



## In The Press: IPWatchdog Turns to Partner Charles R. Macedo for Insight on SCOTUS Decision Declaring Disparagement Clause of Lanham Act Unconstitutional in Matal v. Tam

Industry Reaction to SCOTUS First Amendment Decision in Matal v. Tam - [IPWatchdog.com](https://www.ipwatchdog.com) |  
Patents & Patent Law

By Gene Quinn



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Today, the U.S. Supreme Court found that the Lanham Act provision prohibiting the federal registration of trademarks that “may disparage . . . persons, living or dead” (15 U.S.C. § 1052(a)) violates the Free Speech Clause of the First Amendment, and thus is unconstitutional. While this case represents one of the rare instances in which the Federal Circuit has been affirmed by the high court, it was at the expense of the other two branches of government. Specifically, Congress was in essence found to have passed an unconstitutional law, and the P.T.O. had been “offend[ing] a bedrock First Amendment principle” in enforcing this unconstitutional provision: “Speech may not be banned on the ground that it expresses ideas that offend.” In rejecting the government’s position, Justice Alito made clear that “it is far-fetched to suggest that the content of a registered mark is government speech.”



Although this case was decided 8-0 (Justice Gorsuch did not participate), the concurring opinions by Justice Kennedy (with whom 3 Justices joined) and Justice Thomas showcase different rationales and reflect the hotbed of dispute underlying this case.

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