

USPTO To Suspend New Trademark Applications Containing Scandalous Or Disparaging Material

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On March 10, 2016, The United States Patent and Trademark Office (“USPTO”) issued new examination guidance for trademark applications containing potentially immoral or scandalous matter, which is expressly prohibited by Section 2(a) of the Lanham Act (the “Act”).

Pending litigation has questioned the constitutionality of this section of the Act which prohibits the registration of any trademark that “consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.” (15 U.S.C. § 2(a)).

In particular, the issue of scandalousness is raised by *In re Brunetti* and the issue of disparagement is raised by *In re Tam* and *Pro-Football v. Blackhorse*. In light of this pending litigation, examining trademark attorneys at the USPTO will suspend any new trademark application containing potentially scandalous or disparaging material until these matters are resolved. Applicants are generally not required to respond to suspension notices but should be aware that such suspensions could delay the review process of new trademark applications.

The full text of the USPTO’s guidance on this topic can be found here: <http://www.uspto.gov/trademark/guides-and-manuals/trademark-examination-guides>

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