

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

JACK DANIEL'S PROPERTIES, INC.,)
 Petitioner,)
 v.) No. 22-148
VIP PRODUCTS LLC.,)
 Respondent.)

Pages: 1 through 97
Place: Washington, D.C.
Date: March 22, 2023

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrcourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - -

3 JACK DANIEL'S PROPERTIES, INC.,)

4 Petitioner,)

5 v.) No. 22-148

6 VIP PRODUCTS LLC,)

7 Respondent.)

8 - - - - -

9

10 Washington, D.C.

11 Wednesday, March 22, 2023

12

13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 10:05 a.m.

16

17 APPEARANCES:

18 LISA S. BLATT, ESQUIRE, Washington, D.C.; on behalf of
19 the Petitioner.

20 MATTHEW GUARNIERI, Assistant to the Solicitor General,
21 Department of Justice, Washington, D.C.; for the
22 United States, as amicus curiae, supporting the
23 Petitioner.

24 BENNETT E. COOPER, ESQUIRE, Phoenix, Arizona; on
25 behalf of the Respondent.

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	LISA S. BLATT, ESQ.	
4	On behalf of the Petitioner	3
5	ORAL ARGUMENT OF:	
6	MATTHEW GUARNIERI, ESQ.	
7	For the United States, as amicus	
8	curiae, supporting the Petitioner	42
9	ORAL ARGUMENT OF:	
10	BENNETT E. COOPER, ESQ.	
11	On behalf of the Respondent	58
12	REBUTTAL ARGUMENT OF:	
13	LISA S. BLATT, ESQ.	
14	On behalf of the Petitioner	94
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We'll hear argument this morning in Case 22-148, Jack Daniel's Properties versus VIP Products.

Ms. Blatt.

ORAL ARGUMENT OF LISA S. BLATT

ON BEHALF OF THE PETITIONER

MS. BLATT: Mr. Chief Justice, and may it please the Court:

This case involves a dog toy that copies Jack Daniel's trademark and trade dress and associates its whiskey with dog poop. After a four-day trial, the district court found both infringement and dilution. The Ninth Circuit erroneously reversed both holdings.

As to infringement, the Ninth Circuit did not disturb the trial court's finding of likelihood of confusion. It instead reversed by applying an exception to the Lanham Act that the Second Circuit in *Rogers versus Grimaldi* invented for movie titles.

Under *Rogers*, an expressive work is allowed to confuse as long as the use of a mark is artistically relevant and not explicitly

1 misleading. But the Lanham Act has no
2 exceptions for expressive works. It bars using
3 marks for any goods when likely to cause
4 confusion as to origin, sponsorship, or
5 approval. Artistic relevance has nothing to do
6 with confusion, and both implicit and explicit
7 uses can confuse. Nor does constitutional
8 avoidance justify Rogers. Rogers doesn't
9 plausibly construe any text, and there are no
10 First Amendment issues to avoid.

11 Trademarks are ancient property rights
12 that necessarily restrict speech to protect
13 investment in goodwill and prevent consumer
14 confusion, and parodies can be confusing. Now,
15 as a practical matter, parodies won't confuse
16 when differences in marks, markets, or message,
17 typically ridicule, signal that the brand
18 company didn't make the joke.

19 But absent these features, pervasive
20 copying and trading off a brand's goodwill tends
21 to confuse. And survey results showing consumer
22 confusion indicate that the parodist did too
23 much copying and not enough distinguishing.

24 As to dilution, the Ninth Circuit held
25 that the exclusions for noncommercial use mean

1 noncommercial speech. That holding renders
2 neighboring exclusions superfluous, and it
3 nullifies Congress's decision to limit the
4 parody exclusion to uses other than as a
5 designation of source.

6 This Court should give noncommercial
7 use its ordinary meaning, a use not involving
8 the buying and selling of goods.

9 I welcome your questions.

10 JUSTICE THOMAS: Could a statement
11 be -- could it fail Rogers and be misleading yet
12 not be confusing under the Lanham Act?

13 MS. BLATT: Well, the statutory test
14 is likely to confuse --

15 JUSTICE THOMAS: Yeah.

16 MS. BLATT: -- as to sponsorship --

17 JUSTICE THOMAS: I understand that,
18 but I'm just wondering if the -- they're two
19 ships passing in the night, that it could be
20 misleading yet have nothing to do with confusing
21 --

22 MS. BLATT: Well --

23 JUSTICE THOMAS: -- likelihood to
24 confuse.

25 MS. BLATT: -- so, if it's misleading

1 as to the sky being blue, you're right. That
2 has nothing to do with confusion. But, if it's
3 misleading as to the origin, sponsorship, or
4 approval of the goods, then absolutely. Or
5 services. So it's not -- you're right,
6 misleading in the abstract is irrelevant under
7 the Lanham Act. It's confusion as to origin,
8 source, or sponsorship.

9 So, if you just have a -- I mean, I
10 can go on with examples, but there's lots of
11 explicitly misleading speech that's -- doesn't
12 violate the Lanham Act.

13 JUSTICE THOMAS: So would we have to
14 dispose of or overrule Rogers in order to focus
15 more clearly on likelihood of confusion under
16 the Lanham Act, or can they co-exist?

17 MS. BLATT: No, obviously not, since
18 every case recognizes that the -- the -- this is
19 a -- the test involves a non-application of the
20 Lanham Act because the Second Circuit thought
21 the Lanham Act struck the wrong balance.

22 JUSTICE THOMAS: So there's no way to
23 keep Rogers and for you to win this?

24 MS. BLATT: No, we can win this case
25 on a narrow grounds. There's no way to keep

1 Rogers and be faithful to the text. We can win
2 this case by the Court assuming there's an
3 atextual exception, and this Court can go on and
4 invent an atextual break to that exception.
5 It's unorthodox for this Court to do it, but you
6 can certainly do that. And we've offered a
7 bunch of distinctions.

8 The problem is the text doesn't make
9 any of these, and it's particularly --
10 particularly unorthodox for this Court to create
11 exceptions as to parody and fair use when
12 Congress put in two fair use explicit exceptions
13 in the Act for both infringement and dilution
14 and didn't see fit to do so here.

15 JUSTICE THOMAS: So what would you do
16 with the argument that Respondent makes that,
17 well, the Lanham Act presents difficulties for
18 the not-so-well-heeled defendant or accused
19 infringer?

20 MS. BLATT: Yeah. Well, I mean, the
21 consequence of having a property right is
22 property owners are going to protect them, and
23 the consequence of their position is they would
24 say, if you have a -- an intentionally hundred
25 percent confusing as to customers but as long as

1 there was no overt lie, that they should have to
2 get out and avoid the Lanham Act.

3 If you're concerned about the First
4 Amendment, someone can be -- I don't see how it
5 -- it would be valid, but someone could bring an
6 as-applied First Amendment challenge. It just
7 would borderline be frivolous because it's
8 confusing speech and it's a property right.

9 I just don't think -- you know, a
10 property right by definition in the intellectual
11 property area is one that restricts speech.
12 It's part of the bundle of sticks that you have
13 a limited monopoly on a right to use a name
14 that's associated with your good or service.

15 JUSTICE KAGAN: Ms. Blatt, I'm -- I'm
16 just wondering why you are making such a broad
17 argument when there are pretty obvious narrower
18 arguments available to you. So, for example,
19 one could say that whether the Rogers test
20 should exist, whatever its scope should be, this
21 is an ordinary commercial product using a mark
22 as a source identifier. In that case, whatever
23 we might think about the Rogers test, that's far
24 from the heartland of the Rogers test. The
25 Ninth Circuit just made a mistake as to this.

1 The end.

2 Why wouldn't that be sort of the
3 obvious or appropriate way to resolve this case
4 if we were coming out your way?

5 MS. BLATT: It's a totally obvious and
6 appropriate way, but, as a lawyer, we have a
7 quandary that usually you're up here saying I
8 need a legal principle and I don't want you
9 answering my hypotheticals of, well, that's not
10 this case. So I've got a dog toy --

11 JUSTICE KAGAN: Well, I think that's a
12 pretty good legal principle. It's like -- it's
13 an ordinary commercial product using a mark as a
14 source identifier. That doesn't get any special
15 protection. There's a legal principle for you.

16 MS. BLATT: So that legal principle
17 looks a lot like the fair use exclusions that
18 Congress didn't write in. But, here -- I'm fine
19 with the commercial product. Here's the
20 problem, is once you acknowledge or assume
21 Rogers, you immediately get into the situation
22 of you're saying I will allow a confusing short
23 film but not a confusing commercial; I'll allow
24 a confusing painting, but I won't allow
25 confusing wallpaper; I'll allow a confusing

1 video game, but I won't allow a confusing board
2 game; I will allow a confusing --

3 JUSTICE KAGAN: Well, you know --

4 MS. BLATT: -- tapestry but not a
5 confusing rug.

6 JUSTICE KAGAN: -- you know, as I
7 said, this is not to suggest that there is a
8 secure Rogers heartland. I'm just saying it's
9 totally unnecessary in this case to think about
10 that question or to get there.

11 And I'll just add a little bit. The
12 reason why every court of appeals has -- that
13 has thought about this question has adopted
14 something like Rogers is because there are cases
15 which look really different from this case.

16 There are -- you know, an art
17 photographer does photographs using a Barbie
18 doll, which is clearly meant to have some kind
19 of expressive meaning and is -- is not an
20 ordinary commercial product like this one and
21 doesn't use the Barbie doll as a source
22 identifier.

23 And what the courts have been groping
24 towards -- maybe they've been right, maybe
25 they've been wrong -- all I'm saying is, like,

1 why should we decide that case when we decide
2 this case?

3 MS. BLATT: You don't have to. And
4 the Barbie case is a classic case, that example,
5 of where there's a explicit fair use exception
6 for dilution. We're fine with your dog toy
7 case, but we're just -- it's just so obvious
8 that someone's going to ask about a dreidel or a
9 Halloween costume or a coloring book or a
10 tchotchke, ceramic pottery. There's just all
11 kinds of goods out there that are ordinary
12 commercial goods that you're sort of
13 head-scratching about, well, I don't know how
14 that fit in.

15 And I just think the video game versus
16 a board game -- Scrabble comes in a board game
17 and a video game. A 20-minute commercial looks
18 a lot more expressive to me than a four-minute
19 short film.

20 JUSTICE JACKSON: So -- so can I ask
21 it this way? I -- I guess I'm trying to
22 understand why it's atextual in your view to
23 focus on this idea of use of a mark as a source
24 identifier, because it seems to me that what
25 you're describing as the problem is courts

1 grappling with the degree of expressiveness of
2 various items in terms of determining whether or
3 not this art, Rogers, exception should apply.

4 But I wonder whether the cleaner, more
5 sort of consistent with the statute way of
6 looking at it is to ask, is the artist using
7 this mark as a source identifier, as the
8 threshold, and, if they aren't, then I guess the
9 Lanham Act doesn't apply because, as you said,
10 the Lanham Act worries about confusion that
11 arises from use of a mark as a source
12 identifier.

13 So, if they're not doing that, then
14 there's no trademark problem. But, if they are,
15 if they are doing that, if it's being used as a
16 source identifier, then I suppose we get into
17 all of the questions under the Lanham Act test
18 as to whether or not there's trademark -- what's
19 -- infringement.

20 What's wrong with that?

21 MS. BLATT: Well, unfortunately, a
22 lot. And with respect, that -- literally,
23 you're taking language in the text of parody and
24 in the text of 1115(b)(4), which you had a
25 Supreme Court case on, KP Permanent Makeup,

1 saying other -- designation of a source are
2 actually exceptions under two statutory
3 provisions that don't appear in infringement.
4 So I'm fine with you making up stuff.

5 JUSTICE JACKSON: No, but I'm not
6 making it up. I mean, you said here this
7 morning, and I wrote it down, that the whole
8 confusion issue -- do -- do you agree that
9 confusion is the heart of the Lanham Act --

10 MS. BLATT: Confusion has --

11 JUSTICE JACKSON: -- infringement?

12 MS. BLATT: -- nothing to do with
13 designation of source. So, no, you're just --
14 sorry, but, in trademark law, you can have a
15 very confusing use of a trademark that's not --

16 JUSTICE JACKSON: But I'm sorry, Ms.
17 Blatt, you said a few minutes ago that it's
18 misleading as to origin of source or
19 sponsorship, that that's the confusion that we
20 care about, that -- that -- that a part -- that
21 what the Lanham Act is trying to do is say, are
22 consumers confused as to the origin, source, or
23 sponsorship of this product.

24 And I agree with you, but I'm
25 wondering then, why isn't that --

1 MS. BLATT: So let me --

2 JUSTICE JACKSON: -- the threshold
3 question?

4 MS. BLATT: Yeah, just let me give you
5 an example. The famous film pre-Rogers case,
6 the Dallas Cowboy Cheerleaders involving 12
7 minutes of graphic sex involving a trademark,
8 was not a source identifier. It was just a very
9 confusing use of a trademark.

10 Source -- let me just explain what a
11 source identification means. It means a
12 consistent and persistent origin of source even
13 if the source is unknown. So, like iPhone, even
14 though there's not a company called iPhone that
15 makes the phone, it's Apple, iPhone is a
16 trademark.

17 But you can infringe iPhone's marks or
18 any mark without indicating it's a source. You
19 can put it on a T-shirt, you can put it in a
20 movie, you can sell lots of products. It's just
21 not being used as a trademark. And the
22 statutory definition of infringement has nothing
23 to do with use as a source. It's any use of a
24 mark likely to cause confusion.

25 And I know that I'm right about this

1 because it's -- designation of a source is an
2 explicit carveout under infringement and
3 dilution.

4 JUSTICE JACKSON: All right. Likely
5 to cause confusion in what way? So, fine, you
6 put the Apple mark not on something that looks
7 like an iPhone so that people are confused about
8 the source of that product. You put it on a
9 T-shirt. So likely to -- how is that a
10 trademark infringement in the sense of origin of
11 source?

12 MS. BLATT: Sure. If you just put a
13 T-shirt that says Apple Sucks, that is a
14 diluting -- you know, it's a use of the
15 trademark. It doesn't indicate a source. It's
16 just a statement.

17 If you have your -- put your favorite
18 cartoon character in a movie. That's not a
19 designation of source unless you -- I'll put it
20 this way. A title is not a designation of
21 source. "Gone With the Wind" is not a
22 designation of source. It has to be -- "Harry
23 Potter" might be, but just standard trademark
24 law, and you can look at any case or any
25 McCarthy, and it'll tell you that you can

1 violate the trademark law even though you're not
2 engaged in --

3 JUSTICE SOTOMAYOR: Ms. Blatt --

4 MS. BLATT: -- trademark use.

5 JUSTICE SOTOMAYOR: -- can I get you
6 back to a question that Justice Thomas asked,
7 okay, and in part that Justice Kagan did.

8 I have some hesitation doing away with
9 the Rogers test because -- without knowing that
10 the likelihood-of-confusion test is sufficiently
11 flexible itself.

12 By the way, you talk about making
13 things up, the Polaroid test, the Steel Craft
14 test, it's all judicially crafted. These tests
15 have to be because the statute talks about
16 likelihood of confusion, and what judges have to
17 do is figure out how do -- how do we get to
18 that, how do we decide whether it's confused.

19 So we've got to create some
20 principles. I don't -- I think you're right
21 about it can't be just commercial products
22 because then you get into can you use it in one
23 setting but not another. It can't be just
24 designation of origin because that doesn't have
25 to do with improper use.

1 I think it's contextual, and I think
2 that all -- you're shaking your head yes.

3 MS. BLATT: Yes, absolutely.

4 JUSTICE SOTOMAYOR: If you look at all
5 of the factors, I call them the Polaroid factors
6 because you know I'm from the Second Circuit, so
7 I'm most intimately familiar with those.

8 MS. BLATT: Yeah.

9 JUSTICE SOTOMAYOR: What they're
10 trying to get at is whether the use of this
11 trademark in this context can or is confusing.

12 And so I see the Rogers test perhaps
13 not as -- as articulated, but all of the
14 circuits have some form of it and it's all
15 different, but I see them all doing something
16 where they're saying there are certain contexts
17 of use that are less likely or not likely to
18 confuse.

19 And what the Second Circuit said with
20 respect to titles is, when you're talking about
21 a title use, the context of a movie, you can't
22 decide whether it's confusing until you look at
23 the movie and you decide whether or not the
24 movie uses the title in an aesthetically
25 pleasing way.

1 I think they did add something to the
2 likelihood-of-confusion standard that's not
3 there, because they said it has to have -- I
4 don't remember the words -- but something
5 greater than just a likelihood of confusion.

6 MS. BLATT: Artistic relevance?

7 JUSTICE SOTOMAYOR: Artistic
8 relevance. That may have gone too far, okay?

9 But my point simply is I would limit
10 this to parody and not to anything else because
11 parody as a context does ask not all of the
12 Polaroid factors, it asks something very
13 different. And that's what I would limit the
14 likelihood-of-confusion test to, but I want you
15 to answer these hypotheticals.

16 MS. BLATT: Of course.

17 JUSTICE SOTOMAYOR: All right? And I
18 want you to answer them in view of what Justice
19 Thomas said. Assume that I think that there are
20 some uses that, in context, on their face,
21 should not require a litany of Polaroid factors
22 with surveys and everything else for a court to
23 be able to decide this on a motion to dismiss or
24 summary judgment.

25 An activist takes a political party's

1 trademark animal logo --

2 MS. BLATT: I'm sorry, at a -- I
3 missed that last part. At a --

4 JUSTICE SOTOMAYOR: Takes an animal
5 logo --

6 MS. BLATT: Animal?

7 JUSTICE SOTOMAYOR: -- a donkey or --
8 yes -- or an elephant, okay?

9 MS. BLATT: Oh, elephant.

10 JUSTICE SOTOMAYOR: Yeah, you know,
11 whatever.

12 MS. BLATT: I got it. I got it.

13 JUSTICE SOTOMAYOR: One of the
14 political parties' animal logos, and makes a
15 T-shirt where the animal looks drunk, a company
16 by its slogan, Time to Sober Up America, and
17 they wear that proudly at a protest or here in
18 court.

19 MS. BLATT: Do you want my answer?

20 JUSTICE SOTOMAYOR: She sells these
21 T-shirts on Amazon.

22 MS. BLATT: Okay.

23 JUSTICE SOTOMAYOR: The -- the
24 political party gets a -- consumer survey
25 purportedly showing that 15 percent, 20, 25, 10,

1 whatever number we make up, okay, think the
2 activist needs the party's permission to copy
3 the logo.

4 So I'm a judge. I know what I would
5 do. But tell me what you would do, and do they
6 have to go through a full political -- a full
7 trial under the Polaroid factors to decide this
8 case?

9 MS. BLATT: Okay. So, I mean, first
10 of all, that's funny, your example. I'm going
11 to give you that.

12 (Laughter.)

13 MS. BLATT: Second of all, if I could
14 go back to the point about Polaroid, there is --
15 the fact that a product, including your T-shirt
16 example, is funny or it has a parody is not
17 relevant. What is extremely relevant is any
18 character --

19 JUSTICE SOTOMAYOR: Is whether the
20 person viewing it would get the joke.

21 MS. BLATT: No, whether --

22 JUSTICE SOTOMAYOR: And so isn't that
23 the issue that we're dealing with in confusion?

24 MS. BLATT: Well, I'd like to get this
25 answer out. It's not whether you get the joke.

1 You get that somebody other than the brand was
2 making the joke because it's -- that's what --
3 that's all that matters. Not -- ha, ha, ha is
4 not a standard under the Lanham Act. It's
5 whether it's confusing as to source.

6 Now, in your Republican -- I'm
7 sorry -- elephant example --

8 JUSTICE SOTOMAYOR: Well, that's going
9 back to Justice Kagan -- Justice Jackson's
10 point, and you said it's not only about source,
11 so what else is it about?

12 MS. BLATT: Right. Okay. On your
13 elephant example, in terms of if there's a
14 mistaken idea that, oh, well, you had to copy,
15 okay, first of all, on consumer surveys, they're
16 capturing, for whatever reason, because
17 consumers are dumb or they're confused about the
18 law or just the way they make marketing
19 decisions, surveys are picking up the real-world
20 marketplace that a judge, who has hindsight bias
21 and is highly analytical, is not going to
22 represent the purchasing public.

23 The reason we have surveys in the
24 first place is pretty amazing. In 1948, Jerome
25 Frank on the Second Circuit had a case involving

1 teenage girls' underwear, and he said, you've
2 got to be kidding me. I'm a man. Everyone on
3 this court is a man. How am I supposed to know
4 this? Couldn't somebody do a survey?

5 And surveys were born, and that was in
6 1948. So it's just a little bit rich to trash
7 surveys when the whole point that they came out
8 was to help consumers.

9 Now, on that bit about there's a
10 mistake in perception, it's not a mistake in
11 perception. You do have to get permission if
12 it's confusing.

13 Now your example on the T-shirts. If
14 it's -- if there's a survey on 15 percent, and I
15 also heard in there some sort of implicit thing
16 that 15 percent was too low, if this Court had a
17 rule saying advocates, please do not have briefs
18 that are likely misleading, and if you want us
19 to say, advocates, that can go up to 50 percent
20 because it's okay if only 20 percent of judges
21 found it deceptive or even 40 percent, it has to
22 be more than half.

23 So I think what you're --

24 JUSTICE SOTOMAYOR: Well, no, no, no.
25 That -- but that's the basic problem, which is

1 the percentage. At some point, it's a political
2 statement. It has First Amendment rights. And
3 even if 20, maybe even if 75, it's very clear
4 that at a certain point --

5 MS. BLATT: Yeah. So --

6 JUSTICE SOTOMAYOR: -- those people
7 may be wrong on the law.

8 MS. BLATT: So -- yeah.

9 JUSTICE SOTOMAYOR: They don't need
10 permission to make a political joke. They don't
11 need permission to make a parody.

