Parasitic Art
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The internet is an extensive distribution network that provides a powerful context in which to disseminate information and gather data. However, utopian aspirations for its impact on society have been undermined through the use of these features in the pursuit of profit. The susceptibility of material online to be copied and recontextualised has meant the internet has also proved to be an effective site from which to critique such behaviour by corporations through irony and parody in art. Companies, approaching the internet as a market place, use the law to prevent such activities and have been accused of restraining the 'ability to cite freely, to purloin images that are salient within the general culture, to pursue a conversation without vetting by lawyers'.[1] It has been suggested that intellectual property rights that have been employed by corporations to protect their business interests in the pursuit of profit should not apply on the internet.[2] However, my argument is that art which appropriates may be regarded as a provocation to critique corporations as legally recognised subjects.

The assertion of intellectual property rights online by a company may be understood as an attempt to prevent the risk to corporate identity that results from a brand being contextualised in a way not desired by the company. Inspired by the work of Jacques Derrida, my argument is that this is an attempt to foreclose the iterability of branding.[3] In the process companies disavow the very possibility that allows any meaning at all to be constructed. As such, companies may be understood to employ the law in ways that close off the possibility for an awareness of the way in which individual human identities and society can be different. The effect is to favour the pursuit of profit over critical and inventive thinking. I begin my argument that art which appropriates may provoke recognition of the ways in which the law privileges both the formation and preservation of corporate identity by briefly outlining the legal nature of companies.

In law a company may be incorporated as a separate legal personality with its shareholders enjoying limited liability. This means that that the company's liabilities are the legal responsibility of the company and the shareholders will not be responsible for the company's debts.[4] This often means that creditors or employees who are unable to recover what they are owed from an insolvent company that does not have sufficient assets to pay off its debts, will be unable to do so from the shareholders or the directors. The company structure may be understood to have the effect of protecting the distributed networks of people that lie behind the company (shareholders) and/or through whom the company acts (directors). Art, in the process of opening an awareness of the contingency of this structure, brings about a 'demystification that the law is a neutral and peaceful arbitrator, or means of achieving social order'.[5]

The recognition by the law of corporate personality manifests the violence of the law. This is readily apparent when, in a successful *coup d'état*, for example, an act that is illegal under an established legal order subsequently becomes recognised as the source of a new legal system.[6] However, the force inherent in the law does not take effect from outside the legal system but is a characteristic internal to the law. Violence both founds and conserves a legal system. As Derrida argues in 'Force of Law', in order to have an ongoing legitimacy the violence of the foundation of the law must be iterable.[7] Each time a law is applied in different contexts, such as when a company is formed or asserts its rights, the authority of the law's institutive founding violence is re-iterated. Art, by detaching brand images from a corporate context, may allow an awareness of the implications the law has for the formation of identity. At such a point the conditions are opened for an awareness to arise of how laws could be authorised less arbitrarily and differently articulated.[8] I will take forward my argument in this respect by reference to the work of art entitled *TM Clubcard*.

TM Clubcard was a website set up by Rachel Baker in 1997, which mimicked the supermarket Tesco's loyalty card scheme. Loyalty cards were acquired and distributed via a site that employed direct lifts of the supermarket's logos. The appropriated supermarket branding was associated with a 'dysfunctional' *TM Clubcard* database. The work created a 'living' contrast between itself and the authentic Tesco loyalty card scheme. Visitors to the work could become aware that *TM Clubcard* was a parody due to a number of the work's features, including the requirement for those who wished to apply for a mock loyalty card to answer questions rewritten from those on the supermarket's

application forms. For example, on the questionnaire under the heading 'Personal Pleasure' was the question 'What do you prefer?' and response options included shopping, driving, and sex.[9] However, despite this Tesco took the work seriously as an unacceptable risk to its intellectual property.

In a letter dated 21 April 1997 from the firm of solicitors Willoughby & Partners legal action was threatened in order to protect Tesco's interests if *TM Clubcard* was not brought to an end.[10] Baker describes how in response she employed a strategy which involved the work changing its target from Tesco to the supermarket Sainsbury's. A letter dated 2 July 1997 duly arrived from Sainsbury's solicitors, Denton Hall. This letter similarly alleged that *TM Clubcard* was infringing intellectual property rights and included the assertion that anyone viewing *TM Clubcard* was 'likely to be misled into thinking that your site is in some way associated with or sanctioned by Sainsburys [*sic*], when this is not the case'.[11] Denton Hall characterised this conduct as a deception and on behalf of Sainsbury's sought an undertaking that required the site be brought to an end.[12] The work now only exists online in an archive form.

