

From: [Lisa Ramsey](#)
To: [TM FR Notices](#)
Subject: Comments on the proposal to increase trademark filing fees
Date: Tuesday, September 24, 2019 12:37:04 PM

With regard to the new \$100 fee for filing letters of protest (\$200 for paper filings), I am concerned that this will harm fair competition and freedom of expression. The USPTO acts as a gatekeeper of the public domain and often does a good job refusing to register trademarks consisting of widely used phrases and common symbols using a failure to function rejection or a rejection based on lack of distinctiveness. But sometimes an examining attorney may not be aware of the meaning of a particular term or symbol. He or she may not know that this language has recently become a trending rallying cry or is part of a meme, or is widely used by a niche community of people to communicate political or social messages or other expression. In this situation it is helpful to allow members of the public to file letters of protest that inform the USPTO of the meaning of these terms and symbols and provide other information that could be useful to the determination of whether to register this language as a trademark. If the information provided in the letter of protest is not helpful, it can be ignored by the examining attorney. The benefits of letters of protest clearly outweigh the costs (i.e., the increased time it takes to review the content of the letter and evaluate whether it contains useful information).

After *Tam* and *Brunetti* it is clear that the right to freedom of expression applies to trademark law. Thus we must consider how trademark laws inhibit free speech, including commercial speech. Allowing registration of widely used phrases and common symbols as trademarks for apparel and other expressive merchandise (e.g., jewelry, mobile phone cases) can chill commercial expression. For example, a registration for a common phrase or symbol for clothing may deter print-on-demand companies from printing that language on the front or back of T-shirts in an ornamental manner and selling those items to consumers who desire clothing displaying that expression because of its non-source-identifying message. Moreover, to avoid secondary trademark liability, online service providers may take down advertisements or listings for products that display the common phrase or symbol after the trademark registrant complains. Thus the registration of widely used phrases and common symbols for such products harms both competitors of the registrant and consumers who have a free speech right to receive this expression from a variety of companies and pay less for it because of fair competition in the marketplace.

Many small businesses cannot afford to challenge another's trademark in court or at the USPTO in an opposition or cancellation proceeding. Filing letters of protest may be the best way for them to help prevent registration of certain words and symbols that should remain in the public domain available for use by everyone in an industry. I know some small business owners who have joined together to keep an eye on frivolous applications to register common terms and symbols as marks for apparel and other expressive merchandise. They have filed letters of protest in the past, and have informed me that many of them cannot afford to continue to provide the USPTO with relevant information about these frivolous applications if a \$100 filing fee must be paid to file each letter of protest. As they are providing a public service, the USPTO should not make changes to trademark fees that discourage members of the public from helping examining attorneys reach an informed decision. The USPTO can best promote fair competition and freedom of commercial expression by continuing to allow letters of protest to be filed without payment of any fee.

Best regards,

Lisa P. Ramsey
University of San Diego School of Law
5998 Alcalá Park
San Diego, CA 92110-2492
T. 619-260-7977
lramsey@sandiego.edu
www.lisapramsey.com