



freedom of squeak: the ninth circuit finds first amendment protection for parody dog toy

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In *VIP Products v. Jack Daniel's Properties, Inc.*, No. 18-16012 (9th Cir. March 31, 2020), the Court of Appeals for the Ninth Circuit held this week that a rubber dog toy designed to resemble a bottle of Jack Daniel's Black Label Tennessee Whiskey — the "Bad Spaniels Silly Squeaker" — is an "expressive work" and therefore entitled to interpose a First Amendment defense against the whiskey company's trademark infringement claims.

The lawsuit began in 2014 when Jack Daniel's demanded that VIP Products stop selling the Bad Spaniels on trademark infringement grounds. The manufacturer filed suit asking an Arizona District Court to weigh in and determine whether the whiskey bottle was entitled to trademark protection at all. Jack Daniel's responded with trademark infringement and trademark dilution claims, arguing that the dog toy diluted the commercial power, meaning and value of its brand by tarnishing what the image of the iconic whiskey bottle represents. The District Judge agreed with Jack Daniel's that there was a high likelihood of consumer confusion between the products and ordered VIP Products to stop making and selling the Bad Spaniels toy.

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