12 MS. BLATT: You can -- well, you need
13 to get permission if it's a confusing parody.

14 Now, in terms of your -- I do want to
15 get this point out. There are three very
16 important Sleekcraft factors that bear on the
17 specifics of parody. And the other dog toy case
18 involving Chewy -- Chewy Vuitton, it was a play
19 on Louis Vuitton and Chewy Vuitton, the contrast
20 with that case and this case I think tells you
21 everything you need to know about likelihood of
22 confusion.

23 In the Chewy Vuitton case, it was on
24 substantial similarity in marks, the uses in the
25 mark, and is there some sort of dispelling

1 characteristics that says -- you know, the
2 definition of a parody is that you have to
3 conjure up enough similarity, but then you
4 immediately simultaneously distinguish and say
5 but this is not -- someone else is telling the
6 joke.

7 And in the Chewy Vuitton case, the --
8 the court said, I'm immediately struck by how
9 different. Our court said, I'm immediately
10 struck by how similar. There were nine
11 virtually identical things that were unchanged.
12 In the Chewy Vuitton case, he said almost all the
13 designs were different.

14 In the uses of the markets in the
15 Louis Vuitton case, Louis Vuitton makes dog
16 products, but they're \$1200. They're complete
17 luxury products. They only sell in boutique
18 stores or in boutiques and department stores.

19 In the Jack Daniel's case,
20 Jack Daniel's makes dog products and sells
21 licensed merchandise, like hats and bar stools
22 and what have you, in the same markets that Bad
23 Spaniels was selling its dog toys.

24 And when you have a consumer survey
25 that tells you that consumers didn't get the

1 joke -- they could have thought it was funny.
2 And, by the way, only seven people said they
3 thought there was a confusion as to who owned it
4 -- I mean who needed permission, and that still
5 left 25 percent confusion, which is still, you
6 know, a massively high consumer survey.

7 So it is -- not all the Sleekcraft
8 fact -- I don't know how to -- Polaroid factors
9 will be relevant, but -- and the other thing I
10 want to say before the government gets up here,
11 for 30 years, what I've been saying is what the
12 PTO has been doing. They've been finding parody
13 after parody either confusing or not confusing
14 based on the same thing that this trial court
15 did. It looked at how similar and famous the
16 mark is, and is there something that kind of
17 says, whoa, it's so obvious. I think, in the
18 Republicans go around drunk and need to sober
19 up, your average consumer is going to think the
20 RNC didn't do that, but I -- I could go on and
21 on and on.

22 And the other thing I just wanted to
23 say about your aesthetically pleasing, the movie
24 "Debbie Does Dallas" was not aesthetically
25 pleasing. It infringed a trademark. It

1 infringed someone's property rights, and it was
2 diluting.

3 So the other side wants to talk about
4 the uses they like. They don't want to talk
5 about the pornographic and poisonous things that
6 can be done when you infringe someone's
7 trademark.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Justice Thomas, anything further?

11 Justice Alito?

12 JUSTICE ALITO: I -- I take it your
13 short answer to Justice Sotomayor's hypothetical
14 where, let's say, the -- the survey shows 25
15 percent -- let's say it shows 30 percent, your
16 answer is that has to go to a jury?

17 MS. BLATT: Well, the -- we cited the
18 Dark Knight case, the Fordist case that was
19 resolved on Twombly.

20 JUSTICE ALITO: Would it go to the
21 jury or not? Can you give me an answer?

22 MS. BLATT: I think it would probably
23 -- I mean, it just depends if there was
24 something wrong about the survey, but it -- but
25 I don't know if it would go -- no, no, it would

1 not go to a jury. It could go to summary -- it
2 would -- could be resolved on summary judgment.

3 JUSTICE ALITO: It would go on summary
4 judgment --

5 MS. BLATT: Yeah.

6 JUSTICE ALITO: -- in favor of -- in
7 favor of the Republican Party or the Democratic
8 Party?

9 MS. BLATT: Well, it depends. Unless
10 it meets 12 -- 12(b)(6), it survives a motion to
11 dismiss. I mean, that's --

12 JUSTICE ALITO: Let me give you some
13 other -- let me -- let me give you some other
14 examples that are in -- in the briefs. I'm sure
15 you're familiar with it. So this is from the
16 Electronic Frontier Foundation's brief.

17 So here's a -- a poster. Let's say
18 this is on a T-shirt. It says "Diamonds." It's
19 got a picture of two hands. One has a diamond
20 ring on it. And, at the bottom, it says: Your
21 purchase of diamonds will make it -- will enable
22 us to donate a prosthetic to an African who lost
23 his hands in diamond conflicts. And, at the
24 bottom, it says: De Beers, From Her Fingers to
25 His. Let's say that's on a T-shirt.

1 What about that?

2 MS. BLATT: Well, I don't think that's
3 going to be likely confusing. If it's diluting,
4 it will have an exception for fair use unless --
5 that does not look like a trademark use. But,
6 if you start -- if that becomes a line of books,
7 movies, TV shows, and you're selling all kinds
8 of mugs and coffees, then you would not have the
9 fair use exclusion.

10 But, yeah, if it's -- so you've got --
11 the more it says something ridiculous or
12 condescending about the brand, it's so likely to
13 not be confusing.

14 You always run a chance that you might
15 have a dilution -- dilution -- yeah, dilution
16 claim, but there's a fair use exception and a
17 noncommercial use exception that are pretty
18 robust.

19 JUSTICE ALITO: Could any reasonable
20 person think that Jack Daniel's had approved
21 this use of the mark?

22 MS. BLATT: Absolutely. That's --
23 that's -- that's why we won below.

24 JUSTICE ALITO: Really?

25 MS. BLATT: Yes, because --

1 JUSTICE ALITO: All right. Let me
2 envision this scene. Somebody in Jack Daniel's
3 comes to the CEO and says, I have a great idea
4 for a product that we're going to produce. It's
5 going to be a dog toy, and it's going to have a
6 label that looks a lot like our label, and it's
7 going to have a name that looks a lot like our
8 name, Bad Spaniels, and what's going to be in --
9 purportedly in this dog toy is dog urine. You
10 think the CEO is going to say that's a great
11 idea, we're going to produce that thing?

12 MS. BLATT: No, but Nationwide ran a
13 Super Bowl commercial with a dead child in it,
14 and they had to pull it because it was such a
15 bad idea. I don't know who approved that one.
16 It was really embarrassing for them.

17 JUSTICE ALITO: So a reasonable person
18 would --

19 MS. BLATT: People make dumb
20 commercials.

21 JUSTICE ALITO: -- a reasonable person
22 would not think that Jack Daniel's had approved
23 this?

24 MS. BLATT: I think, if you're selling
25 urine, you're probably going to win on a motion

1 to -- I mean, on a 12(b)(6), but you're probably
2 also violating some state law. But, sure, the
3 --

4 JUSTICE ALITO: No, no, it doesn't --
5 you're not selling urine. It's exactly --

6 MS. BLATT: Oh, I thought you --

7 JUSTICE ALITO: -- this toy.

8 MS. BLATT: Oh, I'm sorry, I thought
9 it was --

10 (Laughter.)

11 MS. BLATT: Oh, it says it contains
12 urine.

13 JUSTICE ALITO: No. It's exactly this
14 toy --

15 MS. BLATT: I'm sorry.

16 JUSTICE ALITO: -- which purportedly
17 contains --

18 MS. BLATT: Oh.

19 JUSTICE ALITO: -- some sort of dog
20 excrement --

21 MS. BLATT: Oh, I'm sorry.

22 JUSTICE ALITO: -- or urine.

23 MS. BLATT: Okay. My bad.

24 (Laughter.)

25 JUSTICE ALITO: The CEA -- the CEO is

1 going to say this is a great idea.

2 MS. BLATT: Well, just showing how
3 confused I was suggests that I would be your
4 perfect consumer.

5 (Laughter.)

6 MS. BLATT: Justice Alito, I don't
7 know how old you are, but you went to law
8 school, you're very smart, you're analytical,
9 you have hindsight bias, and maybe you know
10 something --

11 JUSTICE ALITO: Well, I went to a law
12 school where I didn't learn any law --

13 MS. BLATT: Okay. But --

14 JUSTICE ALITO: -- so don't --

15 (Laughter.)

16 MS. BLATT: -- it's just a little rich
17 for people who are at your level to -- to say
18 that you know what the average purchasing public
19 thinks about all kinds of female products that
20 you don't know anything about or dog toys that
21 you might not know anything about. And so I --
22 I just think --

23 JUSTICE ALITO: I don't know. I had a
24 dog. I know something about dogs.

25 MS. BLATT: Okay.

1 JUSTICE ALITO: The question is not
2 what the average person would think. It's
3 whether there should be -- this should be a
4 reasonable person standard --

5 MS. BLATT: Oh.

6 JUSTICE ALITO: -- to simplify this
7 whole thing.

8 MS. BLATT: So, since 1976, you've had
9 this appreciable or substantial number of
10 confusion. And, again, I think the best example
11 is just you can enact a rule that says
12 likelihood of confusion by judges or likelihood
13 of deception. And if you think that's the
14 average reasonable judge, okay, but I don't know
15 how you would do a survey on that. And if you
16 think there's something wrong with the survey,
17 you can dismiss it. You can -- the Court in
18 Booking said surveys have to be done with
19 careful design and careful reading, and the
20 Court can reject the survey.

21 JUSTICE ALITO: Well, I -- I'm
22 concerned about the First Amendment implications
23 of -- of your position, and you began by
24 saying -- by stressing that Rogers is atextual,
25 it was made up. You know, there is a text that

1 says that Congress shall make no law infringing
2 the freedom of speech. That's a text that takes
3 precedence over the Lanham Act. And you said
4 there are no constitutional issues.

5 But your answer to Justice Sotomayor's
6 hypothetical tells me there are important
7 constitutional issues.

8 MS. BLATT: Well, allow me to push
9 back with the founding. Trademarks have been
10 around since the 1500s. They predated the First
11 Amendment. They -- same way with copyrights.
12 And this Court has had four cases, the
13 San Francisco case, the Zubini or Zucchini --
14 Zacchini, and then your -- Eldred, and Harper
15 and Row. And you said on all four of those
16 cases, even it didn't involve confusing speech,
17 it didn't involve any kind of intent, it didn't
18 involve any kind of -- I mean, those were all
19 harder cases.

20 And so it's a property right. I agree
21 when you don't have property rights, but the
22 definition of a property is it's going to
23 infringe someone's speech. It is a limited
24 monopoly as long as alternative --

25 JUSTICE ALITO: Well, is it your

1 argument that anything that is -- that -- so
2 long as something is protected by the Lanham
3 Act, there is no First Amendment issue?

4 MS. BLATT: Well, when you say --
5 yeah, I think that unless you're going to bring
6 an as-applied, you have to -- yeah, I mean, it's
7 confusing speech and it goes to the dilution.
8 But, yes, I think the Lanham Act is clearly
9 constitutional. You all but held that in the
10 San Francisco case.

11 JUSTICE ALITO: Well, the question
12 isn't whether it's constitutional. The question
13 is whether it should be interpreted and -- and
14 this is where Rogers may come from -- in a way
15 that does not bring it into conflict with the
16 First Amendment.

17 MS. BLATT: Well, then you should
18 strike the statute as either facially invalid or
19 as applied to a dog toy. It just seems that
20 you're overturning centuries and billions of
21 dollars of brand investment as to confusing.

22 I -- what I hear you saying is that
23 you're worried about -- you think are
24 non-confusing uses, but courts have been -- I
25 think we cited it on page 25 -- case after case

1 that rejected parodies. Notably, none of those
2 had survey cases.

3 There are lots of famous cases where
4 the Court rejected likelihood of confusion. And
5 as to dilution, again, I mean, there is a
6 Supreme Court case on point, the San Francisco
7 Athletic Association case.

8 JUSTICE ALITO: All right. Thank you.
9 Thank you.

10 CHIEF JUSTICE ROBERTS: Anything
11 further, Justice Sotomayor?

12 Justice Kagan?

13 Justice Gorsuch?

14 JUSTICE GORSUCH: I just want to make
15 sure I understand your position with respect to
16 the First Amendment.

17 As I understand it, your -- your
18 primary position is a trademark is consistent
19 with the First Amendment, it predated it, it was
20 thought to be consistent by the Founders at the
21 time.

22 MS. BLATT: Well, and it doesn't --
23 and it doesn't protect confusing speech.

24 JUSTICE GORSUCH: Fine. You're not,
25 though, opposed to the possibility that there

1 may be as-applied cases in which trademark law
2 does butt up against the First Amendment?

3 MS. BLATT: And that's the appropriate
4 place to -- yes, to say, as applied, we're --
5 it's unconstitutional, yeah.

6 JUSTICE GORSUCH: And that -- that
7 could happen. And that could have happened
8 here. It just didn't.

9 MS. BLATT: Yeah, and that's the end
10 of that. Yeah.

11 JUSTICE GORSUCH: Yeah. One -- one
12 further question. Your -- your friend or your
13 amicus, I should say, the -- the federal
14 government's about to get up, but I'm not sure
15 how much of a friend they really are to you.

16 MS. BLATT: I agree.

17 (Laughter.)

18 JUSTICE GORSUCH: And -- and -- and
19 their argument is that the district court here
20 failed to, even under the appropriate test that
21 you are arguing for, consider parody and
22 confusion in this case, and we should remand for
23 reconsideration of that issue under existing
24 standards, forget about the Rogers gloss.

25 And I just wanted to give you a chance

1 briefly --

2 MS. BLATT: Yeah, okay, fair.

3 JUSTICE GORSUCH: -- to -- to talk
4 about that.

5 MS. BLATT: Yeah. So, Justice
6 Gorsuch, we agree you remand, and VIP has lots
7 of arguments that we didn't meet the
8 likelihood-of-confusion test, so that'll be on
9 remand. We'd have to win that.

10 But, as to the government's argument,
11 which is that there was a weighing of the
12 capital -- capitalizing on the goodwill and not
13 enough weighing as to the need to copy, we're
14 relying on 30 years of PTO case law that said --
15 has never mentioned -- they -- they mentioned
16 trading off of goodwill is a factor for
17 confusing because it tends to confusion, and not
18 once in 30 years has a PTO case rejecting
19 registration based on parody has it said, well,
20 we're going to discount the similarity. They're
21 just looking at likelihood of confusion.

22 JUSTICE GORSUCH: You agree, though,
23 that we would vacate and remand and --

24 MS. BLATT: Yes.

25 JUSTICE GORSUCH: -- and the Ninth

1 Circuit will do what it will do?

2 MS. BLATT: Yes. And there they --
3 they did brief -- it's fully -- all those issues
4 are fully preserved, the other side.

5 JUSTICE GORSUCH: Yes.

6 MS. BLATT: So they have all those
7 arguments on remand.

8 JUSTICE GORSUCH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Kavanaugh?

11 Justice Barrett?

12 Justice Jackson?

13 JUSTICE JACKSON: So going back to
14 Justice Gorsuch's point, isn't trademark
15 consistent with the First Amendment because of
16 trademark infringement's limited scope?

17 And -- and by that, I mean, if the --
18 isn't the point of having a trademark to
19 identify the mark owner's own goods or services
20 and to prevent others from passing off their
21 goods and services as the mark owner? So the
22 confusion that we care about is that people in
23 the marketplace are going to be looking at these
24 items and think they are the mark owner's
25 because of the way they're labeled rather than

1 the person who actually created them.

2 If I'm right about that, then I guess
3 I'm trying to understand why -- shouldn't the
4 defendant have to be using the mark in a way
5 that identifies who is responsible for it in
6 order for trademark infringement to even apply?

7 MS. BLATT: So passing off was in the
8 1920 Act. It started getting extending past
9 that in the 1946 and then in 1988. So it's just
10 always been extended past passing off. And it's
11 never been limited to designation of a source
12 since the first trademark act of 1881.

13 So you've had trademark law since the
14 late 1800s. You struck the first one for being
15 unconstitutional. But, if you just --

16 JUSTICE JACKSON: All right. So, if
17 it's broader than that, then don't we start
18 really worrying about what Justice Alito and
19 others have brought up? If it's broader than
20 that, then I think we start being concerned
21 about impairing artists who are referencing the
22 mark from doing that in their work.

23 And I guess my thought was, all right,
24 we have these artists with First Amendment
25 rights or parodists or whoever, and the way we

1 prevent infringing their rights is by making
2 sure that trademark holders are only able to
3 come in and accuse them of problems if they --
4 they, the artists -- are -- are -- are trying to
5 designate the source of their products by using
6 the mark.

7 MS. BLATT: I -- I think that's a
8 reasonable policy proposal, but here would be my
9 response to Congress, is that when you -- the
10 Rogers --

11 JUSTICE JACKSON: Isn't that what the
12 statute was trying to do? That's the --

13 MS. BLATT: No.

14 JUSTICE JACKSON: -- point of
15 confusion. That's the -- that's the area of
16 confusion that you keep saying is what the
17 statute is all about.

18 MS. BLATT: So Rogers was not even
19 applied past titles until 2003 and not to the
20 substance of movies until 2 -- 2008. We've had
21 a very vibrant film and artistic community
22 since -- I -- I don't know since when.

23 So the -- the arts have flourished --

24 JUSTICE JACKSON: All right. One last
25 question.

1 MS. BLATT: Sure.

2 JUSTICE JACKSON: I'm sorry. All
3 right. Let's say that's my view, okay?

4 MS. BLATT: Of course.

5 JUSTICE JACKSON: If I think that the
6 Lanham Act only kicks in if we have an item that
7 is being passed -- passed off, as you say, or an
8 item that is creating confusion as to the source
9 or origin or sponsorship, all right, do you have
10 an argument in this case with respect to this
11 item --

12 MS. BLATT: Yes.

13 JUSTICE JACKSON: -- that it's
14 confusing in that way as to origin or
15 sponsorship or source?

16 MS. BLATT: Yeah, that was the -- I
17 mean, that's on page 5, but that was the survey.
18 That was the finding. And on page 5 of our
19 reply brief, we have six ways to Sunday on why
20 this was a designation of source, including the
21 admission in their complaint.

22 JUSTICE JACKSON: All right. Great.
23 Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Mr. Guarnieri?

2 ORAL ARGUMENT OF MATTHEW GUARNIERI
3 FOR THE UNITED STATES, AS AMICUS CURIAE,
4 SUPPORTING THE PETITIONER

5 MR. GUARNIERI: Mr. Chief Justice, and
6 may it please the Court:

7 I -- I'd like to begin by just
8 addressing some of the questions that have
9 already been propounded this morning and
10 particularly the hypothetical about the T-shirt
11 depicting an elephant and -- and the De Beers
12 example drawn from the Electronic --

13 JUSTICE SOTOMAYOR: I said either
14 political party.

15 (Laughter.)

16 MR. GUARNIERI: Excuse me, Justice
17 Sotomayor.

18 JUSTICE SOTOMAYOR: Let's be clear.

19 MR. GUARNIERI: Unspecified political
20 party parody on the T-shirt.

21 You know, I think a -- a lot of the
22 intuition driving some of those difficult
23 questions is that reasonable people are not
24 likely to be confused about the source of those
25 products or whether the -- the target of the

1 parody sponsored or approved the product.

2 And I -- I think that intuition is
3 fully captured by the likelihood-of-confusion
4 test, and that's the statutory standard that we
5 think should be applied in all of those cases.

6 Rogers and the position that
7 Respondent is defending in this case is very
8 different. That -- that view says that you
9 should be allowed for various vague First
10 Amendment policy concerns, you should be allowed
11 to engage in this behavior even if it is likely
12 to confuse consumers about the source of your
13 goods or about the senior mark holder's
14 sponsorship or approval. And -- and I think
15 that view just can't be squared with the Lanham
16 Act itself and is not compelled by the First
17 Amendment.

18 I welcome the Court's questions.

19 JUSTICE THOMAS: So what exactly would
20 you do with Rogers?

21 MR. GUARNIERI: Well, we think that
22 Rogers was incorrectly decided, and Rogers --
23 the Rogers standard is inconsistent with the
24 text of the Lanham Act, and I think you can see
25 that for at least three reasons.

1 First, as -- as applied by the Ninth
2 Circuit, Rogers is an antecedent test that the
3 infringement plaintiff has to satisfy in order
4 to even invoke the Lanham Act.

5 The -- the Court reiterated that at
6 Footnote 2 of its opinion on page 33a of the
7 petition appendix. You have to get over Rogers
8 and then also show likelihood of confusion,
9 and -- and that's just plainly inconsistent with
10 the way the statute was designed to operate.

11 The second point is that Rogers is
12 substantively inconsistent with the Lanham Act.
13 Rogers requires a showing either of a complete
14 lack of artistic relevance or that the use of
15 the trademark is explicitly misleading. But, of
16 course, as Ms. Blatt explained, you can have
17 confusing uses of marks that are implicitly
18 misleading.

19 So, you know, Rogers currently is
20 operating to protect a lot of behavior that
21 could cause -- it's actually likely to cause
22 confusion to consumers, and the Lanham Act makes
23 that kind of trademark use actionable as
24 infringement.

25 And then the third point is that

1 Rogers was not conceived of as an application or
2 an interpretation of the text of the Lanham Act,
3 and, indeed, the case was decided under a
4 predecessor version of the Lanham Act that
5 didn't even explicitly contain the
6 likelihood-of-confusion standard that should
7 govern in this case.

8 JUSTICE SOTOMAYOR: I always have
9 hesitation in doing away with something that
10 circuits have been relying on, all -- virtually
11 all of them, but applying it in different
12 contexts. And we have amicus brief from
13 different stakeholders, some saying it may not
14 apply in parody, but it could apply in movie
15 titles, it might apply in something else and not
16 this, in novels, et cetera.

