the public buyer *knew* that the emblems portrayed the teams' symbols. Thus, it can be argued, the buyer is not confused or deceived. This argument misplaces the purpose of the confusion requirement. The confusion or deceit requirement is met by the fact that the defendant duplicated the protected trademarks and sold them to the public knowing that the public would identify them as being the teams' trademarks. The certain knowledge of the buyer that the source and origin of the trademark symbols were in plaintiffs satisfies the requirement of the act. The argument that confusion must be as to the source of the manufacture of the emblem itself is unpersuasive, where the trademark, originated by the team, is the triggering mechanism for the sale of the emblem.

Does this make sense?

CTA admits that this broadens the Lanham Act:

Although our decision here may slightly tilt the trademark laws from the purpose of protecting the public to the protection of the business interests of plaintiffs, we think that the two become so intermeshed when viewed against the backdrop of the common law of unfair competition that both the public and plaintiffs are better served by granting the relief sought by plaintiffs.

Underlying our decision are three persuasive points. *First*, the major commercial value of the emblems is derived from the efforts of plaintiffs. *Second*, defendant sought and ostensibly would have asserted, if obtained, an exclusive right to make and sell the emblems. *Third*, the sale of a reproduction of the trademark itself on an emblem is an accepted use of such team symbols in connection with the type of activity in which the business of professional sports is engaged. We need not deal here with the concept of whether every artistic reproduction of the symbol would infringe upon plaintiff's rights. We restrict ourselves to the emblems sold principally through sporting goods stores for informal use by the public in connection with sports activities and to show public allegiance to or identification with the teams themselves.

Furthermore, CTA rejects "functionality" defense based on precedent from (un-trademarked) china designs. [856]

But, how is the aesthetic value of the NHL emblem materially different from the china design?

Is it:

- the fact that the NHL emblem is trademarked?
- the fact that the NHL emblem is more widely recognized?
- the fact that the NHL emblem is more valuable?
- the fact that the NHL emblem is *not* pretty, but rather refers to the team?
- a mistake? (cf. p. 858 n. 10)

Int'l Order of Job's Daughters v. Lindeburg & Co. (9th Cir. 1980) [856]

Since 1921 the IOJD has used an emblem and name. It allowed many folks to make jewelry of it.

1954 - Lindeburg starts doing it too

1957 Lindeberg asks for permission (should it have?)

'64 & '66 IOJD asks Lindeberg to stop.

'73 Lindeberg asks again

'75 IOJD sues.

DCT finds for IOJD (on common law mark theory) and grants injunction but says that long acquiescence in infringement bars award of damages.

CTA says jewelry design is functional as its look is "intrinsic utility" (i.e. opposite result of *Boston Prof. Hockey Assn. v. Dallas Cap & Emblem*, which it "rejects")

Boston Athletic Ass'n V. Sullivan (1st Cir. 1989) [860]

Sullivan sold t-shirts etc. with the words Boston Marathon and its logo.

Shirts were sold in a store.

BAA TM's date from the 80's, but use dates from much earlier

D was selling shirts from 1978 on. He sold BAA shirts in 1984, also later dealings.

1987 & '88 shirts made by D were not as good as BAA's shirts.

CTA sees 2 issues:

1. standard likelihood of confusion under §1114(1) between D's shirts and P

Held, yes, there's a likelihood of confusion

2. 'promotional goods' issue -- where the logo is used in a way that might make people think that BAA sponsored, produced or licensed P's shirts.

Given the undisputed facts that (1) defendants intentionally referred to the Boston Marathon on its shirts, and (2) purchasers were likely to buy the shirts precisely because of that reference, we think it fair to presume that purchasers are likely to be confused about the shirt's source or sponsorship. We presume that, at the least, a sufficient number of purchasers would be likely to assume — mistakenly — that defendants' shirts had some connection with the official sponsors of the Boston Marathon. In the absence of any evidence that effectively rebuts this presumption of a "likelihood of confusion," we hold that plaintiffs are entitled to enjoin the manufacture and sale of defendants' shirts.

...

We acknowledge that a trademark, unlike a copyright or patent, is not a "right in gross" that enables a holder to enjoin all reproductions. In Justice Holmes's words, "When the mark is used in such a way that does not deceive the public we see no such sanctity in the word as to prevent it being used to tell the truth. It is not taboo." *Prestonettes, Inc. v. Coty*, 264 U.S. 359 (1924). But when a manufacturer intentionally uses another's mark as a means of establishing a link in consumers' minds with the other's enterprise, and directly profits from that link, there is an unmistakable aura of deception. Such a use is, by its very nature, "likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. §1114(1). Unless the defendant can show that there is in fact no likelihood of such confusion or deception about the product's connection to the trademark holder, such a use can be enjoined.

WCVB-TV v. Boston Athletic Association, (1st Cir. 1991) [869] (per Breyer, J.)

TV station wants to show the Boston Marathon. BAA licensed it to another channel, so it seeks an injunction.

Held, use of "Boston Marathon" to describe the event being televised isn't going to confuse anyone -- this isn't like running a competing race with the same name!

BAA argues (something like?) promotional goods prong of *BAA v. Sullivan*, arguing that public will think BAA authorized the showing. [870] Says these defendants, like the t-shirt sellers, are reaping without sowing.

