

No. 22-293

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In The  
Supreme Court of the United States

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On Petition For a Writ of Certiorari  
To The United States Court of Appeals  
For the Sixth Circuit

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BRIEF OF *TEAM TO BE NAMED LATER AS AMICUS CURIAE*  
IN SUPPORT OF PETITIONER

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## INTEREST OF THE *AMICUS CURIAE*

For over forty years, puzzle fans have converged on the MIT campus to participate in the MIT Mystery Hunt, an annual puzzle competition. The Hunt has come a long way from its initial 1981 incarnation, which challenged puzzlers to solve 12 questions printed on two pages, with the winner earning an Indian Head penny, a keg of beer, a \$20 gift certificate, and a \$50 donation to charity. Among other things, winners don't get a gift certificate any more.

The modern MIT Mystery Hunt regularly attracts thousands of puzzlers to the brisk banks of the Charles River for a weekend of tackling over 100 puzzles in hope of (and in fear of) winning custom minted Coins and the responsibility for running the next year's Mystery Hunt. Past Hunts have hidden puzzles in TED Talks, printed custom Cards Against Humanity sets, launched massively multiplayer online games, served as the venue for an actual wedding, and even featured cameos from nerdy celebrities like Oliver Smoot and Weird Al Yankovic. The Mystery Hunt has been covered by outlets like WIRED, Popular Mechanics, and Mental Floss. To say nothing of the many, many Taylor Swift covers recovered over the years.<sup>1</sup>

As noted statistics blog FiveThirtyEight puts it: “Nothing — with due deference to the laws of the great Commonwealth of Massachusetts and these United States

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<sup>1</sup> The author of this brief eagerly awaits for Mystery Hunt (Taylor's Version), where Taylor Swift and her team take over the administration of the MIT Mystery Hunt for a year.

— is off limits at the Hunt.” And it is that no-holds barred approach to providing incisive social commentary through the lens of puzzling that the MIT Mystery Hunt seeks to protect. Adapting *Goosebumps* into puzzle book form depends on a vibrant tradition of parody and satire.

Team to Be Named Later (“TTBNL”) has drafted this Amicus Curiae in order to protect puzzle constructors’ ability to write puzzles that draw upon reality to create puzzles that may at times be indistinguishable from their surroundings. As one of the largest outlets for freeform puzzling, TTBNL hopes to protect the interests of smaller hunts in freely referencing cultural touchstones, as well.

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## INTRODUCTION AND SUMMARY OF ARGUMENT

Finding out that a man was jailed for the creation of a fake Facebook Page for the city’s police department felt inconceivable to the puzzle community, which finds itself regularly creating fictional facsimiles of things that might legitimately exist in real life.<sup>2</sup> As a reasonable person, you might assume the Sixth Court would have ruled that using the look and feel of real social presences is acceptable so long as sufficient efforts to disclose its fictional nature in the actual text of the page are made.

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<sup>2</sup> Take, for example, the Table of Authorities in this very brief — those citations do reference puzzle titles that exist in the real world. But despite a promising start, they do not fully reflect the historical puzzles that will be spoiled in this brief.

No such reassurance can be offered here, as the court has gallingly supported a police department that felt unduly assaulted by a fake job listing that explicitly discouraged minority applications.

It is essential to the MIT Mystery Hunt process that creating fake profiles across the web should be permitted under the core principles of parody and fair use. Following status quo would require every crossword construction to become a grid, and every direction following puzzle would require ducks.

Importantly, puzzles also seek to satirize figures in environments their subjects might not appreciate. Imagine finding a puzzle about Elon Musk's iPod Submarine held liable for being too effective at lambasting the technology industry's penchant for half-baked ideas that only leaves nothing to the imagination because nothing substantive exists to imagine in the first place.

