

Trademarks, Culture and Corporate Identities

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Intellectual Property and Identity in Post Pandemic
IU Robert H. McKinney School of Law (9 April 2021)



Ethnic (Re)presentation



Cultural Appropriation

"I understand and have deep respect for the significance of the kimono in Japanese culture."

~Kim Kardashian West

Her trademark application for KIMONO SOLUTIONWEAR was abandoned.





WASHINGTON
FOOTBALL TEAM, EST. 1932

Brand and Trademark
Realignment

- Left, 2019
- Right 2021



Brand and Trademark Realignment

- Left, 2019
- Right, 2021

Use of Marks for Social Change

- “We're doing corporate communication. We're sponsoring these images in order to change people's minds and create compassion around social issues. We think of it as art with a social message.”
- ~ Peter Fressola, Benetton's director of communications in North America (quoted in Squires, *Violence in Benetton*, 30 *Artforum* 18 (1992))





Benetton's Social Messaging

- Left, © F/W 1990, "Blanket", Oliviero Toscani
- Top Left & Right, © F/W 1993, "HIV - Positive" Photo: Oliviero Toscani
- Bottom Left & Right, © S/S 1991, "Condoms" Photo: Oliviero Toscani

Benetton Social Messaging

Boat, Oliviero Toscani
February 1992,



The Appropriation of “Woke”



MEMBER'S THESAURUS—The lexicographers of old would be hard put to assemble a dictionary of today's idiom. For definitions not found in Webster or Roget, see box at right.

