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Supreme Court Strikes Down the Prohibition on Registration of Immoral and Scandalous Marks *Iancu v. Brunetti*

Until recently, Federal law barred registration of immoral or scandalous matter or matters that may disparage or falsely suggest a connection with persons, living or dead (Section 2(a) of the Lanham Act 15 U.S.C. S1052(a)).

In 2017, the Supreme Court of the United States ruled on the disparaging provision of the Lanham Act and found it unconstitutional as it violates the First Amendment. *Matal v. Tam*, 137 S. Ct. 1744 (2017). In this case, a dance-rock band applied for federal protection of the band's name "The Slants," and the Trademark Office rejected the registration because the term "Slants" was considered a derogatory term for persons of Asian descent, and members of the band are Asian-American. Thus, the Supreme Court's ban allowed registration of trademarks that were not disparaging about a person, but continued denial of the trademarks with immoral or scandalous matter.

Two years later, in 2019, the Supreme Court went even further and found the Lanham Act's prohibition to register "immoral" or "scandalous" trademarks to infringe on the First Amendment. *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019). In this case, a trademark application for streetwear brand "Fuct" was denied registration because the applied-for mark was phonetically similar to the well-established "F" word as "scandalous."

Shortly after the *Iancu* decision, the USPTO issued its own Examination Guide and explained how it will examine applications with immoral or scandalous matter under the "scandalous provision". While the *Iancu* case was pending before the Supreme Court, the USPTO had been suspending the examination of all marks with immoral or scandalous refusals. Now, the USPTO acknowledges that the scandalous provision is no longer a valid ground to refuse or cancel a trademark registration.