

Parody – UK Trade Mark Law goes Pop

“Art is anything you can get away with” quipped Marshall McLuhan, the icon of media communications in the 1960s. However, two recent cases brought by easyGroup shine a light on what artists in different media might be able to ‘get away with’ and test the limits of English law with respect to the parodic use of trade marks.

As with many clever quotes, McLuhan’s is often mis-attributed to the great pop artist Andy Warhol. But it is no coincidence, as, like his contemporary and “muse” McLuhan, Warhol was a master blurring different modern media into his work. Much of Warhol’s work plays on the key iconography of the post war era: brands, adverts, celebrities and the digital image (be it photography or movies) – and remixes it. Brands, underpinned by trade marks, are a critical – and playful – part of this, possibly most famously with his Campbell’s Soup Cans (see Figure 1).



Figure 1: Andy Warhol, *Soup Cans*, 1962, acrylic with metallic enamel paint on canvas, 32 panels. © 2023 Andy Warhol Foundation / ARS, NY / TM | Photograph source: <https://www.moma.org/collection/works/79809>

Pop Art – and Pop Music – emerged in the 1950s, but peaked in the 1960s. Before Warhol, Roy Lichtenstein’s work had defined the premise of pop art through parody. The pop artists took imagery from advertising and mass market products and made art.

This raises the immediate question – if an artist wishes to use a famous trademark in an artwork – must the artist get permission from the trade mark owner? We will return to this question at the end of this article. Indeed, we are all familiar with “product placement” where the brand does not just give permission but pays to be featured in the artwork. For the brands there can be much to be said for showing a sense of humour, particularly with target demographics, although there will need to be confidence that the artist is not competing with, or causing harm to, the brand.

Parody in the context of trade marks is the use of a take on a particular brand with deliberate exaggeration for comic or satirical effect. Done without the permission of the brand, it can lead to issues of whether there has been trade mark infringement. In the UK, there is no specific legal defence

for parody in trade mark law, unlike in some other countries such as the USA, Australia and Canada. The UK government introduced a fair use exception for parody in copyright law in 2014, but not in trade mark law.

However, in the spirit of the ‘great British sense of humour’, in the UK the general view is that some parodic uses of trade marks, especially when they are related to artistic or political expression and not used to market goods or services that compete with the brand depicted, are unlikely to harm the brand owner’s sales or reputation. In many cases, the best option for brand owners is to ignore or tolerate the parody, rather than suing the parodists. This may avoid negative publicity and show that the brand owners have a sense of humour – and sometimes to playfully engage. Sometimes, a polite letter asking the parodists to stop may be enough. Brands should not be seen as bullies, especially when dealing with the Arts.

There is a long tradition of artists making use of parody. Pop bands often use visual elements of brands in lyrics, album covers and tour posters that may include third party trade marks. Very few of these cases end up in court.

Easy Life and EASYFUN

However, two recent lawsuits filed in the UK High Court by the founder of easyJet, Stelios Haji-loannou, show the risks faced by artists. For readers outside Europe, easyJet is a UK based budget airline founded in 1995 and whose business model was lawfully based on that of South West Airlines. Perhaps surprisingly, easyJet licenses its trade marks from its original founder Stelios Haji-loannou’s company.

easyGroup’s claim that it owns the exclusive right to use the word “easy” followed by any descriptive or allusive word for any type of goods or services. This is a ridiculous claim that goes against both common sense and history.

However, in recent years easyGroup has had success in “attracting” businesses whose names begin with the word “easy” to become its licensees. Established businesses like Easy Networks, Easy Voyage, Easy Cleaning, Easylife and Easyroomate have all joined the “easy family of brands” having been sued for trademark infringement and then as part of settlement assigning their trade marks and/or domain names to easyGroup and agreeing to pay an ongoing licence fee to easyGroup. Currently, easyGroup is using at least 5 English law firms to prosecute actions in relation to its trade marks, and following Brexit has recently expanded its trade mark infringement operations to the Republic of Ireland.