A unique feature of puzzling is that its very format necessitates a close read of the subject matter: in order to decipher a puzzle, the reader must approach it critically, weighing the meaning and purpose behind every word. Otherwise, they may miss an essential element that is required to complete the extraction. Because puzzles demand such active engagement, it would be farcical to make puzzles disclaim their fictionality at every turn: imagine if the weekly crossword section had to proclaim, **THIS IS NOT A NEWS STORY** just because it featured clues that referenced newsworthy events.

Hunts like the Mystery Hunt in particular often hide elements of puzzles in popular media months in advance,

sitting largely unnoticed until its puzzle points out its inner meaning. Offering disclaimers would threaten the nascent thrill of finding secret messages left for the future.

Accepting the Sixth Circuit’s verdict unopposed risks the very fabric of the puzzle hunt community, and arguably the fate of puzzles, writ large. Accordingly, TTBNL urges the Court to vacate the Sixth Circuit’s decision, and make the fake Facebook Page protected from interference. Even if this entire Brief is itself a strained pretext to conceal a puzzle within the typically boring format of a legal text.

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## ARGUMENT

### **I. Variety Puzzles Rely On Camouflaging Familiar Puzzles in Unfamiliar Packaging**

*Ex nihilo nihil fit.* As Lucretius so succinctly stated, nothing comes from nothing. This phrase has nothing to do with the MIT Mystery Hunt – the words are neither motto nor slogan, and its initial utterance was about hard work, not the creative process. And yet, random Latin words remain the introduction to this argument.

Lucretius’ words are raised here because creativity does not live in a vacuum. When, as *Popular Mechanics* argues, “Nothing . . . is off limits at the Hunt”, that nothingness still comes from somewhere. Puzzles comparing puppies and fried chicken to make “Bark Ode” draw upon adversarial image research. Puzzles creating “A Pub Crawl” of Untappd beer check-ins draw upon witty liquor

brands and fantasy board games. These puzzles don't just draw upon a broader body of work, they mimic them and disguise themselves as exemplars of the form.

"Nothing comes from nothing" was not just referenced here because people are more willing to suffer through periods of extended frustration at not cracking a puzzle when they have positive (or "pawsitive", as the case may be with "Bark Ode") associations with the subject matter. Equally important is the transformative act of peeling back a puzzle's camouflage to identify the puzzle it's actually obscuring. "love at 150 km/h" may have started out as a traditional dating simulation game, but it quickly devolves into a love letter to Olympic luge competitions – although it took engaging with the dating sim as it was presented to make that discovery.<sup>3</sup> "Marked Deck" may start out as a deck of laser-cut cards, but it's only a hearty shuffle that its connection to *Cryptonomicon* is unveiled.

One of the primary mechanisms allowing puzzles to draw something from something is fair use and parody law. Generally, fair use defenses draw upon the non-commercial nature of the work (in this case, puzzles), paired with the de minimis use of those materials, as protected under copyright. "One of the Puzzles of All Time" didn't include video from the film *Morbius* – indeed, it didn't even include the quote "It's Morbin' Time" the iconic line that was absolutely

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<sup>3</sup> The video game *OnlyCans* makes a similar surprise reveal, as players realize a game about sentient cans of soda sexily moaning while being photographed is actually a gruesome murder mystery centered around the creation of soda-human hybrids.



featured in the film, or even accurate descriptions of scenes from the film.<sup>4</sup>

Fair use claims that draw upon parody as a defense, however, actively need to make use of the work—and it is through that imitation that the transformative act of criticism and commentary emerges. Mimicking the trappings of the source material is an essential element of the parodist’s toolkit, since those very trappings are part of what the derivative work is looking to explore in depth. And with puzzles, those trappings may even lend functional purpose.

Parody leverages the expectations that are set in readers when confronted with someone’s puzzle in a particular form. The specifics do not matter, but for the sake of brevity, pretend you just came across a newspaper headline—maybe during this very puzzle hunt—that begins in this familiar fashion: Spider-Man: Hero or . . . ” Already, one can see a few puzzles ideas available for setup, leading readers to imagine fictional constructs via a newspaper story. With those simple lines, the Hunt has mimicked a dry tone of an Associated Press news story, using both form and function typical in serious reportage. That mimicry isn’t just essential to convey the puzzle’s focus on fictional news: the various trappings provide a host of potential mechanics for solving the puzzle itself. Who wrote the bylines on the articles, and how is that information potentially untrustworthy? What outlets did the reporting?

