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Supreme Court Holds Bar Against Registration of Immoral or Scandalous Marks Violates the First Amendment

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Let's face it. The Lanham Act's prohibition against registration of "immoral … or scandalous marks" has had little impact on most trademark practitioners — except those lucky enough to have edgy clients or unlucky enough to have depraved ones. Scandals in the trademark world are simply hard to come by.

The same is true for *Ianacu v. Brunetti*, in which the Supreme Court held the Lanham Act's provision barring registration of "immoral … or scandalous" marks to violate constitutionally-protected freedom of speech. See, No. 18-302 (June 24, 2019). Although Justice Kagan made the decision a fun read, it nonetheless is mostly of academic or societal, rather than practical interest — especially since two terms ago, in *Matal v. Tam*, 137 S. Ct. 1744 (2017), the Court held the neighboring clause against the registration of potentially disparaging marks unconstitutional. It was only a matter of time before the Court struck down the "immoral or scandalous" prohibition on the same basis.