What is more interesting – and what we focus on here - is easyGroup’s recently bringing English High Court claim against two separate UK musical acts. They represent just two out of twelve High Court trademark infringement claims filed by easyGroup since the Spring of 2023.

The first case was brought in the Summer of 2023 against the members of a British indie band, in relation to amongst other things its name, Easy Life, and “*Life’s a beach tour*” poster, pictured below.



Figure 2: Easy Life, Life's a beach tour poster, 2021. Photograph posted to X.com by easy life (@easylife): <https://twitter.com/easylife/status/1380445691793801219>

Adding to the alleged infringements, there was also a tour T-shirt with a stylised easyLife logo on the back done in easyJet get-up.

easyGroup, the entity that owns the trade marks for easyJet, brought High Court proceedings against Easy Life for trade mark infringement, complaining of likelihood of confusion, unfair advantage and detriment to the reputation of some of easyGroup's trade marks. easyGroup has commented [on its website](#) that Easy life's lead singer Mr Matravers is a "brand thief", a favoured turn of phrase by easyGroup despite there being no evidence or accusation of criminal activity.

According to court records, in November 2023 easyGroup has also filed a claim at the High Court against Finn Keane, better known as "Easyfun". Easyfun is known for working with high-profile artists, such as Rita Ora, and recently produced Charli XCX's track "Speed Drive", part of the soundtrack of the 2023 film *Barbie*. He is an extremely talented music maker (some links at foot of article).

Again, Mr Keane is being sued personally and is labelled a "brand thief" on [easyGroup's website](#). easyGroup complains that Mr Keane's parodic use on his 2017 album cover of the easyGroup get-up – orange text on a white background, in Cooper Black font, is liable to take unfair advantage of and damage the reputation of easyGroup's trade marks. Whilst we have not yet been able to see easyGroup's Statement of Case, it appears that a primary objection is to the artwork for the 2017 album cover:



Figure 3: easyFun, SoundCloud avatar. Artwork posted to <https://soundcloud.com/easyfunofficial>

According to easyGroup's statement on this matter *"easyGroup is also seriously concerned by the choice by Mr Keane to depict as part of album artwork an aircraft bearing the famous easyGroup livery in distress in the aftermath of a serious air crash. Not only is the artwork in bad taste but an association with such a tragic event risks seriously damaging the reputation in easyGroup's trade marks, in particular easyJet."*

Really? Please look closer at the picture and re-read what is said below.

It's worth noting that the primary complaint here comes not from the airline easyJet, but from easyGroup. The image above is taken from Easyfun's 2015 release *Laplender*. We do not know why the matter is only now being taken to court.

We would ask, will this cause a diversion of trade or put Easyfun's fan base off flying with easyJet?

What we don't know as yet is what has caused easyGroup to sue Easyfun in 2023, when apparently their lawyers first wrote cease and desist since at least as early as 2017/ 2018, and soon after easyGroup was trumpeting successfully dealing with it.

Neither act could argue their use of the word "easy" was because they fall into the easy listening music genre. However, many musical acts have used the word "easy" in their band name over the years.

Robert Smith of The Cure might have dodged a bullet by changing his band's name from "Easy Cure" shortly before achieving chart success, thus avoiding a potential clash with Stelios.

This is not easyGroup's first interest in creative media, as it sued Netflix in 2018 for its TV series "Easy". (Lionel Richie has not, as far as we know, been sued for calling his 1983 hit album "Easy").

easyGroup sued Easyart, an online art store in the early noughties, although it abandoned its hopeless claim not long before trial. It then sued the new owners of Easyart in 2017, on the basis that the name Easyart had, following a merger, ceased to be used.

It seems difficult to see that there was confusion between easyJet and Easy Life, and neither would Easy Life's parody of easyJet harm its reputation. As Easy Life joked in their final X post, "*sorry to anyone who bought gig tickets and ended up on a budget flight to tenerife*". The social media backlash from hundreds of angry Easy Life fans chanting "F**k Easyjet" at the band's last show at Camden Town's Koko speaks for itself. Perhaps that was more damaging to easyJet's reputation than anything the Glastonbury regulars could have done?

