

ALERT

Wiley Rein Helps Secure Important First Amendment Win in Supreme Court Trademark Case

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Washington, DC - Wiley Rein LLP helped secure an important First Amendment victory in *Iancu v. Brunetti*, a high-profile U.S. Supreme Court case concerning the U.S. Patent and Trademark Office's refusal to register immoral or scandalous trademarks.

The case arose from the USPTO's refusal to register Erik Brunetti's mark "FUCTION," which Mr. Brunetti used as a brand for his clothing line. Finding that the mark was "highly offensive" and "vulgar," and that it had "decidedly negative sexual connotations," the USPTO denied registration under the Lanham Act's prohibition on registering "immoral" or "scandalous" trademarks.

When the case reached the Supreme Court, Wiley Rein filed an amicus brief on behalf of the Rutherford Institute, arguing that the USPTO's refusal to register "immoral" or "scandalous" trademarks was unconstitutional viewpoint-based discrimination. "Trademark registration cannot be used to burden speech in an effort to shield the public from offense," Wiley Rein argued in its brief. "This is anathema to the First Amendment."

In a majority opinion written by Justice Kagan, the Supreme Court held that the Lanham Act's ban on immoral or scandalous trademarks violates the First Amendment. Endorsing arguments made in Wiley Rein's amicus brief, the majority wrote that the prohibition on registering immoral or scandalous marks "discriminates on the basis of viewpoint" because it "on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of

Authors

Christopher Kelly
Partner
202.719.7115
ckelly@wiley.law

Wesley E. Weeks
Partner
202.719.7569
wweeks@wiley.law

Practice Areas

Intellectual Property

approval and those provoking offense and condemnation,” and “favors the former, and disfavors the latter.”

Wiley Rein’s amicus brief can be found [here](#). The Supreme Court’s opinion can be found [here](#).