Class 12: Disparaging & Scandalous Marks
CLASS OUTLINE

• Scandalous Marks
• Disparaging Marks
Lanham Act §2(a)

“No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute…”
"I's in Town Honey!"

Aunt Jemima's
Pancake Flour

Better this year than ever before. Prepared from Wheat, Corn and Rice. Makes the finest pancakes imaginable. No trouble at all. Only takes a minute to prepare. All grocers sell

Aunt Jemima's Pancake Flour

Buy a package today and have good old-fashioned, light, digestible pancakes for breakfast tomorrow. You'll be surprised and happy when you see them on the table, smoking hot, delicious and brown.

Aunt Jemima's Pancake Flour is unexcelled for waffles and muffins.

Davis Milling Company,
St. Joseph, Mo.
Manufacturers of the celebrated Aunt Jemima's Special Cake and Pastry Flour.

Davis Golden Sheaf
Kansas Hard Wheat Flour

All our products guaranteed to please you.

Aunt Jemima Original
Pancake & Waffle Mix
Mezcla para Pancakes y Waffles

No Artificial Coloring or Preservatives

DELICIOUS RECIPE ON THE BACK
Aunt Jemima brand to change name, remove image that Quaker says is 'based on a racial stereotype'

"We recognize Aunt Jemima's origins are based on a racial stereotype," Quaker Oats said, adding that the move is an effort "toward progress on racial equality."
SQUAW VALLEY NAME CHANGE

After extensive research into the etymology and history of the term “squaw,” both generally and specifically with respect to Squaw Valley, outreach to Native American groups, including the local Washoe Tribe, and outreach to the local and extended community, company leadership has decided it is time to drop the derogatory and offensive term “squaw” from the destination’s name.

Work to determine a new name will begin immediately and will culminate with an announcement of a new name in early 2021. Implementation of the name change will occur after the winter season concludes in 2021.
The “Frito Bandito”
ROUGH ON RATS

IT CLEARS OUT

"THEY MUST GO."

RATS

MICE

BED BUGS

FLIES

ROACHES

15 CENTS PER BOX.
Registered Trademark of the Cleveland Indians Baseball Team
CAN YOU IMAGINE?

THE CLEVELAND Indians

THE CLEVELAND Asians

THE CLEVELAND Africans

THE CLEVELAND Hispanics
2-part test for disparagement

1. What is the likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements in the mark, the nature of the goods or services, and the manner in which the mark is used in the marketplace in connection with the goods or services; and

2. If that meaning is found to refer to identifiable persons, institutions, beliefs or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.
Scandalous Marks  v. Disparaging Marks

- Based on perceptions of the public as a whole
- Based on perceptions of the allegedly disparaged group
2005 Merlot
Rheins-Westlake Winery
"Hey Hey it's game day. Suck a sucker and watch them play. Our lollipops are tasty and sweet. Buy 'em today and your team can't be beat."
Is a mark scandalous?

Ask whether a “substantial composite of the general public” would find the mark “shocking to the sense of truth, decency, or propriety”; “giving offense to the conscience or moral feelings”; “calling out for condemnation”; “disgraceful”; “offensive”; “disreputable”; or “vulgar.”