



## When it Comes to Parody Twitter Accounts, Laughing Them Off May Be Your Best Move

November 27, 2012

by [Andrew R. W. Hughes](#)

The [@NYTONIt Twitter feed](#) managed to draw more than 20,000 followers and accolades from Time magazine with its wry send-ups of *New York Times* trend pieces. Whenever the *New York Times* published a story that Benjamin Kabak found obvious, pompous, or otherwise groan-inducing, he took to his @NYTONIt Twitter handle to mock the venerable publication. When the *New York Times* ran a piece on teenagers' bedrooms being messy, @NYTONIt was there with, "GUYS, teenagers have messy bedrooms, and The Times is ON IT. <http://nyti.ms/X62BZs>." An article about seniors and the Internet drew, "GUYS, some old people aren't too up on the Internet, and The Times is ON IT. <http://nyti.ms/SaJgIV>."

While many people found the account hilarious, the *New York Times* did not. This week, the paper complained to Twitter, which suspended the account.<sup>1</sup> The basis of the complaint was apparently not the content, but Kabak's use of a modified version of the Times' "T" logo as the handle's avatar:



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<sup>1</sup> Sarah Perez, *Guys, You Can Use "Trademark Concerns" As A Way To Get A Twitter Parody Account Suspended, And The Times Is On It*, TECHCRUNCH, Nov. 20, 2012, <http://techcrunch.com/2012/11/20/guys-you-can-use-copyright-violations-as-a-way-to-get-a-twitter-parody-account-suspended-and-the-times-is-on-it/>.



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As the paper's spokeswoman Eileen Murphy explained, "We're not seeking to disable the account however it is important to The Times that our [trademark] is protected and that it is clear to all users of Twitter that parody accounts or other unofficial Times accounts are not affiliated nor endorsed by The Times."<sup>2</sup>

Kabak claimed that his use of the modified *Times* logo was fair use. Bolstering his claim was the fact that the description of the account explicitly stated that it was "a parody account clearly not associated with any newspaper."<sup>3</sup> Nonetheless, in accordance with [its rules regarding trademark protection](#), Twitter initially suspended the account, before restoring it without the potentially infringing logo.

Whether or not this was the legally correct outcome may not be the most important consideration. As this case demonstrates, Twitter may be quite risk averse when it comes to dealing with claims of trademark infringement. Because Twitter could potentially face vicarious liability if it fails to respond to claims of trademark infringement, it has a strong incentive to err on the side of overprotection. Therefore, to a trademark owner concerned about an arguably infringing use of one of its marks, a complaint to Twitter may seem like a quick and easy solution.

But in trying to shut down a parody Twitter account through a claim of trademark infringement, a trademark owner should consider whether it risks making matters worse for itself. Although the owner may have a legitimate basis to stop a parodist from using a mark similar to its own, a trademark infringement claim may actually draw attention to the parodist and create negative publicity for the mark owner, without actually stopping the parodist. Indeed, it appears this is what happened to the *New York Times*. The @NYTONIt account is still active (albeit with a different logo), and it is hard to see how the *New York Times* could have any further legal basis for challenging the account. At the same time, the *New York Times* has been the subject of ridicule among [many](#) in the tech blogosphere, and, of course, [on Twitter](#). What's more, in the week immediately preceding this writing, which includes two days of media coverage of this story, @NYTONIt has gained more than 5,000 followers, an increase of around 25%.

A trademark owner concerned with a parody Twitter account would be wise to consider its options before pursuing action against a potential infringer. On the one hand, where it is unclear that a Twitter account is parody, and where consumer confusion is therefore likely, pursuing an infringement claim through Twitter may be useful, if for no other reason than to make the parodist clearly identify itself as such. On the other hand, in a case like @NYTONIt, in which a Twitter

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<sup>2</sup> Andrew Beaujon, *Twitter suspends 'NYT On It' account after New York Times complains*, POYNTER, Nov. 20, 2012, <http://www.poynter.org/latest-news/mediawire/196087/twitter-suspends-nyt-on-it-account/>. Ms. Murphy actually referred to The *Times*' copyright, but it is clear that she meant the *Times*' trademark.

<sup>3</sup> See Alexander Abad-Santos, *Update: The New York Times Will Let @NYTONIt Stay on It*, THE ATLANTIC WIRE, Nov. 20, 2012, <http://www.theatlanticwire.com/business/2012/11/actual-new-york-times-gets-twitter-suspend-nytonit-stealing-logo/59172/> (showing screenshot taken Nov. 14, 2012). Twitter, to its credit, has [guidelines for parodists](#) to help them avoid crossing the line between legal parody and potentially illegal impersonation and infringement. The policy warns potential parodists to avoid deactivation of their accounts by making clear that they are not actually, or are not affiliated with, the targets of their parody, by, among other things, using names like "notX" or "fakeX" and clearly stating in the account bios that the accounts are parodies.

account merely uses a similar mark as part of an obvious parody, trademark owners might be better advised to just laugh it off.

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