

No. _____

**In The
Supreme Court of the United States**

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PROGRESSIVE LAWN MANAGERS, INC.,

Petitioner,

v.

LAWN MANAGERS, INC.,

Respondent.

—◆—

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit**

—◆—

PETITION FOR A WRIT OF CERTIORARI

—◆—

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QUESTIONS PRESENTED

1. Whether in a trademark infringement case in which it is necessary for the federal court to construe state-court divorce orders governing the rights and obligations of the parties relevant to unclean hands and where there are ongoing parallel state-court proceedings involving enforcement of those same orders, the federal court may disregard the state-court constructions of the divorce orders and contradictorily construe such orders on the sole basis that the federal case is a “trademark infringement action in federal court.”

2. Whether in the situation where the licensor of a mark purposefully allows the licensee to use the mark to deceive the public into thinking the licensee is the licensor and the licensor retains and exercises no control over the quality of services provided under the mark, the finding of mark abandonment compelled by the Lanham Act may be avoided solely on the basis of a prior relationship between the licensor and licensee, even where that relationship turns hostile before and during the license period.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Progressive Lawn Managers, Inc., Defendant-Appellant below.

Respondent is Lawn Managers, Inc., Plaintiff-Appellee below.

Petitioner Progressive Lawn Managers, Inc. has no parent company. No publicly held company owns 10% or more of Progressive Lawn Managers, Inc.'s stock.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

A. *Lawn Managers, Inc. v. Progressive Lawn Managers, Inc.*, No. 18-2658, United States Court of Appeals for the Eighth Circuit, opinion filed May 20, 2020, rehearing en banc denied June 29, 2020.

B. *Lawn Managers, Inc. v. Progressive Lawn Managers, Inc.*, Case No. 4:16-cv-00144-DDN, United States District Court for the Eastern District of Missouri. Judgment Order entered by the District Court on June 11, 2018; Memorandum Opinion entered by the District Court on June 11, 2018; Supplemental Judgment Order entered by the District Court on July 13, 2018; Memorandum and Order Regarding Post-Judgment Motions entered by the District Court on July 13, 2018; and Memorandum and Order Awarding Attorney's Fees entered August 31, 2018.

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PETITION FOR A WRIT OF CERTIORARI

Progressive Lawn Managers, Inc. (“Petitioner”) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

**OPINIONS BELOW**

The Eighth Circuit’s opinion affirming the judgment of the District Court is reported at 959 F.3d 903 (8th Cir. 2020). The Eighth Circuit’s order denying panel rehearing and rehearing en banc is unreported. The District Court opinion entering judgment in favor of Respondent is reported at 390 F. Supp.3d 975 (E.D. Mo. 2018).

**JURISDICTION**

The Eighth Circuit entered judgment on May 20, 2020 (App.1a) and denied a timely rehearing petition on June 29, 2020 (App.62a). Petitioner files this petition within 90 days of the order denying rehearing as required by Supreme Court Rules 13.1 and 13.3, with the time computed as stated in Rule 30.1. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254(1).



STATUTORY PROVISIONS INVOLVED

The Lanham Act, 15 U.S.C. § 1055

The Lanham Act, 15 U.S.C. § 1064

The Lanham Act, 15 U.S.C. § 1127 (“abandonment”)

The Rules of Decision Act, 28 U.S.C. § 1652

These statutes are reproduced in their entirety in the appendix to this petition. App.130a.

**INTRODUCTION**

This case raises two questions of fundamental importance concerning trademark law.

The first question requires balancing the principles of trademark law, federal court procedure, and comity to state-court rulings. In particular, this case asks the Court to examine whether a federal court in adjudicating the issue of unclean hands in a Lanham Act case may disregard state-court decisions interpreting state-court domestic relations orders, intended to protect marital property awarded an ex-wife from being raided by the ex-husband, and announce a construction of those divorce orders that directly contradicts the constructions issued by the state courts. Here the Eighth Court determined it could because this case is a “trademark infringement case in federal court” and therefore the divorce orders could be regarded as mere licenses.