We have not seen easyGroup's Particulars of Claim in relation to Easy Fun and so have to rely on what easyGroup's press release says. However, the press release seems to lean heavily on the "scenes of distress" following the "aircrash" depicted above.

A third and more recent of easyJet in an item of pop culture came this year with the release of *Greatest Days* a jukebox feature film featuring the music of Take That and featuring a scene with a distinct touch of the Busby Berkeleys in which soundtrack by *Let it Shine* we see ensemble dancing on the airport apron whilst the four female leads dance their hearts on the wing of an easyJet plane. Again, extremely kitsch and a scene that would be alarming if it were real life, but nevertheless in this case easyJet worked with the film's producers and celebrated the scene.

Why are producers of pop attracted to easyJet and its livery? Perhaps it's the nods and winks to both Pop Art and Pop Music that the livery provides. Pet Sounds, arguably the seminal album of the 1960s, famously used the same kitsch Cooper Black font. And here's the same font used for the catalogue for the Tate's 1971 Warhol retrospective:

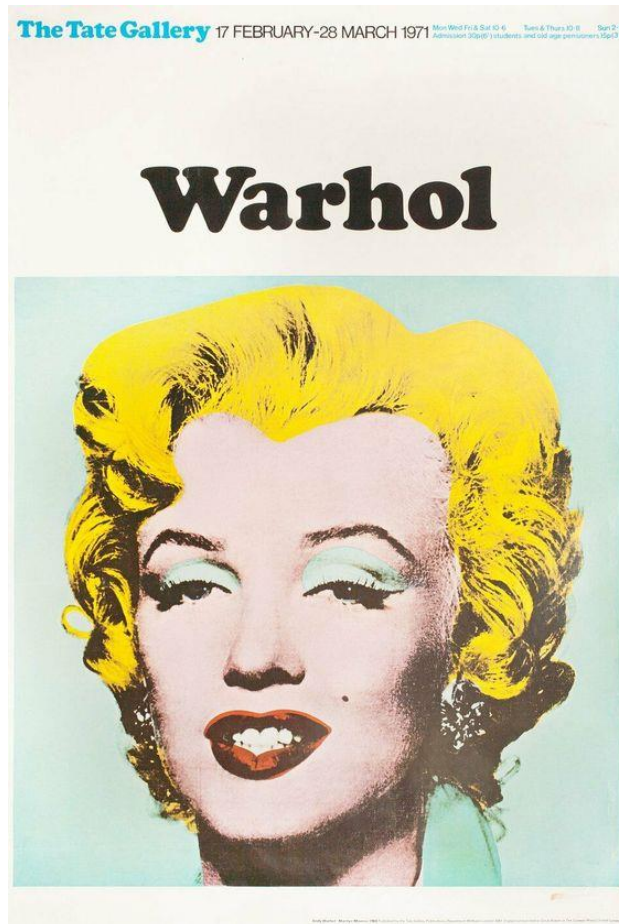


Figure 4: Andy Warhol, Marilyn Monroe, 1971 | Poster for Warhol's London exhibition at the Tate Gallery, 17 February – 28 March 1971.

You have a lot to answer for Mr Warhol!

Good artists copy, great artists steal

Various T.S. Eliot, Dylan Thomas, Igor Stravinsky and Picasso have all laid claim to coining this quote. For once, Warhol is not the "thief"!

The first possible example of an artist engaging in what easyGroup might call "brand theft" was the use of images of the World's very first registered trade mark – for the Bass red triangle – in a painting where the focus of gaze is widely interpreted by critics as clearly being a woman of very easy virtue.



Figure 5: Édouard Manet, *A Bar at the Folies- Folies Bergère*

We do not know whether Bass paid for their bottles to be placed in the picture, or whether the artist sought their permission. We do know that, despite the painting's scandalous subject matter, Bass did not obtain delivery up or destruction (or a royalty on print sales) from Manet for his masterpiece *A Bar at the Folies-Bergere*, as it hangs today in London's Courtauld Gallery. There is no evidence that Manet was labelled a "brand thief".

