

Parody: to be or not to be?

Social media is on the rise in India, but so is the use of parodies to mock brands

Parody, in a literal sense, refers to a work that humorously and critically comments on an existing work to expose its flaws. In order to create a successful parody, the parodist necessarily requires the audience to recognise the original work as well as the manner in which it has been ridiculed. Thus a parody, by its very nature, is dependent upon, and borrows from, the original work.

The publication of parodies in the form of satire, criticism, comedy, spoofs and comparative advertising has become a common and popular source of entertainment on the internet and social media networks. In India, publishing parodies of, for example, Bollywood movies is very common. With India now the second largest user of Facebook after the US, what is the law surrounding parodies, and how should IP owners react when they spot a parody online?

Parodies and copyright infringement

Parodies are generally classified under the defence of 'fair use'. Section 52 of the Indian Copyright Act in this regard states that "a fair dealing with a literary, dramatic, musical or artistic work for the purposes of criticism or review, whether of that work or of any other work will not amount to copyright infringement". As a result, parodies in the form of criticism, satire or reviews are permissible in India.

The courts in India have also dealt with the legal implications of spoofs and parodies, and remakes of movies. For example, in *RG Anand v M/S Delux Films* (1978 AIR 1613), the Supreme Court, while dealing with the issue of copyright infringement and whether copyright infringement can be claimed in a theme of a movie, held that if the theme is the same, but the subsequent work becomes "completely new", it would not be copyright infringement. This case leads to the inference that spoofs that have completely new views and entertainment to offer might not infringe the IP of the filmmaker.

Another case that dealt with a similar issue is *Blackwood And Sons v AN Parasuraman* (AIR 1959 Mad 410), in which the court set out two conditions for qualifying "fair use" under the law: (i) the parodist must not intend to compete with the copyright holder; and (ii) the parodist must not make improper use of the original work.

Civic Chandran v Ammini Amma (1996(16) PTC 670) followed a similar theme. The defendant had published the play, *Ningal Are Communistakki*, which was intended to be a critique of the famous play *Ningal Enna Communitakki*. The court, while deciding the case, held that the copying of the original play was for criticism, and therefore amounted to "fair dealing".

Parodies and trademark infringement

Using the trademarks of others without authorisation appears to be violating proprietary rights of the owner. However, Indian courts have disagreed if the use is non-commercial and the third party user does not advertise or sell related goods or services.

In *Tata Sons Limited v Greenpeace International* (178(2011)DLT705), the Indian court made a detailed analysis of the status of parodies under Indian trademark law. In this case, Tata Sons was aggrieved by Greenpeace International's videogame, *TATA v Turtle*, which allegedly spread defamatory remarks and statements about the Tata Sons. It also argued that the use of the 'T' device and the 'Tata' mark, although not in the course of trade, did amount to trademark infringement, specifically dilution or tarnishment.

Tata Sons contended that 'use' of a trademark is not confined merely to Greenpeace International engaging in a trade or commercial activity, but other forms of speech or representation, which would tarnish the 'Tata' mark.

Greenpeace International contended that it had launched the videogame to protest and garner public opinion against a Tata Sons project that was a threat to Olive Ridley sea turtles. Greenpeace International also submitted that its use of the 'Tata' trademark and 'T' device did not amount to trademark infringement, as it was not commercial usage meant for profit or gain, and that Indian trademark law envisaged the use of a registered trademark for the purposes of criticism, fair comment and parody.

The Delhi High Court refused to grant an injunction to Tata Sons and observed:

- A textual reading of the statute makes it clear that the intent of the trademark law's draftsmen was that infringement would take place when another commercial/entrepreneurial body is exploiting that same trademark;
- A bona fide user of a trademark will infringe only when the user is a similar/competitive profit-making entity to the trademark owner; and
- The defendant's argument that it can make reasonable comment, ridicule, and parody of the registered trademark is persuasive.

In a few cases, Indian courts have rejected the defence of parody and held the unscrupulous use of trademarks in parody or satire to be infringement. For example, in *People for Ethical Treatment of Animals v Doughney* (263 F.3d 359, No. 00-1918 (4th Cir., August 23, 2001), the defendant was

sued following the creation and operation for a website hosted at the domain name *peta.org*, which comprised the plaintiff's registered trademark 'PETA'.

In defence, the defendant argued that his site, entitled *People Eating Tasty Animals*, was a parody of the plaintiff's name, *People for the Ethical Treatment of Animals*. However, the court rejected the defence of parody and held the website's owner liable for trademark infringement.

Parodies are not new to India. They provide a new humorous take on a creative work. They appeal to the public and provide opportunities for amateur artists and creators to display their talent. However, with the advent of the digital age, in which videos go viral on social networking sites and the internet, the impact and influence of these parodies have increased.

Parodies sometimes cross the 'line of creativity' and begin to encroach on the rights instilled in the work or out rightly insult or humiliate the work or its creator. It is necessary to strike a balance between parodies and IP rights. [IPPro](#)



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