The second question tests the limits of how reluctant federal courts may appropriately be to declare abandonment as a result of “naked” licensing and specifically whether a trademark can still be valid if the owner licenses that mark but neither imposes any contractual restrictions on how the mark is used, nor engages in any supervision of the licensee’s use of the mark during the license, nor maintains any ongoing business relationship with the licensee. In doing so, this case asks the Court to examine whether naked licensing, a doctrine long part of the Lanham Act and addressed by virtually every federal appellate court over the span of decades, is a principle to be readily enforced by federal courts in order to protect the public from marketing deception or whether it is merely an academic concept.

A. Deference to State-Court Rulings

The Rules of Decision Act ensures that the outcome of a federal court case will not materially differ than if the case had been brought in state court. 28 U.S.C. § 1652. In addition, some 70 years ago, the Court ruled that federal courts must defer to a state court’s interpretation of its own law. *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). In the context of diversity cases, the Court has ruled that a federal court “must follow the decisions of intermediate state courts in the absence of convincing evidence that the highest court of the state would decide differently.” *Stoner v. New York Life Ins. Co.*, 311 U.S. 464, 467 (1940). When federal cases involve issues of divorce, the Court has been

forcefully vocal in stating that when it comes to matters of domestic relations, state courts have primacy and federal courts should accord state-court rulings the highest level of respect. *See, e.g., U.S. v. Windsor*, 570 U.S. 744, 766–67 (2013).

On the issue of unclean hands in this case, the terms of two Missouri divorce orders (“Divorce Orders”) are critical. Since 2016, there have been ongoing enforcement proceedings against the ex-husband in Missouri state courts for violating the Divorce Orders through his operation of Respondent. Those proceedings have resulted in judicial constructions of the Divorce Orders which are critical to Petitioner’s unclean hands defense. However, both the District Court and Eighth Circuit not only refused to defer to the state-court rulings, but they refused to acknowledge or mention them. Instead, both courts reached interpretations of the Divorce Orders that are remarkable, both in their brevity and in their conflict with the state-court rulings. The constructions of the Divorce Orders here are at odds with the Rules of Decision Act and the Court’s jurisprudence on federal-state comity and the primacy of state-court superintendence over divorce matters.

The Eighth Circuit gave no express basis for its disregard of the Divorce Orders other than to state in a footnote:

Progressive’s contrary argument—to which it devotes much of its brief—that the accounts divided in § 5.02 constituted marital property

and therefore could never be solicited again, misapprehends that this is a trademark infringement action in federal court, and that its unclean hands defense turns on the language of the licensing agreement before us.

Lawn Managers, Inc. v. Progressive Lawn Managers, 959 F.3d 903, 913, n.5 (8th Cir. 2020).

With one unsupported footnote, the Eighth Circuit completely unmoored the terms under consideration from their origin in a state-court divorce decree and ostensibly freed itself to contradict the state-court's interpretation of its own order. Such superficial treatment of a state court ignores the rules of deference housed in the Rules of Decision Act and the Court's comity and domestic relations jurisprudence.

Thus, it mattered not to the Eighth Circuit that the provisions at issue were by their terms "decretal" and "non-modifiable" marital property provisions or that the state court, in lengthy decisions, had adjudged the ex-husband of multiply violating the provisions. By the Eighth Circuit's rationale, it and the District Court owed absolutely no deference to the decisions rendered in the parallel state divorce-court proceedings—despite the fact that *the state circuit court was interpreting its own orders*. With this announcement, the Eighth Circuit has imbued the Lanham Act with an exalted status over the Rules of Decision Act that: a) removes any requirement of comity in federal subject matter jurisdiction cases; b) creates a dangerous and ill-defined carve-out to this Court's domestic relations

jurisprudence; and c) genuinely opens the door for collateral attack on state-court rulings in federal court.

B. Abandonment by Naked Licensing

The Lanham Act, 15 U.S.C. § 1064, provides that a trademark registration may be cancelled because the trademark has been “abandoned.” “Abandoned” is defined in 15 U.S.C. § 1127 to include any act or omission by the registrant that causes the trademark to lose its significance as an indication of origin. Before the Lanham Act was enacted, the doctrine of abandonment by transfer “in gross” (in modern terms, a “naked license”) was judicially recognized. *See Am. Broad. v. Wahl Co.*, 121 F.2d 412, 413–14 (2d Cir. 1941). The Lanham Act incorporated this doctrine into its provisions. 15 U.S.C. § 1055 provides (with emphasis supplied):