Parody of registered trade marks has subsequently been used by artists on innumerable occasions, but most notably with the rise of the Pop Artists. We are not aware of famous trade mark owners deciding it was worth bringing English High Court infringement proceedings. At the most extreme, Jake and Dinos Chapman's unsavoury depiction of McDonald's and Ronald McDonald in Nazi death camps continue to appear in leading art galleries.

Banksy's theme park, "*Dismaland – Bemusement Park*" in Weston-super-Mare was a clear parody of Disney's Disneyland resort, but Disney wisely did not drag the anonymous street artist to court, even though – or perhaps because - thousands of visitors flocked to see it.



Figure 6: Logo of Dismaland, the art exhibition by the artist Banksy | Source: <http://www.itv.com/news/2015-08-20/banksy-reveals-secret-exhibition-due-to-open-in-weston-super-mare/>

Likewise, the Campbell Soup Company did not sue Warhol for using their trade mark soup and seek royalties on his turnover. There's some interesting articles on the trademark owner/ artist relationship at the foot of this article.

Most brand owners might be expected either to ignore the parody of artists and musicians, or even to use it as a PR opportunity. Bringing High Court proceedings to sue artists and force them to change their names might be seen as excessive by many brands. In rare cases it will be a necessary last resort. Using the court system to threaten artists with massive legal costs in order to prevent them not only from parodying their trade marks but to get them to change their very names favours only those brand owners with the deepest pockets, and in most cases flies in the face of artistic and political expression.

Where did Easyfun and Easy Life go wrong?

Whilst it is clear to us that easyGroup would never have had a case for suing either act based solely on the names they chose, it appears that both acts were naïve in not seeking permissions from the airline to use images of its planes or easyJet's orange and Cooper Black get-up.

That's not to say either act will lose should their case go to court. easyGroup will have a number of hurdles to overcome and both cases appear defensible. But the lack of a statutory parody defence makes life tougher.

In the musical arts, album covers, tour posters, t-shirts, promo videos and, of course, lyrics have long made artistic use of parody. They do not generally do so in order to indicate where their music originates from or to show endorsement. What musicians and artists often do in using parody is to throw a whimsical or critical light on the world. They do not do so in order to indicate where their music originates from or to show endorsement by the brand.

However in each case their defence is made harder by their use of parody. And in both cases, they face being crushed by legal costs should they seek to defend.

However, remember what we noted above about easyGroup's recent business model. Might it be possible that easyGroup will simply be after the bands becoming its licensees and paying a royalty to easyGroup? We don't know.

The sensible approach would have been to seek permission to use the easyJet trade marks in their tour posters, album covers etc. Unfortunately, music artists are not generally as sophisticated, well advised or cautious as feature film producers.

As with the older generation and Take That's Greatest Days, easyJet might have welcomed an opportunity to link its brand to such popular artists, and avoid the oft repeated accusations of bullying. After all, the Virgin Atlantic airline had a very successful transatlantic tie-in with the Austen Powers film franchise, which was itself a parody of the James Bond franchise. The Spy Who Shagged Me was an easy lay for an airline seeking to appeal to a younger generation. Below are examples of the giant billboards used to promote the airline in the USA.



Figure 7: Various billboards published by Virgin Atlantic | Photograph source: <https://extremeyou.com/how-the-biggest-break-of-my-career-quickly-turned-into-my-biggest-f-ckup/>

Indeed, we are all familiar with "product placement" where the brand does not just give permission but pays to be featured in the artwork. For the brands there can be much to be said for showing a sense of humour, particularly with target demographics, although there will need to be confidence that the artist is not competing with, or causing harm to, the brand.

