

22-148 JACK DANIEL'S PROPERTIES, INC. V. VIP PRODUCTS LLC

DECISION BELOW: 2022 WL 1654040

LOWER COURT CASE NUMBER: 21-16969

QUESTION PRESENTED:

Respondent VIP Products LLC markets and sells dog toys that trade on the brand recognition of famous companies such as petitioner Jack Daniel's Properties, Inc. The district court found that VIP's use of Jack Daniel's trademarks to sell poop-themed dog toys was likely to confuse consumers, infringed Jack Daniel's marks, and tarnished Jack Daniel's reputation. The Ninth Circuit, however, held that VIP's First Amendment interest in using Jack Daniel's trademarks as its own marks on funny dog toys conferred special protection from infringement claims and rendered VIP's commercial dog toys "noncommercial" and thus exempt from dilution-by-tarnishment claims. The questions presented are:

1. Whether humorous use of another's trademark as one's own on a commercial product is subject to the Lanham Act's traditional likelihood-of-confusion analysis, or instead receives heightened First Amendment protection from trademark-infringement claims.

2. Whether humorous use of another's mark as one's own on a commercial product is "noncommercial" under 15 U.S.C. § 1125(c)(3)(C), thus barring as a matter of law a claim of dilution by tarnishment under the Trademark Dilution Revision Act.

CERT. GRANTED 11/21/2022