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, *provided such mark is not used in such manner as to deceive the public.*

Here, although the Eighth Circuit acknowledged that naked licensing will result “when a trademark owner licenses a mark without exercising sufficient quality control over the services provided under the mark” and that Respondent neither imposed any contractual rights to control nor had the ability to control

the quality of Petitioner’s services, it nevertheless concluded that no naked licensing occurred based on the notion that Respondent could reasonably rely on Petitioner’s own, undisclosed quality-control measures because the parties *previously* had a “special relationship.” *Lawn Managers, Inc.*, 959 F.3d at 911. As the dissenting opinion forcefully demonstrates, the majority ruling conflicts with the holdings of other circuits. In fact, the dissent notes that though a close working relationship may sometimes substitute for formal controls, this case is the only circuit-court opinion to ever hold that a prior working relationship alone, without ongoing controls on the licensee’s quality, is sufficient to overcome naked licensing. The dissent below is clearly correct. The Eighth Circuit’s unprecedented ruling goes too far and effectively excises the doctrine of abandonment by naked licensing from the Lanham Act.

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STATEMENT

A. FACTUAL BACKGROUND

Randy Zweifel (“Randy”) and Linda Smith (“Linda”) married in 1993 and divorced in 2012. A611; A1993.¹ As a married couple, they each owned half of Respondent,

¹ Citations to the trial transcript appear in the following volume, page and line number format: “1T(40:7).” Citations to the appendix filed in the Court of Appeals appear in the format of “A111.” Citations to pages of the Appendix included with this Petition appear in the format of “App.11a.”

Lawn Managers, Inc., a St. Louis-area lawn-care company. A611.

To settle their divorce, Linda and Randy arrived at an agreed division of marital property. A1993. They set forth their agreement in a 28-page “decretal” and non-modifiable marital settlement agreement (the “MSA”) that the Circuit Court for Jefferson County, Missouri, incorporated into a 2012 dissolution decree (the “2012 Decree”). A611–12.

The MSA required Linda to relinquish her share of Respondent. Ex. 11(§5.01). However, instead of Randy paying Linda money for her relinquished share, the MSA partitioned Respondent’s tangible assets and customers. A613–14. The MSA allocated the customers by zip code, giving customers in one group of zip codes to Randy and customers in another group of zip codes to Linda. A613–14. The MSA provided that Linda could form a company, called “Progressive Lawn Managers,” to service her awarded customers.² Ex.11(§5.06).

In allocating customers, section 5.02(2) of the MSA used specific language that Linda was receiving “*all right, title and interest*” to the customers of her specified zip codes. Ex. 11(§5.02(1)). The award of specific customers was not subject to any type of term limitation and, in fact, section 5.06 of the MSA stated that if Randy or Linda wished to sell any awarded customer he or she must give the other the first right to purchase

² Petitioner Progressive Lawn Managers, Inc. is that company. A611.

the customer. A615; Ex. 11(§5.06). In addition to the award of specific customers, the MSA added the requirement that the parties not solicit *any* business (not just the awarded customers) in the zip codes awarded to the other for two years. Ex. 11(§5.06).

Though the MSA provided that Linda's new lawn care company would be formally called "Progressive Lawn Managers, Inc.," it specifically provided that for two years after the divorce, Linda's business could use Respondent's name, "Lawn Managers," when doing business with the public or seeking credit. Ex. 11(§5.06). The MSA did not require the parties to notify the public that Linda's company would now be using the name "Lawn Managers" or that Linda's "Lawn Managers" company was not Randy's "Lawn Managers" company. Ex. 11. Nor did the MSA provide for what the parties were to tell customers about the division of accounts. Ex. 11. The MSA lacked any terms regulating how Linda could use the name "Progressive Lawn Managers." Ex. 11. The MSA also lacked terms giving Randy the right to control or evaluate how Linda used the "Lawn Managers" name or the services rendered under that name. Ex. 11.

