

# Touching the trademark

**"In a world where information is wealth, reclaiming the means of production means asserting one's own voice into the media monopoly's mesmerising white noise."**

By Julian Jonker

**T**his is not an entirely serious essay. After all, it starts with an anecdote about a party. The party in question was a multimedia event by adbusting pranksters Laugh it Off (LIO), held last year in the fire-scarred shell of an old art deco cinema in Cape Town.

The "Culture Jam 2002" hosted exhibitions of LIO's brand-parodying T-shirts, though my highlight was bumping into a friend who, promptly and with a proud grin, dropped his jeans just enough to show off a newly altered pair of boxers. In front, imitating the Calvin Klein label in style and position, he had tagged the words "NAOMI KLEIN" with a black marker.

Take this anecdote as a sign of ambivalence. Culture jamming, a term which can describe a whole range of counter-cultural practices – from billboard liberation and appropriationist art to media hoaxes and "subvertising" – surrenders itself to ambivalence.

The practice of culture jamming (ab)uses the very cultural artefacts of consumer society which it seeks to critique, and so already takes its ambivalence seriously. When Naomi Klein, author of the anti-corporate bible *No Logo*, has her name appropriated as logo itself, one must abide the antinomy, or just laugh it off.

In a world where information is wealth, reclaiming the means of production means hacking the channels of communication, asserting one's own voice into the media monopoly's mesmerising white noise.

Culture jamming and appropriationist art take on copyright and trademark law to show that if information is wealth, and since information wants to be free, the wealthy should be liberated of their information.

Over the past year LIO has made the methods of culture jamming part of the South African national consciousness, garnering widespread media coverage of its battle with corporate giant SABMiller.

The world's second largest brewery had taken the Cape Town-based garage entrepreneurs to court over abuse of one of its trademarks. The offending item was a T-shirt – a spoof of the plaintiff's instantly recognisable Black Label brand.

The T-shirt had changed the logo's wording to read "Black Labour, White Guilt", and the slogans "America's Lusty Lively Beer" and "An Award-Winner Worldwide" had been replaced by "Africa's lusty lively exploitation since 1652" and "No regard given worldwide".

This was in keeping with LIO's irreverent catalogue of similar T-shirt designs, which parody brand names and logos from Diesel to the National Lottery, and even one depicting a gap-toothed Minister of Foreign Affairs, with the legend "Mind the Gap".

Justin Nurse, who heads the venture with friend Chris Verrijdt, quickly became a darling of the media. His firm's irreverent, anti-corporate stance has obviously captured the public imagination, as their designs grow increasingly popular. LIO proves that there is

resurgent demand for anti-corporate sentiment. As Naomi Klein notes: "Something not far from the surface of the public psyche is delighted to see the icons of corporate power subverted and mocked. There is, in short, a market for it."

When police raided a Johannesburg retailer in search of an offending T-shirt, they found that the shop had sold out of stock.

SABMiller was not the only trademark owner to take action. A year before the brewery had decided to institute legal proceedings against LIO, Standard Bank had taken offence to one of the designs. The T-shirt depicted the bank's well known blue flag logo, adapted so that the flagpole looked like a penis, and with the legend "Standard Wank". The T-shirt retained the rest of the bank's slogan: "Simpler. Better. Faster." The bank laid an official complaint with the Department of Trade and Industry, resulting in the police raid.

LIO had also been threatened with legal proceedings by energy drink manufacturer Red Bull. At the end of 2002 a Danish toy manufacturer decided to follow suit, launching its own proceedings against LIO, who had produced a T-shirt showing two Lego figurines in an explicit act of "getting the leg over".

Diesel has followed suit. In fact the T-shirt makers' loss prompted South African singer Steve Hofmeyr to threaten them with defamation, after they had designed a shirt depicting the singer's face and the legend: "Wie's jou pappa?" ("Who's your daddy?") Hofmeyr declared that the T-shirt – which takes its inspiration from an online debate he had sparked off by asking questions about God and the church on the LitNet site – portrayed him as an atheist.

Both times Laugh it Off's response was one of dismay that the trademarks were seen as "untouchable", and then acquiescence in the face of the law's brute machinery.

