Trademark dilution law prohibits uses of a trademark that impair the distinctiveness of or tarnish a famous mark, even though such uses do not infringe the mark. Dilution is a controversial cause of action because it at least arguably runs afoul of a centuries-old maxim of trademark law: trademarks are not held “in gross.” In other words, a trademark holder does not have a right to prevent all uses of the mark, just those that are likely to cause confusion.

I challenge the traditional justification for dilution law and argue that, instead, dilution exists to protect the “persona” of a famous trademark, much like the right of publicity accords a famous person the right to protect her image, or – at least in some jurisdictions – copyright law enables an author to assert moral rights in a work of authorship. I then address the question of whether holders of famous trademarks should be entitled to this type of “moral” right in a trademark and, if so, what types of limitations should be imposed to limit its misuse.