

*Defining the Boundaries of a Scandalous Mark -  
Perspectives from Australia, and the United States, and the United Kingdom*

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Trademarks are renowned to serve multi-faceted purposes. They tell us where products and services come from, and we rely on them as guideposts for consistency, quality and social status. But trademarks also have ... a dark side. "Scandalous" or "immoral" marks (referred to in the general sense of the term), while purportedly entitled to common law protection, are essentially "dead" in federal trademark registration schemes. They are barred from receiving federal trademark registration, or may have such registration revoked, including certain protections and benefits encompassed therein. While the exclusive rights of use of a trademark entitle an owner to prevent third parties from using identical or similar marks in relation to identical or similar products without his consent, these rights are qualified by their entitlement to be registered in the first place. One prohibition to registering a mark under a statutory trademark regime is that such a mark is either "scandalous", "disparaging", "contrary to principles of morality", or "public policy". Yet, there is no fixed definition of any of these terms - nor a general international consensus of how to classify marks that may be contrary to moral principles. In the wake of our globalized world, and near limitless movement of goods, this is highly problematic. The author discusses the approach to identifying scandalous marks, highlights the differences between the approach taken to register (or deny registrability of) trademarks in three common law jurisdictions, namely: the United States, the United Kingdom, and Australia. This paper identifies that there is a need to clarify what "public interest" is, and sets the tone for proposing a universal method to determine when a mark should be deemed scandalous prior to registration. The findings in the paper have implications for property rights the vest under other intellectual property regimes, including geographical indications, as well as Constitutional considerations, and international norms.

**Biography:** I am from Melbourne, Australia, and presently appointed as a Visiting Professor at the College of William and Mary. I specialize in Intellectual Property and Taxation.

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