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Use of a Competitor's Mark in Advertising

Advertising that makes use of a competitor’s trademark (even in parody or comparative advertising) should be reviewed by legal counsel, because it can ignite claims of trademark infringement or unfair competition. Although humorous references to other trademarks are sometimes permitted by advertiser, if not disparaging, trademark owners often disagree about what is funny when their marks are concerned and court decisions go both ways. Sears, for example, was held not liable when it used the phrase BAGZILLA for its “monstrously strong” garbage bags. On the other hand, the Second Circuit Court of Appeals affirmed that use of an animated version of John Deere’s “deer” trademark in comparative advertising (in which a diminutive version of the deer is running to escape the competitor’s Yard-Man lawn tractor) was likely to violate New York’s anti-dilution statute. Other cases prohibiting the use of advertising with “disparaging” messages include Polo Ralph Lauren preventing use POLO CLUB for an adult entertainment business and the National Basketball Association preventing an alteration of its logo on advertisements which reflected the silhouette player holding a gun.