In furtherance of the terms of the MSA, a transfer of customer accounts from Respondent to Petitioner took place on April 25, 2012. By design, the customers were transferred from Respondent to Petitioner without their knowledge. 2T(5:19–6:18). As a result of the 2012 Decree, there were now two St. Louis-area lawn companies using the name "Lawn Managers." 1T(114:17–115:10). Petitioner's employees worked in

the field wearing the same uniforms bearing the “Lawn Managers” name as used by Respondent’s employees until the end of 2014. 1T(114:7–16). Likewise, the parties were both using similar vehicles with similar, and in some cases identical, “Lawn Managers” signage on them. 1T(69:4–8).

Though the 2012 Decree signaled the end of Linda and Randy’s marriage, it did not mark the end of their discord. In July 2013, Linda received a contempt judgment of \$75,000.00 against Randy for failing to pay sums owed under the 2012 Decree. Shortly thereafter, Linda filed a second contempt motion to recover additional unpaid sums and for Randy’s alleged misappropriation of customers specifically awarded under the 2012 Decree. A673. Linda and Randy settled those allegations, which settlement was expressed in a July 25, 2014 Order (the “2014 Order”). Ex. 12. That order required Randy to pay Linda \$125,000.00 and ordered him to transfer customers in two more zip codes to Linda. A616.

The 2014 Order also included a provision, the meaning of which has critical importance to both this case and to later contempt proceedings in the state court. In this regard, whereas Section 5.06 of the MSA prohibited the parties from the *soliciting* of *new* (as opposed to existing) residential customers in the allocated zip codes, the 2014 Order revised the MSA’s prohibition to forbid any *servicing* of *new* residential accounts in those zip codes and extended that prohibition to July 25, 2016. A616. The 2014 Order also extended Linda’s right to use the name “Lawn Managers”

for her business until December 31, 2014 and restated her right to use the name “Progressive Lawn Managers, Inc.” A616; Ex. 12. The 2014 Order concluded by stating that all other terms of the 2012 Decree would remain in effect. Ex. 12.

The customers transferred by the 2014 Order were transferred without their knowledge. 1T(207:18–21). Similarly, there was nothing in the 2014 Order that required the parties to notify the public that customers had been transferred to Linda or that gave Respondent the right to control the use of the “Lawn Managers” name by Linda. Ex. 12.

B. Proceedings Below and in the State Courts

Respondent instituted this case under 15 U.S.C. §§ 1051, *et seq.*, and against Petitioner in February 2016, alleging that Petitioner was infringing Respondent’s federal trademark rights in that it used the two-word name “Lawn Managers” after the license expired in 2014. In its Complaint Respondent also openly collaterally attacked the Divorce Orders by alleging that Petitioner’s use of the name “Progressive Lawn Managers” was an infringement of its rights and requested the District Court bar Petitioner from using any name using the words “Lawn Managers.” App.146a-148a. Petitioner answered the Complaint raising certain affirmative defenses, namely the binding effect of the Divorce Orders and Respondent’s unclean hands in violating those orders by servicing and soliciting Petitioner’s customers. A36.

Six months after Respondent filed this case, Respondent sent mailers, entitled “We Want You Back,” to the customers that had been specifically awarded Linda by the Divorce Orders as marital property by Section 5.02 of the MSA.³ A2188(2–9); Ex. 51. Asserting this conduct to be a breach of the Divorce Orders, Linda filed a third motion for contempt against Randy in state court.

On September 1, 2016, the state court held a hearing on Linda’s request for a restraining order in connection with the motion for contempt. At the hearing, Randy defended his actions in soliciting the specifically awarded customers with the defense that the 2012 Decree and 2014 Order allowed him to solicit any customers *after* July 25, 2016. Specifically, Randy argued that although Section 5.02 allocated “all right, title and interest” in certain customers to Linda, Section 5.06 of the MSA provided a two-year limitation (later extended to July 25, 2016 by the 2014 Order) on non-solicitation. Linda counter-argued that by the terms of the MSA and the 2014 Order, only *new* customers (and not the specifically awarded customers) could be solicited in her zip codes after July 25, 2016. As to those specifically awarded customers, the terms of Sections 5.02 and 5.06 indicated that those customers were allocated marital property not subject to solicitation by Respondent.

³ Respondent’s solicitation had an immediate effect: hundreds of Petitioner’s customers cancelled, causing a precipitous drop in revenue. 3T(19:5–20:3).