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<sup>4</sup> The 1909 text *Passing English of the Victorian Era* by James Redding Ware noted that the expression “got the morbs” describes a feeling of temporary melancholia. This phrase accurately expresses the author’s sadness at missing out on “Morbin’ Time”.

Of course, times design can enter the realm of parody is when puzzle design pairs the headline with the punchline—the puzzle piece exploring the newspaper format. The constructor might try headlines like: “Supreme Court Rules Ends Justify Lines.” A constructor could push the parody yet another level, formatting the joke out in article format so that justified text shows the Justices in the majority, before referencing how the US Constitution guarantees equality across all branches: in executive, legislative, and file formatting, though it definitely does not guarantee vertical justified text, and rounding off by reporting the Supreme Court’s holding that the Judiciary “rules and rules totally, all worthy and governed under MLA standards, for all time, as set forth in Strunk and White. Word processors must bend their will to the Courts, as the Courts must not show bias to the left or right, no matter how justified it might seem from one side.”

In this hypothetical puzzle example, the trappings of traditional journalism—including full justification of text—is mimicked to subvert puzzlers’ expectations for how to engage with the content of the newspaper article.<sup>5</sup> Both as a textual matter (playing on legal justifications versus textual justifications) and as a structural matter (playing on the news’ visual expression as puzzling mechanic).<sup>6</sup>

More appropriately: Imagine cracking open the New York Times Crossword on February 7<sup>th</sup>, 2022 and stumbling across the clue for 70-across, tasking solvers to iden-

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<sup>5</sup> The traditional method of engaging with newspaper articles is, of course, folding it into a pirate hat and setting sail to chase after the title of Pirate King.

<sup>6</sup> One *can*, of course, attempt to make a pirate hat out of this brief, but it just wouldn’t be the same.

tify “The better of two sci-fi franchises.” In a format dominated by the presumptively unbiased statement of fact, forcing solvers to choose between *STARTREK* and *STARWARS* as the pinnacle of science fiction might seem an impossible task—or at least, it would until you realize that the five “Down” clues in question allow for both answers to work equally well. The puzzle’s metaphorical twist of the knife was only made possible by framing a purely subjective question as if it were a statement of fact, complying with crossword norms in order to subvert them.

Variety puzzles draw upon both storytelling and puzzle-based gameplay in crafting a puzzle: and properly balancing these often conflicting levers can either create ludonarrative dissonance, or ludonarrative harmony. However, neither form of ludonarrative resonance would be possible without relying on historical reference points of what form and function stories and games are supposed to take in the first place. And those reference points are essential to ensure that “nothing...is off limits at the Hunt.”

## **II. By Creating Facsimiles of Reality, Variety Puzzles Provide Opportunities For Incisive Criticism**

Importantly, parody provides functionality and value to a writer or a social commentator that might lose its edge when, say, simply stating the criticism explicitly stops chances for the confusion of enigmatologists bamboozled by a big fat lie. One of parody’s biggest strengths comes from artifice. It gives puzzlers chances at falling into a lure of serious authority—either through

“trusted” styles that speak of the news feeds you scroll incessantly or the press’ majority opinion—or minority opinions often editorialized from within. Game designers often lambast targeted authoritarian’s cult appeal in games, as subtly deceptive tricks that politicians play might normalize those same behaviors, without an experiential light shining down upon the often farcical behavioral patterns that might seem almost normal when experienced through the dry and dispassionate tone of traditional news coverage.<sup>7</sup>

