

**Examination Guide 2-19**  
**Examination Guidance for Section 2(a)'s**  
**Scandalous Marks Provision after *Iancu v. Brunetti***  
**Issued July 3, 2019**

Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), bars registration of marks that consist of or comprise immoral or scandalous matter (“the scandalousness provision”). In December 2017, the U.S. Court of Appeals for the Federal Circuit held that the scandalousness provision violates the First Amendment of the Constitution because it impermissibly restricts free speech. *In re Brunetti*, 877 F.3d 1330, 125 USPQ2d 1072 (Fed. Cir. 2017). On June 24, 2019, the Supreme Court of the United States decided *Iancu v. Brunetti*, \_\_\_ U.S. \_\_\_, 2019 USPQ2d 232043 (2019), which affirmed the judgment of the Federal Circuit.

As most recently explained in Examination Guide 02-18, the USPTO has been suspending action on pending applications involving marks subject to refusal under the scandalousness provision until the *Brunetti* litigation concludes. The USPTO issues this updated guidance to explain how the USPTO will examine applications following the Supreme Court’s decision in *Brunetti*.

The Supreme Court held that the scandalousness provision is unconstitutional under the Free Speech Clause of the First Amendment because it is facially viewpoint-based. Accordingly, that a mark may consist of or comprise “immoral” or “scandalous” matter is no longer a valid ground on which to refuse registration or cancel a registration. The portions of Trademark Manual of Examining Procedure (TMEP) §1203 that relate specifically to examination of immoral or scandalous matter no longer apply. Applications that received an advisory refusal under the scandalousness provision and were suspended will be removed from suspension and examined for any other requirements or refusals. If an application was previously abandoned after being refused registration under the provision, and is beyond the deadline for filing a petition to revive, a new application may be filed.

The USPTO will begin acting on requests after *Brunetti*’s case returns to the agency, which is at least 25 days after the decision, or on July 19, 2019, at the earliest. *See* Supreme Court Rules 44, 45.