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The Devil's in the Details: The Merits of The Satanic Temple's Copyright and Trademark Lawsuit Against Netflix and Warner Bros.

BY [AKINYELE JORDAN](#) / ON NOVEMBER 25, 2018



Sabrina Spellman is a teenage (half-)witch who was originally envisioned to make a one-shot appearance in the Archie Comics universe, but became so popular that she has starred in several of her own titles.^[2] She is best known as the protagonist of the sitcom *Sabrina The Teenage Witch*, which first aired on ABC in 1996.^[3]

On October 26, 2018, Netflix released the most recent incarnation of the Sabrina story, and this time it's a little more grown up.^[4] The 10-episode Part 1 of *Chilling Adventures of Sabrina* ("Sabrina") embraces occult themes and dark magic in a way previously unseen in Sabrina iterations.^[5] The show employs a statue of Baphomet, the androgynous goat-headed deity used as a symbol of the modern Satanist movement by The Satanic Temple.^[6]

In 2014, in an effort to emphasize religious equality and in response to the donation of a monument to the Ten Commandments, The Satanic Temple commissioned a statue of Baphomet to be donated to the Oklahoma Capitol Preservation Committee for display in front of the Oklahoma State Capitol.^[7] In a complaint filed in the Southern District of New York on November 8, The Satanic Temple claims that the new Netflix show infringes upon and defames this statue.^[8] The complaint sets forth claims of copyright infringement under 17 U.S.C. §§ 101 *et seq.*; false designation of origin, false description and dilution forbidden under 15 U.S.C. § 1125; and injury to business reputation and dilution under New York General Business Law § 360-L.^[9]

Copyright law draws its strength from the Constitution, which grants to Congress the power "to promote the [p]rogress of [s]cience and useful [a]rts, by securing for limited [t]imes to [a]uthors and [i]nventors the exclusive [r]ight to their respective [w]ritings and [d]iscoveries."^[10] Pursuant to this grant, Congress passed the Copyright Act of 1976, which outlines the rights conferred upon authors of works "fixed in a tangible medium of expression," and the penalties levied against those who infringe upon those rights.^[11]

To successfully establish a claim of copyright infringement, a plaintiff must show that she owns a valid copyright, and that the defendant copied the original elements that make up the plaintiff's copyright.^[12] In order to satisfy the copying prong, the plaintiff must show that the defendant actually copied her work, and as such, a substantial similarity exists between the two works.^[13]

The Satanic Temple argues in its complaint that, while the idea of Baphomet is neither copyrightable nor attributable to the Temple, the expression of the idea of Baphomet as displayed in the 2014 statue ("TST Baphomet") is their valid copyright.^[14] To that end, they assert that they hold two U.S. Copyright registrations for TST Baphomet.^[15] The TST Baphomet differs from typical expressions of Baphomet because, in the TST Baphomet, the deity is surrounded by two small children and has an exposed male chest, as opposed to the [typical] "large voluptuous female breasts."^[16] It is with these original modifications that the statue appears in Sabrina.^[17]

In contrast to copyright law, trademark law is aimed at protecting the use of a commercial actor's marks.

The owner of a famous mark will prevail on a claim of federal trademark dilution if she can establish the defendant's use in commerce of a mark that is likely to cause dilution by either blurring, where the distinctiveness of a famous mark is decreased due to proximity to a later mark, or tarnishment, where there is harm to the reputation of a famous mark due to proximity to a later mark.^[18] The owner of the famous mark need not show actual confusion, competition, or economic injury.^[19]

The Satanic Temple asserts that they have a famous mark, but they have yet to establish either fame or use in commerce sufficient to constitute a mark. It's important to note that for trademark protection under the Lanham Act, it is not enough to coin a word or fashion a logo—one must then use said word or logo in commerce.^[20] The Satanic Temple alleges that the TST Baphomet was designed "to be a central part of its efforts to promote First Amendment values of separation of church and state and equal protection."^[21] However, they point to no actual uses of the TST Baphomet, let alone actual uses in commerce. Furthermore, were they to somehow show that they have a valid trademark in the TST Baphomet, they would ultimately struggle to show that said mark was famous. The Satanic Temple asserts that TST Baphomet is a symbol of the Temple, yet has offered no proof in support of this claim.^[22] Moreover, even assuming establishment of use in commerce sufficient to satisfy Section 1127, the statue was designed in 2014, which is not long enough to garner a presumption of fame.^[23]

Likewise, New York State trademark law offers injunctive relief to a mark owner who can establish likelihood of harm to reputation or dilution of distinctiveness of a mark due to infringement by another mark, regardless of whether competition or confusion exists.^[24] Here, the Satanic Temple would dodge the hurdle of fame, because the state dilution law does not specify that a mark be famous in order to bring a suit. However, the question still remains whether the Temple could prove use of the TST Baphomet in commerce sufficient to constitute a protectable mark.

The Satanic Temple's main issue with *Sabrina* is its portrayal of witches as cannibalistic and murderous.^[25] However, the copyright claim does not adequately address this concern. The trademark dilution claims are a way to set out how at odds with the Satanic movement the form of worship displayed on the show is. Unfortunately, the latter claims appear weak in comparison to the former.

Within the show, Sabrina herself is hauled into court by the forces of Satan. With hope, this suit will be resolved in a similar way: without ordeal by water.^[26]

Akinyele Jordan is a second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Law Journal. He is interested in applying deconstructionist practices to pop culture, and he has watched almost all of the Chilling Adventures of Sabrina in a day. He hopes to someday be an advocate for artists from underrepresented and over-exploited communities.

