

## David Bell in law.com: Not Open Season for Offensive Trademarks

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**PRACTICES** Trademark and Advertising, Intellectual Property

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*Law.com*'s "Inside Track" column quoted Haynes Boone Partner [David Bell](#), co-head of the Trademark Practice Group, on the direction of the law regarding offensive marks.

*Law.com* [reported](#) that the U.S. Court of Appeals for the Federal Circuit recently ruled in a case questioning whether a variation on a curse word is a registrable trademark. The appellate court said barring trademarks that include immoral or scandalous language is an unconstitutional restriction on free speech. The ruling came just months after the U.S. Supreme Court struck down the Lanham Act's ban on disparaging trademarks, *law.com* reported, asking, is it now open season for offensive marks?

? **Not necessarily.** "For one thing, offensive trademarks, and especially those pushing boundaries with sex or drug references, have been filed frequently for many years," said David Bell, partner at Haynes Boone and co-head of the firm's trademark practice group. "Offensive trademarks also may exist in the marketplace, and even develop common law (unregistered) trademark rights, without a federal U.S. registration. So, the prohibition against offensive marks may have deterred some businesses from pursuing such brands, but has never been enough to legally stop their use."

What the decision may do, Bell added, is "open the door to companies pursuing edgier marks, as their marketing and branding team learn that full trademark protection is available for designs and words pushing the boundaries."

? **The Aftermath.** Since the ruling, "more than two dozen trademark applications have been filed with the U.S. Patent and Trademark Office that would have been prime candidates for a 'scandalous' or 'immoral' refusal," Bell said, noting that in some cases, the filers had previously filed a mark refused as scandalous or immoral. "These applicants were therefore likely waiting in the wings for the decision to issue," he said. ...

Excerpted from *law.com*. To read the full article, click [here](#). (Subscription required)