Which brings us back to iPod Submarine.<sup>8</sup> The initial game was created as a parody of tech billionaires’ penchants for coming up with seemingly nonsensical solutions to problems that are coincidentally designed to help line their pockets. The game as it was designed focused its attention on Elon Musk’s particular foibles. However, when Setec Astronomy adapted the game into the similarly named iPod Submarine puzzle, seemingly arbitrary rules were added to dictate decisions by five other tech magnates. The only way to learn that Richard Branson favors projects that use the same letter over and over again, or that Stephen Wolfram favors projects that generate the highest SCRABBLE score<sup>9</sup>, is by incessantly running pitch after pitch by an almost farcical tech jury to determine the

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<sup>7</sup> Attempting to turn this brief into a pirate hat won’t help you uncover any puzzles, but it sure sounds like a lot of fun, doesn’t it?

<sup>8</sup> Fine, don’t make the pirate hat. But at least consider [playing a round of iPod Submarine](#) to unwind.

<sup>9</sup> Specifically, under the rules of the puzzle Branson and Wolfram would be more likely to accuse someone of being Elon Musk if the answers met the given criteria.

method behind their assured madness. As unflattering as the commentary might be, it only emerges through play.<sup>10</sup>

The point of all this is not that it is funny watching deluded figures hellbent on selling infomercials for the actual news—even if advancing the argument *is* funny. Rather, it's how puzzles make chances for figures to puncture their inherent sense of self-importance by going for what any reasonable figure should reject for some absurd bastardization of their own views. Within a tech context, these factors are oft particularly pronounced. With *Hustler*, religious figures also drew attention (1988); In that case, Jerry Falwell Sr. claimed emotional distress over an ad depicting him as an incestuous drunk. The case was not decided on the truth of the matter or the quality of the disclaimer, but the First Amendment's importance.

### III. Disclaimers Should Not Be Necessary To Recognize Puzzles For What They Are

At bottom, parody functions by catering to a reasonable reader—one who can tell (even after being tricked at first) when they are seeing fake news. As many readers of parody know what they're getting into with text, then there would not be humor upon discovering a government believing that a pudgy dictator like Kim Jong-un was the sexiest man on Earth. Everyone would just agree they were justified getting fooled, with them to be assured they couldn't have known.

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<sup>10</sup> See also Frank Lantz's game *Universal Paperclips*, where the classic thought experiment sees a hyper-capitalistic paperclip factory optimizing production to extreme lengths.

The law turns on the same reasonable-person construct. The reasonable-reader test gauges whether a hypothetical person saddled with the description of “reasonable person” would be savvy enough to understand what’s going on—this standard isn’t focused on whether you can find some poor patsy gullible or unintelligent enough to be fooled, nor is it a search for the most suspicious conspiracy theorist, looking for lies and subterfuge in even the simplest of circumstances. Instead, it’s a search for that default human your imagination constructs when you think about some random person. It’s not “What Would Jesus Do” but “What Would Ella From Down the Block Do”.

But the “reasonable reader” is “no dullard. It’s said she does not represent the lowest common denominator, but reasonable booksmarts, even learning. He or she can tell when someone leverages satire and sincerity.’ ” *New Times, Inc. v Isaacks*, 146 S.W.3d 144, 157 (Tex 2004) (quoting *Patrick v Sup. Ct.*, 27 Cal. Rptr. 2d 883, 887). The Court said “find me a reasonable person, some perfectly average bumpkin who cannot perceive the comedy in *Family Guy*.” *Patrick*, 27 Cal. Rptr. 2d at 600. Centering this ordinary reader’s perspective “is essential in conducting one’s assessment of her state of mind when confronted by the source of parody. And while hunting for this platonic ideal of a perfectly normal person seems a fool’s errand, this is the role that properly instructed jurors are selected to play, charged with finding what is reasonable from their collective inclinations.

We’ve talked of parody generally, but how does this apply to puzzles? A reasonable person standard for “traditional” puzzles is a relatively simple matter—if it looks like a crossword, acts like a crossword, and solves like a crossword? You’re probably looking at a crossword puzzle. However, complications arise with variety puzzles.