[1] Alex Marshall, *Satanic Temple Settles Lawsuit Over Goat-Headed Statue in Sabrina*, N.Y. Times (Nov. 22, 2018), <https://www.nytimes.com/2018/11/22/arts/satanic-temple-sabrina-statue.html> (On November 21, the parties settled, only disclosing that the Satanic Temple will be credited for episodes already filmed.).

[2] Devin Fuller, *Excited for the 'Sabrina' Reboot? Here's How the Teenage Witch (and Her Cat) Have Evolved*, N.Y. Times (Oct. 25, 2018), <https://www.nytimes.com/2018/10/25/arts/television/chilling-adventures-sabrina-teenage-witch-history.html>.

[3] *Id.*

[4] *Id.*; Margaret Lyons, *Review: 'The Chilling Adventures of Sabrina' Pits Teenage Rage Against Dark Magic*, N.Y. Times (Oct. 26, 2018), <https://www.nytimes.com/2018/10/26/arts/television/the-chilling-adventures-of-sabrina-review-netflix.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>.

[5] Angelica Jade Bastién, *Chilling Adventures of Sabrina is a Decadently Malevolent Halloween Treat*, Vulture (Oct. 23, 2018), <https://www.vulture.com/2018/10/the-chilling-adventures-of-sabrina-netflix-review.html>; Sarah Larson, *"Chilling Adventures of Sabrina" and the Ever-Bleaker Archie Universe*, New Yorker (Oct. 26, 2018), <https://www.newyorker.com/culture/culture-desk/chilling-adventures-of-sabrina-and-the-ever-bleaker-archie-universe>; Glen Weldon, *'Chilling Adventures of Sabrina' Is Wicked, Good*, NPR (Oct. 19, 2018), <https://www.npr.org/2018/10/19/657536244/chilling-adventures-of-sabrina-is-wicked-good>.

[6] *Baphomet*, Wikipedia, <https://en.wikipedia.org/wiki/Baphomet> (last modified Nov. 11, 2018).

[7] Sara C. Nelson, *Satanic Temple's 7ft 'Baphomet' Demon Is Coming Along Nicely (Pictures)*, Huffington Post (May 2, 2014), https://www.huffingtonpost.co.uk/2014/05/02/satanic-temple-7ft-baphomet-demon-pictures_n_5253153.html; Daniel Burke, *Satanists Want Statue Next to 10 Commandments*, CNN (Dec. 9, 2013), <http://religion.blogs.cnn.com/2013/12/09/satanists-we-want-a-monument-in-oklahoma/>.

[8] Compl., *United Federation of Churches LLC v. Netflix, Inc.*, 1:18-cv-10372 (S.D.N.Y. Nov. 8, 2018).

[9] *Id.*

[10] U.S. Const. art. I, § 8, cl. 8.

[11] 17 U.S.C. § 102; 17 U.S.C. §§ 502-06.

[12] *See Oyewole v. Ora*, 291 F. Supp. 3d 422, 432 (S.D.N.Y. 2018).

[13] *Id.*

[14] Compl. at ¶ 2.

[15] Compl. at ¶ 53. It should be pointed out that these registrations allow The Satanic Temple to sue in the first place. *See Corporate Counsel's Guide to Copyright Law* § 2:19.

[16] Compl. at ¶ 4.

[17] *The Chilling Adventures of Sabrina*, Netflix (Oct. 26, 2018), <https://www.netflix.com/title/80223989>.

[18] *See Knowles-Carter v. Feyonce, Inc.*, No. 16-CV-2532 (AJN), 2018 WL 4757943 at *6 (S.D.N.Y. Sept. 30, 2018) (quoting 15 U.S.C. § 1125(c)).

[19] *Knowles-Carter*, at *6.

[20] Compl. at ¶ 62; *Museum of Modern Art v. MOMACHA IP LLC*, No. 18 Civ. 3364 (LLS), 2018 WL 5019753 at *10 (S.D.N.Y. Sept. 28, 2018) (listing the senior mark's fame as a necessary element to a claim of dilution); 15 U.S.C. § 1127 (defining "use in commerce" as "the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark.").

[21] Compl. at ¶ 64.

[22] Compl. at ¶ 61.

[23] *Cf. Museum of Modern Art*, 2018 WL 5019753 at *10 (establishing MoMA use of their trademark for 50 years); *Jews For Jesus v. Brodsky*, 993 F. Supp. 282 (D.N.J. 1998), *aff'd*, 159 F.3d 1351 (3d Cir. 1998) (pointing out plaintiff had used phrase "Jews for Jesus" for more than 24 years).

[24] N.Y. Gen. Bus. § 360-L.

[25] Compl.at ¶ 64; Kara Weisenstein, *Satanic Temple Claims Netflix's 'Sabrina' Illegally Copied Baphomet Statue*, Broadly (Oct. 29, 2018), https://broadly.vice.com/en_us/article/zm9pe3/satanic-temple-claims-netflixs-sabrina-illegally-copied-baphomet-statue.

[26] *The Chilling Adventures of Sabrina: The Trial of Sabrina Spellman*, Netflix (Oct. 26, 2018), <https://www.netflix.com/title/80223989> (Father Blackwood suggests Sabrina be subjected to "ordeal by water"); *Dunking*, Wikipedia, <https://en.wikipedia.org/wiki/Dunking> (last modified Nov. 7, 2018).