
 KeyCite Red Flag - Severe Negative Treatment

Unconstitutional or Preempted **Held Unconstitutional by** In re Tam, Fed.Cir., Dec. 22, 2015

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

United States Code Annotated
Title 15. Commerce and Trade
Chapter 22. Trademarks (Refs & Annos)
Subchapter I. The Principal Register

15 U.S.C.A. § 1052

§ 1052. Trademarks registrable on principal register; concurrent registration

Effective: October 6, 2006

Currentness

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of Title 19) enters into force with respect to the United States.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in

commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.

A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.

CREDIT(S)

(July 5, 1946, c. 540, Title I, § 2, 60 Stat. 428; Oct. 9, 1962, Pub.L. 87-772, § 2, 76 Stat. 769; Jan. 2, 1975, Pub.L. 93-596, § 1, 88 Stat. 1949; Nov. 16, 1988, Pub.L. 100-667, Title I, § 104, 102 Stat. 3937; Dec. 8, 1993, Pub.L. 103-182, Title III, § 333(a), 107 Stat. 2114; Dec. 8, 1994, Pub.L. 103-465, Title V, § 522, 108 Stat. 4982; Oct. 30, 1998, Pub.L. 105-330, Title II, § 201(a)(2), (12), 112 Stat. 3069, 3070; Aug. 5, 1999, Pub.L. 106-43, § 2(a), 113 Stat. 218; Nov. 29, 1999, Pub.L. 106-113, Div. B, § 1000(a)(9) [Title IV, § 4732(b)(1)(B)], 113 Stat. 1536, 1501A-583; Oct. 6, 2006, Pub.L. 109-312, § 3(a), 120 Stat. 1732.)

Notes of Decisions (4543)

15 U.S.C.A. § 1052, 15 USCA § 1052

Current through P.L. 114-114 (excluding 114-92, 114-94, 114-95 and 114-113) approved 12-28-2015