



US Supreme Court to hear case on vulgar trademarks

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The US Supreme Court takes up Monday the government's refusal to register a trademark by a clothing line named "Fuct," and arguments should be, well, salty.

The case pits a provision of US trademark law that allows the government to deny requests on the basis of "immoral" or "scandalous" words against the bedrock principles of free speech enshrined in the Constitution.

It all started with provocateur, artist and designer Erik Brunetti, who founded the streetwear brand in 1990. It rhymes with plucked.

Under the label, he has since freely sold clothing with anti-religious, anti-government slogans and motifs, often parodying pop culture.

But in 2011, authorities refused to register "Fuct" at the United States Patent and Trademark Office (USPTO), citing a provision that dates back to 1905.

Brunetti, feeling that his rights had been violated, took his fight to the courts.

In December 2017, a federal appeals court ruled in his favor. According to its findings, the law invoked violates the First Amendment of the US Constitution that guarantees free speech.

But the administration of President Donald Trump then asked the top bench to give a final ruling on the matter.

Dog poop

The provision in question "does not restrict respondent's ability to express himself, through use of his mark or otherwise, but simply denies him the advantages associated with federal trademark registration," the US administration has argued.

"The board concluded that the mark was vulgar and therefore unregistrable."

Yet vulgarity plays an important role in society, according to the Cato Institute, which has backed Brunetti in the fight.

"A sentence like, 'Will you pick up your dog's shit, and stop him from pissing on my roses!' would not mean the same thing if the profanity were replaced by politesse," the libertarian think tank argued.

And the 1905 law is applied in a "systematically inconsistent and arbitrary way," said law professors Barton Beebe and Jeanne Fromer in an argument transmitted to Supreme Court.

They note, for example, that the fashion brand PHUC -- which sounds the same as the swear word in question -- got a trademark.

Censorship of ideas?

The way Brunetti sees it, the seemingly capricious nature of authorities' decision-making is a way to censor ideas they dislike -- noting that the USPTO in its rejection of his application stated he had sold clothes with "revolutionary themes, proudly subversive graphics and in-your-face imagery."

"His assaults on American culture critique capitalism, government, religion and pop culture," it added.

Brunetti has asked the Supreme Court to apply the same reasoning it did in a 2017 case when it ruled that an Asian-American band could trademark its name "The Slants" despite its racist connotations.

"We have said time and again that 'the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers,'" Supreme Court Justice Samuel Alito wrote in that ruling, citing previous decisions.