



THINK FORWARD

Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.: Second Circuit Affirms Finding of Trademark Parody and Copyright Fair Use

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The maker of “My Other Bag” tote bags received its hoped-for holiday gift in late December when the Second Circuit affirmed the district court’s earlier grant of a summary judgment in its favor based on a parody defense. *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.*, No. 16-241-cv (2nd Cir. Dec. 22, 2016) (summary order). Louis Vuitton sued My Other Bag for trademark infringement, dilution by blurring, and copyright infringement. The “My Other Bag” (“MOB”) totes are the creation of Tara Martin, a self-described “hand bag junkie,” and feature cartoon imagery of high-end bags (from Louis Vuitton and other luxury designers) on one side and the “My Other Bag” slogan on the other. The district court granted summary judgment to MOB, observing that “MOB’s use of Louis Vuitton’s marks in service of what is an obvious attempt at humor is not likely to cause confusion or the blurring of the distinctiveness of Louis Vuitton’s marks; if anything, it is likely only to reinforce and enhance the distinctiveness and notoriety of the famous brand.” *Louis Vuitton Malletier, S.A. v. My Other Bag, Inc.*, 156 F.Supp.3d 425, 445 (S.D.N.Y. 2016). The district court also held that the fair use defense defeated Louis Vuitton’s copyright claim. *Id.* at 444-45.

In affirming summary judgment, the Second Circuit concluded that the MOB bags were in fact legal “parodies” of Louis Vuitton bags. The Second Circuit explained, “A parody must convey two simultaneous – and contradictory-- messages: that it is the original, but also that it is not the original and is instead a parody.” The three-judge panel concluded that MOB’s bags accomplished that message quite well, as the bags both mimicked LV’s famous designs in a recognizable way, but also conveyed a distinguishable inexpensive look along with the parodic slogan, “My Other Bag,” playing off of the popular “My Other Car is a . . .” bumper sticker trope. The Second Circuit panel explained, “The fact the joke on LV’s luxury image is gentle does not preclude it from being a parody.”

The court provided guidance about when the parody defense would likely apply and when it might not. Specifically, the court noted that this case, where the parody of Louis Vuitton’s luxury image was the “very point of MOB’s plebian product,” was in sharp contrast to the situation in *Starbucks Corp. v. Wolfe’s Borough Coffee, Inc.*, 588 F.3d 806 (2nd Cir. 1999), where the defendants used the name CHARBUCKS to identify a coffee blend that would compete with STARBUCK’S coffee at the same level and quality. The Second Circuit also affirmed the rejection of Louis Vuitton’s claim that the MOB totes infringed upon the Louis Vuitton copyrighted designs, as it found the cartoon variations used by MOB were a “new expression and message” constituting transformative, hence non-infringing, use.

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