CTA distinguishes *Sullivan* (convincingly?? not??) [870-71] -- but does it do so on grounds that *Sullivan* test doesn't apply (court says this but gives no coherent reason for it other than 'you lose?') rather than because, applying the test there are facts to rebut the presumption created in *Sullivan*. Or at least so it says.

The court says it's the former [871] in that there's no suggestion this is an 'official' telecast (but why is the lettering at the start and end of show any less official-like

than the t-shirt? is it just social convention that we know TV stations show what they like, but we have expectations about T-shirts [we do??]?

If so, are we not having the exact problems warned against in *Sullivan* at [867]?

National Football League Properties, Inc. v. Playoff Corp., (ND Tex 192) [873]

Plaintiff refused to license football trading cards bearing the NFL team logos and uniforms. Defendant had obtained the players' permission to depict the players. Following plaintiff's objection, defendant removed the team logos from its cards, but continued to portray the players in their team uniforms. After declining to follow the Ninth Circuit's nominative fair use doctrine (stating that adoption of the doctrine was for the Fifth Circuit, and not for a district court) the court upheld plaintiff's infringement claim. The court also rejected a first amendment defense.

Can these decisions be reconciled? Is the 1st Amendment right of a TV station superior to baseball cards?

If they can't be reconciled, which should predominate?

Is it correct that the 9th circuit view requires application to t-shirts and baseball cards to be consistent? If so, does it destroy TM law? If not, does it destroy first amendment law?

Parody [874-915]

Mutual of Omaha Ins. co. v. Novak [8th cir 1987] [874]

Mutant of Omaha, and Mutant Kingdom t-shirts etc
DCT enjoined on infringement (denied claim based on disparagement).
CTA affirms infringement and doesn't reach disparagement issue.

Uses mainly *Squirtco* (ie Polaroid) factors

CTA relies on a survey showing actual confusion (or on DCT's reliance on survey, as the reliance is not clearly erroneous), to find that parody defense doesn't work.
Dissent says reliance is clearly erroneous.

Cliff Notes v. Bantam (2nd cir. 1989) [881]

Spy Notes, a parody of Cliffs Notes, copies distinctive yellow and black of Cliff Notes's TM registered cover design.

But there are some differences in cover copy and words "a satire" appear five times
Court looks at 1st amendment r.t. parody [885]

"A parody must convey two simultaneous - and contradictory - messages: that it is the original, but also that it is not the original and is instead a parody." [881]

NB fn 3 p. 887: Must go beyond *Polaroid* factors to consider 1st amendment interest also.
I.e. need to balance public interest in non-confusion w/ 1st amendment.

Anheuser-Busch v. Balducci Publ. (CA8 1994)

Once again 8th cir downplays 1st am. values.... this is the minority view....cf. cases listed 891....

Mattel v. Universal Music (CA9 2002) [Supp 126]

This is a fun opinion. And it lays out the *Rogers* test and applies it. Plus reads the FTDA in an interesting way. But the song isn't that great.

Among the points to note: courts are reluctant to find TM infringement in titles ("consumers ... do not expect [a title] to identify the publisher or producer").

The *Rogers* issue is actually easy; the FTDA issue is harder since the act is newer. Is this a case of dilution by blurring or tarnishment? Barbie is a famous mark, and was before the song ever got written. The song is commercial use in commerce. (Cf. Supp p. 131 for a good discussion of what is and is not). And the court concludes somewhat summarily that this *is* blurring. [but then what isn't?]

So the issue is defences. And the court says the 'commentary' exception doesn't apply, leaving only the 'noncommercial use' one. Having just found that this is a 'commercial use in commerce' that may seem an odd thing to say. Kozinsky says you have to read the two clauses differently to avoid a First Amendment problem, especially as the likely relief is injunctive.

So, relying on the legislative history (!), Kozinsky says that the FTDA's second use of "noncommercial" in "noncommercial use" means "use that consists entirely of noncommercial, or fully constitutionally protected speech". This works so long as you accept that commercial speech somehow isn't fully constitutionally protected -- a not uncontroversial view. (That issue is touched on at supp 133-34)

Note also the reliance on the *Hoffman* decision -- even if speech is mixture of commercial and non-commercial speech, it's protected under Kozinsky's rule, so long as the elements are inseparable.

Finally, Part VI of this decision is an object lesson in the perils of scorched-earth litigation tactics.

MoFo v. Wick (D.Colo 2000) [900]

Issue: a web site with nasty stuff about firm. [c.f 777 for ACPA part of case]

D. had 95 law firm domain names.

Held, no parody since the name of the site is more like a source identifier than a communicative message - message is only on page.

-- Query: doesn't this buy 100% into the initial interest confusion vision? Is there any non-TM-owner use that would be OK?

Yankee Publishing v. News America Publishing (SDNY 1992) [902]

Farmer's Almanac v. New York Magazine

NB. crafty move by judge on factor 1 of *Polaroid* [910]: if mark is v. strong, then likelihood of confusion *might* be less (argument - if it's plausible - is pretty dubious for a v. famous mark with a less strong personality - e.g. Coke?).

NB. How he says some gaps don't bridge - EVEN WHEN they are BOTH "magazines"!

NB. Good faith: intent is to in some sense copy look and feel of P's mark, but not in order to cause confusion or free ride/poach on its customers.

Nb. "This is not parody." [913] but first amendment still applies to commentary other than parody.