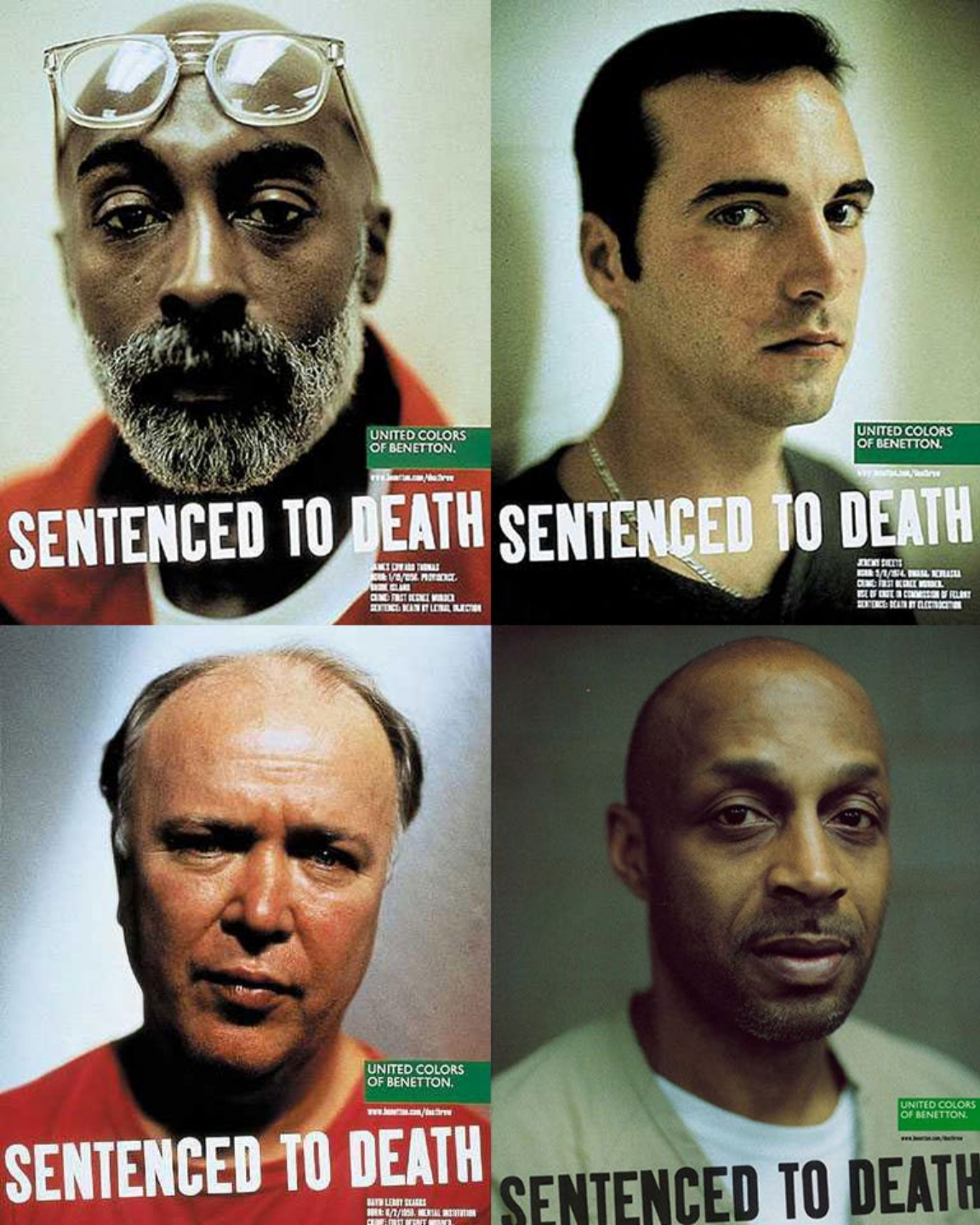
If You're Woke You Dig It

No mickey mouse can be expected to follow today's Negro idiom without a hip assist.

By WILLIAM MELVIN KELLEY



WOKE®



Benetton "Shockvertising" *We, On Death Row*, Oliviero Toscani (2000)

- This advertisement was part of a one-hundred-page anti-death penalty *TALK* magazine insert, which contained pictures and interviews with twenty-five death row inmates from around the U.S.
- Widely criticized by victims' rights groups and others, Benetton issued written apologies to victims' families.
- The photo montage was withdrawn.

PEPSICO and its Faux Pas



Signs of the Times

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	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	90439337		WOKE PAJAMAS	TSDR	LIVE
2	90009607		VOTERSWOKE	TSDR	LIVE
3	90256029		WOEKGVP	TSDR	LIVE
4	90039551		CLIMATE WOKE	TSDR	LIVE
5	90260933		WOKE STRATEGIST	TSDR	LIVE
6	90247416		GET WOKE OR STAY BROKE	TSDR	LIVE
7	90256922		IF YOU'RE NOT WOKE, YOU'LL ALWAYS BE BROKE	TSDR	LIVE
8	90086760	6293850	THE WOKE DESI	TSDR	LIVE
9	90571618		I'M NOT WOKE! I JUST NEVER FELL ASLEEP!	TSDR	LIVE
10	90568025		WOKE KRYPTONITE	TSDR	LIVE
11	90564915		WOKE UP WORTHY	TSDR	LIVE
12	90563125		WOKE BROWN GIRL	TSDR	LIVE
13	90404257		WOKE & HEALTHY WITH ZAKKIYA	TSDR	LIVE
14	90192792		WOKE _ISH APPAREL EST. 2020	TSDR	LIVE
15	90095501		P. WOKE	TSDR	LIVE
16	90537279		WOKE BOTANICALS	TSDR	LIVE
17	90221275		WOKE HOMESCHOOLING	TSDR	LIVE
18	90172280		WOKE IS THE NEW SEXY	TSDR	LIVE
19	90172244		WOKE IS THE NEW SEXY	TSDR	LIVE
20	90379555		THE WOKE AND WEALTHY COACH	TSDR	LIVE
21	90366417		WOKE MOTHERS	TSDR	LIVE
22	90366093		WOKE UP!	TSDR	LIVE
23	90195221		WOKESTAR	TSDR	LIVE
24	90360470		WOKE ISN'T ENOUGH	TSDR	LIVE

Virtue
Signaling



BCORPORATION for Association services, namely, promoting socially responsible business practices by identifying and promoting business policies and practices that benefit employees, communities, the economy, the environment and the commercial health of the business(US Reg. No. 3316897;Section 8 cancellation, 2018)

RAINBOW TICK for Certification services, Medical services; mental health services; Personal and social services rendered by others to meet the needs of individuals; social work services. (NZ Trademark Registration No. 973581)

Final Thoughts

- When we launder our desire for civil rights and equality through the lens of branding culture, everything, even resistance, becomes commodified. The marketplace of ideas becomes a battleground of brands, trademarks, images, and sardonic hashtags. Even though the Supreme Court assured us, time and again, in *Tam* that trademarks are private speech, not government speech, there is an inescapable difference between a word and a brand. Brands are more than just private speech. They are commodified, commercial speech with public implications.”

~ Sonia Katyal, *Brands Behaving Badly*, 109 Trademark Rep. 819 (2019)

THANK
YOU!

