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PRESS RELEASE

Wiley Rein Helps Secure Important First Amendment Win in Supreme Court Trademark Case

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Washington, DC — Wiley Rein LLP helped secure an important First Amendment victory in *Iancu v. Brunetti*, a high-profile U.S. Supreme Court case concerning the U.S. Patent and Trademark Office's refusal to register scandalous and immoral trademarks.

The case arose from the USPTO's refusal to register Erik Brunetti's mark "FUCT," which Mr. Brunetti used as a brand for his clothing line. Finding that the clothing line depicted explicit sexual imagery, the USPTO concluded that the mark would be perceived as an obscenity and denied his registration under the Lanham Act's prohibition on registering marks with "immoral" or "scandalous" matter.

When the case reached the Supreme Court, Wiley Rein filed an *amicus* brief on behalf of the Rutherford Institute, arguing that the USPTO's refusal to register "scandalous and immoral" trademarks was unconstitutional viewpoint-based discrimination. "Trademark registration cannot be used to burden speech in an effort to shield the public from offense," Wiley Rein argued in its brief. "This is anathema to the First Amendment."

Megan L. Brown, partner in firm's Appellate Practice, is Counsel of Record to The Rutherford Institute. The Wiley Rein team in this matter also includes Scott B. Wilkens, partner in the Appellate and

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Practice Areas

First Amendment/Commercial Speech
Intellectual Property
Issues and Appeals
Trademark

Intellectual Property practices; Christopher Kelly, chair of the Trademark Practice; and Wesley E. Weeks, associate in the Appellate and IP practices.

In a majority opinion written by Justice Kagan, the Supreme Court held that the Lanham Act's ban on scandalous and immoral trademarks violated the First Amendment. Endorsing arguments made in Wiley Rein's amicus brief, the majority wrote that the prohibition on registering scandalous and immoral marks "infringes the First Amendment" because it "on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation" and "favors the former, and disfavors the latter."

Wiley Rein's experienced Trademark Team, including Practice chair Christopher Kelly – a former Trademark Examining Attorney with the USPTO – and partner Scott B. Wilkens, works closely with numerous other practice groups, including the Copyright Practice, to provide clients with complete management throughout the life of a brand, including trademark selection, protection, enforcement, and licensing. The Copyright Practice, which includes Mr. Wilkens and partner David E. Weslow, has broad experience in copyright litigation, copyright and content protection (digital rights management) technology, and music and sound recording licensing.

Wiley Rein's *amicus* brief can be found here. The Supreme Court's opinion can be found here.