17 Why should we rule broadly? And if we
18 rule narrowly, on what basis? You've heard
19 earlier at least three alliterations, one, the
20 -- Justice Kagan's, one Justice Jackson, one me,
21 limit this just to parodies, because parodies
22 really do rely on is this a joke that people are
23 going to get.

24 MR. GUARNIERI: Sure. Justice
25 Sotomayor, let me make a couple of points in

1 response to those concerns.

2 First, just to address the status quo,
3 it -- it's not the case that all circuits have
4 applied the Rogers test. There are many
5 circuits that have never adopted Rogers. There
6 are many circuits, including the Fourth, Fifth,
7 and Seventh Circuits, that I think address
8 parodies the correct way, the way that we
9 advocate, which is you can take the parodic
10 nature of the use into account under the
11 existing likelihood-of-confusion standard, which
12 is actually the statutory standard.

13 The second point is, I mean, I will
14 grant you that there are a number of courts of
15 appeals that have followed Rogers, but many of
16 those cases involved titles, as Rogers involved
17 a title.

18 The Ninth Circuit has really
19 dramatically expanded the scope of Rogers to
20 include --

21 JUSTICE SOTOMAYOR: Well, that begs my
22 question.

23 MR. GUARNIERI: Sure.

24 JUSTICE SOTOMAYOR: Why don't we just
25 decide on parody rather than everything else?

1 MR. GUARNIERI: Well, I -- I think
2 Rogers, at least as conceived by the Ninth
3 Circuit, is not limited to parody. So I think
4 the Court would -- if -- if you're saying that
5 Rogers is inapplicable to the circumstances of
6 this case, I think you would probably logically
7 be saying it shouldn't be applied not just in
8 cases involving parody but in other --

9 JUSTICE SOTOMAYOR: I don't know why
10 that -- that's logical, because we're not
11 dealing with titles, movies, or anything else.

12 JUSTICE KAGAN: I think, Mr. --

13 JUSTICE SOTOMAYOR: Fiction.

14 JUSTICE KAGAN: I -- I'm sorry.

15 JUSTICE SOTOMAYOR: Go ahead.

16 MR. GUARNIERI: Well, I -- I -- I
17 mean, I think our principal response is that if
18 the rationale for the decision that the Court
19 adopts is that Rogers can't be squared with the
20 Lanham Act, it's hard to understand how that
21 would be limited to parodies. It wouldn't apply
22 equally to other supposedly expressive uses of
23 marks that are currently covered by the Rogers
24 test in the Ninth Circuit.

25 JUSTICE GORSUCH: Counsel, I --

1 CHIEF JUSTICE ROBERTS: Counsel, if --
2 if -- is the government's position that in a
3 case of likelihood of confusion, the Rogers test
4 is out of the picture or that the First
5 Amendment across the board is out of the
6 picture?

7 MR. GUARNIERI: I think it's just the
8 former. We -- we just think the Rogers test is
9 the wrong way to approach these cases. It has
10 no sound basis in trademark law or, indeed, in
11 the First Amendment.

12 But, you know, as Justice Gorsuch's
13 questions to Ms. Blatt illustrated earlier, I
14 think you could still have an as-applied
15 challenge. I think, if the Court gets rid of
16 Rogers and -- and tells the lower courts that
17 Rogers is not the correct way to do it -- this,
18 the correct way is to apply the
19 likelihood-of-confusion standard, that doesn't
20 foreclose an as-applied First Amendment
21 challenge in an appropriate case.

22 But Rogers is not itself an
23 application of any established First Amendment
24 principles. I cannot think of any area of this
25 Court's First Amendment jurisprudence which

1 requires courts to make judgments of artistic
2 relevance or in which the government's authority
3 to regulate turns on judgments of artistic
4 relevance.

5 The "explicitly misleading" prong of
6 Rogers also has no sound basis in this Court's
7 First Amendment precedent. There are areas of
8 false and misleading speech in which the
9 government can regulate, but those -- you know,
10 including fraud, defamation, perjury. In those
11 areas of unprotected speech, it has never
12 mattered whether the -- the deceit is explicit
13 or merely implicit. I mean, that's just a
14 distinction that is -- was made up by the Second
15 Circuit in -- in Rogers, and I think it's time
16 to put an end to it.

17 JUSTICE GORSUCH: And, counsel, I'd
18 like to understand what you would have us do
19 with respect to the remand, because you do argue
20 that even under the Lanham Act's text, always a
21 place to start, likelihood of confusion, that
22 the district court erred and it didn't fully
23 account for the parody nature of -- of this
24 product.

25 So exactly what instructions and --

1 and how would you -- how would you articulate
2 that?

3 MR. GUARNIERI: Sure. Well, in our
4 view, the district court committed legal error
5 in failing to take account of the parodic nature
6 of Respondent's use when applying the
7 likelihood-of-confusion factors that are applied
8 in the Ninth Circuit. I think that is primarily
9 apparent in the district court's consideration
10 of the similarity of the marks factor, which is
11 a factor that all the courts of appeals consider
12 relevant to -- to evaluating the likelihood of
13 confusion.

14 The district court -- you know, in --
15 in our view, the way that parody enters into the
16 picture in -- in most of these cases is that
17 ordinarily you would think that the -- the more
18 similar two marks are, the more likely consumers
19 are to be confused. And a fact-finder could
20 conclude that that's not the case in a -- in --
21 in a parody case because the parody, by its
22 nature, is going to be drawing some humorous
23 contrast with the original, and that contrast
24 will itself serve to distinguish the two in the
25 minds of consumers. And -- and I think the

1 Court could make that clear in its opinion.

2 And Petitioner -- Petitioner and the
3 government have a disagreement about how best to
4 read the district court's opinion, whether the
5 district court actually made the legal error
6 that we think the court made. That -- that's
7 really a question for the Ninth Circuit to
8 resolve.

9 JUSTICE GORSUCH: Let me -- let me see
10 if I have it, okay?

11 MR. GUARNIERI: Certainly.

12 JUSTICE GORSUCH: And I may not. But
13 that -- that the similarity of the marks was a
14 great emphasis in the district court's opinion
15 and perhaps too much, to the point where there
16 are some parodies in which the marks are going
17 to be very similar, but everybody or most
18 everybody or a reasonable person -- and I guess
19 the question is which of those -- would
20 understand that the whole point of the joke is
21 that it isn't the trademark holder's product,
22 it's somebody else's.

23 MR. GUARNIERI: Yes, Justice Gorsuch.
24 I think that's exactly right.

25 JUSTICE GORSUCH: Okay.

1 JUSTICE KAGAN: Mr. Guarnieri, going

2 --

3 JUSTICE ALITO: Well, which of those
4 is it, some percentage or a reasonable person?

5 MR. GUARNIERI: It's an appreciable
6 number of ordinary consumers exercising ordinary
7 care. That's a longstanding standard. It's
8 derived from this Court's cases that predated
9 the Lanham Act.

10 JUSTICE ALITO: And what about the
11 fact that a lot of people surveyed may think
12 that as a matter of law, it was necessary to get
13 the approval of the mark holder?

14 MR. GUARNIERI: Well, that's a hard
15 case. It's a hard question. There are, you
16 know, certainly some amici supporting Respondent
17 who say that that -- that's a kind of legal
18 mistake that should just be dismissed in the
19 likelihood-of-confusion analysis.

20 I think that's hard to say because the
21 -- the Lanham Act itself -- one theory of
22 trademark infringement is that consumers are
23 confused about whether the mark holder has
24 granted its permission to use its marks, that
25 is, whether it has granted legal permission to

1 the allegedly infringing junior mark. If the
2 surveyed consumers think, yeah, you couldn't do
3 this without getting Jack Daniel's permission, I
4 think that's -- that's evidence of likelihood of
5 confusion in -- in -- now I will say --

6 JUSTICE KAGAN: If I --

7 MR. GUARNIERI: -- just to step back a
8 second --

9 JUSTICE KAGAN: -- could --

10 MR. GUARNIERI: -- surveys are just --
11 I mean, it's one piece of the puzzle here, but
12 it's not the whole thing. They are meant to be
13 an approximation of consumer perceptions in the
14 marketplace.

15 JUSTICE KAGAN: The point is that
16 these surveys are expensive and they're in a --
17 a test that is a multifactor test which is
18 confusing, which doesn't provide a lot of
19 guidance in particular situations. It's an
20 extremely kind of expensive litigation to go
21 through.

22 So, when you look at these
23 hypotheticals that were given to you, whether
24 they're political or whether they're artistic
25 speech, and your first-line defense of this and,

1 as I conceive it, your second- and third-line
2 defense too, is don't worry, you'll win on
3 likelihood of confusion, I think that what this
4 Rogers test is all about is to say that there
5 are some things, the political hypotheticals,
6 the artistic speech hypotheticals, that
7 shouldn't have to go through this whole analysis
8 and that we can get rid of in the first instance
9 on a motion to dismiss without surveys, without
10 a lot of fuss and bother.

11 MR. GUARNIERI: Well, Justice Kagan,
12 you -- you can adjudicate a trademark
13 infringement suit on a motion to dismiss at the
14 12(b)(6) stage if the allegations in the
15 complaint do not plausibly allege infringement,
16 if they do not plausibly allege a likelihood of
17 consumer confusion. That's the ordinary
18 standard that applies in every other context in
19 federal litigation. It is --

20 JUSTICE KAGAN: Well, every other
21 context in federal litigation doesn't involve
22 the kinds of clearly First Amendment-protected
23 speech that these hypotheticals are about.

24 So the point of these hypotheticals is
25 to say that every other context in litigation

1 really doesn't cut it when you're talking about
2 protected political and artistic speech.

3 MR. GUARNIERI: Well, I -- if you were
4 to raise -- in any other context, if you were
5 the defendant in one of these cases in a
6 non-trademark case and you were, you know, the
7 subject of a statutory claim and you wanted to
8 raise a -- the -- as a defense that the First
9 Amendment protected your contact -- your
10 conduct, you would have to litigate that
11 defense. You don't get a special off-ramp at
12 the beginning of the litigation just because it
13 might be expensive to litigate the defense that
14 you'd like to raise.

15 And I think, in general, the costs of
16 litigating a trademark infringement suit are not
17 a compelling reason to displace the statutory
18 standard with this Rogers standard that is not
19 itself based in trademark law or, indeed, based
20 in, you know, established First Amendment
21 principles.

22 The other thing I would point out, I
23 mean, I take the point in some of the briefing
24 on the other side that, you know, there is a
25 possibility or a threat of abusive litigation

1 tactics that could -- could show legitimate
2 non-confusing uses of marks. And I think the
3 Congress already addressed that concern to some
4 extent by providing for fee-shifting in the
5 Lanham Act, which is itself an unusual feature
6 in -- in federal law. In an appropriate case, a
7 district court that could, you know, found that
8 a case was brought in bad faith to chill speech
9 that is not confusing, you could award
10 attorneys' fees, and -- and that serves as a
11 deterrent to some extent.

12 JUSTICE ALITO: Some of the
13 hypotheticals and actual cases that are
14 highlighted in the briefing in this case do seem
15 to me to present serious First Amendment issues.
16 And you seem not to be very concerned about the
17 free speech implications of the position that
18 you're taking.

19 Here's another example. This is a
20 real-life example in one of the briefs. There's
21 a college, I won't say what it was, let's say
22 it's ABC College, and a professor and -- and
23 there's a website called ABC -- that has ABC in
24 it, and it's -- it is dedicated to criticism of
25 the college for corruption and mismanagement.

1 And the college brings suit, claiming that
2 that's an infringement of the mark.

3 MR. GUARNIERI: Well, it's very
4 difficult to imagine in a case like that that an
5 ordinary consumer exercising ordinary care would
6 be confused about whether this website that is
7 highly critical of the college -- whether the
8 college was the source of that website or
9 otherwise sponsored or approved it. So I -- I
10 think the likelihood of confusion --

11 JUSTICE ALITO: And you think that
12 could be dismissed under 12(b)(6) --

13 MR. GUARNIERI: Well --

14 JUSTICE ALITO: -- if they plead that
15 there was a likelihood of confusion?

16 MR. GUARNIERI: -- you -- you'd have
17 to know more about the complaint and -- and
18 you'd have -- the fact-finder would have to be
19 making a judgment about whether the allegations
20 of confusion are plausible.

21 I mean, that -- that's -- I think that
22 you do have some cases that are dismissed at the
23 12(b)(6) stage in this area, so it's not
24 impossible, but, you know, again, I mean, I
25 think the likelihood-of-confusion standard can

1 capture that -- that case.

2 And -- and, indeed, I don't take a lot
3 of the amici who favor Rogers to be saying that
4 the cases would really come out differently.
5 The -- the claim is just that they don't want to
6 have to go through the process of demonstrating
7 that consumer confusion is not likely, and --
8 and I don't think that itself is a sufficient
9 basis for maintaining Rogers.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas?

13 Justice Kavanaugh?

14 Justice Barrett?

15 Oh, I'm sorry. Justice Jackson?

16 Mr. Cooper?

17 ORAL ARGUMENT OF BENNETT E. COOPER

18 ON BEHALF OF THE RESPONDENT

19 MR. COOPER: Mr. Chief Justice, and
20 may it please the Court:

21 In our popular culture, iconic brands
22 are another kind of celebrity. People are
23 constitutionally entitled to talk about
24 celebrities and, yes, even make fun of them.

25 Jack Daniel's advertised in its

1 self-serious way that Jack is everyone's friend,
2 and Bad Spaniels is a parody playful in
3 comparing Jack to man's other best friend.

4 It's clear in this case that what
5 Jack Daniel's is complaining about is not Bad
6 Spaniels as a designation of source. They're
7 complaining about the speech, the parody, the
8 comparison to dog poop and a Bad Spaniel, not
9 the mark.

10 Parodies on noncompetitive goods like
11 Bad Spaniels aren't likely to cause confusion as
12 to source or approval. As this Court recognized
13 quite properly in Campbell, companies simply do
14 not license lampoons of their own products.

15 The circuits developed the Rogers test
16 to protect expressive works generally. And it
17 keeps the thread of extended litigation from
18 silencing speech. That's particularly true when
19 well-heeled celebrities go after parodists.

20 The Solicitor General agrees that the
21 general multifactor test that is usually applied
22 does not work for parodies and that the district
23 court misapplied the factors here.

24 More broadly, a test that convicts
25 pure parodic speech like Mutant of Omaha Nuclear

1 Holocaust Insurance or Michelob Oily in a humor
2 magazine is broken. A test that requires
3 significant resources to vindicate obvious
4 parodies like Wal-Qaeda or Walocaust or Chewy
5 Vuitton is simply the wrong tool for the job.

6 If the Court is inclined toward the
7 Solicitor General's position, the Court should
8 provide more guidance to lower courts than
9 simply, hey, keep that it's a parody in mind,
10 because the burden of litigating the irrelevant
11 or inverted factors itself chills speech.

12 Stripping out those factors, a more
13 focused version of the general test would ask
14 three questions: One, can the Court reasonably
15 perceive the product's parodic character?
16 That's taken from Campbell.

17 Two, what is the proximity and
18 competitiveness of the party's goods? That's
19 taken from the standard test.

20 And third, does the parody otherwise
21 fail to differentiate itself from the parodied
22 mark? This test protects speech while denying a
23 free pass to knock offs and counterfeits.

24 But, fundamentally, the First
25 Amendment is not a game show where the result is

1 survey says I'm confused, stop talking.

2 I welcome your questions.

3 JUSTICE THOMAS: So is your concern --
4 are you as much concerned about the test itself
5 or the location of the test? So what if your
6 test and the factors that are concerning you are
7 rolled into the multifactor test?

8 MR. COOPER: Your Honor, the -- the --
9 I think the Rogers test, if I understand your
10 question --

11 JUSTICE THOMAS: Yes. And --

12 MR. COOPER: -- the Rogers test is a
13 simpler way of addressing --

14 JUSTICE THOMAS: Well, I understand
15 that. But what I'm trying to get -- I'm trying
16 to understand is whether or not you are more
17 concerned about the fact that Rogers preempts
18 the Lanham Act multifactor approach up front as
19 opposed to your having the exact same test but
20 at the multifactor stage.

21 MR. COOPER: Your Honor, we think that
22 the Rogers test functions best as a screen that
23 takes out all the expressive works at the
24 beginning so you never have to get there.

25 JUSTICE THOMAS: So, in -- in other

1 words, you -- your -- you prefer the Rogers test
2 because it precludes the application of the full
3 Lanham test?

4 MR. COOPER: Well, at -- at least the
5 multifactor test as that's conceived of --

6 JUSTICE THOMAS: Yes.

7 MR. COOPER: -- as a application.

8 JUSTICE THOMAS: Yeah, I --

9 MR. COOPER: Yes, because the
10 multifactor test, as -- as this Court recognized
11 in Wisconsin Right to Life, that kind of
12 rough-and-tumble open-ended inquiry itself
13 chills speech --

14 JUSTICE THOMAS: So now, with that,
15 what is your best textual hook for Rogers and
16 for the off-ramp that you're proposing and that
17 the Ninth Circuit applied?

18 MR. COOPER: We -- we think that
19 the -- the -- the broad standard of likely to
20 confuse or perceive is fine. There is an entire
21 edifice built under the Lanham Act to try to
22 reconcile that with First Amendment text,
23 whether it's fair use doctrines, which are
24 nonstatutory, whether it's nominative fair use,
25 whether it's the Rogers test.

1 There are ways of meshing that and
2 understanding that the text does not provide a
3 standard for -- for the quantum or the mechanism
4 or the means of causing confusion or identify
5 what kind of confusion --

6 JUSTICE THOMAS: Well, but -- but the
7 Rogers test doesn't seem to have its roots in
8 First Amendment jurisprudence, though.

9 MR. COOPER: Well, I think one has to
10 differentiate the Rogers test as it was
11 originally formulated. And I agree that it's
12 not the most well-phrased test in terms of
13 artistic relevance.

14 I think the intellectual --
15 intellectual law -- law professors brief in
16 support of neither is -- kind of approaches the
17 more accurate test to say not is it artistically
18 relevant but is it a gratuitous use for the
19 message.

20 So, as long as there's a connection,
21 it's not just throwing on a funny trademark that
22 has nothing to do with the rest of the good,
23 then that has a significant relevance.

24 And I think, as applied in the parody
25 case, parody's an easy case because of the

1 nature of parodies in both saying I'm the
2 original, but I'm also not the original.

3 JUSTICE JACKSON: Can I ask you,
4 you -- you said that Rogers screens out
5 expressive works, and I think part -- part of
6 the problem that I'm struggling with is all of
7 the uncertainty we have as to whether or not
8 something is sufficiently expressive, and that
9 -- that seems to be where there's a lot of
10 problems in the administrability of the Rogers
11 test.

12 So let me -- let me ask you one
13 question, which is, is it your view that
14 expressive works can never confuse as to source
15 or origin? Because, if an expressive work can,
16 I don't understand why it would be entitled to
17 be screened out.

18 MR. COOPER: I think it's highly
19 unlikely that, and, in fact, I haven't seen an
20 example, where you could have an expressive work
21 that was likely to confuse if it was not
22 otherwise explicitly misleading.

23 JUSTICE JACKSON: Well, what about --
24 what about the hypothetical of this very
25 scenario? So let's say VIP made a dog toy that

1 was the exact size, shape, and color of a
2 Jack Daniel's bottle. They called it Bad
3 Spaniels, but the label is identical and
4 everything is the same, and there we have it.

5 Are you saying that that scenario is
6 one in which you would still claim entitlement
7 to expressive screening out? In other words,
8 would -- if -- if we know that these things are,
9 you know, basically identical, except one says
10 Jack Daniel's and the other says -- or -- or
11 let's -- let's do it this way. What if it says
12 Jack Daniel's? That's an easier hypothetical.
13 The -- the Chewy dog toy says Jack Daniel's and
14 it's --

15 MR. COOPER: It is that --

16 JUSTICE JACKSON: -- the same color,
17 size, shape, and everything.

18 MR. COOPER: It is easy because we
19 would consider that to be explicitly misleading.
20 The parody here, though, is not putting Jack
21 Daniel's on a dog toy. There's far more to it.
22 And there is in this case --

23 JUSTICE KAGAN: Well, what is there to
24 it? What is the parody here?

25 MR. COOPER: The parody?

1 JUSTICE KAGAN: Yeah.

2 MR. COOPER: The parody is of --

3 JUSTICE KAGAN: Because I -- maybe I
4 just have no sense of humor, but --

5 (Laughter.)

6 JUSTICE KAGAN: -- what's the parody?

7 MR. COOPER: The -- the parody is
8 multifold. The -- the -- the testimony
9 indicates, and it's not been disputed, that the
10 parody is to make fun of marks that take
11 themselves seriously.

12 JUSTICE KAGAN: Well you, I mean, you
13 say that, but you -- you know, you make fun of a
14 lot of marks: Doggie Walker, Dos Perros, Smella
15 R Paw, Canine Cola, Mountain Drool. Are all of
16 these companies taking themselves too seriously?

17 MR. COOPER: Yes, in fact. You don't
18 see a parody --

19 (Laughter.)

20 JUSTICE KAGAN: I mean, just like --

21 MR. COOPER: -- as -- as a bourbon --

22 JUSTICE KAGAN: -- soft drinks and
23 liquor --

24 MR. COOPER: And -- and I would say
25 all --

1 JUSTICE KAGAN: -- companies take
2 themselves too seriously as a class?

3 MR. COOPER: I think there are a lot
4 of products that take them too seriously --
5 seriously and merchandise. You don't see, for
6 example, something near and dear to my heart, a
7 parody of Woodford Reserve bourbon because you
8 don't get that building up of an edifice of
9 making them into an iconic -- a cultural icon
10 and reference point.

