HOW'S MY POST? DIAL 1-800-EYE-ROLL: LIFE IN A FUCT TRADEMARK UNIVERSE

Posted on May 4, 2022 by Michael A. Kahn



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It started as an ordinary traffic stop—waiting for the light to turn green, thoughts drifting aimlessly, idling behind a Honda Civic, but then I noticed the bumper sticker on that car:

HOW'S MY DRIVING?
DIAL 1-800-EAT-SHIT

Did I laugh? No. Did I smile? No. Was I outraged? No. Was I offended? No. Did I flash back to a blog post of mine from four years ago? How did you guess?

Make America Naughty Again: The Risk of Risqué Trademarks

The choice of a lawyer is an important decision and should not be based solely upon advertisements.

Yes, back in 2018 I wrote the second of what would be several posts on what I described back then as the risk of risqué trademarks. The focus of that post was the fate of Section 2(a) of the Lanham Act, which prohibited the registration of trademarks that were immoral or scandalous and which had been cited by the Trademark Office in rejecting an application to register FUCT for apparel. I flagged the recent decision by the Federal Court of Appeals reversing that denial of a registration on the grounds that the Section 2(a) restriction violated the First Amendment.



Make America Naughty Again: The Risk of Risqué Trademarks

February 21, 2018 |

Two years ago, in a post entitled "Is Your Brand Naughty or Nice? The New Santa at the Trademark Office", I discussed some rulings at the U.S. Trademark Office that suggested that those old fuddy-duddies might be relaxing their view of what types of trademarks violate the immoral/scandalous rule in the Lanham Act. In addition to giving a shout-out to the Office's registration of my new favorite beer trademark—Nut Sack Brown Ale—I offered the following observations on two trademark registration disputes that were working their way up through the courts:

I wondered whether the Supreme Court would review that FUCT decision? And in the interim, what would be the impact of that Court of Appeals decision on applications to register X-rated trademarks?

As I discovered, the FUCT decision had already triggered a race to the Trademark Office with dozens and dozens of new applications to register trademarks containing the word "fuck" or "shit," along with others somewhat more obscure, such as MILF. (*Don't know what that acronym stands for? That's why the Gods, i.e., Larry Page and Sergey Brin, invented Google.*)

Are We Fuct? The Supreme Court to Answer this Trademark Question

A year later, after the Supreme Court announced that it would indeed review the appellate court decision in the FUCT case, I revisited the issue in a post entitled "Are We Fuct? The Supreme Court to Answer this Trademark Question." And I noted at the end of that post that the number of pending applications to register trademarks that include the word "fuck" had doubled since my earlier post.



Are We Fuct? The Supreme Court to Answer this Trademark Question

February 18, 2019 |

My favorite scene in the movie National Lampoon's Christmas Vacation



Christmas Eve. A knock at the front door. Clark Griswold (Chevy Chase) opens the door. It's a messenger delivery of his eagerly awaited Christmas bonus—the one he hopes will be big enough to fund construction of the backyard pool. His extended family gathers around as Clark opens the envelope. He stares at the contents. His wife finally asks, "Clark, what's wrong. Is it bigger than you expected? Smaller? What is it?" After a pause, Clark mumbles, "It's

But my ongoing confusion—revisited as I sat idling behind that Hondo Civic with the bumper sticker—was over the commercial potential of obtaining an X-rated trademark registration. In other words, how many people out there would want to drive around with that bumper sticker on the back of their car? Surely no parent waiting in a school carpool line. Or a member of a church choir. Or a

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schoolteacher. Or a doctor or member of the PTA or Boy Scout Leader. Or, well, whatever.

And thus what was the potential market and profit for someone willing to finance the registration of a trademark for that bumper sticker?

Well, in June of 2019 the Supreme Court did indeed affirm the Court of Appeals ruling, holding that the Lanham Act's prohibition on registration of "immoral or scandalous" trademarks violates the First Amendment.

However, several justices expressed concern over the consequences of that ruling, as best exemplified by Justice Sotomayor's separate opinion, which opened:

> *"The Court's decision today will beget unfortunate results. With the Lanham Act's scandalous-marks provision, 15 U.S.C. § 1052(a), struck down as unconstitutional viewpoint discrimination, the Government will have no statutory basis to refuse (and thus no choice but to begin) registering marks containing the most vulgar, profane, or obscene words and images imaginable."*

She warned of "the coming rush to register such trademarks —and the Government's immediate powerlessness to say no."

Current Stats for X-Rated Trademark Registration Applications

More than two years have elapsed since that warning. So what are the current stats for x-rated trademark registration applications? Your humble scribe has done the down-and-dirty research and can report as follows:

Noteworthy NSFW Trademark Registrations

- The Mom to MILF Makeover® (for medical clinical services)
- 60plus MILFs® (magazine featuring mature nude female models)]
- Dick Sucking Lips® (exfoliating scrubs for cosmetic purposes)

Finally, I note that there are currently 47 trademark registrations beginning with 1-800, including 1-800-LIQUORS, 1-800-LASIC-DOC, and 1-800-ALLSTATE. Fortunately, there is no registration for the 1-800 version I saw on the rear bumper of that Honda Civic. **At least not yet.**

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