

# ***Trademark-Based Parodies and Other Commentaries in the Age of AI***

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Trademarks have become important elements of our daily lives, with many of them representing a significant part not only of economies but also of our common cultural heritage. They are compact symbols that people use to comment on things, including to criticise companies or just to lighten the mood with a humorous take (Coombe). European Union law is still not settled regarding how it deals with such actions as using trademarks in parodies or, more generally, in commentary on the surrounding reality (Senftleben). While non-commercial uses are considered “safe,” a slight hint of commerciality helps establish a violation of some company’s rights to its famous trademark and shut down a plausibly important piece of speech (Schovsbo).

Online platforms make things worse: a simple click will shut down innocent or possibly inspirational attempts at free expression because of worries by platforms regarding liability on their side as intermediaries. With artificial intelligence (AI) tools, the situation is more upsetting: certain generative AI tools will not generate an image if one asks it to include a Nike logo, especially if they add criticism of Nike’s actions into the prompts. Is it sustainable, especially if we are concerned about our freedom of speech and rule of law, not rule by law, in the digital environment (Smuha)?

This paper will dig deeper into the AI-led setting and, utilizing the legal dogmatics method and the law-and-technology perspective, explore how to improve the situation for citizens in conditions where trademark norms and court practice are still questionable, but AI tools have a very simplistic (hence very likely mistaken) picture of how to handle the issue (Lissack). In the end, we hardly wish to accept that commercial actors will define our speech architecture with just a small element in their computer code that mostly benefits them.