There is a link between corporate identity and brands that are protected by intellectual property rights. A company, as a separate legal personality, is comprised of distributed groups of people. Various and co-implicated methods are used to encourage the perception of individual companies as being discrete entities distinguishable from competitors. The many elements that contribute to such an identity include a company's mission statement; the 'behaviour' of the company as expressed through the way customers are treated; the way in which its products are priced; the spectrum of products offered by the company; the geographical 'roots' of the company (e.g. whether it is a local business); its longevity; any slogans used; and also any benefits which accrue to its customers. The brand of a company provides a gathering point for each of the elements involved in the construction of its identity.

A 'genuine' loyalty card scheme contributes to the process of identity formation by reason of its database functionality. It has been pointed out that it was the use of a relational database that 'made Wal-Mart the biggest retailer on earth, and Oracle the second largest software company behind Microsoft'.[13] by means of mining data for information. The database associated with a loyalty card scheme allows information to be obtained that can be used to associate the brand with the various qualities claimed for the company identity. *TM Clubcard* worked to direct attention to the possibility that the two supermarkets could be disjoined from 'their' respective brands by means of a 'dysfunctional database'. Yet, while the database was 'dysfunctional' in the sense it was not associated with a supermarket, as Baker pointed out the majority of those in the work's database realised that that was the case. Baker describes how she 'emailed all 45 members of the database asking if they had assumed I was the real Tescos. 3 replied that they had'.[14]

The work's effectiveness depended on *TM Clubcard* eventually being understood as a parasite of the 'normal', legitimised, and commercial loyalty cards so that it could work as a contrast to such schemes. The intended critique would not be effective unless the work was at least initially taken to be a 'real' supermarket loyalty card site because of the appropriated branding. However, the contrast could not be created unless there was eventually awareness that the 'dysfunctional' database was not associated with a supermarket loyalty card scheme. *TM Clubcard* was predicated on the combination of branding parasited from supermarkets and a functioning database. In this sense *TM Clubcard's* database and the network based on that data were no more improper than those of Tesco or Sainsbury's. It seems to me that for the three people who thought that *TM Clubcard* was operated by Tesco it could be said the work had failed to the extent it did not have the effect of allowing an awareness of the significance of the differences between the supermarket's loyalty card and the way in which *TM Clubcard* was operated by Baker.

Importantly for my argument as most did understand the work was a parody there was arguably, in Derrida's words, a 'relative stability of the dominant interpretation' of *TM Clubcard*.[15] The work had the effect of uncovering the process of construction underlying the supermarkets' identities. It directed attention to the way in which corporate identity, despite anyone's best efforts, cannot entirely be controlled. As Baker observed, the work took advantage of the way in which on the web 'all identities, including those cultivated by big companies, are unstable, insecure, providing the opportunity, for those with the desire, to change/intercept the relationship with a brand name or distort its meaning'.[16] A critical awareness of the contingent meaning of a corporate brand is

problematic for companies. In order for a brand to be a success in the formation of corporate identity, which is ultimately measured in terms of a company's profitability, ideally its meaning needs to be as fixed and determined as possible. To achieve certainty about the meaning of a brand a company must control the context in which it is viewed and understood. The respective threats of legal proceedings by the supermarkets may be considered to have been attempts to achieve such fixity.

The letters from the supermarkets' lawyers asserted that in terms of the various intellectual property rights claimed by the supermarkets *TM Clubcard* was in breach of the law. Yet, the 'generality of the law is fundamentally heterogeneous to the specificity of the case'.[17] The significance of this point is that although justice demands that laws should be sufficiently general so as to enable like cases to be treated alike, laws also need to be applied in varying circumstances with specific sets of facts. Laws are necessarily applied at times that are different from the point at which they are formulated and brought into being. The individual contexts in which laws are called to be applied cannot all be anticipated when the laws are passed. The intellectual property rights asserted by the supermarkets, as with any other laws which come into effect, could not be expressed in terms that are able to take into account every contingency. In short, my argument is that it was not necessarily just either to assert or apply intellectual property law to bring *TM Clubcard* to an end. The law is 'doomed to be essentially unethical and inhospitable',[18] in that it is always to some extent given effect a-contextually and as such denies the Other that might otherwise arrive. It may be concluded that the legal threats made by the supermarkets were unjust in the context of the relative stability of the meaning of *TM Clubcard* as a parody. The effect of the rights asserted by the supermarkets was to permit them to protect their respective brands and the formation of their identities at the cost of Baker's freedom of expression.

