

U.S. Supreme Court Invalidates Law Against Offensive Trademarks

Legal Alert
June 24, 2019

Iancu v. Brunetti

On Monday, June 24, 2019, the U.S. Supreme Court declared unconstitutional a federal law that barred offensive or vulgar trademarks. In *Iancu v. Brunetti*, the Court held in a 6-3 decision that the Lanham Act's prohibition on the registration of "immoral" or "scandalous" trademarks violates the First Amendment by disfavoring certain ideas.

Among the Lanham Act's restrictions on trademark registration is a prohibition on the registration of any mark that "consists of . . . immoral . . . or scandalous matter." 15 U.S.C. § 1052(a). Citing this provision, the U.S. Patent and Trademark Office ("PTO") in this case refused to grant a trademark to Brunetti for the mark "FUCT," which served as the brand name for a line of clothing. The PTO found that the mark was offensive and vulgar because it suggests a word of profanity with sexual, misogynistic and violent connotations. Brunetti challenged these decisions, arguing that the Lanham Act bar on immoral or scandalous marks violated the First Amendment.

The Supreme Court determined that the restriction on offensive trademarks directly conflicted with the First Amendment. The Court found that application of the terms "immoral" and "scandalous" to be viewpoint based: permitting registration of marks that champion society's sense of morality but barring messages that defy society's sense of decency or propriety. For instance, the PTO approved registration of marks expressing generally accepted views on topics such as drug use, religion, or terrorism, but denied registration of marks communicating immoral or scandalous views about the same topics. Because the law discriminates between non-offensive ideas and offensive ones, the law violates the First Amendment.

This marks the second time in the last two years that the Court struck down restrictions on marks citing free speech grounds. In

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Matal v. Tam (2017), the Court invalidated the bar on registration of marks that disparage people. That decision, like this one, concluded that a law disfavoring offensive ideas discriminates against such ideas on the basis of viewpoint, in violation of the First Amendment.

Some view the *Iancu v. Brunetti* and *Matal v. Tam* decisions as significant because they possibly expand the right to trademark registration. Marks that feature unpopular ideas or profane terms may now be eligible for trademark protection and the valuable benefits that accompany trademark protection.

Notably, the full Court agreed that the bar on “immoral” trademarks was unconstitutional. Three members of the Court, however, opined that a narrow construction of “scandalous”—limited to a viewpoint-neutral bar on obscene, vulgar or profane content—could be constitutional. While such content is now eligible for trademark registration under the majority opinion of the Court, future congressional action could re-impose limits on trademark eligibility for marks containing such content.

If you have questions about the implications of this case on a trademark registration or trademark proceeding, please contact a member of Foster Pepper’s [Intellectual Property](#) group.