

Topic: Trademark Registration Rules and Review Procedures

Question by: Thomas B. Connolly

Jurisdiction: New Hampshire

Date: November 14, 2019

Jurisdiction	Question(s)
	<p>I am writing to survey IACA's U.S. members that administer their state's Trademark Act.</p> <p>Recent U.S. Supreme Court decisions (Matal v. Tam (2017), "Slants" case and Iancu v. Brunetti (2019), the "FUCT" case) struck down as unconstitutional certain provisions in federal trademark law (Lanham Act) that allowed the USPTO to deny registration of marks that were deemed "disparaging" of persons, as well as marks that "consists of or comprises immoral, deceptive, or scandalous matter."</p> <p>As most state's trademark laws (including N.H.) and the Model State Trademark Act, have similar restrictive language, I am asking:</p> <ol style="list-style-type: none"> 1) Has your State made or proposed any changes to state law or your Department's administrative rules regarding registration of trademarks in response to these decisions? 2) Have you made any changes to your procedures for trademark examination or approval of applications related to these terms?
Manitoba	
Corporations Canada	
Alabama	
Alaska	
Arizona	
Arkansas	

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California	<ol style="list-style-type: none"> 1) Has your State made or proposed any changes to state law or your Department's administrative rules regarding registration of trademarks in response to these decisions? <p>California has not made or proposed any changes to California Business and Professions Code section 14205 in response to these decisions. California Business and Professions Code section 14205 provides:</p> <p>"A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it meets any of the following criteria:</p> <ol style="list-style-type: none"> (a) It consists of or comprises immoral, deceptive, or scandalous matter. (b) It consists of or comprises matter that may disparage or falsely suggest a connection with persons living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute...." <ol style="list-style-type: none"> 2) Have you made any changes to your procedures for trademark examination or approval of applications related to these terms? <p>Examiners in California generally will not reject an Application for Registration of a Trademark or Service Mark based upon the mark consisting of (i) immoral or scandalous matter or (ii) disparaging persons, living or dead, institutions, beliefs or national symbols. However, issues relating to these are rare. As a result, major changes to procedures in place for trademark examination or approval have not been necessary.</p>
Colorado	

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Connecticut	
Delaware	
District of Columbia	
Florida	
Georgia	
Hawaii	
Idaho	
Illinois	
Indiana	<p>We actually just had a meeting with a local attorney and law professor. She did a great job explaining the Court's rulings and how those rulings impact states that adopted the model TM act. She also provide some perspective on how the USPTO is changing their procedures.</p> <p>We are currently considering legislation that would secure/make clear the limited authority to reject TM applications that remains following these rulings. This authority would be based on the Court's rulings and comments. We are expecting draft language soon. If you are interested I would be happy to share it with you.</p>
Iowa	
Kansas	

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Kentucky	
Louisiana	Louisiana's answer to both questions is no.
Maine	
Maryland	
Massachusetts	Massachusetts' answers to both of the below questions is no.

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Michigan	<p>Michigan's Trademarks and Service Marks Act, MCL 429.31 et seq, mirrors the federal trademark statute (the Lanham Act).</p> <ol style="list-style-type: none"> 1. Has your State made or proposed any changes to state law or your Department's administrative rules regarding registration of trademarks in response to these decisions? <ul style="list-style-type: none"> * Michigan's statute does not provide rulemaking authority regarding registration of marks. 1. Have you made any changes to your procedures for trademark examination or approval of applications related to these terms? <ul style="list-style-type: none"> * We have received a notable Application for Registration of Trademark shortly after the decision in Iancu v. Brunetti, 139 S. Ct. 2294 (2019) was issued. The application was to trademark "Exekute Killer Kops." It was reviewed in light of the recent U.S. Supreme Court decision. You can find the application and the letter detailing the grounds for rejection at: www.michigan.gov/corprejectedsearch<https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.michigan.gov%2Fcorprejectedsearch&data=02%7C01%7CDerrossettA1%40michigan.gov%7C7597d4e974dc45c7824508d769f5050e%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C637094373376490049&sdata=i0RK5PBjzvzGuJiM0TynfWX1zqlsqLL10AQQ42liaw%3D&reserved=0>. The date of rejection was 07/26/2019.
Minnesota	Minnesota's answer to both questions is no.
Mississippi	

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Missouri	
Montana	<p>We still have staff perform manual compliance on state TM registrations, and follow the laws in Montana that are all listed within this link: https://leg.mt.gov/bills/mca/title_0300/chapter_0130/part_0030/sections_index.html</p> <p>I believe both answers are ?no? for you under our current law.</p>
Nebraska	
Nevada	Nevada statutes do address this (copy below). All mark registrations are reviewed by staff and may be rejected.
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	

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Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	Tennessee has not addressed this issue yet.

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Texas	<ol style="list-style-type: none"> 1) Has your State made or proposed any changes to state law or your Department's administrative rules regarding registration of trademarks in response to these decisions? <p>Our legislature meets every odd numbered year, so there is no pending legislation to amend the Texas trademark law at this time. I second Betsy's request, and would be interested in seeing any proposed legislation when you are ready to share. Since our administrative rules on trademarks don't deal with this specific issue, there is no need to propose any changes to the trademark rules.</p> <ol style="list-style-type: none"> 2) Have you made any changes to your procedures for trademark examination or approval of applications related to these terms? <p>While we rarely receive applications where these types of objections would be raised, we have decided to follow the procedures and guidelines of the USPTO should we receive an application for registration of a trademark to which this would apply.</p>
Utah	
Vermont	
Virginia	
Washington	
West Virginia	

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Wisconsin	
Wyoming	

Additional comments:

Full text of email:

Greetings!

I am writing to survey IACA's U.S. members that administer their state's Trademark Act.

Recent U.S. Supreme Court decisions (Matal v. Tam (2017), "Slants" case and Iancu v. Brunetti (2019), the "FUCT" case) struck down as unconstitutional certain provisions in federal trademark law (Lanham Act) that allowed the USPTO to deny registration of marks that were deemed "disparaging" of persons, as well as marks that "consists of or comprises immoral, deceptive, or scandalous matter."

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Thanks for your time and assistance!

Tom

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Thomas B. Connolly

Assistant Secretary of State

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603.271.0716 direct