11 When you advertise on TV incessantly
12 and you create this image of yourself as
13 something that's so important --

14 JUSTICE KAGAN: So you're just saying
15 anytime you go out after or you use the mark of
16 a large company, it's a parody just by
17 definition?

18 MR. COOPER: Well --

19 JUSTICE KAGAN: Because they must
20 be -- they must take themselves too seriously
21 because they're a big company.

22 MR. COOPER: I -- I think, as applied
23 here, there's no doubt that Jack Daniel's takes
24 itself very seriously.

25 JUSTICE KAGAN: Well, I don't know. I

1 don't think Stella Artois takes itself very
2 seriously.

3 MR. COOPER: And they would --

4 JUSTICE KAGAN: They have very funny
5 commercials.

6 MR. COOPER: Yeah, and I've seen their
7 historical commercials, and they would earn our
8 parody too. But Jack Daniel's is at the head of
9 the line.

10 JUSTICE KAGAN: I mean, this is --
11 (Laughter.)

12 JUSTICE KAGAN: Okay. I've made my
13 point.

14 MR. COOPER: No, and I -- I think --

15 JUSTICE GORSUCH: Counsel -- counsel,
16 I think the point has been made.

17 (Laughter.)

18 JUSTICE GORSUCH: I just have a
19 slightly different question.

20 So you -- with respect to Rogers
21 itself, you -- you've said the artistic
22 expressiveness isn't quite right. And -- and --
23 and you'd agree that judges would make for
24 pretty lousy art critics, I assume.

25 MR. COOPER: That's correct.

1 JUSTICE GORSUCH: Okay.

2 MR. COOPER: So do lawyers of all
3 kinds.

4 JUSTICE GORSUCH: Thank you.
5 Appreciate that.

6 The -- the other part is this
7 "explicitly misleading" prong, and our First
8 Amendment doesn't -- doesn't protect speech that
9 is misleading often or it doesn't give it the
10 same protection always. And it -- I'm not sure
11 where "explicitly" comes from as opposed to
12 "implicitly misleading." That would also seem
13 to have different First Amendment implications.

14 So why -- why is -- where -- where
15 does that come from?

16 MR. COOPER: The problem of artistic
17 use, Your Honor, or any kind of expressive
18 use --

19 JUSTICE GORSUCH: Well, we've already
20 put that aside.

21 MR. COOPER: Right. No, the problem
22 of any --

23 JUSTICE GORSUCH: So the "explicitly
24 misleading" portion --

25 MR. COOPER: Right.

1 JUSTICE GORSUCH: -- why "explicitly"?

2 MR. COOPER. Well, here's the problem,
3 is that, first of all, "explicitly misleading"
4 is a way of identifying a mechanism of
5 confusion, so it's consistent with the statute.

6 JUSTICE GORSUCH: Oh, so we're back at
7 -- so -- so it's confusion then that's --

8 MR. COOPER: Well --

9 JUSTICE GORSUCH: -- the relevant
10 standard?

11 MR. COOPER: -- confusion caused by an
12 explicitly misleading form.

13 JUSTICE GORSUCH: But confusion is the
14 right standard?

15 MR. COOPER: Well, it factors into the
16 Rogers test. Yes.

17 JUSTICE GORSUCH: It factors into the
18 -- the statutory standard factors into --

19 MR. COOPER: It is part.

20 JUSTICE GORSUCH: -- the Rogers test
21 --

22 MR. COOPER: Yes.

23 JUSTICE GORSUCH: -- through the
24 explicitly misleading portion?

25 MR. COOPER: Yes, it brings -- as

1 we've argued in our brief, it brings the
2 confusion standard in.

3 JUSTICE GORSUCH: Okay. I -- I -- I
4 think I understand.

5 MR. COOPER: Okay.

6 JUSTICE GORSUCH: You -- you had a
7 three-part test that was -- you started with --

8 MR. COOPER: Yes.

9 JUSTICE GORSUCH: -- at the beginning,
10 but it's different from the Rogers test.

11 MR. COOPER: Yes, it is. It's an
12 alternative based on -- that's derived more from
13 the multifactor test if you strip out the
14 inverted or irrelevant factors --

15 JUSTICE GORSUCH: Right.

16 MR. COOPER: -- in the case of parody.

17 JUSTICE GORSUCH: Okay. And those are
18 things that are grounded in the statute and its
19 -- and its traditional interpretations?

20 MR. COOPER: Grounded in the statute
21 and in this Court's recognition in Campbell --

22 JUSTICE GORSUCH: Yeah.

23 MR. COOPER: -- the reality of
24 parodies, that people don't license lampoons of
25 their own products.

1 JUSTICE GORSUCH: Would you be okay
2 with that?

3 MR. COOPER: I -- I think --

4 JUSTICE GORSUCH: I mean, you -- you
5 argued for it in your opening, so I assume --

6 MR. COOPER: Yes.

7 JUSTICE GORSUCH: -- the answer is
8 yes.

9 MR. COOPER: I -- I think it -- it --
10 for parodies, it approaches the Rogers test as a
11 means to protect speech while not denying a free
12 pass to knockoffs and counterfeits.

13 JUSTICE GORSUCH: Okay. Thank you.

14 JUSTICE SOTOMAYOR: I -- I've been
15 confused by your allegation in your complaint
16 that Bad Spaniels' trademark and trade dress,
17 that you're the owner of it. Can I stop -- the
18 only trademark I see on your product is on the
19 Silly Squeakers. That's --

20 MR. COOPER: Right.

21 JUSTICE SOTOMAYOR: -- the source,
22 Silly Squeakers, correct?

23 MR. COOPER: Yes.

24 JUSTICE SOTOMAYOR: That's the
25 trademark?

1 MR. COOPER: That is the actual
2 trademark.

3 JUSTICE SOTOMAYOR: And that's the
4 only thing that has an "R" on it.

5 MR. COOPER: Right. Or a "TM" on the
6 product.

7 JUSTICE SOTOMAYOR: Okay. I'm not
8 sure how you're calling Bad Spaniels a trademark
9 --

10 MR. COOPER: We --

11 JUSTICE SOTOMAYOR: -- or why you're
12 calling how the bottle -- which you admit is the
13 Jack Daniel's trade dress because it's -- it's a
14 unique square bottle -- how you can claim it as
15 your own.

16 MR. COOPER: We're not, Your Honor,
17 but Jack Daniel's is claiming that we are using
18 that as a trademark. We're simply --

19 JUSTICE SOTOMAYOR: So why did your
20 complaint said -- say that you are the owner of
21 all rights in Bad Spaniels' trademark and trade
22 dress?

23 MR. COOPER: Your Honor, it's a form
24 allegation of legal ownership, which is a
25 conclusion. It's not, under Ninth Circuit

1 precedent, any kind of judicial admission.

2 What we were just saying, in the kind
3 of rote way you do in complaints, that we own --
4 we're Bad Spaniels. And so the question is --

5 JUSTICE SOTOMAYOR: You're not Bad
6 Spaniels; you're Silly Squeakers?

7 MR. COOPER: We're Silly -- as a
8 designation of source on the product. But, in
9 terms of identifying the --

10 JUSTICE SOTOMAYOR: Okay. I mean,
11 every designer of products that puts their trade
12 name on it -- name any famous designer -- they
13 have a logo that symbolizes them, they give each
14 design a different name. That's what you do.
15 Bad Spaniels is one among many other names
16 Justice Kagan --

17 MR. COOPER: That's right. We -- we
18 have argued throughout the case, in the district
19 court and in the court of appeals, that neither
20 Bad Spaniels nor the -- the label and the
21 appearance on the -- on the toy are designations
22 of source or function as a trademark.

23 JUSTICE ALITO: But some of your other
24 toys are registered trademarks, aren't they?
25 Doggie Walker is registered.

1 MR. COOPER: It --

2 JUSTICE ALITO: Dos -- Dos Perros is
3 registered.

4 MR. COOPER: Only the standard
5 character mark, what used to be called the type
6 mark, only that name, not the parodic image.
7 And Jack Daniel's has made clear in this case
8 that they don't consider Bad Spaniels to be
9 infringing. It's the totality of the whole
10 look. In fact, in their confusion survey, they
11 used Bad Spaniels and the dog head as it appears
12 on the hangtag of the product as their control
13 sample.

14 JUSTICE ALITO: Did you agree with the
15 suggestion that the First Amendment does not
16 protect speech that is misleading?

17 MR. COOPER: Well --

18 JUSTICE ALITO: We wouldn't have very
19 much speech in this country if that were the
20 case.

21 (Laughter.)

22 MR. COOPER: I -- I -- I think that's
23 an overbroad statement of the law.

24 JUSTICE ALITO: And the Court held
25 that it -- it protects speech that is

1 demonstrably false in -- in Alvarez, didn't it?

2 MR. COOPER: Well, in fact, because
3 people were not -- relying or going to be
4 misled, something approaching fraud. In this
5 case, there's no evidence that anyone would buy
6 the Bad Spaniels toy believing that it either
7 came from Jack Daniel's or Jack Daniel's
8 sponsored it in the way that, you know,
9 McDonald's sponsored something that actually
10 comes from its franchisees. That's what the
11 real --

12 JUSTICE JACKSON: So why isn't that
13 the threshold test? Why -- why don't we just
14 ask that at the beginning of all of this? With
15 respect to any argument about trademark in this
16 way, why don't we ask, would a customer, you
17 know, mistakenly believe that this thing came
18 from Jack Daniel's, was sponsored by Jack
19 Daniel's? Why do we need a Rogers test that is
20 importing, you know, these other kinds of
21 criteria that don't seem to be grounded directly
22 in -- in -- in the statute?

23 MR. COOPER: Because the methods in
24 which in a commercial case with parties that
25 should be operating entirely at arm's length, we

1 determine whether someone would reasonably
2 believe that there was a claim of origin or a
3 claim of sponsorship or a representation.

4 JUSTICE JACKSON: Exactly. I'm just
5 saying, so why isn't that the question at the
6 beginning?

7 MR. COOPER: Because it's so difficult
8 and so subject to misapplication in expressive
9 works, including parodies, that the standard
10 method --

11 JUSTICE JACKSON: But you said
12 parodies are clear. Parodies are the
13 paradigmatic easy answer to that question.

14 MR. COOPER: We agree, Your Honor. We
15 agree that this should have been a case
16 susceptible of resolution by a motion to dismiss
17 or a motion for summary judgment because no one
18 looking at this toy could possibly believe --

19 JUSTICE JACKSON: And it wasn't
20 precisely because we have a Rogers test that I
21 think is confusing people into doing other
22 things.

23 MR. COOPER: No, the district court
24 threw away the Rogers test and applied the
25 multifactor test and got it wrong.

1 JUSTICE GORSUCH: Well, what if --
2 what if -- what if -- what if we did remand this
3 case, as the Solicitor General suggests, and say
4 we're not sure where this Rogers thing comes
5 from, but we do think that the district court
6 may not have given adequate weight to the fact
7 that this is a parody and the proximity and the
8 -- and the differences in the label in its
9 analysis? Would -- would -- would you have any
10 objection to that?

11 MR. COOPER: Yes, Your Honor, because
12 the -- the problem --

13 JUSTICE GORSUCH: Most -- most lawyers
14 don't stand at the lectern and -- and oppose a
15 win, but I'm -- I'm --

16 MR. COOPER: No, no.

17 (Laughter.)

18 JUSTICE GORSUCH: This will be
19 interesting.

20 MR. COOPER: I would prefer more of a
21 landslide win than --

22 JUSTICE GORSUCH: Oh.

23 (Laughter.)

24 MR. COOPER: And -- and -- and
25 something also that is --

1 JUSTICE GORSUCH: Fair enough. Who
2 wouldn't?

3 MR. COOPER: And some -- and something
4 that also in future cases would provide clearer
5 guidance from saying consider how parody plays
6 into it.

7 The problem is -- and I say this --
8 before I was an appellate lawyer, I was a
9 trademark lawyer -- when you have to litigate
10 six, seven, eight, nine, ten factors --

11 JUSTICE GORSUCH: Well -- well --

12 MR. COOPER: -- and you have to --

13 JUSTICE GORSUCH: Oh, if we're going
14 to talk about factors, you're asking us to put
15 more factors into the equation, not fewer, and
16 some that aren't in the statute, and it's an
17 antecedent door that has to be opened before you
18 even get to the statute.

19 MR. COOPER: I think -- first of all,
20 I think I've gotten it down to three factors
21 here. And I think there are things that --

22 JUSTICE GORSUCH: Well, but those --
23 those you say are in the statute. I'm talking
24 about the Rogers factors, artistic relevance,
25 we're lousy art critics and all that sort of

1 thing, has to be done before we even get to
2 those.

3 MR. COOPER: I -- I -- I think the
4 word "artistic" could be stricken from the copy
5 of Rogers. I think it's really a matter of
6 relevance rather than artistic relevance. It's
7 not -- and I think, in practice, it has not
8 proven a test that is difficult to apply on a
9 fair and reasonable basis. And courts have been
10 able to distinguish, for example, in the
11 Harley-Davidson case, someone just using a mark
12 and claiming Rogers and saying, no, there --
13 there's no -- there's no message here, there's
14 nothing here.

15 JUSTICE GORSUCH: You'd take as a
16 second best the win?

17 MR. COOPER: I would -- I would take a
18 second -- well, we'd like a win under any
19 circumstances, but I'll take it under the second
20 best. But what -- what's --

21 JUSTICE KAGAN: Mr. --

22 MR. COOPER: -- I think --

23 JUSTICE KAGAN: I'm sorry. Go ahead.

24 MR. COOPER: No, no, what's critically
25 important, Your Honors, is that whatever the

1 test is, it's something that in this case or
2 other cases can be applied simply and fairly and
3 without spending people who are -- as parodists,
4 are punching up --

5 JUSTICE KAGAN: So --

6 MR. COOPER: -- in every case.

7 JUSTICE KAGAN: -- so, for -- for me,
8 you still have to fight against a loss.

9 MR. COOPER: Okay.

10 JUSTICE KAGAN: So, I mean, whatever
11 the -- whether the Rogers test gets the question
12 exactly right, whether there should be a better
13 test to think about First Amendment issues,
14 you're -- you're sort of out of that, I -- I
15 think. You're sort of leagues away from that.
16 You're -- this is a standard commercial product.
17 This is not a political T-shirt. It's not a
18 film. It's not an artistic photograph. It's
19 nothing of those things. It's a standard
20 commercial product.

21 You're -- I don't see the parody, but,
22 you know, whatever.

23 (Laughter.)

24 JUSTICE KAGAN: You're using this, as
25 your complaint says, as your registration on the

1 other products say, as the placement of your
2 hangtag says, you're using it as a source
3 identifier.

4 It seems like just not a First
5 Amendment Rogers kind of case, and the First
6 Amendment Rogers kind of case, I think what this
7 argument suggests is, those are hard questions.
8 Why -- why don't you -- why -- I guess the
9 question is, why aren't you leagues from Rogers?

10 MR. COOPER: I will agree with Jack
11 Daniel's counsel on one thing: A distinction
12 between utilitarian goods and expressive works
13 is a nonexistent standard.

14 Your Honor gave as an example a
15 T-shirt. T-shirt people buy them in order to
16 not get caught up with public nudity. They are
17 functional, utilitarian goods, but they may also
18 bear a message, whether it's a hat or a -- a hat
19 we -- we all know can be become political
20 symbols or a T-shirt or a coffee mug.

21 JUSTICE KAGAN: Okay. A dog toy, I'm
22 just going to say, is a utilitarian good.

23 MR. COOPER: Well --

24 JUSTICE KAGAN: You know, there might
25 be some hard cases. I actually don't think that

1 the political T-shirt is a very hard case. It
2 says something, it's making a point.

3 But dog toys are just utilitarian
4 goods, and you're using somebody else's mark as
5 a source identifier, and that's not a First
6 Amendment problem.

7 MR. COOPER: And if we -- Your Honor,
8 if we change the hypothetical and we said, okay,
9 put on the hangtag, not for use with real dogs,
10 and it was sold purely as a collectible, because
11 that's what the testimony was, that this -- they
12 intended that this would in part be a
13 collectible from the graphic designer who worked
14 it up.

15 Then it would not be a utilitarian
16 good. It would be soft sculpture in copyright
17 terms. It would be an art piece. It doesn't
18 matter whether you use it with your dog or you
19 put it on a shelf, as I plan to do, and laugh at
20 it from time to time. It is still an
21 expression.

22 And what they don't -- what
23 Jack Daniel's is upset about is not the
24 utilitarian good. They're upset about the
25 speech that's born on it.

1 JUSTICE JACKSON: But it does matter
2 whether you put it on a shelf because the Lanham
3 Act doesn't care about that. If you do -- if
4 put it on a shelf, right, then you're not using
5 it in commerce. You're not shopping it around
6 and potentially confusing people into thinking
7 that Jack Daniel's is selling this. That's the
8 whole heartland of the trademark.

9 MR. COOPER: I -- I'm sorry if I
10 wasn't clear about my hypothetical. If VIP
11 Products sold that toy not as a toy to be used
12 with a dog but as soft sculpture for people to
13 buy and put on their shelf to get a good laugh
14 at the joke, which at least some people get, in
15 fact, that would take away its supposed
16 utilitarian value, but it would keep its
17 expressive value because what people laugh at is
18 not the fact that it's a dog toy, it's the
19 speech on it, and that's precise --

20 JUSTICE JACKSON: Would you object if
21 Jack Daniel's was doing that to a test that
22 would say, when you were sued -- I mean, if --
23 if VIP was doing that, to a test that would say
24 is this item being used as a source identifier
25 for this product in a way that would confuse

1 people into thinking that Jack Daniel's was
2 actually sponsoring or it was made by
3 Jack Daniel's or whatever? Would you object to
4 that being really the primary question that is
5 being asked?

6 MR. COOPER: Well, that -- that
7 inquiry, Your Honor, does not turn on whether
8 it's being used as a utilitarian good or not.

9 JUSTICE JACKSON: True.

10 MR. COOPER: It doesn't.

11 JUSTICE JACKSON: I'm asking --

12 MR. COOPER: But the question --

13 JUSTICE JACKSON: -- something
14 slightly different than Justice Kagan.

15 MR. COOPER: -- is whether people
16 perceive -- whether a reasonable -- objective
17 reasonable consumer would perceive that this
18 came from Jack Daniel's or that Jack --

19 JUSTICE JACKSON: Right. Rather
20 than -- rather than does this have artistic
21 value, is it explicitly misleading, all of these
22 other questions, why isn't the question just
23 whether people, in looking at this, a reasonable
24 person, et cetera, the way the Lanham Act I
25 understood directs courts to look at, are people

1 confused into believing that Jack Daniel's
2 created this, sponsored this, or whatever?

3 MR. COOPER: I think Your Honor could
4 do that. The problem, I think, that Rogers
5 recognized is, to paraphrase my opposing
6 counsel, but we've got a survey --

7 JUSTICE JACKSON: No, I think --

8 MR. COOPER: -- and the Rogers court
9 said --

10 JUSTICE JACKSON: But I think the
11 problem --

12 MR. COOPER: -- and it said --

13 JUSTICE JACKSON: Yeah.

14 MR. COOPER: Let me just say --

15 JUSTICE JACKSON: Yeah.

16 MR. COOPER: -- it's a survey, and
17 also I think, as the Cliff Notes court and other
18 courts have noted, that when you're dealing with
19 expressive work, you have to change -- you have
20 to accept a slightly higher degree of confusion.

21 JUSTICE JACKSON: But it sounds like
22 what you're doing is saying, when you're dealing
23 with an expressive work, we get a pass under the
24 Lanham Act. We get to -- even though the
25 standard ordinarily for trademark violations in

1 -- in what Congress cared about is people
2 putting things into the marketplace that confuse
3 consumers into believing that the mark -- that
4 it's from the mark holder or sponsored by the
5 mark holder, if it's an expressive thing, then
6 we don't really have to do that.

7 We can put our thing out there.
8 People can be totally confused, but it -- but
9 we -- we -- we then just scream First Amendment
10 and we get out of Lanham Act liability. And I
11 don't see that in the statute, and that's what
12 I'm worried about.

13 MR. COOPER: And I don't see that in
14 the First Amendment either. I don't think you
15 have to go that far to accommodate the First --
16 free speech considerations in the Lanham Act
17 test. And I think a lot of those cases where
18 people say, oh, we're expressive and we're doing
19 something, the Rogers test -- test itself would
20 address through the application of the prongs
21 either the use is gratuitous -- just --

22 JUSTICE JACKSON: And you don't think
23 that could be a -- taken care of through the
24 factors in the Lanham Act?

25 MR. COOPER: It could -- it could be

1 if the --

2 JUSTICE JACKSON: Isn't that the
3 government's position in this case? They say,
4 just do it under the Lanham Act and have -- send
5 it back and have parody taken into account.

6 MR. COOPER: It could, but it won't be
7 unless this Court provides more guidance as to
8 what that means, and that's why we gave that
9 stripped-down version of the test.

10 CHIEF JUSTICE ROBERTS: Justice
11 Thomas?

12 JUSTICE THOMAS: On a separate
13 subject, could you just elaborate a bit on why a
14 product that you -- that's -- that you can buy
15 online or at Petco is noncommercial?

16 MR. COOPER: Absolutely, Your Honor.
17 We live in an age where -- and it's actually
18 true in all past ages -- everything is for sale.
19 Whether something is sold or not does not make
20 it noncommercial or commercial.

21 In fact, under the Lanham Act's test,
22 under Section 1127, which has definitions, if
23 the test were whether you can buy or sell it, in
24 fact, you would have -- the -- the noncommercial
25 use exclusion would mean you'd have to have

1 something which was not bought and sold in
2 commerce, which is defined as the ordinary
3 course of trade in the statute. So that --
4 that's just an impossibility.