It was with SABMiller's application to the Cape High Court that the subvertiser decided to test the corporate's "self-ordained sanctity of their brand". Nurse told the *Argus* that "[t]here is very little our society shrinks from satirising, yet we are afraid to mock big brands. In a society consumed by its own consumption, that can be extremely misguided." (*Argus*, 12 February 2003).

As the media hype grew, Nurse began sounding more politicised than his previous "no sacred cows" statements might have suggested: "We are hoping to draw attention to the way in which low-wage black labour is still building South Africa," he told the press. "White South Africans may feel guilty about it, but it's happening and it's something people don't talk about."

Yet it is surely the case that his original motivation was different to this, a less reasoned fury against the hypermediated existence of the empire of signs.

The decision of the court, taken on 16 April 2003, is illuminating. SABMiller had applied to the court in terms of s.34(1)(c) of the Trademark Act, a provision which prohibits the dilution of a registered trademark.

The dilution clause prevents one from using a mark that is similar to the trademark holder's in order to take unfair advantage of the trademark's reputation or to dilute such reputation.

More specifically, this can mean one of two things: firstly, one may not use the trademark for inferior goods and thereby prejudice the good name of that trademark ("tarnishment"); and secondly one may not use the trademark in such a way that the distinct association between the trademark and the original goods and services is diluted ("blurring").

The court was of the opinion that tarnishment had taken place. What about the Constitutional right to freedom of expression, which LIO had raised in their defence? Judge Cleaver held that LIO had exceeded the limits of freedom of speech, since it had deliberately exploited SABMiller's trademark for commercial gain, and since it was not "clean satire", but bordered on "hate speech".

It would seem that the judgement could be successfully challenged on legal grounds; it is safe to say that other judges might differ on where to strike the balance between the protection of trademark holders' interests and upholding freedom of expression.

Yet this misses a vital point. Reading through the short judgement it is striking how common-sensical, how unassailable its logic often seems. More specifically, LIO's reasons for acting are the reasons of the outlaw, and therefore reasons which could not be presented in court, never mind used to win in court.

Nurse, at one point in his deposition to the court, freely admitted that the firm had intentionally attacked SABMiller's intellectual property rights. His

**"In capitalism's world of who dares to overturn"**





reasons, should they have been more bluntly stated, are ones which would have been laughed out of court.

Nurse was upbeat after the decision in SABMiller's favour was given. "We will continue to challenge the role of large companies. Humour will always be on our side," he told the press soon afterwards (news24.com, 22 April 2003).

Laughing between the li(n)es, the case speaks of a broader confrontation, one which posed the decadence of the carnivalesque against the ornate decadence of the legal cathedral. Laughing in church – isn't that blasphemy? More to the point, are we allowed to take such laughter seriously? In other words, can we be serious about not being serious?

Culture jamming draws on the carnivalesque, an aesthetic that sites resistance in humour, the grotesque (just think of the "Standard Wank" shirt), the dis-

guised, the turning of common sense on its head. LIO brought the carnival to the cathedral, and the media were less concerned with the goings-on inside the cathedral as supporters congregated outside.

If anything, it is the idea of carnival which best conveys the meaning of Hakim Bey's "temporary autonomous zones", those sites Mark Dery names "pirate utopias, centrifuges in which social gravity is artificially suspended".

Not only is social gravity lifted, but there is a sense of moral weightlessness. It is the cultural appropriationist's sense of humour that disrupts 'serious' moral conversations.

This laughter is the repressed frivolity lying behind enlightenment's persistent frown; it is the dark side of sense, nonsense, the jingle of loose cents in rationality's pocket. Laughter begins where rationality

runs short. The outlawed signifier, the stolen sign – that which results from what Naomi Klein calls "semi-otic Robin Hoodism" – wins its most significant battle when it loses in court.

In capitalism's world of legalised greed, the cultural outlaw is the new messiah who dares to overturn the merchant's tables outside the cathedral.

But is there really anything to laugh about? Is this not the last laugh of capitalism eating itself, the strange hilarity of a world in which Naomi Klein's name is a brand, appropriation a business model, and prêt-à-protest a perennial favourite on the trade negotiations fashion circuit?

In the South, the culture jamming fashion may at first seem to be simply self-serving adolescent rebelliousness. But when we find ourselves once more on the margin, this time on the periphery of an empire of signs, it is no mere laughing matter.

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