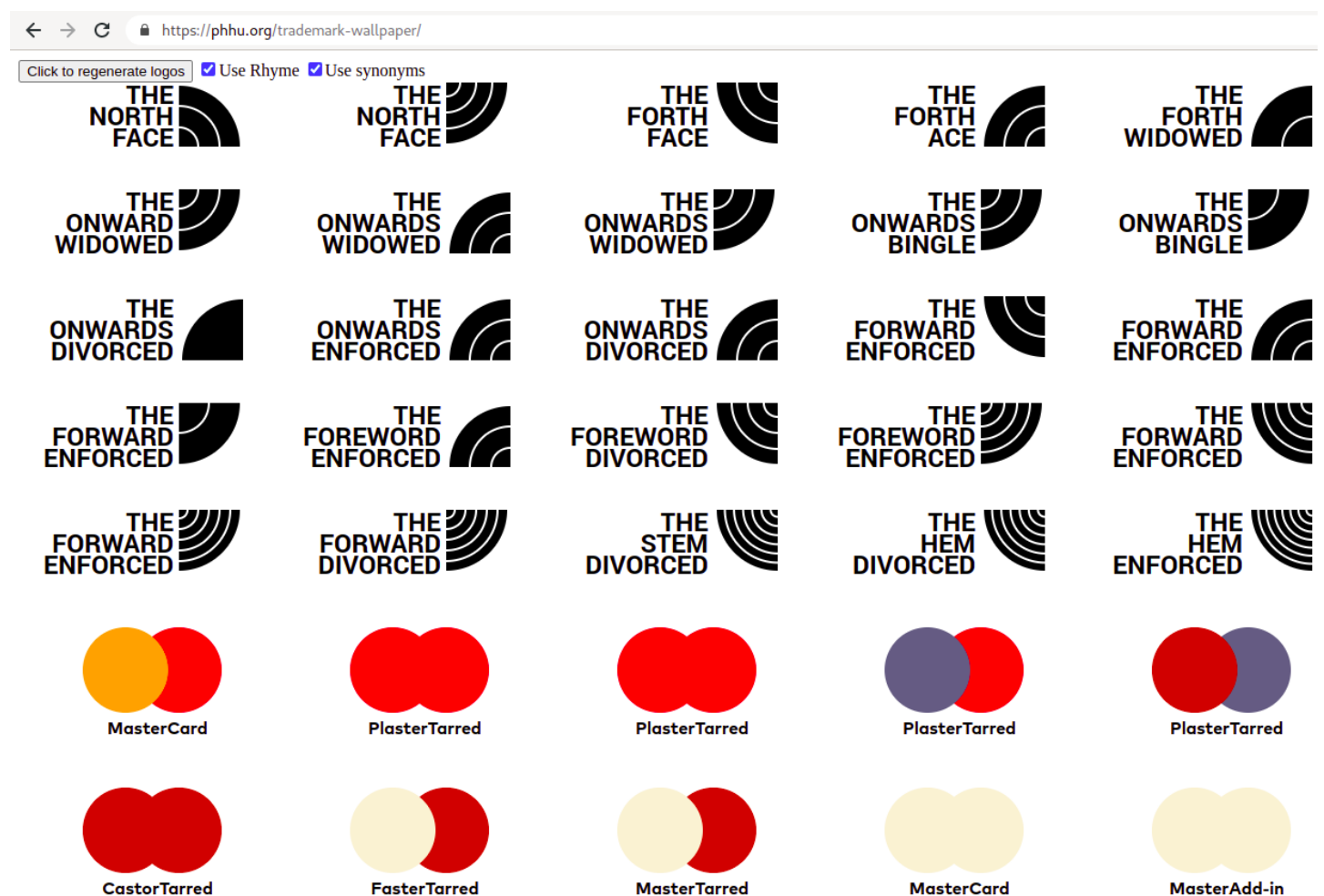


# Trademark Wallpaper

- My project is online at <https://phhu.org/trademark-wallpaper>
- The source code is available at <https://github.com/phhu/trademark-wallpaper>
- The video presentation is at <https://phhu.org/trademark-wallpaper/pres.mp4>

