

IN THE SUPREME COURT OF THE UNITED STATES

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No. 22-148

JACK DANIEL'S PROPERTIES, INC., PETITIONER

v.

VIP PRODUCTS LLC

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE  
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,  
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case; that the time allotted for oral argument be enlarged to 70 minutes; and that the time be allotted as follows: 20 minutes for petitioner, 15 minutes for the United States, and 35 minutes for respondent. Petitioner and respondent both do not oppose this motion.

This case presents two questions concerning the Lanham Act, 15 U.S.C. 1051 et seq. The first question is whether a plaintiff

asserting a claim of trademark infringement under the Act must satisfy a special threshold test before invoking the Act's likelihood-of-confusion standard for proving infringement, see 15 U.S.C. 1114(1)(a), 1125(a)(1)(A), when the alleged infringement occurs in the context of an "expressive" work -- here, a chewable dog toy designed to parody the trademarks and trade dress that petitioner uses to sell Jack Daniel's Old No. 7 Tennessee whiskey. The second question is whether respondent's use of parodies of petitioner's trademarks and trade dress to sell dog toys constitutes a "noncommercial use" within the meaning of 15 U.S.C. 1125(c)(3)(C), which provides that any noncommercial use of a mark cannot be a basis for liability for trademark dilution. The court of appeals resolved both of the questions presented in respondent's favor, and the United States filed an amicus brief in support of petitioner, arguing that the court's resolution of both questions was erroneous.

The United States has a substantial interest in the resolution of the questions presented. The U.S. Patent and Trademark Office (USPTO) administers the federal statutory scheme for trademark registration. 35 U.S.C. 2(a)(1). Under that scheme, the USPTO is charged with making ex parte decisions about the registrability of marks and with adjudicating inter partes disputes about registration and cancellation. In both roles, the agency can be

required to consider how the Lanham Act applies in the context of alleged parodies of existing marks.

The United States has participated in oral argument as amicus curiae in prior cases involving the Lanham Act and trademark law more generally. See, e.g., B & B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138 (2015); Hana Financial, Inc. v. Hana Bank, 574 U.S. 418 (2015); POM Wonderful LLC v. Coca-Cola Co., 573 U.S. 102 (2014); Already, LLC v. Nike, Inc., 568 U.S. 85 (2013). The United States' participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

FEBRUARY 2023