

SUPREME COURT OF THE UNITED STATES

THOMAS D. FOSTER, APC,
Petitioner,

v.

UNITED STATES PATENT AND TRADEMARK OFFICE,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF [AMICUS NAME] AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE AMICUS CURIAE

[Amicus name] is a [brief description—e.g., small business owner, legal academic, entrepreneur, nonprofit organization, etc.] committed to the protection of intellectual property rights, free enterprise, and the First and Fifth Amendments to the United States Constitution. This case raises profound questions about the scope of the Lanham Act, the rights of trademark applicants, and the constitutionality of vague statutory interpretation by government agencies.

Amicus files this brief in support of Petitioner Thomas D. Foster to urge this Court to grant certiorari and restore clarity and constitutional integrity to the administration of federal trademark law.

SUMMARY OF THE ARGUMENT

The Federal Circuit's decision in *In re Foster* contradicts established principles of trademark law, undermines the purpose of intent-to-use (ITU) filings, and violates the constitutional rights of applicants by allowing post-filing government actions to retroactively destroy trademark rights. The decision invites arbitrary enforcement of 15 U.S.C. § 1052(a) and leaves entrepreneurs, creators, and investors without fair notice or legal certainty.

ARGUMENT

I. The Decision Below Undermines the Constructive Use Doctrine and Creates Legal Uncertainty

The Lanham Act grants ITU applicants a constructive use date as of the filing (15 U.S.C. § 1057(c)). The Federal Circuit upheld a refusal based on events—government announcements and legislation—that occurred after Foster filed his application. If future developments can vitiate trademark rights retroactively, then constructive use is a hollow doctrine, and the statute no longer offers applicants a reliable path to brand development.

II. The Court’s Reasoning Conflicts with Due Process and Violates the Constitution

The use of post-filing facts to determine registrability violates the Fifth Amendment’s guarantee of due process. The government must provide clear, prospective standards—not vague criteria that shift depending on political developments. Here, Foster could not have known at the time of filing that a later-created government agency would render his mark unregistrable. Such uncertainty chills innovation, commerce, and expression.

III. Section 2(a) of the Lanham Act Is Unconstitutionally Vague as Applied

The phrase “falsely suggests a connection with” lacks precise boundaries and was applied here without meaningful guidance. The Board and court could not agree whether the mark suggested a connection to the U.S. Government generally, President Trump personally, or a military branch that didn’t yet exist. This standard is so elastic that it enables viewpoint or content-based denials, raising serious First Amendment concerns.

IV. The Federal Circuit’s Decision Threatens a Wide Range of Creative and Commercial Activity

If allowed to stand, this ruling threatens not only trademark applicants, but also businesses, artists, filmmakers, and others who rely on fair use of patriotic or institutional imagery. The ruling effectively gives the government veto power over expressive content and brand identity, even when no confusion or endorsement exists.

CONCLUSION

The petition raises critical questions of statutory interpretation, procedural fairness, and constitutional rights. For these reasons, Amicus respectfully urges the Court to grant the petition for writ of certiorari.

Respectfully submitted,

[Amicus Name or Counsel for Amicus]

[Title/Organization, if applicable]

[Contact Information]

[Date]