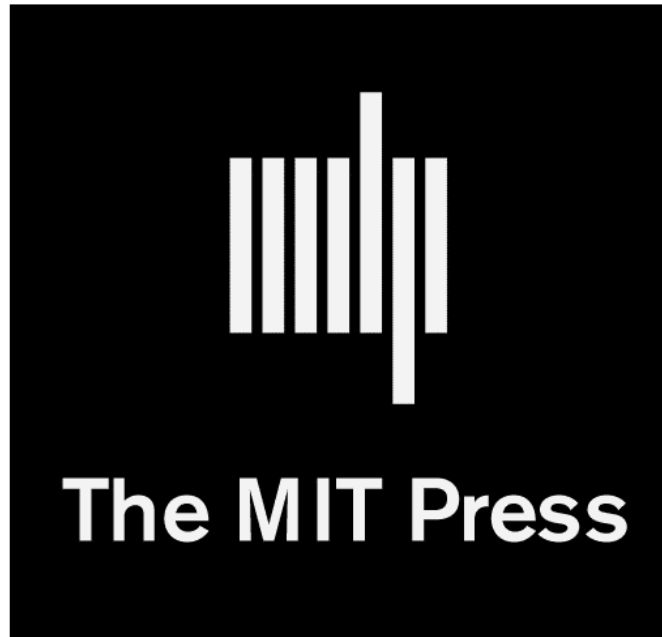
## Screenshot



*Screenshot: This shows two series of logos, one based on the "The North Face" logo, and another on the "Mastercard" logo. The original logo is in the top left of each series, and variations are slowly introduced, working right and then down in rows. Variations are generated using rhymes and synonyms. As we progress down the series, the trademarks become less like the original one, creating a grey issue as to where and whether the generated trademarks would violate the original ones.*

# Presentation

When designing a trademark or logo, it is not uncommon to begin by referencing existing trademarks, either as sources of creative inspiration, or perhaps also with the intent of being somewhat similar to the imitated mark in order benefit from its reputation and goodwill , or to compete with it in a similar market. For example, I would identify a similarity between the MIT Press logo, and that of the Royal Conservatoire of Scotland, both of which relate to educational institutions:



This similarity has not led to litigation as far as I am aware. Sometimes though such imitation is done for reasons of parody and profit, as in the case of "The South Butt", which was a real (commercial) parody of "The North Face", operating in the same market of outdoor clothing:





In the case of The South Butt, it's notable that a number of steps were taken by creator Jimmy Winkelmann Jr to distinguish the trademark: (a) he used antonyms (opposites) of two works in the trademark, with "North" becoming "South", and "Face" becoming "Butt", and (b) he rearranged the graphic part of the logo, reducing the number of shapes from three to two, and changing their orientation and location relative to the text. Despite this, he was still forced to close the business, having been sued by the North Face , and eventually settling out of court <sup>[1]</sup>

The legal point here is that the North Face is an established brand in the clothing market, and could probably argue that customers might be confused by the South Butt brand, and in any case are allowed to claim damages in such a case, as described in 15 U.S. Code § 1125<sup>[2]</sup>:

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in

commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

Winkelmann did take some steps to avoid possible confusion though, observing that "everyone can tell a butt from a face", and based on this, I wondered how many discrete transformational steps from an existing logo one can go in order to find a trademark that is valid. I realised there is likely a considerable grey area to be explored along a spectrum of marks creating by iterating discrete transformations.

Based on this, for this project I have made a draft project which creates such series, based on the "The North Face" logo and also the "Mastercard" logo. Variations are created by iteratively changing the words "north", "face", "master" and "card" using synonyms and rhymes (but not antonyms, for technical and time reasons), and also varying colour and making some geometric changes to the logos.

Some of the logos produced by this project would presumably count as trademark violations too: consider a tennis equipment company called "the Forth Ace":



But others might be acceptable, such as "The Hem Enforced" as a clothing modification and repair company, with a logo perhaps suggesting reals of thread or fabric:



Or would MasterCard sue in the case of an adult entertainment business called "MasterTease"? Is this a suitably different market to Mastercards - or is Mastercard a suitably famous mark, entitled to protection against the possiblity it might enter such an industry?



This project is a rough proof of concept, and pressure of time has prevented me from introducing all the transformations I would have liked to (in particular, I would like to be able to gradually interpolate between two existing trademarks, as I did previously with melodies (see <https://phhu.org/melody-interp>). But the principle works, and its notable that as a creative technique, generating variations with the right amount and kinds of variety sometimes produces ideas good ideas, that the human mind might not arrive at.

In legal terms, such a tool could at a push be used to resolve trademark disputes. Consider *Christian Louboutin v. Yves Saint Laurent* (696 F. 3d 206 - Court of Appeals, 2nd Circuit 2012), where a question is raised about what shades of red are (not) allowed on the soles of shoes: if we could generate multiple examples, maybe allowing customers to order custom models with just-in-time production, we could perhaps force the courts (at expense) to draw a line. Or we could perhaps in the case of *T-MOBILE vs AIO WIRELESS LLC* (991 F.Supp.2d 888 (2014)) draw a series of logos and try to resolve the issue of when the colour magenta ceases to be magenta (or, otherwise, explore possibilities of changing fonts and geometry to produce an acceptable trademark, without the need of expensive litigation and lawyers - or even the expense of graphic designers!)



1. See <https://www.nbcnews.com/id/wbna36334733>, and also <https://assets.documentcloud.org/documents/484472/north-face-vs-butt-face-092112-memorandum-in.pdf> ((*North Face Apparel Corp v Williams Pharmacy et al*, 4:09-cv-02029, ↩)
2. See <https://www.law.cornell.edu/uscode/text/15/1125> ↩