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Paul Smith
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"All that for a drop of blood."[1] Easter season would not truly be complete without a controversial story involving Satan. But how exactly does a tendentious music video involving a lap dance with the devil ultimately lead to a lawsuit from Nike?

The recent release of "Montero (Call Me by Your Name)" by Lil Nas X was met with an almost immediate barrage of polarizing opinions from various news outlets, social media, and the like.[2] The song itself proved to be another chart-topping success for the 21-year-old rapper, as the song quickly rose to No. 1 on the Billboard Hot 100.[3] The song's swift success further entrenched Lil Nas X's image as a provocative artist, having previously garnered a significant response to his release of "Old Town Road," which "sparked a national conversation about country music and race."[4] The latest release by the young artist also generated a significant public response, but the focus was centered around the song's over-the-top music video. The music video features the artist sliding down a pole from heaven into hell, where he then gives the devil a lap dance and subsequently kills him, taking his horns in victory.[5] While there may be many individuals who fancy listening and watching something a bit more PG, many of the sentiments regarding the nature of the song and music video were left only to the court of

public opinion. However, Lil Nas X also sought to incorporate this theme into a line of shoes in collaboration with MSCHF, an art collective known for repurposing luxury items and accessories.[6]

MSCHF based its limited-supply line of "Satan Shoes" off the Nike Air Max 97 shoes.[7] Consistent with the biblical devil theme, the "Satan Shoes" feature a bronze pentagram, an inverted cross, and a reference to Luke 10:18, which details the fall of Satan.[8] Only 666 of the shoes were available for purchase and, more notably, each pair contains a drop of human blood mixed with red ink in the signature Nike air bubble cushioning sole.[9] The "Satan Shoes" proved to be a big success as they sold out after being up for sale for only a few minutes.[10]

Shortly after the release of the "Satan Shoes," Nike filed a complaint in federal district court alleging trademark infringement, false designation of origin, trademark dilution, and common law trademark infringement and unfair competition.[11] Nike argued that it did not authorize or approve of MSCHF's "Satan Shoes," and that the design of the shoes—which clearly display the eponymous brand's iconic "swoosh" symbol—is likely to cause confusion.[12] In support of its claims, Nike stated that its goodwill had been tarnished, and that consumers have started to boycott the brand believing it to be endorsing satanism.[13] In order to remedy the harm caused by the consumer confusion, Nike sought an injunction against MSCHF to permanently stop the production and sale of the shoes.[14] MSCHF argued that consumers knew that Nike did not produce the shoes, and that the product was entirely sold out, thereby minimizing any harm the brand may have suffered.[15] The New York federal court was unconvinced by MSCHF's arguments and it determined that Nike was able to demonstrate a likelihood of success on some of its claims.[16] Shortly thereafter, the two parties were able to settle the matter outside the courtroom.[17]

This appears to be a classic example of trademark infringement—a party uses the famous mark of a brand without authorization and approval, and in such a manner that is likely to cause consumer confusion.[18] However, had the parties not reached their out-of-court settlement and instead litigated the matter in federal district court, a ruling in Nike's favor could have set a precedent that would have lasting repercussions for designers and artists who engage in "upcycling"—repurposing products with a new spin to make them more in-demand with a limited supply.[19] This method of design has gained momentum over the past decade as designers and consumers alike have focused more on sustainability.[20]

Fashion brands are thus left in a catch-22—on the one hand, policing this market may result in negative reactions from consumers who purchase the repurposed goods bearing the famous marks, but on the other hand, these goods are in many instances clearly infringing on protected trademarks. In the instant case, Nike cited the harms experienced through consumers' perception of the brand as endorsing satanism.[21]

The question then seems to come down to how the public will view the brand given the nature of the products repurposed. For example, just one year before MSCHF released the "Satan Shoes," it released its "Jesus Shoes." The "Jesus Shoes" are also modified Nike Air Max 97s, but instead of human blood, they contain water sourced from the River Jordan located in the bubble cushioning sole.[22] Nike did not pursue legal action against MSCHF for its "Jesus Shoes," although the shoes were included in the recent settlement as part of the voluntary buy-back program to keep the shoes out of the public.[23] Therefore, Nike arguably only pursued legal action for the "Satan Shoes" because of the public's negative association with the satanic artwork incorporated in the shoes.[24] This style of retroactive legal action or inaction based upon the response of the public makes it difficult for designers and artists who engage in upcycling to gauge the risk their designs generate. Moreover, Nike's swift filing of its complaint without first sending a cease-and-desist letter may seriously affect designers' willingness to repurpose existing products and sell them to consumers. This could effectively lead to a significant curtailing of a market that has grown substantially over the past decade.

Nike's motivation for settling the matter outside the courtroom is likely due to the adverse publicity the brand received in pursuing this legal action.[25] Nevertheless, in the age of sustainable fashion and following upcycling trends, the legal issues surrounding the sale of repurposed fashion goods are likely to persist. Brands will continue to vigorously police their intellectual property, and designers will look to capitalize on a market that promotes recycling goods through creative means. While the can has effectively been kicked down the road regarding the issue of infringement with respect to repurposed goods, the issues of when designers are liable for infringement through their repurposing and when brands should pursue legal action for infringement will likely continue to be dictated by the court of public opinion.

Paul Smith is a Second-Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts & Entertainment Law Journal. Paul is interested in fashion and trademark law. Paul is also on the e-board of the Cardozo Fashion Law Society and is presently interning at Calvin Klein.

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