

No. 18-302

**In the
Supreme Court of the United States**

ANDREI IANCU, UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR,
UNITED STATES PATENT AND TRADEMARK OFFICE,
Petitioner,

v.

ERIK BRUNETTI,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit**

**BRIEF OF AMICUS CURIAE SIMON TAM
IN SUPPORT OF RESPONDENT**

STUART BANNER
Counsel of Record
UCLA School of Law
Supreme Court Clinic
405 Hilgard Ave.
Los Angeles, CA 90095
(310) 206-8506
banner@law.ucla.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT	2
The ban on registering immoral trademarks is the last vestige of a Victorian legal culture in which government officials routinely restricted speech to promote morality.	2
A. When Congress banned the registration of immoral trademarks, there were many other areas of law in which judges and other officials restricted speech they considered immoral.	3
1. Copyright	3
2. The Comstock laws	6
3. Film censorship	8
B. The Lanham Act’s “immoral ... or scandalous” clause is the last remnant of federal law authorizing the restriction of immoral but non-obscene speech.	10
C. The only interest advanced by the ban on registering immoral trademarks is the now-impermissible Victorian aim of insulating the public from offensive speech.	11
CONCLUSION	13

TABLE OF AUTHORITIES

<i>Barnes v. Miner</i> , 122 F. 480 (C.C.S.D.N.Y. 1903)	5
<i>Bleistein v. Donaldson Lithographing Co.</i> , 188 U.S. 239 (1903)	6
<i>Block v. City of Chicago</i> , 87 N.E. 1011 (Ill. 1909)	8, 9
<i>Broder v. Zeno Mauvais Music Co.</i> , 88 F. 74 (C.C.N.D. Cal. 1898)	4
<i>Carey v. Population Servs., Int’l</i> , 431 U.S. 678 (1977)	11
<i>Forsyth Cty. v. Nationalist Movement</i> , 505 U.S. 123 (1992)	12
<i>Hallmark Prods., Inc. v. Carroll</i> , 121 A.2d 584 (Pa. 1956)	9
<i>Hamling v. United States</i> , 418 U.S. 87 (1974)	10
<i>Hoffman v. Le Traunik</i> , 209 F. 375 (N.D.N.Y. 1913)	5
<i>Joseph Burstyn, Inc. v. Wilson</i> , 343 U.S. 495 (1952)	9
<i>Keene v. Kimball</i> , 82 Mass. 545 (1860)	5
<i>Manual Enters., Inc. v. Day</i> , 370 U.S. 478 (1962)	10
<i>Martinetti v. Maguire</i> , 16 F. Cas. 920 (C.C.D. Cal. 1867)	4
<i>Matal v. Tam</i> , 137 S. Ct. 1744 (2017)	1, 12
<i>Message Photo-Play Co. v. Bell</i> , 166 N.Y.S. 338 (N.Y. App. Div. 1917)	9
<i>Miller v. California</i> , 413 U.S. 15 (1973)	11
<i>Mitchell Bros. Film Grp. v. Cinema Adult Theater</i> , 604 F.2d 852 (5th Cir. 1979)	5
<i>Mutual Film Corp. v. Industrial Comm’n</i> , 236 U.S. 230 (1915)	8

<i>People v. Muller</i> , 96 N.Y. 408 (1884)	7
<i>Roth v. United States</i> , 354 U.S. 476 (1957)	11
<i>Shook v. Daly</i> , 49 How. Pr. 366 (N.Y. Ct. Comm. Pleas 1875)	5
<i>Snyder v. Phelps</i> , 562 U.S. 443 (2011)	12
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989)	12
<i>United States v. 12 200-Ft. Reels of Super 8MM. Film</i> , 413 U.S. 123 (1973)	10
<i>United States v. 31 Photographs</i> , 156 F. Supp. 350 (S.D.N.Y. 1957)	10
<i>United States v. Bennett</i> , 24 F. Cas. 1093 (C.C.S.D.N.Y. 1879)	7
<i>United States v. Britton</i> , 17 F. 731 (S.D. Ohio 1883)	7
<i>United States v. Clarke</i> , 38 F. 732 (E.D. Mo. 1889)	7
18 U.S.C. § 1461	10
18 U.S.C. § 1465	10
Comstock Laws:	
17 Stat. 302 (1872)	6
17 Stat. 598 (1873)	6
Trademark Act of 1905, Pub. L. No. 58-84, 33 Stat. 724 (1905)	2
Samantha Barbas, <i>How the Movies Became Speech</i> , 64 Rutgers L. Rev. 665 (2012)	9
William Henry Browne, <i>A Treatise on the Law of Trade-Marks</i> (1873)	2
Easton S. Drone, <i>A Treatise on the Law of Property in Intellectual Productions</i> (1879)	3

Lawrence M. Friedman, <i>Human Rights, Freedom of Expression, and the Rise of the Silver Screen</i> , 43 Hofstra L. Rev. 1 (2014)	8
E.H. Heywood, <i>Cupid's Yokes</i> (1876)	6
Harry D. Nims, <i>The Law of Unfair Competition and Trade-Marks</i> (2d ed. 1917)	2
David M. Rabban, <i>Free Speech in Its Forgotten Years</i> (1997)	6
Joseph Story, <i>Commentaries on Equity Jurisprudence</i> (Isaac F. Redfield ed., 10th ed. 1870)	3
Amy Werbel, <i>Lust on Trial: Censorship and the Rise of American Obscenity in the Age of Anthony Comstock</i> (2018)	6

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.