5 And I think the -- both the
6 legislative history and a textual analysis of
7 1125 and 1127 point to the use as a reference of
8 this Court's commercial speech, noncommercial
9 speech distinction, and that teaches that it's
10 only commercial if it does no more than propose
11 a transaction.

12 And, in this case, the parody is not
13 proposing a transaction of anything because
14 there is no parodic product. There is no bottle
15 of poo. It's simply making a joke and the joke
16 is noncommercial.

17 But that's what the struggle was, I
18 think, in the Ninth Circuit's M -- MCA records
19 case looking back at the legislative history and
20 also the -- the commentary we -- we've submitted
21 to the Court of analyzing what this exclusion
22 was -- purpose it was supposed to serve and what
23 the reference was and how it fits with Supreme
24 -- not only this Court's doctrine on
25 noncommercial speech but also how it fits with

1 the other exclusions.

2 JUSTICE THOMAS: Well, I -- I still
3 don't know what that means, but give me an
4 example of something that is commercial then.

5 MR. COOPER: A commercial would be an
6 advertisement.

7 JUSTICE THOMAS: No, no, no.
8 Something that is commercial, that does -- that
9 fits -- that it's not noncommercial.

10 MR. COOPER: I think an advertisement
11 would be commercial speech, that it proposes a
12 transaction. And so, if we were to have
13 something that advertised a product, let's say
14 Bad Spaniels Whiskey, and it was an ad for Bad
15 Spaniels Whiskey, that advertisement would be
16 commercial speech. You're proposing a
17 transaction.

18 But that's not what we're doing here.
19 We're not selling a bottle of diluted dog poo,
20 which is the subject of the parody that they're
21 complaining about.

22 JUSTICE SOTOMAYOR: The Ninth Circuit
23 and other -- the government is proposing and
24 Petitioner that -- that noncommercial is
25 anything you buy or sell, and you've answered

1 that, but they also make the point that saying
2 that noncommercial is anything that has speech
3 in it is too broad, that that would do away with
4 the exception for parody, and that itself would
5 undermine the trademark dilution definition.

6 You wouldn't even need noncommercial
7 because the definition says that it applies only
8 to the goods that are in commerce, so why would
9 you need the word noncommercial at all?

10 MR. COOPER: Well, you could have a
11 commercial use in commerce, but the real problem
12 is, unless you read those exclusions broadly, as
13 we think is appropriate, you run into the plain
14 fact that dilution by tarnishment is
15 unconstitutional viewpoint discrimination.
16 It's -- you'll be enjoined if you tarnish but
17 not if you burnish. It's an end run about --
18 around the defamation --

19 JUSTICE SOTOMAYOR: Well, but that
20 might be true if we were talking about a
21 Mattel-type case, but we're not. We're talking
22 about a case with many exceptions, including a
23 direct exception for parody. So I'm not sure
24 how it runs into an unconstitutional First
25 Amendment burden. But the Ninth Circuit and

1 other circuits have relied on our commercial
2 speech doctrine --

3 MR. COOPER: Correct.

4 JUSTICE SOTOMAYOR: -- and analogize
5 noncommercial to that doctrine. The Ninth
6 Circuit did it before this case.

7 MR. COOPER: Yes. MCA Records was the
8 original.

9 JUSTICE SOTOMAYOR: So why is that
10 wrong?

11 MR. COOPER: Why is that -- I'm sorry?

12 JUSTICE SOTOMAYOR: Why is that wrong?

13 MR. COOPER: It's not wrong to
14 analogize.

15 JUSTICE SOTOMAYOR: I mean, I --

16 MR. COOPER: I -- I think it's the
17 appropriate interpretation to compare it to
18 the --

19 JUSTICE SOTOMAYOR: But this would not
20 under our non -- on -- on our commercial speech
21 doctrine, this would still be commerce.

22 MR. COOPER: It would not be a
23 commercial use because the parody is doing more
24 than proposing a transaction. It's not even
25 proposing --

1 JUSTICE SOTOMAYOR: It's doing both,
2 counselor.

3 MR. COOPER: I'm sorry?

4 JUSTICE SOTOMAYOR: You want people to
5 buy this product because of the parody.

6 MR. COOPER: That's not the test.

7 JUSTICE SOTOMAYOR: I mean, I've
8 seen -- I -- I -- I'm exaggerating only
9 slightly -- I've seen thousands of dog toys in
10 the market, and you pick based on something
11 uniquely funny about a particular toy.

12 MR. COOPER: That's correct, but
13 that's not the test.

14 JUSTICE SOTOMAYOR: So that's
15 proposing -- you're proposing a transaction.

16 MR. COOPER: Any product you sell
17 proposes a transaction -- proposes a transaction
18 in the sense that it's an appealing product, but
19 that's not what the test is. That's -- it's not
20 --

21 JUSTICE SOTOMAYOR: Thank you,
22 counsel.

23 MR. COOPER: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice Alito,
25 anything further?

1 Justice Sotomayor? No?

2 Justice Kagan?

3 Justice Gorsuch?

4 Justice Jackson?

5 Thank you, counsel.

6 MR. COOPER: Thank you, Your Honor.

7 CHIEF JUSTICE ROBERTS: Ms. Blatt,
8 rebuttal?

9 REBUTTAL ARGUMENT OF LISA S. BLATT

10 ON BEHALF OF THE PETITIONER

11 MS. BLATT: Thank you, Mr. Chief
12 Justice.

13 Justice Alito, all trademarks are
14 expressive. They have speech rights. And every
15 time you infringe them, it's going to implicate
16 speech by definition.

17 And what the other side and I don't
18 hear you guys talking about is the half of
19 speech that no one likes, the pornography and
20 the poison. And it is hard for me to see how
21 you can say that the trademark owner doesn't
22 have an interest in something that approaches
23 compelled speech if their mark has been using in
24 porn films and porn toys and sex toys and people
25 are profiting off of that.

1 In terms of where we're going with the
2 message versus the product, the T-shirt example
3 -- there's a very entertaining case. The case
4 is on page 25, all rejecting parody, and it
5 involves the Miami Vice T-shirt that's turned
6 into "Miami Mice" T-shirt. Very funny. No one
7 would think it's confusing because they're
8 cartoon mice. And so there are plenty of
9 T-shirts that just don't meet that confusion.

10 The First, Seventh, Tenth, and D.C.
11 Circuit have not adopted Rogers. Twombly and
12 Iqbal, there's a case we cited on page 11 of our
13 brief out of the Seventh Circuit, and it is a
14 case saying it's completely implausible that the
15 "Clean Slate" program in the "Dark Knight" movie
16 could be confused with a Clean Slate software
17 program, and the Court dismissed that on
18 Twombly -- excuse me -- at 12(b)(6).

19 As far as I know, Rogers doesn't even
20 get dismissed on 12(b)(6). It goes to summary
21 judgment. So I'm not sure how Rogers helps.

22 In terms of, you know, the -- the
23 disconnect between Justice Jackson and Justice
24 Sotomayor, Justice Jackson is talking about
25 designation of source, and Justice Sotomayor is

1 talking about parody. But, of course, those two
2 intersect. You could have a political message
3 on a dog toy. You can put a parody on a
4 T-shirt. You can put a political message on a
5 calendar or -- one man's tchotchke is another
6 man's paperweight. They are both decorative.
7 And -- and then anytime you mention holidays,
8 like Christmas lights, Christmas ornaments,
9 Christmas trees, Halloween costumes, and I
10 mentioned dreidels, menorahs, et cetera. I -- I
11 don't know what that is. It sounds too
12 expressive to me, but they're all utilitarian.

13 Finally -- well, two more points.
14 Justice Thomas, the examples of uses in
15 commerce, which means trade or interstate
16 commerce, sales over state lines, the examples
17 that would not be commercial use are tweets,
18 anything like a TikTok video, so that's social
19 media; any televised campaign speech, campaign
20 buttons, opinion articles, and pamphlets. So
21 those are all goods that move in commerce,
22 noncommercial because they don't involve the
23 buying and selling of goods.

24 Finally, in terms of the remand, we,
25 of course, want the Court to remand, and we

1 think the issues are preserved. But it is -- it
2 is somewhat galling to have the SG's Office come
3 up time and again and don't even mention the
4 PTO's position. They have 30 years of case law
5 that doesn't mention anything they're talking
6 about today, and the government doesn't even
7 mention it in their -- their brief. I think
8 that's unacceptable for them to come up here and
9 say the opposite.

10 Thank you.

11 CHIEF JUSTICE ROBERTS: Thank you,
12 counsel. The case is submitted.

13 (Whereupon, at 11:29 a.m., the case
14 was submitted.)

15

16

17

18

19

20

21

22

23

24

25

Official

\$				
\$1200 [1] 24:16	abusive [1] 55:25	19	applying [3] 3:20 45:11 50:6	available [1] 8:18
1	accept [1] 86:20	allege [2] 54:15,16	appreciable [2] 32:9 52:5	average [4] 25:19 31:18 32:2,14
10 [1] 19:25	accommodate [1] 87:15	allegedly [1] 53:1	Appreciate [1] 69:5	avoid [2] 4:10 8:2
10:05 [2] 1:15 3:2	account [4] 46:10 49:23	alliterations [1] 45:19	approach [2] 48:9 61:18	avoidance [1] 4:8
11 [1] 95:12	50:5 88:5	allow [7] 9:22,23,24,25 10:1,2 33:8	approaches [3] 63:16 72:10 94:22	award [1] 56:9
11:29 [1] 97:13	accurate [1] 63:17	allowed [3] 3:24 43:9,10	approaching [1] 76:4	away [6] 16:8 45:9 77:24
1115(b)(4) [1] 12:24	accuse [1] 40:3	almost [1] 24:12	appropriate [8] 9:3,6 36:3,20 48:21 56:6 91:13 92:17	81:15 84:15 91:3
1125 [1] 89:7	acknowledged [1] 7:18	already [3] 42:9 56:3 69:19	approval [5] 4:5 6:4 43:14	B
1127 [2] 88:22 89:7	acknowledges [1] 9:20	alternative [2] 33:24 71:12	52:13 59:12	back [9] 16:6 20:14 21:9
12 [2] 14:6 27:10	across [1] 48:5	Alvarez [1] 76:1	approved [5] 28:20 29:15,22 43:1 57:9	33:9 38:13 53:7 70:6 88:5
12(b)(6) [7] 27:10 30:1 54:14 57:12,23 95:18,20	Act [43] 3:20 4:1 5:12 6:7,12,16,20,21 7:13,17 8:2 12:9,10,17 13:9,21 21:4 33:3	amazing [1] 21:24	approximation [1] 53:13	89:19
15 [3] 19:25 22:14,16	34:3,8 39:8,12 41:6 43:16,24 44:4,12,22 45:2,4 47:20	Amazon [1] 19:21	area [4] 8:11 40:15 48:24	Bad [22] 24:22 29:8,15 30:23 56:8 59:2,5,8,11 65:2
1500s [1] 33:10	52:9,21 56:5 61:18 62:21	Amendment [37] 4:10 8:4,6 23:2 32:22 33:11 34:3,16 35:16,19 36:2 38:15 39:24 43:10,17 48:5,11,20,23,25 49:7 55:9,20 56:15 60:25 62:22 63:8 69:8,13 75:15 81:13 82:5,6 83:6 87:9,14 91:25	57:23	72:16 73:8,21 74:4,5,15,20
1800s [1] 39:14	84:3 85:24 86:24 87:10,16,24 88:4	Amendment-protected [1] 54:22	areas [2] 49:7,11	75:8,11 76:6 90:14,14
1881 [1] 39:12	Act's [2] 49:20 88:21	America [1] 19:16	aren't [5] 12:8 59:11 74:24	balance [1] 6:21
1920 [1] 39:8	actionable [1] 44:23	amici [2] 52:16 58:3	79:16 82:9	bar [1] 24:21
1946 [1] 39:9	activist [2] 18:25 20:2	amicus [5] 1:22 2:7 36:13	argue [1] 49:19	Barbie [3] 10:17,21 11:4
1948 [2] 21:24 22:6	actual [2] 56:13 73:1	42:3 45:12	argued [3] 71:1 72:5 74:18	Barrett [2] 38:11 58:14
1976 [1] 32:8	actually [9] 13:2 39:1 44:21 46:12 51:5 76:9 82:25	among [1] 74:15	arguing [1] 36:21	bars [1] 4:2
1988 [1] 39:9	85:2 88:17	analogize [2] 92:4,14	arguing [18] 1:14 2:2,5,9,12 3:4,7 7:16 8:17 34:1 36:19 37:10 41:10 42:2 58:17	based [6] 25:14 37:19 55:19,19 71:12 93:10
2	ad [1] 90:14	analysis [4] 52:19 54:7 78:9 89:6	76:15 82:7 94:9	19,19 71:12 93:10
2 [2] 40:20 44:6	add [2] 10:11 18:1	analytical [2] 21:21 31:8	arguments [3] 8:18 37:7	basic [1] 22:25
20 [3] 19:25 22:20 23:3	address [3] 46:2,7 87:20	analyzing [1] 89:21	38:7	basically [1] 65:9
20-minute [1] 11:17	addressed [1] 56:3	ancient [1] 4:11	arises [1] 12:11	basis [5] 45:18 48:10 49:6
2003 [1] 40:19	addressing [2] 42:8 61:13	animal [5] 19:1,4,6,14,15	Arizona [1] 1:24	58:9 80:9
2008 [1] 40:20	adequate [1] 78:6	another [4] 16:23 56:19 58:22 96:5	arm's [1] 76:25	bear [2] 23:16 82:18
2023 [1] 1:11	adjudicate [1] 54:12	answer [10] 18:15,18 19:19	around [4] 25:18 33:10 84:5 91:18	become [1] 82:19
22 [1] 1:11	administrability [1] 64:10	20:25 26:13,16,21 33:5 72:7 77:13	19 37:10 41:10 42:2 58:17	becomes [1] 28:6
22-148 [1] 3:4	admission [2] 41:21 74:1	answered [1] 90:25	76:15 82:7 94:9	Beers [2] 27:24 42:11
25 [5] 19:25 25:5 26:14 34:25 95:4	admit [1] 73:12	answering [1] 9:9	articles [1] 96:20	began [1] 32:23
3	adopted [3] 10:13 46:5 95:11	antecedent [2] 44:2 79:17	articulate [1] 50:1	begin [1] 42:7
3 [1] 2:4	adopts [1] 47:19	anytime [2] 67:15 96:7	articulated [1] 17:13	beginning [5] 55:12 61:24
30 [5] 25:11 26:15 37:14,18	advertise [1] 67:11	apparent [1] 50:9	artist [1] 12:6	71:9 76:14 77:6
97:4	advertised [2] 58:25 90:13	appealing [1] 93:18	artistic [18] 4:5 18:6,7 40:21 44:14 49:1,3 53:24 54:6 55:2 63:13 68:21 69:16	begs [1] 46:21
33a [1] 44:6	advertisement [3] 90:6,10,15	appeals [4] 10:12 46:15 50:11 74:19	79:24 80:4,6 81:18 85:20	behalf [8] 1:18,25 2:4,11,14 3:8 58:18 94:10
4	advocate [1] 46:9	appear [1] 13:3	artistically [2] 3:25 63:17	behavior [2] 43:11 44:20
40 [1] 22:21	advocates [2] 22:17,19	appearance [1] 74:21	artists [3] 39:21,24 40:4	believe [3] 76:17 77:2,18
42 [1] 2:8	aesthetically [3] 17:24 25:23,24	APPEARANCES [1] 1:17	Artois [1] 68:1	believing [3] 76:6 86:1 87:3
5	African [1] 27:22	appears [1] 75:11	arts [1] 40:23	below [1] 28:23
5 [2] 41:17,18	age [1] 88:17	appellate [1] 79:8	as-applied [5] 8:6 34:6 36:1 48:14,20	BENNETT [3] 1:24 2:10 58:17
50 [1] 22:19	ages [1] 88:18	appendix [1] 44:7	aside [1] 69:20	17
58 [1] 2:11	ago [1] 13:17	Apple [3] 14:15 15:6,13	asks [1] 18:12	best [7] 32:10 51:3 59:3 61:22 62:15 80:16,20
7	agree [12] 13:8,24 33:20 36:16 37:6,22 63:11 68:23 75:14 77:14,15 82:10	application [5] 45:1 48:23	Assistant [1] 1:20	better [1] 81:12
75 [1] 23:3	agrees [1] 59:20	62:2,7 87:20	associated [1] 8:14	between [2] 82:12 95:23
9	ahead [2] 47:15 80:23	applied [14] 34:19 36:4 40:19 43:5 44:1 46:4 47:7 50:7 59:21 62:17 63:24 67:22	associates [1] 3:13	bias [2] 21:20 31:9
94 [1] 2:14	Alito [41] 26:11,12,20 27:3,6,12 28:19,24 29:1,17,21	77:24 81:2	Association [1] 35:7	big [1] 67:21
A	30:4,7,13,16,19,22,25 31:6,11,14,23 32:1,6,21 33:25	applies [2] 54:18 91:7	assume [4] 9:20 18:19 68:24 72:5	billions [1] 34:20
a.m [3] 1:15 3:2 97:13	34:11 35:8 39:18 52:3,10	apply [9] 12:3,9 39:6 45:14,14,15 47:21 48:18 80:8	assuming [1] 7:2	bit [4] 10:11 22:6,9 88:13
ABC [3] 56:22,23,23	56:12 57:11,14 74:23 75:2,14,18,24 93:24 94:13		atextual [4] 7:3,4 11:22 32:24	BLATT [94] 1:18 2:3,13 3:6,7,9 5:13,16,22,25 6:17,24
able [3] 18:23 40:2 80:10	allegation [2] 72:15 73:24		Athletic [1] 35:7	7:20 8:15 9:5,16 10:4 11:3
above-entitled [1] 1:13	allegations [2] 54:14 57:19		attorneys' [1] 56:10	12:21 13:10,12,17 14:1,4
absent [1] 4:19			authority [1] 49:2	15:12 16:3,4 17:3,8 18:6,16 19:2,6,9,12,19,22 20:9,13,21,24 21:12 23:5,8,12
absolutely [4] 6:4 17:3 28:22 88:16				26:17,22 27:5,9 28:2,22,25
abstract [1] 6:6				29:12,19,24 30:6,8,11,15,18,21,23 31:2,6,13,16,25