After hearing arguments and testimony regarding the terms of the Divorce Orders, the Circuit Court of Jefferson County, Missouri, restrained Randy from soliciting or servicing the customers awarded to Linda by those orders. A454. In reaching this decision, the state-court judge compared the language of Sections 5.02 and 5.06 of the MSA and determined that Section 5.02 effected “a division of property” and the two-year non-solicitation period applied only to “*new* business with those zip codes.” (A2308-2311). On November 18, 2016, after a hearing on a preliminary injunction, the state court maintained its previous construction of the MSA and ordered the conversion of its temporary restraining order (“TRO”) against Randy into a preliminary injunction. A458. Respondent was thus prohibited from soliciting or servicing the customers awarded Linda in 2012 and 2014 during the pendency of the contempt proceedings. A458; 1T(61:5–15).

In December 2016, Petitioner alerted the District Court to the parallel state-court enforcement proceedings and provided a copy of the transcript from the state-court TRO hearing. A59–A204. After a supplemental case-management conference (A205; A252), the District Court entered an order staying the case pending resolution of the contempt proceedings. A243. Respondent moved for reconsideration of the stay order asserting that there was no overlap of issues between the proceedings and that the question whether Randy could solicit the customers awarded by the Divorce Orders was “not in any way before” the District Court.

A272, A340-41. The District Court vacated the stay on March 10, 2017. A390.

The case went to trial on October 30, 2017. In support of the defense of unclean hands, the evidence indicated that at the time of the July 2014 Order, Respondent had been servicing accounts that had been awarded Linda in 2012. 2T(144:17–22). After July 2014, Respondent continued servicing those customers. 1T(118:22–25). As for the solicitation of specifically-awarded customers after July 25, 2016, Petitioner submitted the transcript from the August 31, 2016 TRO hearing wherein Randy admitted soliciting those customers and the state-court judge explained how he interpreted the Divorce Orders and why he was entering a restraining order.⁴

After trial, the District Court requested proposed findings of fact and conclusions of law. Prior to the deadline for the proposed findings and conclusions, Petitioner filed with the District Court the just-issued 24-page summary judgment ruling from the Missouri state court rejecting Randy’s argument that he was permitted to solicit the awarded customers after July 25, 2016. A660. The state court noted in its ruling that the time limits set out in the Divorce Orders “clearly and unambiguously” applied to soliciting “new business”—not the specifically awarded customers. A684. The state court further found that the customers

⁴ By virtue of summary judgment motions, the District Court already had the state court’s TRO ruling and preliminary injunction. A434–38.

awarded pursuant to the MSA were marital property “not subject to modification,” A683, meaning that Randy could *not* freely solicit and service those particular customers after July 25, 2016.

While waiting for the District Court to issue its ruling in this case, trial began on Linda’s pending contempt motion. Shortly after that trial ended, but before a judgment on that case issued, the District Court in this case issued its ruling on June 11, 2018. A862; A846. The court adjudged Petitioner guilty of willful infringement of Respondent’s mark. A854–58. In ruling on Petitioner’s defense of unclean hands, the District Court came up with its own construction of the Divorce Orders, which construction took only a few sentences to express:

Rather than any such indicator of perpetual intent, both the 2012 divorce decree and the 2014 Judgment expressly limited the non-solicitation and non-compete provisions to a term of years. Accordingly, Respondent was entitled to renew advertising to customers following the expiration of the 2014 Judgment’s non-compete provision in July 2016, and this advertisement did not sully Respondent’s hands in a suit for trademark infringement.

A859.

The District Court cited no specific terms of the Divorce Orders or testimony that supported its conclusion. More glaringly, the ruling made no mention of the previous state-court rulings, even though the court no doubt knew its ruling would be used to interfere with

those proceedings.⁵ As part of its judgment, the District Court awarded damages and attorneys' fees against Petitioner. The District Court also awarded injunctive relief and in doing so effectively modified the Divorce Orders by setting forth requirements on how Petitioner could use the name "Progressive Lawn Managers." *See* App.57a.

