



hara v. netflix, inc.: ninth circuit reaffirms *rogers* test for expressive works post- *jack daniel's*

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MSK Client Alert

July 31, 2025

On July 28, 2025, the Ninth Circuit affirmed dismissal of a Lanham Act false endorsement suit brought by drag performer Lance Hara (known professionally as Vicky Vox) against Netflix over an animated cameo in the comedy series *Q-Force*. Vox alleged her animated likeness appeared without permission in a ten-second scene, an official teaser trailer, and a promotional still image. *Hara v. Netflix, Inc.*, No. 23-3768, 2025 WL 2102547, at *1-2 (9th Cir. July 28, 2025). She claimed this depiction implied her endorsement or affiliation, violating Section 43(a) of the Lanham Act. The district court dismissed her claims under Rule 12(b)(6), and the Ninth Circuit affirmed, clarifying the applicability of *Rogers v. Grimaldi* after the Supreme Court's decision in *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. 140 (2023).

Rogers Test Post-*Jack Daniel's*: Expressive vs. Source-Identifying Use

The Ninth Circuit analyzed whether and to what extent the *Rogers* First Amendment test—balancing trademark rights against free expression—still applies following *Jack Daniel's*.

Under *Rogers*, expressive works face liability only if their use (1) has zero artistic relevance or (2) explicitly misleads consumers regarding endorsement or source. This standard demands explicit deception, not mere confusion.

The Supreme Court held in *Jack Daniel's* that *Rogers* does not apply when trademarks primarily function as source identifiers (e.g., the “Bad Spaniels”-branded dog toy). See *Jack Daniel's*, 599 U.S. at 145, 157. However, the Court explicitly stated that it was not deciding *Rogers*' broader applicability, and left open whether and where *Rogers* may still apply beyond source-identifying contexts.

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Clarifying this issue, the Ninth Circuit held *Rogers* still applies when a likeness or mark is used purely for expressive purposes, rather than as source identifiers. For purposes of the motion to dismiss, the court accepted Vox's allegations as true, thus treating Netflix's purported depiction of Vox as expressive—not promotional—because her character appeared briefly and served solely to enhance comedic realism. *Id.* Therefore, *Rogers* remained applicable despite alleged viewer confusion.

The Ninth Circuit easily found Netflix's use of Vox's likeness artistically relevant under the first *Rogers* factor. Featuring a drag queen in a West Hollywood LGBTQ spy comedy clearly advanced the show's thematic authenticity, a point Vox did not dispute.

As to the second *Rogers* prong, Vox argued viewers mistakenly believed she endorsed the show. The court acknowledged potential confusion but emphasized that mere confusion is insufficient under *Rogers*. Indeed, *Rogers* itself notably involved a similar allegation of false endorsement claim—namely, Ginger Rogers' purported endorsement of the film *Fred and Ginger*. Vox's allegations identified no overt misrepresentation by Netflix. Ninth Circuit precedent holds that even substantial evidence of consumer confusion fails *Rogers* absent explicit deception. Thus, because Vox alleged no explicitly misleading conduct, her claim failed, justifying the district court's order of dismissal. *Id.*

In sum, the Ninth Circuit's holding is a welcomed decision for the creative industries, as it provides crucial clarity following *Jack Daniel's*, affirming *Rogers'* continued robust protection for expressive, non-source-identifying uses.

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