Official

32:5,8 33:8 34:4,17 35:22 36:3,9,16 37:2,5,24 38:2,6 39:7 40:7,13,18 41:1,4,12, 16 44:16 48:13 94:7,9,11 blue [1] 6:1 board [4] 10:1 11:16,16 48: 5 book [1] 11:9 Booking [1] 32:18 books [1] 28:6 borderline [1] 8:7 born [2] 22:5 83:25 both [8] 3:14,16 4:6 7:13 64:1 89:5 93:1 96:6 bother [1] 54:10 bottle [5] 65:2 73:12,14 89: 14 90:19 bottom [2] 27:20,24 bought [1] 89:1 bourbon [2] 66:21 67:7 boutique [1] 24:17 boutiques [1] 24:18 Bowl [1] 29:13 brand [4] 4:17 21:1 28:12 34:21 brand's [1] 4:20 brands [1] 58:21 break [1] 7:4 brief [8] 27:16 38:3 41:19 45:12 63:15 71:1 95:13 97: 7 briefing [2] 55:23 56:14 briefly [1] 37:1 briefs [3] 22:17 27:14 56: 20 bring [3] 8:5 34:5,15 brings [3] 57:1 70:25 71:1 broad [3] 8:16 62:19 91:3 broader [2] 39:17,19 broadly [3] 45:17 59:24 91: 12 broken [1] 60:2 brought [2] 39:19 56:8 building [1] 67:8 built [1] 62:21 bunch [1] 7:7 bundle [1] 8:12 burden [2] 60:10 91:25 burnish [1] 91:17 butt [1] 36:2 buttons [1] 96:20 buy [7] 76:5 82:15 84:13 88: 14,23 90:25 93:5 buying [2] 5:8 96:23	Campbell [3] 59:13 60:16 71:21 Canine [1] 66:15 cannot [1] 48:24 capital [1] 37:12 capitalizing [1] 37:12 capture [1] 58:1 captured [1] 43:3 capturing [1] 21:16 care [6] 13:20 38:22 52:7 57:5 84:3 87:23 cared [1] 87:1 careful [2] 32:19,19 cartoon [2] 15:18 95:8 carveout [1] 15:2 Case [87] 3:4,11 6:18,24 7: 2 8:22 9:3,10 10:9,15 11:1, 2,4,4,7 12:25 14:5 15:24 20:8 21:25 23:17,20,20,23 24:7,12,15,19 26:18,18 33: 13 34:10,25,25 35:6,7 36: 22 37:14,18 41:10 43:7 45: 3,7 46:3 47:6 48:3,21 50: 20,21 52:15 55:6 56:6,8,14 57:4 58:1 59:4 63:25,25 65:22 71:16 74:18 75:7,20 76:5,24 77:15 78:3 80:11 81:1,6 82:5,6 83:1 88:3 89: 12,19 91:21,22 92:6 95:3,3, 12,14 97:4,12,13 cases [21] 10:14 33:12,16, 19 35:2,3 36:1 43:5 46:16 47:8 48:9 50:16 52:8 55:5 56:13 57:22 58:4 79:4 81: 2 82:25 87:17 caught [1] 82:16 cause [6] 4:3 14:24 15:5 44:21,21 59:11 caused [1] 70:11 causing [1] 63:4 CEA [1] 30:25 celebrities [2] 58:24 59:19 celebrity [1] 58:22 centuries [1] 34:20 CEO [3] 29:3,10 30:25 ceramic [1] 11:10 certain [2] 17:16 23:4 certainly [3] 7:6 51:11 52: 16 cetera [3] 45:16 85:24 96: 10 challenge [3] 8:6 48:15,21 chance [2] 28:14 36:25 change [2] 83:8 86:19 character [4] 15:18 20:18 60:15 75:5 characteristics [1] 24:1 Cheerleaders [1] 14:6 Chewy [8] 23:18,18,19,23 24:7,12 60:4 65:13 CHIEF [15] 3:3,9 26:8 35: 10 38:9 41:24 42:5 48:1 58:10,19 88:10 93:24 94:7, 11 97:11	child [1] 29:13 chill [1] 56:8 chills [2] 60:11 62:13 Christmas [3] 96:8,8,9 Circuit [24] 3:15,17,21 4:24 6:20 8:25 17:6,19 21:25 38:1 44:2 46:18 47:3,24 49:15 50:8 51:7 62:17 73: 25 90:22 91:25 92:6 95:11, 13 Circuit's [1] 89:18 circuits [8] 17:14 45:10 46: 3,5,6,7 59:15 92:1 circumstances [2] 47:5 80:19 cited [3] 26:17 34:25 95:12 claim [7] 28:16 55:7 58:5 65:6 73:14 77:2,3 claiming [3] 57:1 73:17 80: 12 class [1] 67:2 classic [1] 11:4 Clean [2] 95:15,16 cleaner [1] 12:4 clear [7] 23:3 42:18 51:1 59:4 75:7 77:12 84:10 clearer [1] 79:4 clearly [4] 6:15 10:18 34:8 54:22 Cliff [1] 86:17 co-exist [1] 6:16 coffee [1] 82:20 coffees [1] 28:8 Cola [1] 66:15 collectible [2] 83:10,13 college [6] 56:21,22,25 57: 1,7,8 color [2] 65:1,16 coloring [1] 11:9 come [6] 34:14 40:3 58:4 69:15 97:2,8 comes [5] 11:16 29:3 69: 11 76:10 78:4 coming [1] 9:4 commentary [1] 89:20 commerce [8] 84:5 89:2 91:8,11 92:21 96:15,16,21 19,23 10:20 11:12,17 16: 21 29:13 76:24 81:16,20 88:20 89:8,10 90:4,5,8,11, 16 91:11 92:1,20,23 96:17 commercials [3] 29:20 68: 5,7 committed [1] 50:4 community [1] 40:21 companies [3] 59:13 66: 16 67:1 company [5] 4:18 14:14 19:15 67:16,21 compare [1] 92:17 comparing [1] 59:3 comparison [1] 59:8 compelled [2] 43:16 94:23	compelling [1] 55:17 competitiveness [1] 60: 18 complaining [3] 59:5,7 90: 21 complaint [6] 41:21 54:15 57:17 72:15 73:20 81:25 complaints [1] 74:3 complete [2] 24:16 44:13 completely [1] 95:14 conceive [1] 54:1 conceived [3] 45:1 47:2 62:5 concern [2] 56:3 61:3 concerned [6] 8:3 32:22 39:20 56:16 61:4,17 concerning [1] 61:6 concerns [2] 43:10 46:1 conclude [1] 50:20 conclusion [1] 73:25 condescending [1] 28:12 conduct [1] 55:10 conflict [1] 34:15 conflicts [1] 27:23 confuse [13] 3:24 4:7,15, 21 5:14,24 17:18 43:12 62: 20 64:14,21 84:25 87:2 confused [14] 13:22 15:7 16:18 21:17 31:3 42:24 50: 19 52:23 57:6 61:1 72:15 86:1 87:8 95:16 confusing [36] 4:14 5:12, 20 7:25 8:8 9:22,23,24,25, 25 10:1,2,5 13:15 14:9 17: 11,22 21:5 22:12 23:13 25: 13,13 28:3,13 33:16 34:7, 21 35:23 37:17 41:14 44: 17 53:18 56:9 77:21 84:6 95:7 confusion [54] 3:19 4:4,6, 14,22 6:2,7,15 12:10 13:8, 9,10,19 14:24 15:5 16:16 18:5 20:23 23:22 25:3,5 32:10,12 35:4 36:22 37:17, 21 38:22 40:15,16 41:8 44: 8,22 48:3 49:21 50:13 53: 5 54:3,17 57:10,15,20 58:7 59:11 63:4,5 70:5,7,11,13 71:2 75:10 86:20 95:9 Congress [6] 7:12 9:18 33: 1 40:9 56:3 87:1 Congress's [1] 5:3 conjure [1] 24:3 connection [1] 63:20 consequence [2] 7:21,23 consider [5] 36:21 50:11 65:19 75:8 79:5 consideration [1] 50:9 considerations [1] 87:16 consistent [6] 12:5 14:12 35:18,20 38:15 70:5 constitutional [5] 4:7 33:4, 7 34:9,12 constitutionally [1] 58:23	construe [1] 4:9 consumer [13] 4:13,21 19: 24 21:15 24:24 25:6,19 31: 4 53:13 54:17 57:5 58:7 85:17 consumers [12] 13:22 21: 17 22:8 24:25 43:12 44:22 50:18,25 52:6,22 53:2 87: 3 contact [1] 55:9 contain [1] 45:5 contains [2] 30:11,17 context [8] 17:11,21 18:11, 20 54:18,21,25 55:4 contexts [2] 17:16 45:12 contextual [1] 17:1 contrast [3] 23:19 50:23, 23 control [1] 75:12 convicts [1] 59:24 COOPER [112] 1:24 2:10 58:16,17,19 61:8,12,21 62: 4,7,9,18 63:9 64:18 65:15, 18,25 66:2,7,17,21,24 67:3, 18,22 68:3,6,14,25 69:2,16, 21,25 70:2,8,11,15,19,22, 25 71:5,8,11,16,20,23 72:3, 6,9,20,23 73:1,5,10,16,23 74:7,17 75:1,4,17,22 76:2, 23 77:7,14,23 78:11,16,20, 24 79:3,12,19 80:3,17,22, 24 81:6,9 82:10,23 83:7 84:9 85:6,10,12,15 86:3,8, 12,14,16 87:13,25 88:6,16 90:5,10 91:10 92:3,7,11,13, 16,22 93:3,6,12,16,23 94:6 copies [1] 3:12 copy [4] 20:2 21:14 37:13 80:4 copying [2] 4:20,23 copyright [1] 83:16 copyrights [1] 33:11 correct [7] 46:8 48:17,18 68:25 72:22 92:3 93:12 corruption [1] 56:25 costs [1] 55:15 costume [1] 11:9 costumes [1] 96:9 Couldn't [2] 22:4 53:2 counsel [13] 26:9 41:25 47: 25 48:1 49:17 58:11 68:15, 15 82:11 86:6 93:22 94:5 97:12 counselor [1] 93:2 counterfeits [2] 60:23 72: 12 country [1] 75:19 couple [1] 45:25 course [6] 18:16 41:4 44: 16 89:3 96:1,25 COURT [54] 1:1,14 3:10,14 5:6 7:2,3,5,10 10:12 12:25 18:22 19:18 22:3,16 24:8, 9 25:14 32:17,20 33:12 35:
C				
calendar [1] 96:5 call [1] 17:5 called [4] 14:14 56:23 65:2 75:5 calling [2] 73:8,12 came [5] 1:13 22:7 76:7,17 85:18 campaign [2] 96:19,19				

Official

<p>few ^[1] 13:17 fewer ^[1] 79:15 Fiction ^[1] 47:13 Fifth ^[1] 46:6 fight ^[1] 81:8 figure ^[1] 16:17 film ^[5] 9:23 11:19 14:5 40:21 81:18 films ^[1] 94:24 Finally ^[2] 96:13,24 finding ^[3] 3:18 25:12 41:18 fine ^[6] 9:18 11:6 13:4 15:5 35:24 62:20 Fingers ^[1] 27:24 First ^[50] 4:10 8:3,6 20:9 21:15,24 23:2 32:22 33:10 34:3,16 35:16,19 36:2 38:15 39:12,14,24 43:9,16 44:1 46:2 48:4,11,20,23,25 49:7 54:8,22 55:8,20 56:15 60:24 62:22 63:8 69:7,13 70:3 75:15 79:19 81:13 82:4,5 83:5 87:9,14,15 91:24 95:10 first-line ^[1] 53:25 fit ^[2] 7:14 11:14 fits ^[3] 89:23,25 90:9 flexible ^[1] 16:11 flourished ^[1] 40:23 focus ^[2] 6:14 11:23 focused ^[1] 60:13 followed ^[1] 46:15 Footnote ^[1] 44:6 Fordist ^[1] 26:18 foreclose ^[1] 48:20 forget ^[1] 36:24 form ^[3] 17:14 70:12 73:23 former ^[1] 48:8 formulated ^[1] 63:11 found ^[3] 3:14 22:21 56:7 Foundation's ^[1] 27:16 Founders ^[1] 35:20 founding ^[1] 33:9 four ^[2] 33:12,15 four-day ^[1] 3:14 four-minute ^[1] 11:18 Fourth ^[1] 46:6 franchisees ^[1] 76:10 Francisco ^[3] 33:13 34:10 35:6 Frank ^[1] 21:25 fraud ^[2] 49:10 76:4 free ^[4] 56:17 60:23 72:11 87:16 freedom ^[1] 33:2 friend ^[4] 36:12,15 59:1,3 frivolous ^[1] 8:7 front ^[1] 61:18 Frontier ^[1] 27:16 full ^[3] 20:6,6 62:2 fully ^[4] 38:3,4 43:3 49:22 fun ^[3] 58:24 66:10,13 function ^[1] 74:22</p>	<p>functional ^[1] 82:17 functions ^[1] 61:22 fundamentally ^[1] 60:24 funny ^[7] 20:10,16 25:1 63:21 68:4 93:11 95:6 further ^[4] 26:10 35:11 36:12 93:25 fuss ^[1] 54:10 future ^[1] 79:4</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>galling ^[1] 97:2 game ^[7] 10:1,2 11:15,16,16,17 60:25 gave ^[2] 82:14 88:8 General ^[6] 1:20 55:15 59:20,21 60:13 78:3 General's ^[1] 60:7 generally ^[1] 59:16 gets ^[4] 19:24 25:10 48:15 81:11 getting ^[2] 39:8 53:3 girls' ^[1] 22:1 give ^[10] 5:6 14:4 20:11 26:21 27:12,13 36:25 69:9 74:13 90:3 given ^[2] 53:23 78:6 gloss ^[1] 36:24 goods ^[16] 4:3 5:8 6:4 11:11,12 38:19,21 43:13 59:10 60:18 82:12,17 83:4 91:8 96:21,23 goodwill ^[4] 4:13,20 37:12,16 Gorsuch ^[51] 35:13,14,24 36:6,11,18 37:3,6,22,25 38:5,8 47:25 49:17 51:9,12,23,25 68:15,18 69:1,4,19,23 70:1,6,9,13,17,20,23 71:3,6,9,15,17,22 72:1,4,7,13 78:1,13,18,22 79:1,11,13,22 80:15 94:3 Gorsuch's ^[2] 38:14 48:12 got ^[9] 9:10 16:19 19:12,12 22:2 27:19 28:10 77:25 86:6 gotten ^[1] 79:20 govern ^[1] 45:7 government ^[5] 25:10 49:9 51:3 90:23 97:6 government's ^[5] 36:14 37:10 48:2 49:2 88:3 grant ^[1] 46:14 granted ^[2] 52:24,25 graphic ^[2] 14:7 83:13 grappling ^[1] 12:1 gratuitous ^[2] 63:18 87:21 great ^[5] 29:3,10 31:1 41:22 51:14 greater ^[1] 18:5 Grimaldi ^[1] 3:21 groping ^[1] 10:23 grounded ^[3] 71:18,20 76:21</p>	<p>grounds ^[1] 6:25 GUARNIERI ^[26] 1:20 2:6 42:1,2,5,16,19 43:21 45:24 46:23 47:1,16 48:7 50:3 51:11,23 52:1,5,14 53:7,10 54:11 55:3 57:3,13,16 guess ^[6] 11:21 12:8 39:2,23 51:18 82:8 guidance ^[4] 53:19 60:8 79:5 88:7 guys ^[1] 94:18</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>ha ^[3] 21:3,3,3 half ^[2] 22:22 94:18 Halloween ^[2] 11:9 96:9 hands ^[2] 27:19,23 hangtag ^[3] 75:12 82:2 83:9 happen ^[1] 36:7 happened ^[1] 36:7 hard ^[8] 47:20 52:14,15,20 82:7,25 83:1 94:20 harder ^[1] 33:19 Harley-Davidson ^[1] 80:11 Harper ^[1] 33:14 Harry ^[1] 15:22 hat ^[2] 82:18,18 hats ^[1] 24:21 head ^[3] 17:2 68:8 75:11 head-scratching ^[1] 11:13 hear ^[3] 3:3 34:22 94:18 heard ^[2] 22:15 45:18 heart ^[2] 13:9 67:6 heartland ^[3] 8:24 10:8 84:8 held ^[3] 4:24 34:9 75:24 help ^[1] 22:8 helps ^[1] 95:21 hesitation ^[2] 16:8 45:9 high ^[1] 25:6 higher ^[1] 86:20 highlighted ^[1] 56:14 highly ^[3] 21:21 57:7 64:18 hindsight ^[2] 21:20 31:9 historical ^[1] 68:7 history ^[2] 89:6,19 holder ^[4] 52:13,23 87:4,5 holder's ^[2] 43:13 51:21 holders ^[1] 40:2 holding ^[1] 5:1 holdings ^[1] 3:16 holidays ^[1] 96:7 Holocaust ^[1] 60:1 Honor ^[13] 61:8,21 69:17 73:16,23 77:14 78:11 82:14 83:7 85:7 86:3 88:16 94:6 Honors ^[1] 80:25 hook ^[1] 62:15 humor ^[2] 60:1 66:4 humorous ^[1] 50:22</p>	<p>hundred ^[1] 7:24 hypothetical ^[7] 26:13 33:6 42:10 64:24 65:12 83:8 84:10 hypotheticals ^[8] 9:9 18:15 53:23 54:5,6,23,24 56:13</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>icon ^[1] 67:9 iconic ^[2] 58:21 67:9 idea ^[6] 11:23 21:14 29:3,11,15 31:1 identical ^[3] 24:11 65:3,9 identification ^[1] 14:11 identifier ^[11] 8:22 9:14 10:22 11:24 12:7,12,16 14:8 82:3 83:5 84:24 identifies ^[1] 39:5 identify ^[2] 38:19 63:4 identifying ^[2] 70:4 74:9 illustrated ^[1] 48:13 image ^[2] 67:12 75:6 imagine ^[1] 57:4 immediately ^[4] 9:21 24:4,8,9 impairing ^[1] 39:21 implausible ^[1] 95:14 implicate ^[1] 94:15 implications ^[3] 32:22 56:17 69:13 implicit ^[3] 4:6 22:15 49:13 implicitly ^[2] 44:17 69:12 important ^[4] 23:16 33:6 67:13 80:25 importing ^[1] 76:20 impossibility ^[1] 89:4 impossible ^[1] 57:24 improper ^[1] 16:25 inapplicable ^[1] 47:5 INC ^[1] 1:3 incessantly ^[1] 67:11 inclined ^[1] 60:6 include ^[1] 46:20 including ^[6] 20:15 41:20 46:6 49:10 77:9 91:22 inconsistent ^[3] 43:23 44:9,12 incorrectly ^[1] 43:22 indeed ^[4] 45:3 48:10 55:19 58:2 indicate ^[2] 4:22 15:15 indicates ^[1] 66:9 indicating ^[1] 14:18 infringe ^[4] 14:17 26:6 33:23 94:15 infringed ^[2] 25:25 26:1 infringement ^[17] 3:15,17 7:13 12:19 13:3,11 14:22 15:2,10 39:6 44:3,24 52:22 54:13,15 55:16 57:2 infringement's ^[1] 38:16 infringer ^[1] 7:19 infringing ^[4] 33:1 40:1 53:1 75:9</p>	<p>inquiry ^[2] 62:12 85:7 instance ^[1] 54:8 instead ^[1] 3:19 instructions ^[1] 49:25 Insurance ^[1] 60:1 intellectual ^[3] 8:10 63:14,15 intended ^[1] 83:12 intent ^[1] 33:17 intentionally ^[1] 7:24 interest ^[1] 94:22 interesting ^[1] 78:19 interpretation ^[2] 45:2 92:17 interpretations ^[1] 71:19 interpreted ^[1] 34:13 intersect ^[1] 96:2 interstate ^[1] 96:15 intimately ^[1] 17:7 intuition ^[2] 42:22 43:2 invalid ^[1] 34:18 invent ^[1] 7:4 invented ^[1] 3:22 inverted ^[2] 60:11 71:14 investment ^[2] 4:13 34:21 invoke ^[1] 44:4 involve ^[5] 33:16,17,18 54:21 96:22 involved ^[2] 46:16,16 involves ^[3] 3:11 6:19 95:5 involving ^[6] 5:7 14:6,7 21:25 23:18 47:8 iPhone ^[4] 14:13,14,15 15:7 iPhone's ^[1] 14:17 Iqbal ^[1] 95:12 irrelevant ^[3] 6:6 60:10 71:14 isn't ^[12] 13:25 20:22 34:12 38:14,18 40:11 51:21 68:22 76:12 77:5 85:22 88:2 issue ^[4] 13:8 20:23 34:3 36:23 issues ^[7] 4:10 33:4,7 38:3 56:15 81:13 97:1 it'll ^[1] 15:25 item ^[4] 41:6,8,11 84:24 items ^[2] 12:2 38:24 itself ^[17] 16:11 43:16 48:22 50:24 52:21 55:19 56:5 58:8 60:11,21 61:4 62:12 67:24 68:1,21 87:19 91:4</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>JACK ^[36] 1:3 3:4,12 24:19,20 28:20 29:2,22 53:3 58:25 59:1,3,5 65:2,10,12,13,20 67:23 68:8 73:13,17 75:7 76:7,7,18,18 82:10 83:23 84:7,21 85:1,3,18,18 86:1 JACKSON ^[41] 11:20 13:5,11,16 14:2 15:4 38:12,13 39:16 40:11,14,24 41:2,5,</p>
---	---	---	---	--