Petitioner appealed to the Eighth Circuit. A1312. On November 20, 2018 and just before Petitioner's reply brief was due, the state court issued its 30-page Judgment and Order on Linda's third motion for contempt.⁶ App.86a. The ruling determined that in the context of a dissolution, customer lists, customer accounts, and accounts receivable are marital property. In follow up to this determination, the state court again ruled that the Divorce Orders allowed Linda and Randy to solicit *new* customers in the zip codes, but not the customers that were specifically awarded. App.117a-120a. Thus, the state court held that the language of the Divorce Orders prohibited exactly what Lawn Managers did in July 2016—solicit customers specifically awarded as property to Linda. App.118a-120a. Further, with respect to conduct before July 2016, the state court found that leading up to the 2014 Order, Randy failed to disclose information to Linda as

⁵ The court began its judgment with the statement that nothing in its ruling was intended to affect the state-court proceedings. Nevertheless, Randy filed the District Court's ruling in state court and argued that ruling bound the state court.

⁶ The state-court judgment also contained a disclaimer that nothing in it was intended to interfere with the determinations in this case.

to the extent of his violation of the 2012 Decree. App.114a-115a. As a result of these violations of the Divorce Orders, the state court determined that Randy had damaged Linda in the amount of \$415,381.72. App.123a. Petitioner reported this ruling to the Eighth Circuit in its reply brief. Meanwhile, Randy appealed the state-court ruling to the Missouri Court of Appeals. That appeal meant there were now parallel state and federal proceedings at the appellate level involving construction of the same provisions of the state-court Divorce Orders.

The Missouri Court of Appeals reached its decision first on January 28, 2020. *Zweifel v. Zweifel*, 595 S.W.3d 526 (Mo. App. 2020). The Missouri appeals court dealt first with Randy's assertion that the District Court's ruling in this case conclusively determined the meaning of the MSA in state court. The court rejected this assertion. *Zweifel*, 595 S.W.2d at 533. The court then dealt with the propriety of a finding of contempt against Randy. As to this point, the court observed that, *from a contempt standpoint*, the language of sections 5.02 and 5.06 was not specific enough to serve as the basis for a contempt finding. *Zweifel*, 595 S.W.2d at 536. Of note, in evaluating the propriety of contempt, the Missouri Court of Appeals expressly determined that the provisions at issue were not "unambiguous." *Id.* at 535.

The Missouri Court of Appeals added, however, that it was not finding the state trial court's interpretation of the Divorce Orders incorrect, only that the language of the decrees was not forceful enough for

contempt enforcement. In this respect, the Missouri Court of Appeals stated:

[W]e do not conclude that Zweifel's conduct was permissible under the 2012 MSA and Judgment or the 2014 Settlement and Judgment—only that the judgments are too vague for the trial court to have determined that the conduct was contemptuous.

Zweifel, 595 S.W.3d at 536.

Importantly, the Missouri Court of Appeals refused to set aside the preliminary injunction entered against Randy stating:

But we have not made any definitive conclusions about the meaning of the 2012 MSA and Judgment or the 2014 Settlement and Judgment. Again, our conclusion is that *those judgments were not clear* as to the parties' obligations and restrictions regarding the existing residential customers awarded to each of them. While this conclusion means that Zweifel cannot be held in contempt of the 2012 MSA and Judgment or the 2014 Settlement and Judgment, that is not the same as a dispositive holding that his conduct was permissible under those judgments. *Zweifel has not cited any authority that would support deeming the preliminary injunction improvident and dissolving it under these circumstances.*

Id. at 537 (emphasis supplied).

The Missouri Court of Appeals remanded the case to the state trial court for proceedings consistent with

its decision. Petitioner informed the Eighth Circuit Court of Appeals of the Missouri Court of Appeals' ruling on January 31, 2020. In a split-panel ruling filed on May 20, 2020, the Eighth Circuit Court of Appeals affirmed the finding of infringement against Petitioner and affirmed the District Court's ruling on Petitioner's unclean hands defense. As to the interpretation of the Divorce Orders, the Eighth Circuit panel stated, in terse fashion, "there is no relevant ambiguity in the licensing agreement and that Lawn Managers was permitted to send the 'We Want You Back' mailer in July 2016." *Lawn Managers, Inc. v. Progressive Lawn Managers*, 959 F.3d 903, 912 (8th Cir. 2020). The panel's opinion made no reference to any of the state-court rulings or that the Missouri Court of Appeals had adjudged the provisions at issue ambiguous. Instead, in a remarkably candid footnote, the panel admitted its lack of concern that the provisions at issue were part of a marital property award in a divorce decree:

Progressive's contrary argument—to which it devotes much of its brief—that the accounts divided in § 5.02 constituted marital property and therefore could never be solicited again, *misapprehends that this is a trademark infringement action in federal court*, and that its unclean hands defense turns on the language of the licensing agreement before us.

