

No Fleeting Obscenities Are Planned

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Most U.S. Supreme Court briefs don't make you blush when you read them. But the briefing in *Iancu v. Brunetti*, set for argument April 15, is most assuredly not suitable for minors.

The case asks whether the statute allowing the government to deny trademark protection for "scandalous" marks violates the First Amendment. Under that law, Erik Brunetti was denied a trademark for his clothing brand FUCT, which he claims actually stands for something: Friends U Can't Trust.

But FUCT is far from the [Brunetti brief's](#) most off-color bit of terminology.

To prove the trademark office's inconsistent enforcement of the statute, counsel of record John Sommer listed 34 words that might sound scandalous, only three of which have been handled consistently. It has allowed FCUK, FWORD, and WTF IS UP WITH MY LOVE LIFE? Again, those are mild compared to other unmentionable words and phrases in the brief.

As profane as the brief is, however, Sommer dropped an unusual footnote that will reassure the justices that they won't have to hear the words he wrote about:

"It is not expected that it will be necessary to refer to vulgar terms during argument. If it should be necessary, the discussion will be purely clinical, analogous to when medical terms are discussed."

Asked why he included the footnote, Sommer said, "I thought it was appropriate to say, and I didn't have to worry about the word limit." Sommer, [general counsel](#) for an unrelated clothing brand, takes on other clients like Brunetti.

It's probably a smart move on Sommer's part. In 2008 and 2012, when the high court heard arguments in *FCC v. Fox Television* over "fleeting expletives" uttered during live television shows, Sidley Austin's Carter Phillips (at left) was advised by a court official not to utter the words at issue.

As Phillips [told us in January](#), "Given that the clerk called me (along with the SG) not once, but twice to say 'The court does not want to hear those words during argument,' I think there is no chance the court will decide that using FUCT now is okay."

The Cato Institute also drops f-bombs in [its brief](#) to make a somewhat different point: that scandalous speech is valuable to society. Ilya Shapiro, counsel of record in Cato's latest, trademark "funny briefs," cites the Bible, Shakespeare and a full range of modern-day cultural examples, including the 2011 bestselling book *Go the Fuck to Sleep*, which Shapiro, the father of two young boys, told the justices in a footnote that he owns.

The Rutherford Institute and a brief on behalf of New York University law professors Barton Beebe and Jeanne Fromer may also send you to the Urban Dictionary to find the sexual meaning of phrases you never heard before. Counsel of record for the Rutherford brief is Megan Brown of Wiley Rein, and William Jay of Goodwin Procter authored the professors' brief.