

Tantrums and Tiaras - slogans creativity, originality and advertising.

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Abstract:

This article examines whether advertising creativity informs the legal policy dichotomy between trade mark and copyright protection of slogans. Creativity research searches for methods to objectively quantify evaluate and assess the essence of creativity in all forms of human endeavour, including advertising slogans. Creative slogans satisfy objective assessments of the client's desire to sell their products and the customers desire to purchase the product. These objectives indicate the dual purpose of a slogan being functional and expressive. The functional purpose indicates origin of the goods, and the expressive purpose "wows" or delights the public. The objective evaluation of success in satisfying both purposes means a slogan is described as innovative, original, novel or unique and thus creative. This objective evaluation of creativity by purpose mirrors the legal protection of slogans that protects function over expression through trade mark law rather than copyright law. This paper examines creativity and specifically slogans discussed in recent legal decisions that questioned the legal status quo that slogans are protected by functional purpose rather than the expressive purpose. This paper postulates that courts in appropriate circumstances may protect the expression against function, but are not willing to open the floodgates by categorising slogans as a category of literary work.