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Jack Daniel's Loss in Long-Running 'Bad Spaniels' Case Significantly Raises Bar for Tarnishment Claims, Experts Say

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[Michael D. Hobbs, Jr.](#)

[Michael D. Hobbs](#), a partner in Troutman Pepper Locke's [Intellectual Property](#) Practice Group, was quoted in the August 7, 2026, *World Trademark Review* article, "[Jack Daniel's Loss in Long-Running 'Bad Spaniels' Case Significantly Raises Bar for Tarnishment Claims, Experts Say.](#)"

The Supreme Court's decision was supposed to be a win for Jack Daniel's, at least on the legal framework, but it also forced a more rigorous tarnishment analysis which the company's case hadn't been built to survive, says Mike Hobbs, partner at Troutman Pepper Locke.

The Ninth Circuit had to evaluate tarnishment on a clean slate, without the protective buffer of the *Rogers* test, and apply a stricter doctrinal standard, he explains.

"Under that framework, Jack Daniel's' evidentiary record simply couldn't hold up," he says.

According to Hobbs, the court's conclusion that OLD NO 7 was not independently proven famous eliminated the entire OLD NO 2 parody as a basis for tarnishment.

"The expert testimony that may have been sufficient under the old, more plaintiff-friendly framework didn't survive scrutiny once the court required product-specific evidence of likely reputational harm rather than generic consumer psychology research," Hobbs poses.

"Any pending tarnishment case involving an obviously humorous junior product – particularly in the pet, novelty, or entertainment space – just got harder for the plaintiff," he says.

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Hobbs describes the ruling as a meaningful recalibration of the tarnishment doctrine, arguing that the "fame-by-mark holding" will reshape how brand owners build dilution cases.

"Fame is not like an Amazon Prime account that gets passed around from family member to family member," he says. "You can no longer treat a brand family as a single famous entity and expect to protect every element of it."

The decision clarifies that "fame is mark-specific, not brand-specific", Hobbs states, which is a "significant limitation".

"The lesson is that brand owners that have invested in building enterprise-level brand recognition may have less coverage than they assumed if they haven't specifically documented fame for each element they want to protect," he says.

"Famous-mark status is not a blanket that covers everything that looks like your brand."

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Hobbs similarly advises brand owners to audit which specific marks can actually be proven famous, including through survey evidence, before pursuing litigation.

If a brand owner intends to allege tarnishment against a parody, it should commission consumer research

focused on the specific product at issue, he says.

“Generic expert testimony about how disgust works psychologically is not going to carry a federal trial,” he adds.

Brand owners should also undertake an “honest pre-suit assessment of whether the parody is actually harming your brand or just making you uncomfortable”, Hobbs advises.

“Courts are increasingly sceptical of tarnishment claims that are really about brand control rather than genuine reputational injury.”

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While the Ninth Circuit decision sets a “national consensus” on the role of parody in tarnishment analysis, Hobbs notes that a significant constitutional question remains unresolved.

“The Ninth Circuit declined to rule on VIP’s argument that the tarnishment provision itself is unconstitutional, so that issue is still alive for the right future case,” he says.

“The next parodist who doesn’t have the facts VIP had may take a very different run at it, and at that point courts will have to confront whether the government can restrict expression simply because a famous brand finds it distasteful,” Hobbs urges.

“That’s the sleeper issue in this entire body of law.”

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“This is the practical advice most brand owners don’t want to hear: consider whether 12 years of litigation and a Supreme Court trip has done more reputational damage to your brand than the dog toy ever would have,” Hobbs poses.

“Bad Spaniels was a regional novelty product. It’s now a household name because Jack Daniel’s made it one.”

Had Jack Daniel’s, for example, responded with a joke on social media and moved on, the brand may have emerged in a stronger position, Hobbs suggests.

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