Official

13,22 45:20 58:15 64:3,23 65:16 76:12 77:4,11,19 84: 1,20 85:9,11,13,19 86:7,10, 13,15,21 87:22 88:2 94:4 95:23,24 Jackson's [1] 21:9 Jerome [1] 21:24 job [1] 60:5 joke [12] 4:18 20:20,25 21: 2 23:10 24:6 25:1 45:22 51:20 84:14 89:15,15 judge [3] 20:4 21:20 32:14 judges [4] 16:16 22:20 32: 12 68:23 judgment [6] 18:24 27:2,4 57:19 77:17 95:21 judgments [2] 49:1,3 judicial [1] 74:1 judicially [1] 16:14 junior [1] 53:1 jurisprudence [2] 48:25 63:8 jury [3] 26:16,21 27:1 Justice [277] 1:21 3:3,9 5: 10,15,17,23 6:13,22 7:15 8: 15 9:11 10:3,6 11:20 13:5, 11,16 14:2 15:4 16:3,5,6,7 17:4,9 18:7,17,18 19:4,7, 10,13,20,23 20:19,22 21:8, 9,9 22:24 23:6,9 26:8,10, 11,12,13,20 27:3,6,12 28: 19,24 29:1,17,21 30:4,7,13, 16,19,22,25 31:6,11,14,23 32:1,6,21 33:5,25 34:11 35:8,10,11,12,13,14,24 36: 6,11,18 37:3,5,22,25 38:5, 8,9,9,11,12,13,14 39:16,18 40:11,14,24 41:2,5,13,22, 24 42:5,13,16,18 43:19 45: 8,20,20,24 46:21,24 47:9, 12,13,14,15,25 48:1,12 49: 17 51:9,12,23,25 52:1,3,10 53:6,9,15 54:11,20 56:12 57:11,14 58:10,12,13,14, 15,19 61:3,11,14,25 62:6,8, 14 63:6 64:3,23 65:16,23 66:1,3,6,12,20,22 67:1,14, 19,25 68:4,10,12,15,18 69: 1,4,19,23 70:1,6,9,13,17, 20,23 71:3,6,9,15,17,22 72: 1,4,7,13,14,21,24 73:3,7, 11,19 74:5,10,16,23 75:2, 14,18,24 76:12 77:4,11,19 78:1,13,18,22 79:1,11,13, 22 80:15,21,23 81:5,7,10, 24 82:21,24 84:1,20 85:9, 11,13,14,19 86:7,10,13,15, 21 87:22 88:2,10,12 90: 2,7,22 91:19 92:4,9,12,15, 19 93:1,4,7,14,21,24,24 94: 1,2,3,4,7,12,13 95:23,23, 24,25 96:14 97:11 justify [1] 4:8	K	KAGAN [40] 8:15 9:11 10:3, 6 16:7 21:9 35:12 47:12, 14 52:1 53:6,9,15 54:11,20 65:23 66:1,3,6,12,20,22 67: 1,14,19,25 68:4,10,12 74: 16 80:21,23 81:5,7,10,24 82:21,24 85:14 94:2 Kagan's [1] 45:20 Kavanaugh [2] 38:10 58: 13 keep [5] 6:23,25 40:16 60:9 84:16 keeps [1] 59:17 kicks [1] 41:6 kidding [1] 22:2 kind [16] 10:18 25:16 33:17, 18 44:23 52:17 53:20 58: 22 62:11 63:5,16 69:17 74: 1,2 82:5,6 kinds [6] 11:11 28:7 31:19 54:22 69:3 76:20 Knight [2] 26:18 95:15 knock [1] 60:23 knockoffs [1] 72:12 knowing [1] 16:9 KP [1] 12:25	lectern [1] 78:14 left [1] 25:5 legal [9] 9:8,12,15,16 50:4 51:5 52:17,25 73:24 legislative [2] 89:6,19 legitimate [1] 56:1 length [1] 76:25 less [1] 17:17 level [1] 31:17 liability [1] 87:10 license [2] 59:14 71:24 licensed [1] 24:21 lie [1] 8:1 Life [1] 62:11 lights [1] 96:8 likelihood [19] 3:19 5:23 6: 15 16:16 18:5 23:21 32:12, 12 35:4 37:21 44:8 48:3 49:21 50:12 53:4 54:3,16 57:10,15 likelihood-of-confusion [11] 16:10 18:2,14 37:8 43:3 45:6 46:11 48:19 50:7 52: 19 57:25 likely [18] 4:3 5:14 14:24 15:4,9 17:17,17 22:18 28: 3,12 42:24 43:11 44:21 50: 18 58:7 59:11 62:19 64:21 likes [1] 94:19 limit [4] 5:3 18:9,13 45:21 limited [6] 8:13 33:23 38: 16 39:11 47:3,21 line [2] 28:6 68:9 lines [1] 96:16 liquor [1] 66:23 LISA [5] 1:18 2:3,13 3:7 94: 9 litany [1] 18:21 literally [1] 12:22 litigate [3] 55:10,13 79:9 litigating [2] 55:16 60:10 litigation [7] 53:20 54:19, 21,25 55:12,25 59:17 little [3] 10:11 22:6 31:16 live [1] 88:17 LLC [1] 1:6 location [1] 61:5 logical [1] 47:10 logically [1] 47:6 logo [4] 19:1,5 20:3 74:13 logos [1] 19:14 long [5] 3:24 7:25 33:24 34: 2 63:20 longstanding [1] 52:7 look [8] 10:15 15:24 17:4, 22 28:5 53:22 75:10 85:25 looked [1] 25:15 looking [6] 12:6 37:21 38: 23 77:18 85:23 89:19 looks [6] 9:17 11:17 15:6 19:15 29:6,7 loss [1] 81:8 lost [1] 27:22 lot [15] 9:17 11:18 12:22 29:	6,7 42:21 44:20 52:11 53: 18 54:10 58:2 64:9 66:14 67:3 87:17 lots [4] 6:10 14:20 35:3 37: 6 Louis [3] 23:19 24:15,15 lousy [2] 68:24 79:25 low [1] 22:16 lower [2] 48:16 60:8 luxury [1] 24:17	M	made [10] 8:25 32:25 49:14 51:5,6 64:25 68:12,16 75: 7 85:2 magazine [1] 60:2 maintaining [1] 58:9 Makeup [1] 12:25 man [2] 22:2,3 man's [3] 59:3 96:5,6 many [5] 46:4,6,15 74:15 91:22 March [1] 1:11 mark [34] 3:24 8:21 9:13 11: 23 12:7,11 14:18,24 15:6 23:25 25:16 28:21 38:19, 21,24 39:4,22 40:6 43:13 52:13,23 53:1 57:2 59:9 60:22 67:15 75:5,6 80:11 83:4 87:3,4,5 94:23 market [1] 93:10 marketing [1] 21:18 marketplace [4] 21:20 38: 23 53:14 87:2 markets [3] 4:16 24:14,22 marks [14] 4:3,16 14:17 23: 24 44:17 47:23 50:10,18 51:13,16 52:24 56:2 66:10, 14 massively [1] 25:6 Mattel-type [1] 91:21 matter [6] 1:13 4:15 52:12 80:5 83:18 84:1 mattered [1] 49:12 matters [1] 21:3 MATTHEW [3] 1:20 2:6 42: 2 MCA [2] 89:18 92:7 McCarthy [1] 15:25 McDonald's [1] 76:9 mean [31] 4:25 6:9 7:20 13: 6 20:9 25:4 26:23 27:11 30:1 33:18 34:6 35:5 38: 17 41:17 46:13 47:17 49: 13 53:11 55:23 57:21,24 66:12,20 68:10 72:4 74:10 81:10 84:22 88:25 92:15 93:7 meaning [2] 5:7 10:19 means [7] 14:11,11 63:4 72:11 88:8 90:3 96:15 meant [2] 10:18 53:12 mechanism [2] 63:3 70:4 media [1] 96:19	meet [2] 37:7 95:9 meets [1] 27:10 menorahs [1] 96:10 mention [4] 96:7 97:3,5,7 mentioned [3] 37:15,15 96: 10 merchandise [2] 24:21 67: 5 merely [1] 49:13 meshing [1] 63:1 message [7] 4:16 63:19 80: 13 82:18 95:2 96:2,4 method [1] 77:10 methods [1] 76:23 Miami [2] 95:5,6 Mice [2] 95:6,8 Michelob [1] 60:1 might [8] 8:23 15:23 28:14 31:21 45:15 55:13 82:24 91:20 mind [1] 60:9 minds [1] 50:25 minutes [2] 13:17 14:7 misapplication [1] 77:8 misapplied [1] 59:23 misleading [24] 4:1 5:11, 20,25 6:3,6,11 13:18 22:18 44:15,18 49:5,8 64:22 65: 19 69:7,9,12,24 70:3,12,24 75:16 85:21 misled [1] 76:4 mismanagement [1] 56: 25 missed [1] 19:3 mistake [4] 8:25 22:10,10 52:18 mistaken [1] 21:14 mistakenly [1] 76:17 monopoly [2] 8:13 33:24 morning [3] 3:4 13:7 42:9 most [6] 17:7 50:16 51:17 63:12 78:13,13 motion [7] 18:23 27:10 29: 25 54:9,13 77:16,17 Mountain [1] 66:15 move [1] 96:21 movie [9] 3:22 14:20 15:18 17:21,23,24 25:23 45:14 95:15 movies [3] 28:7 40:20 47: 11 Ms [89] 3:6,9 5:13,16,22,25 6:17,24 7:20 8:15 9:5,16 10:4 11:3 12:21 13:10,12, 16 14:1,4 15:12 16:3,4 17: 3,8 18:6,16 19:2,6,9,12,19, 22 20:9,13,21,24 21:12 23: 5,8,12 26:17,22 27:5,9 28: 2,22,25 29:12,19,24 30:6,8, 11,15,18,21,23 31:2,6,13, 16,25 32:5,8 33:8 34:4,17 35:22 36:3,9,16 37:2,5,24 38:2,6 39:7 40:7,13,18 41: 1,4,12,16 44:16 48:13 94:7,
--	----------	--	---	--	----------	--	---

Official

<p>11 much [5] 4:23 36:15 51:15 61:4 75:19 mug [1] 82:20 mugs [1] 28:8 multifactor [9] 53:17 59: 21 61:7,18,20 62:5,10 71: 13 77:25 multifold [1] 66:8 must [2] 67:19,20 Mutant [1] 59:25</p> <hr/> <p style="text-align: center;">N</p> <p>name [7] 8:13 29:7,8 74:12, 12,14 75:6 names [1] 74:15 narrow [1] 6:25 narrower [1] 8:17 narrowly [1] 45:18 Nationwide [1] 29:12 nature [5] 46:10 49:23 50:5, 22 64:1 near [1] 67:6 necessarily [1] 4:12 necessary [1] 52:12 need [10] 9:8 23:9,11,12,21 25:18 37:13 76:19 91:6,9 needed [1] 25:4 needs [1] 20:2 neighboring [1] 5:2 neither [2] 63:16 74:19 never [6] 37:15 39:11 46:5 49:11 61:24 64:14 night [1] 5:19 nine [2] 24:10 79:10 Ninth [17] 3:15,17 4:24 8: 25 37:25 44:1 46:18 47:2, 24 50:8 51:7 62:17 73:25 89:18 90:22 91:25 92:5 nominate [1] 62:24 non [1] 92:20 non-application [1] 6:19 non-confusing [2] 34:24 56:2 non-trademark [1] 55:6 noncommercial [17] 4:25 5:1,6 28:17 88:15,20,24 89:8,16,25 90:9,24 91:2,6, 9 92:5 96:22 noncompetitive [1] 59:10 none [1] 35:1 nonexistent [1] 82:13 nonstatutory [1] 62:24 Nor [2] 4:7 74:20 not-so-well-heeled [1] 7: 18 Notably [1] 35:1 noted [1] 86:18 Notes [1] 86:17 nothing [8] 4:5 5:20 6:2 13: 12 14:22 63:22 80:14 81: 19 novels [1] 45:16 Nuclear [1] 59:25</p>	<p>nudity [1] 82:16 nullifies [1] 5:3 number [4] 20:1 32:9 46: 14 52:6</p> <hr/> <p style="text-align: center;">O</p> <p>object [2] 84:20 85:3 objection [1] 78:10 objective [1] 85:16 obvious [6] 8:17 9:3,5 11: 7 25:17 60:3 obviously [1] 6:17 off-ramp [2] 55:11 62:16 offered [1] 7:6 Office [1] 97:2 offs [1] 60:23 often [1] 69:9 Oily [1] 60:1 okay [29] 16:7 18:8 19:8,22 20:1,9 21:12,15 22:20 30: 23 31:13,25 32:14 37:2 41: 3 51:10,25 68:12 69:1 71: 3,5,17 72:1,13 73:7 74:10 81:9 82:21 83:8 old [1] 31:7 Omaha [1] 59:25 once [2] 9:20 37:18 one [29] 8:11,19 10:20 16: 22 19:13 27:19 29:15 36: 11,11 39:14 40:24 45:19, 20,20 52:21 53:11 55:5 56: 20 60:14 63:9 64:12 65:6, 9 74:15 77:17 82:11 94:19 95:6 96:5 online [1] 88:15 only [14] 21:10 22:20 24:17 25:2 40:2 41:6 72:18 73:4 75:4,6 89:10,24 91:7 93:8 open-ended [1] 62:12 opened [1] 79:17 opening [1] 72:5 operate [1] 44:10 operating [2] 44:20 76:25 opinion [5] 44:6 51:1,4,14 96:20 oppose [1] 78:14 opposed [3] 35:25 61:19 69:11 opposing [1] 86:5 opposite [1] 97:9 oral [7] 1:14 2:2,5,9 3:7 42: 2 58:17 order [4] 6:14 39:6 44:3 82: 15 ordinarily [2] 50:17 86:25 ordinary [11] 5:7 8:21 9:13 10:20 11:11 52:6,6 54:17 57:5,5 89:2 origin [12] 4:4 6:3,7 13:18, 22 14:12 15:10 16:24 41:9, 14 64:15 77:2 original [4] 50:23 64:2,2 92:8 originally [1] 63:11</p>	<p>ornaments [1] 96:8 other [35] 5:4 13:1 21:1 23: 17 25:9,22 26:3 27:13,13 38:4 47:8,22 54:18,20,25 55:4,22,24 59:3 61:25 65: 7,10 69:6 74:15,23 76:20 77:21 81:2 82:1 85:22 86: 17 90:1,23 92:1 94:17 others [1] 23 38:20 39:19 otherwise [3] 57:9 60:20 64:22 out [22] 8:2 9:4 11:11 16:17 20:25 22:7 23:15 48:4,5 55:22 58:4 60:12 61:23 64: 4,17 65:7 67:15 71:13 81: 14 87:7 10 95:13 over [3] 33:3 44:7 96:16 overbroad [1] 75:23 overrule [1] 6:14 overt [1] 8:1 overturning [1] 34:20 own [5] 38:19 59:14 71:25 73:15 74:3 owned [1] 25:3 owner [4] 38:21 72:17 73: 20 94:21 owner's [2] 38:19,24 owners [1] 7:22 ownership [1] 73:24</p> <hr/> <p style="text-align: center;">P</p> <p>PAGE [7] 2:2 34:25 41:17, 18 44:6 95:4,12 painting [1] 9:24 pamphlets [1] 96:20 paperweight [1] 96:6 paradigmatic [1] 77:13 paraphrase [1] 86:5 parodic [6] 46:9 50:5 59: 25 60:15 75:6 89:14 parodied [1] 60:21 parodies [17] 4:14,15 35:1 45:21,21 46:8 47:21 51:16 59:10,22 60:4 64:1 71:24 72:10 77:9,12,12 parodist [1] 4:22 parodists [3] 39:25 59:19 81:3 parody [54] 5:4 7:11 12:23 18:10,11 20:16 23:11,13, 17 24:2 25:12,13 36:21 37: 19 42:20 43:1 45:14 46:25 47:3,8 49:23 50:15,21,21 59:2,7 60:9,20 63:24 65: 20,24,25 66:2,6,7,10,18 67: 7,16 68:8 71:16 78:7 79:5 81:21 88:5 89:12 90:20 91: 4,23 92:23 93:5 95:4 96:1, 3 parody's [1] 63:25 part [9] 8:12 13:20 16:7 19: 3 64:5,5 69:6 70:19 83:12 particular [2] 53:19 93:11 particularly [4] 7:9,10 42:</p>	<p>10 59:18 parties [1] 76:24 parties' [1] 19:14 party [5] 19:24 27:7,8 42: 14,20 party's [3] 18:25 20:2 60: 18 pass [3] 60:23 72:12 86:23 passed [2] 41:7,7 passing [4] 5:19 38:20 39: 7,10 past [4] 39:8,10 40:19 88: 18 Paw [1] 66:15 people [28] 15:7 23:6 25:2 29:19 31:17 38:22 42:23 45:22 52:11 58:22 71:24 76:3 77:21 81:3 82:15 84: 6,12,14,17 85:1,15,23,25 87:1,8,18 93:4 94:24 perceive [4] 60:15 62:20 85:16,17 percent [10] 7:25 19:25 22: 14,16,19,20,21 25:5 26:15, 15 percentage [2] 23:1 52:4 perception [2] 22:10,11 perceptions [1] 53:13 perfect [1] 31:4 perhaps [2] 17:12 51:15 perjury [1] 49:10 Permanent [1] 12:25 permission [9] 20:2 22:11 23:10,11,13 25:4 52:24,25 53:3 Perros [2] 66:14 75:2 persistent [1] 14:12 person [10] 20:20 28:20 29: 17,21 32:2,4 39:1 51:18 52:4 85:24 pervasive [1] 4:19 Petco [1] 88:15 petition [1] 44:7 Petitioner [12] 1:4,19,23 2: 4,8,14 3:8 42:4 51:2,2 90: 24 94:10 Phoenix [1] 1:24 phone [1] 14:15 photograph [1] 81:18 photographer [1] 10:17 photographs [1] 10:17 pick [1] 93:10 picking [1] 21:19 picture [4] 27:19 48:4,6 50: 16 piece [2] 53:11 83:17 place [3] 21:24 36:4 49:21 placement [1] 82:1 plain [1] 91:13 plainly [1] 44:9 plaintiff [1] 44:3 plan [1] 83:19 plausible [1] 57:20 plausibly [3] 4:9 54:15,16</p>	<p>play [1] 23:18 playful [1] 59:2 plays [1] 79:5 plead [1] 57:14 please [4] 3:10 22:17 42:6 58:20 pleasing [3] 17:25 25:23, 25 plenty [1] 95:8 point [26] 18:9 20:14 21:10 22:7 23:1,4,15 35:6 38:14, 18 40:14 44:11,25 46:13 51:15,20 53:15 54:24 55: 22,23 67:10 68:13,16 83:2 89:7 91:1 points [2] 45:25 96:13 poison [1] 94:20 poisonous [1] 26:5 Polaroid [7] 16:13 17:5 18: 12,21 20:7,14 25:8 policy [2] 40:8 43:10 political [16] 18:25 19:14, 24 20:6 23:1,10 42:14,19 53:24 54:5 55:2 81:17 82: 19 83:1 96:2,4 poo [2] 89:15 90:19 poop [2] 3:13 59:8 popular [1] 58:21 porn [2] 94:24,24 pornographic [1] 26:5 pornography [1] 94:19 portion [2] 69:24 70:24 position [10] 7:23 32:23 35: 15,18 43:6 48:2 56:17 60: 7 88:3 97:4 possibility [2] 35:25 55:25 possibly [1] 77:18 poster [1] 27:17 potentially [1] 84:6 Potter [1] 15:23 pottery [1] 11:10 practical [1] 4:15 practice [1] 80:7 pre-Rogers [1] 14:5 precedence [1] 33:3 precedent [2] 49:7 74:1 precise [1] 84:19 precisely [1] 77:20 precludes [1] 62:2 predated [3] 33:10 35:19 52:8 predecessor [1] 45:4 preempts [1] 61:17 prefer [2] 62:1 78:20 present [1] 56:15 presents [1] 7:17 preserved [2] 38:4 97:1 pretty [5] 8:17 9:12 21:24 28:17 68:24 prevent [3] 4:13 38:20 40: 1 primarily [1] 50:8 primary [2] 35:18 85:4 principal [1] 47:17</p>
---	---	--	---	--

