

District Court Holds That First Amendment Trumps Trademark Rights

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A recent trademark infringement case out of the Eastern District of California demonstrates that the First Amendment may trump a trademark owner's objections to use of a similar mark by a political opponent. In the case of *Protectmarriage.com-Yes on 8*, a Project of California Renewal v. Courage Campaign, 93 U.S.P. Q.2d 1477 (E.D. Cal. 2010), the plaintiff, ProtectMarriage.com, is a nonprofit organization opposed to same-sex marriage in California. The plaintiff's logo consisted of the phrase "Yes on 8 Protect Marriage" and four stylized human figures: two adults and two children.

The defendant, Courage Campaign Institute, is a nonprofit supporter of same-sex marriage and self-proclaimed frequent adversary of ProtectMarriage.com. The defendant created a logo-admittedly derived from the ProtectMarriage.com logo-depicting the silhouette of two women with two children, and used it for a website that provided news coverage of a lawsuit challenging the challenging an amendment to the California State Constitution that outlaws same-sex marriages.

The plaintiff sought a temporary restraining order against the defendants' use of the modified logo. The defendant claimed that the use was protected on grounds of parody under the protections of the First Amendment.

The district court agreed with the defendant and held that First Amendment considerations outweighed the plaintiff's trademark rights. The court held first that, under Ninth Circuit law, contested marks used in connection with artistic works are not actionable under the Lanham Act, 15 U.S.C. § 1114 *et seq.*, unless they have no artistic relevance to the underlying artistic works whatsoever or, if relevant, they are explicitly misleading as to the source or the content of the work. *Protectmarriage.com*, 93 U.S.P.Q.2d at 1479 (citing to *Rogers v. Grimaldi*, 875 F.2d 994 (2d Cir. 1989)).

The court found that, in this case, not only was the defendant's logo artistic, but also the defendant's website was "undeniably expressive of a political idea, and both political and artistic expression are protected by the First Amendment Further, the mark does not explicitly mislead as to the source of the work. Any potential for confusion or misdirection was obviated by the images and text that uniformly accompany defendant's use of the mark, namely, photos of homosexual couples together with text explicitly endorsing homosexual marriage." *Id.* at 1480 (citations omitted). In other words, the court found, no visitor to the website might

possibly be confused as to whether the site was affiliated with the plaintiff.

The *Protectmarriage.com* decision provides some guidance to political organizations seeking to use parodied marks in connection with core First Amendment activities. If the mark is considered artistic in nature (*e.g.*, not just a word or phrase), is relevant to the underlying work, and the context of the mark's use is not misleading as to source or content, then the parody may pass muster under the First Amendment.