

## FUCT UP! CAN WE NOW REGISTER IMMORAL AND SCANDALOUS TRADEMARKS?

In 2011, Erik Brunetti attempted to register the mark “FUCT” for use with apparel, and the USPTO refused registration on the basis of the “immoral or scandalous” bar to registration in the Lanham Act. Brunetti then challenged the ruling as violating the First Amendment.

On June 24, in *Iancu v. Brunetti*, 139 S.Ct. 782 (2019), the Supreme Court invalidated the provision of the Lanham Act that prohibited the registration of “immoral or scandalous” marks. The Supreme Court ruled the prohibition as unconstitutional under the First Amendment.

If you are a company with edgier, humorous marks that you have previously not been able to register, now might be a good time to file those applications.

### “Immoral or Scandalous” Ban Invalidated

With a 5-member majority, Justice Kagan delivered the opinion of the Court, holding that the ban on registration of “immoral or scandalous” marks was “viewpoint-based” and, therefore, in violation of the First Amendment. The court concluded that the “immoral or scandalous” ban denies the benefit of trademark registration to marks which express unpopular ideas such as: “YOU CAN’T SPELL HEALTHCARE WITHOUT THC” for pain-relief medication, “MARIJUANA COLA” and “KO KANE” for beverages, “BONG HITS FOR JESUS” and “BABY AL-QAEDA.”

### Implications

The first implication is that we may see a rush to the trademark office with applications for numerous offensive or controversial trademarks.

If you are a company with edgier, humorous marks that you have previously not been able to or not tried to register, now might be a good time to file those applications.

Although there is the possibility of future limitations, the USPTO may be required to grant these marks...for now.

For more information in the Brunetti case or other trademark matters, please contact **Dana Brody-Brown** in our San Jose office at (408) 947-2433.

# Primary Contact

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