Official

<p>principle ^[4] 9:8,12,15,16 principles ^[3] 16:20 48:24 55:21 probably ^[4] 26:22 29:25 30:1 47:6 problem ^[15] 7:8 9:20 11:25 12:14 22:25 64:6 69:16, 86:4,11 91:11 problems ^[2] 40:3 64:10 process ^[1] 58:6 produce ^[2] 29:4,11 product ^[25] 8:21 9:13,19 10:20 13:23 15:8 20:15 29:4 43:1 49:24 51:21 72:18 73:6 74:8 75:12 81:16,20 84:25 88:14 89:14 90:13 93:5,16,18 95:2 product's ^[1] 60:15 PRODUCTS ^[16] 1:6 3:5 14:20 16:21 24:16,17,20 31:19 40:5 42:25 59:14 67:4 71:25 74:11 82:1 84:11 professor ^[1] 56:22 professors ^[1] 63:15 profiting ^[1] 94:25 program ^[2] 95:15,17 prong ^[2] 49:5 69:7 prongs ^[1] 87:20 properly ^[1] 59:13 PROPERTIES ^[2] 1:3 3:5 property ^[10] 4:11 7:21,22 8:8,10,11 26:1 33:20,21,22 proposal ^[1] 40:8 propose ^[1] 89:10 proposes ^[3] 90:11 93:17, 17 proposing ^[8] 62:16 89:13 90:16,23 92:24,25 93:15, 15 propounded ^[1] 42:9 prosthetic ^[1] 27:22 protect ^[8] 4:12 7:22 35:23 44:20 59:16 69:8 72:11 75:16 protected ^[3] 34:2 55:2,9 protection ^[2] 9:15 69:10 protects ^[2] 60:22 75:25 protest ^[1] 19:17 proudly ^[1] 19:17 proven ^[1] 80:8 provide ^[4] 53:18 60:8 63:2 79:4 provides ^[1] 88:7 providing ^[1] 56:4 provisions ^[1] 13:3 proximity ^[2] 60:17 78:7 PTO ^[3] 25:12 37:14,18 PTO's ^[1] 97:4 public ^[3] 21:22 31:18 82:16 pull ^[1] 29:14 punching ^[1] 81:4 purchase ^[1] 27:21</p>	<p>purchasing ^[2] 21:22 31:18 pure ^[1] 59:25 purely ^[1] 83:10 purportedly ^[3] 19:25 29:9 30:16 purpose ^[1] 89:22 push ^[1] 33:8 put ^[19] 7:12 14:19,19 15:6, 8,12,17,19 49:16 69:20 79:14 83:9,19 84:2,4,13 87:7 96:3,4 puts ^[1] 74:11 putting ^[2] 65:20 87:2 puzzle ^[1] 53:11</p> <hr/> <p style="text-align: center;">Q</p> <p>quandary ^[1] 9:7 quantum ^[1] 63:3 question ^[24] 10:10,13 14:3 16:6 32:1 34:11,12 36:12 40:25 46:22 51:7,19 52:15 61:10 64:13 68:19 74:4 77:5,13 81:11 82:9 85:4, 12,22 questions ^[10] 5:9 12:17 42:8,23 43:18 48:13 60:14 61:2 82:7 85:22 quite ^[2] 59:13 68:22 quo ^[1] 46:2</p> <hr/> <p style="text-align: center;">R</p> <p>raise ^[3] 55:4,8,14 ran ^[1] 29:12 rather ^[5] 38:25 46:25 80:6 85:19,20 rational ^[1] 47:18 read ^[2] 51:4 91:12 reading ^[1] 32:19 real ^[3] 76:11 83:9 91:11 real-life ^[1] 56:20 real-world ^[1] 21:19 reality ^[1] 71:23 really ^[13] 10:15 28:24 29:16 36:15 39:18 45:22 46:18 51:7 55:1 58:4 80:5 85:4 87:6 reason ^[4] 10:12 21:16,23 55:17 reasonable ^[13] 28:19 29:17,21 32:4,14 40:8 42:23 51:18 52:4 80:9 85:16,17, 23 reasonably ^[2] 60:14 77:1 reasons ^[1] 43:25 REBUTTAL ^[3] 2:12 94:8, 9 recognition ^[1] 71:21 recognized ^[3] 59:12 62:10 86:5 recognizes ^[1] 6:18 reconcile ^[1] 62:22 reconsideration ^[1] 36:23 records ^[2] 89:18 92:7</p>	<p>reference ^[3] 67:10 89:7, 23 referencing ^[1] 39:21 registered ^[3] 74:24,25 75:3 registration ^[2] 37:19 81:25 regulate ^[2] 49:3,9 reiterated ^[1] 44:5 reject ^[1] 32:20 rejected ^[2] 35:1,4 rejecting ^[2] 37:18 95:4 relevance ^[11] 4:5 18:6,8 44:14 49:2,4 63:13,23 79:24 80:6,6 relevant ^[7] 3:25 20:17,17 25:9 50:12 63:18 70:9 relied ^[1] 92:1 rely ^[1] 45:22 relying ^[3] 37:14 45:10 76:3 remand ^[9] 36:22 37:6,9,23 38:7 49:19 78:2 96:24,25 remember ^[1] 18:4 renders ^[1] 5:1 reply ^[1] 41:19 represent ^[1] 21:22 representation ^[1] 77:3 Republican ^[2] 21:6 27:7 Republicans ^[1] 25:18 require ^[1] 18:21 requires ^[3] 44:13 49:1 60:2 Reserve ^[1] 67:7 resolution ^[1] 77:16 resolve ^[2] 9:3 51:8 resolved ^[2] 26:19 27:2 resources ^[1] 60:3 respect ^[7] 12:22 17:20 35:15 41:10 49:19 68:20 76:15 Respondent ^[7] 1:7,25 2:11 7:16 43:7 52:16 58:18 Respondent's ^[1] 50:6 response ^[3] 40:9 46:1 47:17 responsible ^[1] 39:5 rest ^[1] 63:22 restrict ^[1] 4:12 restricts ^[1] 8:11 result ^[1] 60:25 results ^[1] 4:21 reversed ^[2] 3:16,19 rich ^[2] 22:6 31:16 rid ^[2] 48:15 54:8 ridicule ^[1] 4:17 ridiculous ^[1] 28:11 rights ^[8] 4:11 23:2 26:1 33:21 39:25 40:1 73:21 94:14 ring ^[1] 27:20 RNC ^[1] 25:20 ROBERTS ^[11] 3:3 26:8 35:10 38:9 41:24 48:1 58:10</p>	<p>88:10 93:24 94:7 97:11 robust ^[1] 28:18 Rogers ^[87] 3:21,23 4:8,8 5:11 6:14,23 7:1 8:19,23, 24 9:21 10:8,14 12:3 16:9 17:12 32:24 34:14 36:24 40:10,18 43:6,20,22,22,23 44:2,7,11,13,19 45:1 46:4, 5,15,16,19 47:2,5,19,23 48:3,8,16,17,22 49:6,15 54:4 55:18 58:3,9 59:15 61:9, 12,17,22 62:1,15,25 63:7, 10 64:4,10 68:20 70:16,20 71:10 72:10 76:19 77:20, 24 78:4 79:24 80:5,12 81:11 82:5,6,9 86:4,8 87:19 95:11,19,21 rolled ^[1] 61:7 roots ^[1] 63:7 rote ^[1] 74:3 rough-and-tumble ^[1] 62:12 Row ^[1] 33:15 rug ^[1] 10:5 rule ^[4] 22:17 32:11 45:17, 18 run ^[3] 28:14 91:13,17 runs ^[1] 91:24</p> <hr/> <p style="text-align: center;">S</p> <p>sale ^[1] 88:18 sales ^[1] 96:16 same ^[7] 24:22 25:14 33:11 61:19 65:4,16 69:10 sample ^[1] 75:13 San ^[3] 33:13 34:10 35:6 satisfy ^[1] 44:3 saying ^[25] 9:7,22 10:8,25 13:1 17:16 22:17 25:11 32:24 34:22 40:16 45:13 47:4, 7 58:3 64:1 65:5 67:14 74:2 77:5 79:5 80:12 86:22 91:1 95:14 says ^[21] 15:13 24:1 25:17 27:18,20,24 28:11 29:3 30:11 32:11 33:1 43:8 61:1 65:9,10,11,13 81:25 82:2 83:2 91:7 scenario ^[2] 64:25 65:5 scene ^[1] 29:2 school ^[2] 31:8,12 scope ^[3] 8:20 38:16 46:19 Scrabble ^[1] 11:16 scream ^[1] 87:9 screen ^[1] 61:22 screened ^[1] 64:17 screening ^[1] 65:7 screens ^[1] 64:4 sculpture ^[2] 83:16 84:12 Second ^[14] 3:21 6:20 17:6, 19 20:13 21:25 44:11 46:13 49:14 53:8 54:1 80:16, 18,19 Section ^[1] 88:22</p>	<p>secure ^[1] 10:8 see ^[13] 7:14 8:4 17:12,15 43:24 51:9 66:18 67:5 72:18 81:21 87:11,13 94:20 seem ^[5] 56:14,16 63:7 69:12 76:21 seems ^[4] 11:24 34:19 64:9 82:4 seen ^[4] 64:19 68:6 93:8,9 self-serious ^[1] 59:1 sell ^[5] 14:20 24:17 88:23 90:25 93:16 selling ^[8] 5:8 24:23 28:7 29:24 30:5 84:7 90:19 96:23 sells ^[2] 19:20 24:20 send ^[1] 88:4 senior ^[1] 43:13 sense ^[3] 15:10 66:4 93:18 separate ^[1] 88:12 serious ^[1] 56:15 seriously ^[8] 66:11,16 67:2, 4,5,20,24 68:2 serve ^[2] 50:24 89:22 serves ^[1] 56:10 service ^[1] 8:14 services ^[3] 6:5 38:19,21 setting ^[1] 16:23 seven ^[2] 25:2 79:10 Seventh ^[3] 46:7 95:10,13 sex ^[2] 14:7 94:24 SG's ^[1] 97:2 shaking ^[1] 17:2 shall ^[1] 33:1 shape ^[2] 65:1,17 shelf ^[4] 83:19 84:2,4,13 ships ^[1] 5:19 shopping ^[1] 84:5 short ^[3] 9:22 11:19 26:13 shouldn't ^[3] 39:3 47:7 54:7 show ^[3] 44:8 56:1 60:25 showing ^[4] 4:21 19:25 31:2 44:13 shows ^[3] 26:14,15 28:7 side ^[4] 26:3 38:4 55:24 94:17 signal ^[1] 4:17 significant ^[2] 60:3 63:23 silencing ^[1] 59:18 Silly ^[4] 72:19,22 74:6,7 similar ^[4] 24:10 25:15 50:18 51:17 similarity ^[5] 23:24 24:3 37:20 50:10 51:13 simpler ^[1] 61:13 simplify ^[1] 32:6 simply ^[7] 18:9 59:13 60:5, 9 73:18 81:2 89:15 simultaneously ^[1] 24:4 since ^[7] 6:17 32:8 33:10 39:12,13 40:22,22 situation ^[1] 9:21 situations ^[1] 53:19</p>
--	--	--	---	--

Official

<p>six [2] 41:19 79:10 size [2] 65:1,17 sky [1] 6:1 Slate [2] 95:15,16 Sleekcraft [2] 23:16 25:7 slightly [4] 68:19 85:14 86:20 93:9 slogan [1] 19:16 smart [1] 31:8 Smella [1] 66:14 Sober [2] 19:16 25:18 social [1] 96:18 soft [3] 66:22 83:16 84:12 software [1] 95:16 sold [4] 83:10 84:11 88:19 89:1 Solicitor [4] 1:20 59:20 60:7 78:3 somebody [5] 21:1 22:4 29:2 51:22 83:4 someone [5] 8:4,5 24:5 77:1 80:11 someone's [4] 11:8 26:1,6 33:23 somewhat [1] 97:2 sorry [14] 13:14,16 19:2 21:7 30:8,15,21 41:2 47:14 58:15 80:23 84:9 92:11 93:3 sort [9] 9:2 11:12 12:5 22:15 23:25 30:19 79:25 81:14,15 SOTOMAYOR [53] 16:3,5 17:4,9 18:7,17 19:4,7,10,13,20,23 20:19,22 21:8 22:24 23:6,9 35:11 42:13,17,18 45:8,25 46:21,24 47:9,13,15 72:14,21,24 73:3,7,11,19 74:5,10 90:22 91:19 92:4,9,12,15,19 93:1,4,7,14,21 94:1 95:24,25 Sotomayor's [2] 26:13 33:5 sound [2] 48:10 49:6 sounds [2] 86:21 96:11 source [47] 5:5 6:8 8:22 9:14 10:21 11:23 12:7,11,16 13:1,13,18,22 14:8,10,11,12,13,18,23 15:1,8,11,15,19,21,22 21:5,10 39:11 40:5 41:8,15,20 42:24 43:12 57:8 59:6,12 64:14 72:21 74:8,22 82:2 83:5 84:24 95:25 Spaniel [1] 59:8 Spaniels [16] 24:23 29:8 59:2,6,11 65:3 73:8 74:4,6,15,20 75:8,11 76:6 90:14,15 Spaniels' [2] 72:16 73:21 special [2] 9:14 55:11 specifics [1] 23:17 speech [45] 4:12 5:1 6:11 8:8,11 33:2,16,23 34:7 35:</p>	<p>23 49:8,11 53:25 54:6,23 55:2 56:8,17 59:7,18,25 60:11,22 62:13 69:8 72:11 75:16,19,25 83:25 84:19 87:16 89:8,9,25 90:11,16 91:2 92:2,20 94:14,16,19,23 96:19 spending [1] 81:3 sponsored [7] 43:1 57:9 76:8,9,18 86:2 87:4 sponsoring [1] 85:2 sponsorship [10] 4:4 5:16 6:3,8 13:19,23 41:9,15 43:14 77:3 square [1] 73:14 Squared [2] 43:15 47:19 Squeakers [3] 72:19,22 74:6 stage [3] 54:14 57:23 61:20 stakeholders [1] 45:13 stand [1] 78:14 standard [28] 15:23 18:2 21:4 32:4 43:4,23 45:6 46:11,12 48:19 52:7 54:18 55:18,18 57:25 60:19 62:19 63:3 70:10,14,18 71:2 75:4 77:9 81:16,19 82:13 86:25 standards [1] 36:24 start [4] 28:6 39:17,20 49:21 started [2] 39:8 71:7 state [2] 30:2 96:16 statement [4] 5:10 15:16 23:2 75:23 STATES [5] 1:1,15,22 2:7 42:3 status [1] 46:2 statute [15] 12:5 16:15 34:18 40:12,17 44:10 70:5 71:18,20 76:22 79:16,18,23 87:11 89:3 statutory [8] 5:13 13:2 14:22 43:4 46:12 55:7,17 70:18 Steel [1] 16:13 Stella [1] 68:1 step [1] 53:7 sticks [1] 8:12 still [8] 25:4,5 48:14 65:6 81:8 83:20 90:2 92:21 stools [1] 24:21 stop [2] 61:1 72:17 stores [2] 24:18,18 stressing [1] 32:24 stricken [1] 80:4 strike [1] 34:18 strip [1] 71:13 stripped-down [1] 88:9 Stripping [1] 60:12 struck [4] 6:21 24:8,10 39:14 struggle [1] 89:17</p>	<p>struggling [1] 64:6 stuff [1] 13:4 subject [4] 55:7 77:8 88:13 90:20 submitted [3] 89:20 97:12,14 substance [1] 40:20 substantial [2] 23:24 32:9 substantively [1] 44:12 Sucks [1] 15:13 sued [1] 84:22 sufficient [1] 58:8 sufficiently [2] 16:10 64:8 suggest [1] 10:7 suggestion [1] 75:15 suggests [3] 31:3 78:3 82:7 suit [3] 54:13 55:16 57:1 summary [6] 18:24 27:1,2,3 77:17 95:20 Sunday [1] 41:19 Super [1] 29:13 superfluous [1] 5:2 support [1] 63:16 supporting [4] 1:22 2:8 42:4 52:16 suppose [1] 12:16 supposed [3] 22:3 84:15 89:22 supposedly [1] 47:22 SUPREME [5] 1:1,14 12:25 35:6 89:23 survey [17] 4:21 19:24 22:4,14 24:24 25:6 26:14,24 32:15,16,20 35:2 41:17 61:1 75:10 86:6,16 surveyed [2] 52:11 53:2 surveys [10] 18:22 21:15,19,23 22:5,7 32:18 53:10,16 54:9 survives [1] 27:10 susceptible [1] 77:16 symbolizes [1] 74:13 symbols [1] 82:20</p> <hr/> <p style="text-align: center;">T</p> <p>T-shirt [18] 14:19 15:9,13 19:15 20:15 27:18,25 42:10,20 81:17 82:15,15,20 83:1 95:2,5,6 96:4 T-shirts [3] 19:21 22:13 95:9 tactics [1] 56:1 talks [1] 16:15 tapestry [1] 10:4 target [1] 42:25 tarnish [1] 91:16 tarnishment [1] 91:14 tchotchke [2] 11:10 96:5 teaches [1] 89:9 teenage [1] 22:1 televised [1] 96:19 tells [4] 23:20 24:25 33:6 48:16</p>	<p>ten [1] 79:10 tends [2] 4:20 37:17 Tenth [1] 95:10 terms [9] 12:2 21:13 23:14 63:12 74:9 83:17 95:1,22 96:24 test [74] 5:13 6:19 8:19,23,24 12:17 16:9,10,13,14 17:12 18:14 36:20 37:8 43:4 44:2 46:4 47:24 48:3,8 53:17,17 54:4 59:15,21,24 60:2,13,19,22 61:4,5,6,7,9,12,19,22 62:1,3,5,10,25 63:7,10,12,17 64:11 70:16,20 71:7,10,13 72:10 76:13,19 77:20,24,25 80:8 81:1,11,13 84:21,23 87:17,19,19 88:9,21,23 93:6,13,19 testimony [2] 66:8 83:11 tests [1] 16:14 text [12] 4:9 7:1,8 12:23,24 32:25 33:2 43:24 45:2 49:20 62:22 63:2 textual [2] 62:15 89:6 that'll [1] 37:8 themselves [4] 66:11,16 67:2,20 theory [1] 52:21 there's [27] 6:10,22,25 7:2 9:15 11:5,10 12:14,18 14:14 21:13 22:9,14 28:16 32:16 56:20,23 63:20 64:9 65:21 67:23 76:5 80:13,13,13 95:3,12 they've [3] 10:24,25 25:12 thinking [2] 84:6 85:1 thinks [1] 31:19 third [2] 44:25 60:20 third-line [1] 54:1 THOMAS [25] 5:10,15,17,23 6:13,22 7:15 16:6 18:19 26:10 43:19 58:12 61:3,11,14,25 62:6,8,14 63:6 88:11,12 90:2,7 96:14 though [7] 14:14 16:1 35:25 37:22 63:8 65:20 86:24 thousands [1] 93:9 thread [1] 59:17 threat [1] 55:25 three [5] 23:15 43:25 45:19 60:14 79:20 three-part [1] 71:7 threshold [3] 12:8 14:2 76:13 threw [1] 77:24 throughout [1] 74:18 throwing [1] 63:21 TikTok [1] 96:18 title [4] 15:20 17:21,24 46:17 titles [6] 3:22 17:20 40:19 45:15 46:16 47:11 TM [1] 73:5 today [1] 97:6</p>	<p>tool [1] 60:5 totality [1] 75:9 totally [3] 9:5 10:9 87:8 toward [1] 60:6 towards [1] 10:24 toy [21] 3:11 9:10 11:6 23:17 29:5,9 30:7,14 34:19 64:25 65:13,21 74:21 76:6 77:18 82:21 84:11,11,18 93:11 96:3 toys [7] 24:23 31:20 74:24 83:3 93:9 94:24,24 trade [7] 3:12 72:16 73:13,21 74:11 89:3 96:15 trademark [51] 3:12 12:12:14,18 13:14,15 14:7,9,16,21 15:10,15,23 16:1,4 17:11 19:1 25:25 26:7 28:5 35:18 36:1 38:14,16,18 39:6,12,13 40:2 44:15,23 48:10 51:21 52:22 54:12 55:16,19 63:21 72:16,18,25 73:2,8,18,21 74:22 76:15 79:9 84:8 86:25 91:5 94:21 Trademarks [4] 4:11 33:9 74:24 94:13 trading [2] 4:20 37:16 traditional [1] 71:19 transaction [8] 89:11,13 90:12,17 92:24 93:15,17,17 trash [1] 22:6 trees [1] 96:9 trial [4] 3:14,18 20:7 25:14 true [4] 59:18 85:9 88:18 91:20 try [1] 62:21 trying [8] 11:21 13:21 17:10 39:3 40:4,12 61:15,15 turn [1] 85:7 turned [1] 95:5 turns [1] 49:3 TV [2] 28:7 67:11 tweets [1] 96:17 two [9] 5:18 7:12 13:2 27:19 50:18,24 60:17 96:1,13,18 Twombly [3] 26:19 95:11,18 type [1] 75:5 typically [1] 4:17</p> <hr/> <p style="text-align: center;">U</p> <p>unacceptable [1] 97:8 uncertainty [1] 64:7 unchanged [1] 24:11 unconstitutional [4] 36:5 39:15 91:15,24 Under [24] 3:23 5:12 6:6,15 12:17 13:2 15:2 20:7 21:4 36:20,23 45:3 46:10 49:20 57:12 62:21 73:25 80:18,19 86:23 88:4,21,22 92:20 undermine [1] 91:5 understand [13] 5:17 11:</p>
--	--	--	---	--

Official

22 35:15,17 39:3 47:20 49:18 51:20 61:9,14,16 64:16 71:4	Vuiton ^[1] 24:12	word ^[2] 80:4 91:9
understanding ^[1] 63:2	Vuitton ^[8] 23:18,19,19,23 24:7,15,15 60:5	words ^[3] 18:4 62:1 65:7
understood ^[1] 85:25	W	work ^[7] 3:23 39:22 59:22 64:15,20 86:19,23
underwear ^[1] 22:1	Wal-Qaeda ^[1] 60:4	worked ^[1] 83:13
unfortunately ^[1] 12:21	Walker ^[2] 66:14 74:25	works ^[7] 4:2 59:16 61:23 64:5,14 77:9 82:12
unique ^[1] 73:14	wallpaper ^[1] 9:25	worried ^[2] 34:23 87:12
uniquely ^[1] 93:11	Walocaust ^[1] 60:4	worries ^[1] 12:10
UNITED ^[5] 1:1,15,22 2:7 42:3	wanted ^[3] 25:22 36:25 55:7	worry ^[1] 54:2
unknown ^[1] 14:13	wants ^[1] 26:3	worrying ^[1] 39:18
unless ^[6] 15:19 27:9 28:4 34:5 88:7 91:12	Washington ^[3] 1:10,18,21	write ^[1] 9:18
unlikely ^[1] 64:19	way ^[35] 6:22,25 9:3,4,6 11:21 12:5 15:5,20 16:12 17:25 21:18 25:2 33:11 34:14 38:25 39:4,25 41:14 44:10 46:8,8 48:9,17,18 50:15 59:1 61:13 65:11 70:4 74:3 76:8,16 84:25 85:24	wrote ^[1] 13:7
unnecessary ^[1] 10:9	ways ^[2] 41:19 63:1	Y
unorthodox ^[2] 7:5,10	wear ^[1] 19:17	years ^[4] 25:11 37:14,18 97:4
unprotected ^[1] 49:11	website ^[3] 56:23 57:6,8	yourself ^[1] 67:12
Unspecified ^[1] 42:19	Wednesday ^[1] 1:11	Z
until ^[3] 17:22 40:19,20	weighing ^[2] 37:11,13	Zacchini ^[1] 33:14
unusual ^[1] 56:5	weight ^[1] 78:6	Zubini ^[1] 33:13
up ^[23] 9:7 13:4,6 16:13 19:16 20:1 21:19 22:19 24:3 25:10,19 32:25 36:2,14 39:19 49:14 61:18 67:8 81:4 82:16 83:14 97:3,8	welcome ^[3] 5:9 43:18 61:2	Zucchini ^[1] 33:13
upset ^[2] 83:23,24	well-heeled ^[1] 59:19	
urine ^[5] 29:9,25 30:5,12,22	well-phrased ^[1] 63:12	
uses ^[12] 4:7 5:4 17:24 18:20 23:24 24:14 26:4 34:24 44:17 47:22 56:2 96:14	whatever ^[10] 8:20,22 19:11 20:1 21:16 80:25 81:10,22 85:3 86:2	
using ^[14] 4:2 8:21 9:13 10:17 12:6 39:4 40:5 73:17 80:11 81:24 82:2 83:4 84:4 94:23	Whereupon ^[1] 97:13	
utilitarian ^[9] 82:12,17,22 83:3,15,24 84:16 85:8 96:12	whether ^[42] 8:19 12:2,4,18 16:18 17:10,22,23 20:19,21,25 21:5 32:3 34:12,13 42:25 49:12 51:4 52:23,25 53:23,24 57:6,7,19 61:16 62:23,24,25 64:7 77:1 81:11,12 82:18 83:18 84:2 85:7,15,16,23 88:19,23	
V	whiskey ^[3] 3:13 90:14,15	
vacate ^[1] 37:23	whoa ^[1] 25:17	
vague ^[1] 43:9	whoever ^[1] 39:25	
valid ^[1] 8:5	whole ^[8] 13:7 22:7 32:7 51:20 53:12 54:7 75:9 84:8	
value ^[3] 84:16,17 85:21	will ^[13] 9:22 10:2 25:9 27:21,21 28:4 38:1,1 46:13 50:24 53:5 78:18 82:10	
various ^[2] 12:2 43:9	win ^[10] 6:23,24 7:1 29:25 37:9 54:2 78:15,21 80:16,18	
version ^[3] 45:4 60:13 88:9	Wind ^[1] 15:21	
versus ^[4] 3:5,21 11:15 95:2	Wisconsin ^[1] 62:11	
vibrant ^[1] 40:21	without ^[6] 14:18 16:9 53:3 54:9,9 81:3	
Vice ^[1] 95:5	won ^[1] 28:23	
video ^[4] 10:1 11:15,17 96:18	wonder ^[1] 12:4	
view ^[8] 11:22 18:18 41:3 43:8,15 50:4,15 64:13	wondering ^[3] 5:18 8:16 13:25	
viewing ^[1] 20:20	Woodford ^[1] 67:7	
viewpoint ^[1] 91:15		
vindicate ^[1] 60:3		
violate ^[2] 6:12 16:1		
violating ^[1] 30:2		
violations ^[1] 86:25		
VIP ^[6] 1:6 3:5 37:6 64:25 84:10,23		
virtually ^[2] 24:11 45:10		