I accept that in a democracy a determination always has to be made by the law as to where the line is to be drawn between holding a person responsible for what s/he does and the freedom to act as s/he chooses. My argument is not that companies should not be able to hold people to account. I acknowledge that it is possible to characterise the desire by the supermarkets for the fixity of the meaning of their respective brands as also being in the interests of those who accessed *TM Clubcard*. Indeed, that is precisely what the supermarkets asserted through their solicitors. Tesco claimed that *TM Clubcard* had 'deceptively obtained confidential information from users by passing off as Tesco Plc [*sic*]' but Sainsbury's went 'one step further than Tesco in demanding that I hand over printouts of the data I've collected through the webforms'.[19] *TM Clubcard* directed attention toward the way in which the users of *TM Clubcard*, or users of other online locations such as social networking sites are, were exposed to the risk of having (personal) information disclosed to others. The work revealed the inability of those who came to it to be absolutely certain of its meaning and in doing so drew attention to the way in which iterability simultaneously both gives rise to and undermines the possibility of identity creation. In the process *TM Clubcard* opened awareness of the (in)competence that is inherent in the need to make decisions. I would argue that it is the way in which the law privileges the programmatic approach brought by corporations to decision making that should be critically examined.

TM Clubcard required a decision as to whether it was a parodying work of art or operating as a supermarket loyalty card. It was this need that opened the possibility for an awareness of the contingent nature of the ways by which corporations are enabled both to create and protect identity through the use of brands. As was perhaps most clearly illustrated by the threats of legal action, *TM Clubcard* allowed an awareness of the implications of the programmatic approach brought by corporations to such issues. The work was an opening for the 'logic of incompetence and the impossibility of the decision' to be acknowledged.[20] However, the supermarkets, calling upon the authority of the law, wanted branding to result in decisions being a matter of formality: it was desired that the presence of a logo could only convey corporate identity. The reason for this was that in law solvent companies are generally identified with and exist for the benefit of their shareholders. This gives rise to a programmatic basis for making decisions. Those who make the decisions for companies must do so in order to achieve profitable returns, which will in turn benefit the shareholders. Any brand contextualisation that is not controlled and directed toward the means by which the company seeks to unify its distributed nature as a legal personality is unacceptable: it places a company's profitability at risk. Yet, this has the effect of disavowing the (in)competence

that is a necessary aspect of making meaningful decisions.

The only sort of decision (about a brand) that is worth calling a decision is one that arrives at a conclusion whilst acknowledging iterability. This means accepting the risk introduced by iterability and that, despite any efforts to fix meaning, these necessarily may fail. Mansfield, employing the work of Derrida, argues: 'The only decision that can truly be considered a decision is one that insists on undoing both the logic of authority within specific cultures, and one that resists the totalising authority of a universalism'.[21] The decisions that *TM Clubcard* invited from those who visited the site was intolerable to the supermarkets because the work refused to accept the way in which company law simultaneously privileges the corporate construction of identity and permits its iterability to be disavowed. It is in that respect that the use of branding by companies in reliance on intellectual property rights betrays the violence of the law. The closure of *TM Clubcard* was a denial of the 'absolute risk of decision'.[22] Instead, such art should be welcomed as providing an opening on to how a different legal framework could give rise to a social and cultural order different to that existing at the time of the work's existence.

TM Clubcard invited awareness of the contingency of the formation of corporate identity through the use of branding. The supermarkets sought to create and enforce their respective brands on the basis of intellectual property rights, which had the effect of bringing *TM Clubcard* to an end. My argument is that this was done because works such as *TM Clubcard* reveal the ways in which companies could come to have identities not understood to be productive of profitable returns for their shareholders. The infringement of branding will not be acceptable to companies when it is calculated that it puts the interests of profitability at any risk. Corporate branding must have calculable effects and 'calculation is a dream of the erasure of contingency'.[23] Approached in such terms, companies have the effect of foreclosing inventive engagements with how society might be constructed. In contrast, *TM Clubcard* allowed awareness that, while laws may work to secure identity and reduce risk, it is risk that opens the possibility of change.