In the meantime, a debate needs to be had as to the UK bringing in a statutory defence for parody in trade mark law, as in the USA. In particular, artists, musicians and film makers are surely worthy of protection? Such a defence saved the band Aqua and MCA Records when sued in the USA in 1997 by Barbie maker and trademark owner Mattel in relation to the kitsch masterpiece "Barbie Girl". The law suit reportedly focused on the description in the lyrics of Barbie as being a "blonde bimbo". However, is the lack of legislation in the UK the real elephant in the room?

As a final word, before using the trade marks of well-known brands – such as easyJet – very careful consideration should be given to obtaining permissions. Whilst we are unlikely to see an easyJet wing being built onto a major UK Gallery, the brand may well attract artists in the future, and with it the attentions of easyGroup/ and Stelios Haji-Ioannou.

For a full legal analysis of Parody and trade marks, Justine Flockhart, Will Holmes and Fabiana Atzeni recently wrote an article for LexisNexis, setting out the tools and practical considerations for brand owners and their advisors wanting to prevent the use of their famous trade marks in parodies. The full article can be found [here](#) (paywall).

INTERESTING ARTICLES AND VIDEO CLIPS

[Exploring The Debate Over Andy Warhol's Campbell's Soup Can Prints And Their Impact On Copyright And Trademark Law – Huckleberry Fine Art](#)

[Why Did Andy Warhol Paint Soup Cans? | Campbell's Soup \(campbellsoup.co.uk\)](#)

[Why Warhol painted Barbie - BBC News](#)

[Disney refuses to comment on Banksy's 'Dismaland' | Daily Mail Online](#)

[Trademarks in works of art are allowed - Leiden Law Blog](#)

[Comment from easyGroup concerning brand theft by Mr Matravers and others. - easy.com](#)

Easy Life's last gig [easy life - trust exercises \(live at koko\) - YouTube](#)

Charlie XCX's track from Barbie the Movie <https://www.youtube.com/watch?v=ACKP-FBZRJc>

easyFun <https://www.youtube.com/watch?v=F6rfT8GrT8o>

And at it the Court of Public Opinion [language warning] [Blood Records on X: ". @easyJet I hope you're happy. I just missed my flight to Magaluf because there's an indie band called Easy Life playing at something called Koko. Incredibly confusing. Sheila and the kids are devastated. My atol wasn't even protected. I demand atol https://t.co/INRC2oDQQ3" / X \(twitter.com\)](#)

Amazon Prime's trailer for Greatest Days [Prime Video UK & IE on X: "Greatest Days is finally on Prime Video and we sure know what we're going to be watching \(and singing along to\) this weekend 🎉 #greatestdaysmovie https://t.co/8LfXlnfy6A" / X \(twitter.com\)](#)

<https://mediacentre.easyjet.com/story/15914/easyjet-celebrates-starring-role-in-take-that-film-offering-friends-the-chance-to-enjoy-their-own-greatest-days-together-with-1000-towards-a-holiday>

Barbie Girl [Aqua - Barbie Girl \(Official Music Video\) - YouTube](#)

https://www.kingandmcgaw.com/prints/andy-warhol/airplane-c-1959-434998#434998::frame:880229_glass:770007_media:0_mount:108644_mount-width:50

Hansel Henson is a leading intellectual property and digital media firm of solicitors.

We have advised well over thirty different businesses that have been threatened by easyGroup, beginning with Easyart in 2001 and 2017, and Easynet, Easy Pizza, easyfundraising, Easy Live Auction. There's more on that at <https://www.hanselhenson.com/sitemap/easyDisputes>

We have not advised Easyfun, Easy Life, Easy Networks, Easy Voyage, Easy Cleaning, EasyLife and Easyroomate.

More happily, Hansel Henson advises a number of very well known art galleries and cultural institutions (both big and small) as well as brands on complex issues in relation to art and creativity. We would have loved to have advised Andy Warhol, but sadly did not.

In film, we have advised amongst other LipSync on its investment and post production services to the above referenced *Take That* jukebox feature film *Greatest Days*, but did not advise on the easyJet scene. We did not advise the producers of *Barbie*.

With thanks to RB of the NG