Within the context of the MIT Mystery Hunt, where “Nothing . . . is off limits”, teams make the conscious choice to flag that some things are, in fact, off limits by emblazoning the phrase “THIS IS NOT A PUZZLE” on things that are definitely not puzzles. Thrust into a space where everything *can* be a puzzle, a reasonable person might assume that anything *is* a puzzle until proven otherwise. However, just because something might be a puzzle doesn’t mean a reasonable person—or even a reasonable Mystery Hunter—would recognize it as such, without the appropriate context. Parody stripped of context risks looking like misinformation. Puzzles, though? Puzzles blend in.

Let’s return to “A Pub Crawl”, the former Mystery Hunt puzzle that seeded liquor reviews on Untappd. In order for the puzzle to function, five Untappd accounts were created: Deirdre the Priestess, Fiona the Volatile, Gerki the Sneak, Zot and Pooky, and Barmaid W. One month prior to that Mystery Hunt, the four fictional characters went on an Untappd bender across Cambridge, checking in 48 times across 10 different locations.<sup>11</sup> While most of these check-ins came without context, a few provided flavorful comments like “Not now! These men are interested (sic.) in

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<sup>11</sup> Please drink responsibly, even if you’re currently hunting on Setec Astronomy and don’t want to win this year.

my religion” and “This is just the thing to get the blood off my sword!” It is entirely possible some liquor loving Bostonians stumbled across those check-ins without knowing the profiles were associated with a puzzle. However, assuming that they did, a reasonable person wouldn’t look at those Untappd check-ins and see anything but Untappd check-ins. Even a reasonable Mystery Hunt participant wouldn’t necessarily jump to “this has to be a puzzle”. Most likely, these reasonable Bostonians wouldn’t think about the posts at all, because the internet is filled with weird and unexplainable things. Two earlier check-ins at the MIT Museum (Building N52), one of the locations featured in the puzzle, say “Widget” as a compliment for beer. The author of this brief has no idea what “Widget” means in relation to beer. One of the reviews says “Widget. But pilsner, so low score” implying that describing a beer as “Widget” is a positive thing . . . but does “Widget” mean there is another puzzle on the page, or is the world just inscrutable?

If the impact of improperly identifying parody is misinformation, one must also consider the impact of improperly identifying a puzzle. The shell of a puzzle that, if a reasonable person presumes it to be real, advances real harm (either by advocating for conspiracy theories, promising miracle cures, or offering deep discounts on your car insurance) should of course be properly disclosed as puzzles, to protect against harms to the mythical “reasonable person.”

However, more often than not, incorrectly clocking puzzles as something real doesn’t result in some grand conspiratorial misinformation campaign, but bemused disinterest. Learning that the word “widget” can be used to compliment a tasty beer didn’t launch a massive research effort



plumbing the depths of regional slang, it resulted in a shrug of the shoulders and the offhand thought, “oh that’s neat.” However, discovering that a complete playthrough of a fantasy board game took place on a social media platform dedicated to rating obscure beers? That created a truly magical moment. And while adding disclaimers for the Untappd profiles saying “this profile is part of a puzzle hunt” was still a possibility, doing so would be counter-productive. Stripped of its broader context, does the puzzle even function as a puzzle?

Technically, “A Pub Crawl” can be solved using only information contained within the five Untappd profiles . . . as long as the savvy solver also obtains a card list for the game “Red Dragon Inn”. However, without knowledge that the puzzle was part of the MIT Mystery Hunt, solvers don’t know to look for a word or phrase as an answer, and might treat the puzzle like a geocaching challenge that requires identifying the last stop on the bar crawl (Intersystems Corporation). And without a live version of the Mystery Hunt website running, solvers don’t have the ability to confirm whether their answer is correct. Stripped of context and intended environment, disclaimers can be an exercise in frustration for a reasonable person looking for answers.

Particularly as it pertains to puzzles, providing disclaimers serves only to draw attention to something designed to blend into the background. In an attempt to provide clarity, disclaimers rob solvers of the thrill of discovery while leaving curious passerby frustrated and confused.