NOTES

1. Julian Stallabrass, *Internet Art*, London: Tate Publishing, 2003, p. 104. This description succinctly encapsulates a state of affairs engaged with in detail by Lawrence Lessig. See Lawrence Lessig, *Code Version 2.0*, New York: Basic Books, 2006 and *Free Culture: The Nature and Future of Creativity*, Penguin Books, 2004.
2. Christiane Paul has suggested that 'traditional copyright laws to a large extent are not applicable in the digital realm'. See Christiane Paul, *Digital Art,* London: Thames & Hudson, 2003, pp. 210 11. I agree that existing law in England and the Unites States in relation to copyright should be changed. However, to advocate that there should be a different set of laws for the 'virtual' as compared to the 'physical' world reflects a 'disembodiment of cyberspace', that ignores the way in which the internet is 'important today precisely because it is integrated so tightly into our social and economic networks and our physical environment'. See Jay David Bolter and Diane Gromala, *Windows and Mirrors*, Cambridge, MA: M.I.T. Press, 2003, p. 12
3. I call on the work of Jacques Derrida when I employ the word iterability. Derrida engages at length with iterability in the texts gathered together in *Limited Inc*. See *Limited Inc.*, tr. by Alan Bass, Jeffrey Mehlman, Samuel Weber, Evanston: Northwestern University Press, 1988. The repetition of a mark as itself 'ensures that the full presence of singularity thus repeated comports in itself the reference to something else, thus rending the full presence that it nevertheless announces. This is why iteration is not simply repetition' (p. 129). In order for a brand to convey an intended meaning it must be repeatable. Yet, with that repetition comes a change in context and the brand is opened to signifying a meaning different from that intended (by, for example, a supermarket). Derrida observes that iterability 'entails the necessity of thinking at once both the rule and the event, concept and singularity" [emphasis in the original] (p. 119). Although I am unable to justice to the point in this context, I feel obliged to at least repeat that iterability is itself both an 'ideal concept' and 'also the concept of the possibility of ideality' (*Limited Inc.*, p. 119).
4. There are some exceptions to this, as to which see for example Lorraine E. Talbot, *Critical Company Law*, Oxford: Routledge-Cavendish, 2008, pp. 29 43.
5. Margaret Davies, 'Legitimate Fictions', *Jacques Derrida and the Humanities: A Critical Reader*, ed. by Tom Cohen, Cambridge: Cambridge U.P., 2001, pp. 213 237 (p. 227).
6. Davies, 'Legitimate Ficitions', p. 225.
7. Jacques Derrida, 'Force of Law: The Mystical Foundation of Authority', *Cardozo Law Review*, 11 (1990), pp. 919 1045.
8. William W. Sokoloff, 'Between Justice and Legality: Derrida on Decision', *Political Research Quarterly*, 58:2 (2005), pp. 341 352 (p. 345).
9. Rachel Baker, *TM Clubcard* <http://www.irational.org/cgi-bin/clubcard/> [accessed 6 January 2011].
10. Rachel Baker, *TM Clubcard: Remember Language is Not Free*, 1997 <http://www.heise.de/tp/r4/artikel/6/6168/1.html> [accessed 26 October 2010]
11. Rachel Baker, *TM Clubcard*. The quotation is taken from an electronic copy of the letter from Denton Hall dated 2 July 1997 that is included in the archived form of *TM Clubcard* at <http://www.irational.org/tm/archived/sainsbury/> [accessed 6 January 2011].
12. Baker, *TM Clubcard: Remember Language is Not Free*.
13. Brett Stalbaum, *After Land Art: Database and the Locative Turn* <http://www.intelligentagent.com/archive/Vol4_No4_freerad_afterlandart_stalbaum.htm> [accessed 6 January 2011]
14. Baker, *TM Clubcard: Remember Language is Not Free*.
15. Derrida, *Limited Inc.*, p. 143.
16. Baker, *TM Clubcard: Remember Language is Not Free*.
17. Sokoloff, 'Between Justice and Legality: Derrida on Decision', p. 344.
18. James K. A. Smith, *Jacques Derrida: Live Theory*, London & New York: Continuum, 2005, p. 79.
19. Baker, *TM Clubcard: Remember Language is Not Free*.
20. Nick Mansfield, 'Refusing Defeatism: Derrida, Decision and Absolute Risk', *Social Semiotics*, 16 (2006), pp. 473 483 (p. 482).
21. Nick Mansfield, 'Derrida and the Culture Debate: Autoimmunity, Law and Decision', *Macquarie Law Journal*, 6 (2006), pp. 97 111 (p. 111).
22. Mansfield, 'Refusing Defeatism', p. 482.
23. Mansfield, 'Refusing Defeatism', p. 480.