

OPINION & ANALYSIS

Supreme Court Strikes Morality Standard for Trademarks

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The United States Supreme Court in Washington, D.C. (Lance Turner)

The U.S. Supreme Court made a big change to trademark law on Monday, [striking down a provision](#) that precluded federal registration of any trademark that "consists of or comprises immoral, deceptive or scandalous matter."

Here's a brief explanation of the history and process behind the [decision](#).

The internet is known as a vast free speech zone protected by the Free Speech Clause of our First Amendment. The same internet is also the backbone to a \$500 billion dollar e-commerce economy in the United States. It is where online shoppers can buy virtually anything, and trademarks are at the heart of online retail because trademarks help consumers select products that we can trust.

THIS IS AN OPINION

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If you sell a branded product or service online, then a trademark attorney will likely urge you to secure a federal trademark registration with the U.S. Patent and Trademark Office. Online retailer Amazon now requires vendors to have a federal registration to enroll in Amazon's Brand Registry to prevent online fraud and counterfeit products.



Federal trademark regulations safeguard not only the integrity of brands but also the moral sensibilities of the public. As societal norms have evolved, the tension mounted between the First Amendment and trademark laws.

The trademark laws, at [15 U.S.C. § 1052\(a\)](#), precluded federal registration of any trademark that "consists of or comprises immoral, deceptive or scandalous matter." This law denied registration for marks having religious connotations, drug references, sexual innuendos and real or perceived obscenities.

The process of registering your trademark is straightforward. You apply with the U.S. Patent and Trademark Office, and an examining attorney decides if your trademark meets the requirements. But before today's U.S. Supreme Court decision, if an examining attorney believed your branding was immoral, deceptive, or scandalous, then you would not get a trademark registration, and you would potentially miss valuable federal trademark benefits and rights.

This morality standard was not consistently applied. Take for example the trademark application for "MADONNA" as a brand for wine. The examining attorney rejected the mark as too scandalous an association of our Virgin Mary with wine. Conversely, a different examining attorney approved registration of "AMISH" for hawking cigars.

The question in this case, [Iancu v. Brunetti](#), was whether these morality restrictions violated the constitutionally protected rights of free speech and expression. In this case, the examining attorney refused registration of the trademark for "FUCT," which is purportedly the acronym for the slogan "Friends U Can't Trust." Arguing before the Supreme Court, Brunetti claimed it is not the government's job to decide what is "immoral, deceptive or scandalous."

The International Trademark Association (INTA), along with many other powerful voices in the law, joined to strike the morality provisions. The American Intellectual Property Law Association (AIPLA), having 13,500 attorney members, also submitted a brief arguing the law is unconstitutional.

Notably, even Americans for Prosperity, a group known for supporting very conservative political candidates, submitted briefs urging the Supreme Court strike this law as violating the First Amendment.

We're witnessing an unusual development about the boundaries of free speech in our society and whether the government can decide morality. *Iancu v. Brunetti* was decided by a conservative Supreme Court. The authors cannot decide if it is ironic for this particular Supreme Court to have disposed of the morality standard for trademark registrations.