#### IV. The Need For Puzzles To Draw Upon The World Around Us Should Be Obvious

This is the fifteenth page of a convoluted legal filing intended to comment on puzzling's protections under parody, so your willingness to entertain these pointless and wandering tangents is running thinner than a bar graph of daily puzzles written over Hunt history. The jurist who tolerated the painful legalese contained within, by the way, has my most sincere apols for what comes next: *Bona patria. Caveat emptor. Deorum injuria diis curae. De minimis. Canis meus id comedit. Res ipsa loquitur. Sui juris. Ad astra abyssosque. Sua sponte. Vice versa. Ad hoc. Quod est demonstrandum. Actus reus. Tete numquam relinquam. Isthey isyay otnay ayay ueclay.*

Feel better now? A perfectly good chance for legal discussion of puzzling's purpose along with quite serious historical and ludo-narrative factors to help get strong protections for parody law, lost to indulgently mocking the way legalese stripped of meaning becomes boring and belie the hollowness of a legal position. That's the setup and punchline idea again. It would not have worked quite as well had I approached it like the following: "Hello there, reader, for this puzzle you're reading an *amicus* brief about the nature of puzzles. Strap in, because we're going to be conducting a textual analysis here, including a line-by-line audit!"

In retrospect, that could've saved some time, helping you choose to pass on this puzzle 14 pages ago.

However, this is a legal brief focused on protecting the rights of citizens to create parody (and yes, puzzles) that draw upon and mimic the trappings of the real world in order to more effectively and incisively serve a central purpose.<sup>12</sup> Its creator helps the reader by providing familiar scaffolding in form and format that triggers deep-set memories on how to interact with that particular form of media, and then subverts those expectations by presenting something else entirely. Puzzlers learn to read critically by facing their cognitive shortcuts, and begin to treat assumptions as starting points rather than unbreakable rules.

Applying a reasonable person standard to puzzling is an important guideline to follow, as it centers the average puzzler's experience (although the baseline of what an "average puzzler" looks like remains context-specific). However, the broad application of disclaimers to protect those reasonable people from the amorphous threat of temporary confusion insults everyone involved.

At their finest, puzzles can hold up a mirror to society and highlight what it deems important at a snapshot in time. It's why cruciverbalists passionately debate what subjects are noteworthy enough to be enshrined in solutions, and it's why the corpus of Mystery Hunt puzzle subjects cover such a broad swath of interests and passions: Kpop dances, knitting, street art, and even sex toys have served as focal points for puzzles in the past. And the corners of the world reflected through the lens of puzzling will only expand moving forward—if we continue to allow it.

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<sup>12</sup> In many ways, this brief is like an onion. If you bite into it without knowing what you're getting into, you're probably going to cry. And even if you recognize the onion for what it is, you're probably going to cry.

The Sixth Circuit's ruling threatens that legacy in two ways: first, by eroding the strength of fair use and parody law so that it becomes harder for puzzles to borrow from the trappings of reality, and second by trying to establish a new standard that mandates disclaimers and disclosures to strip away any wonder and curiosity from the world that would spark the very critical thinking we want to encourage to make sure the reasonable person remains reasonable in the future as well. In order for nothing to be off-limits at the Hunt, we need to fiercely protect our right to draw upon a broad corpus of subject matters, platforms, and presentation styles. Even if that does run the risk of occasionally making powerful people uncomfortable or presenting puzzles stripped of their context.

Team To Be Named Later hopes it will be quite some time before it is next called to run an MIT Mystery Hunt, but strenuously supports the rights of future puzzle designers to push the boundaries on what a puzzle looks like. And it would strongly prefer that legal precedent continues to promote and protect the various forms of creativity necessary to craft them. Especially if it's other people doing the work, this was a lot of writing.



## CONCLUSION

The petition for certiorari should be granted, the rights of the people vindicated, various historical wrongs remedied, and the secret puzzle should be uncovered. Team To Be Named Later would welcome any one of the four, particularly the last.

Respectfully submitted,