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Our Latest Industry Insights

IP File
March 30, 2016
Freedom of Speech Protects “Disparaging” Marks, Federal Circuit Holds

By: Dan Liu
In a recent landmark ruling, the Federal Circuit, sitting en banc, held that Section 2(a) of the Lanham Act’s ban on “disparaging” marks violates the First Amendment.[1] Section 2(a) provides that no trademark shall be refused registration “unless it consists of or comprises . . . matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols[.]”[2] The majority found that the government’s prohibition of registration of disparaging marks “amounts to viewpoint discrimination, and under the strict scrutiny review, . . . is unconstitutional.”[3] It further concluded that such prohibition is unconstitutional even under the intermediate scrutiny review because the government offered no legitimate interests to justify such prohibition.[4]

TAGS: Federal Circuit, First Amendment, Intellectual Property, Intellectual Property, Lanham Act, Trademark & Trade Dress, Trademarks, USPTO

IP File
January 28, 2015
For the Redskins, NFL Playoff Season Means. . . Constitutionality Questions?

The NFL playoffs aren’t the only big football news happening this month! The U.S. Department of Justice recently decided to intervene in the Washington Redskins trademark litigation over the constitutionality of certain provisions of the Lanham Act.

TAGS: commercial speech, doj, eastern district of virginia, federal court, fifth amendment, first amendment, football, free speech, intellectual property, lanham act, lanham act section 2a, native americans, nfl, notice of intervention, redskins, registered trademark, trademark & trade dress, trademark litigation, trademarks, ttab, u.s. department of justice, u.s. district court, u.s. trademark trial and appeal board, washington redskins

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IP File
January 14, 2015

Low Octane Levels? Octane Fitness' Impact in the Trademark and Trade Secret Realms

We have previously addressed the Supreme Court's decision in Octane Fitness, LLC v. Icon Health & Fitness, Inc., 12-1184, Slip Op. at 7 (2014), which relaxed the standard for awarding attorney's fees under Section 285 of the Patent Act ("§285") and ruled that decisions on §285 are entitled to deference on appeal. In the patent litigation realm, the Octane Fitness decision does not seem to have led to an overwhelming trend toward awarding fees. It does, however, beg the question: how has this impacted the standard for awarding attorney's fees in other types of intellectual property cases, such as trademarks and trade secrets?

TAGS: apple inc. v. samsung elecs. co., bmw of north america v. cudahar, fair wind sailing v. dempster, intellectual property, lanham act, monster daddy v. monster cable products, ninth circuit, octane fitness, octane fitness llc v. icon health & fitness inc., patent act, patent infringement, patent litigation, patent litigation, premium balloon accessories v. creative ballon mfg., sixth circuit, supreme court, third circuit court of appeals, tivo research, tns, tns media research v. tivo research, trade secret & unfair competition, trade secret statutes, trade secrets, trademark & trade dress, trademark attorney fees, trademarks, uniform trade secrets act, utsa

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IP File
April 30, 2014

U.S. Supreme Court Expands Scope of Potential Plaintiffs in Lanham Act False Advertising Claims – No Longer Limited to Actual Competitors

One of the several claims available to plaintiffs under the Lanham Act is a claim for "false advertising." Section 1125(a)(1)(B) of the Lanham Act states that:(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

TAGS: false advertising, intellectual property, lanham act, lexmark

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