Id. at 913, n.5 (emphasis supplied).

On June 29, 2020, the Court of Appeals denied panel and en banc rehearing.

On August 24, 2020, the state trial court, in reliance on the Missouri Court of Appeals’ finding that the Divorce Orders were ambiguous for contempt purposes, set aside the previous judgment of contempt against Randy. App.126a. Notably, this ruling did *not* determine that Randy did not violate the Divorce Orders. As of the date of the filing of this petition, additional proceedings in the state court case remain pending—in particular Linda’s motion to amend the judgment to reflect that, though a contempt finding may not persist, the August 24, 2020 ruling should be amended, using the guidance from the Missouri Court of Appeals, to include the determinations of the previous judgment of November 20, 2018 finding Randy to have breached the Divorce Orders.



REASONS FOR GRANTING THE PETITION

- A. In Refusing to Give any Deference to the State-Court Rulings on the Basis that this Case is a “Trademark Infringement Action in Federal Court,” The Eighth Circuit has Manufactured a Dangerous, Lanham Act-Specific Carve-Out to the Rules of Decision Act and the Court’s Comity and Domestic Relations Jurisprudence.**

The Rules of Decision Act states:

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of

decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. § 1652. This statute, though *not* facially limited to diversity cases, is often discussed in the context of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938). *See, e.g., Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 427 (1996); *U.S. v. Little Lake Misere Land Co., Inc.*, 412 U.S. 580, 591 (1973). However, the statute has been applied in federal-question cases as well. *See, e.g., Island Insteel Systems, Inc. v. Waters*, 296 F.3d 200, 208, n. 3 (3d Cir. 2002).

In addition to the Rules of Decision Act, long ago the Court ruled that federal courts must defer to a state court's interpretation of its own law. *Terminiello*, 337 U.S. at 4. Also, the law has been long and deeply settled that a federal court sitting in diversity must apply the law of the state governing the case at issue. *Erie*, 304 U.S. at 78. Two years after *Erie*, the Court fortified the ruling of that case and held that a federal court “must follow the decisions of intermediate state courts in the absence of convincing evidence that the highest court of the state would decide differently.” *Stoner v. New York Life Ins. Co.*, 311 U.S. 464, 467 (1940). In view of *Terminiello*, *Stoner*, and the Rules of Decision Act, the idea that, because this case is a federal trademark case, the Eighth Circuit had the absolute right to interpret the Divorce Orders in obvious disregard and contradiction of relevant state-court rulings is immediately suspect.

The law of *Terminiello* and *Stoner* has remained unchanged, and since their pronouncement, federal

courts consistently have relied on the law-of-the-case doctrine. In addition to the directives of *Terminiello* and *Stoner*, principles of comity require federal courts to defer to a state’s judgment on issues of state law and, more particularly, on issues of state procedural law. *Engle v. Isaac*, 456 U.S. 107, 128–29 (1982); *Murray v. Carrier*, 477 U.S. 478, 491 (1986). These principles apply particularly strongly in the context of issues implicating divorce. On this exact point, this Court has remarked that when it comes to matters of domestic relations, federal courts should accord state-court rulings the highest level of respect. *Windsor*, 570 U.S. at 766 (“[T]he federal courts, as a general rule, do not adjudicate issues of marital status even when there might otherwise be a basis for federal jurisdiction.”) (citing *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (2013)).

Critically, the holdings of *Terminiello* and *Stoner* do not mean that in a federal subject-matter case federal courts may wholly disregard on-point state-court rulings. Yet, it is abundantly clear from the Eighth Circuit’s opinion that it deemed the federal trademark questions of this case as a talisman that disencumbered it from this Court’s long-established directives requiring deference to state courts to the point that it could ignore not just any state court ruling—but the ruling of the state court that originally entered the order. Nowhere in this Court’s jurisprudence is it remotely suggested that such a dangerous and powerful talisman exists.

Here, though the underlying case is a federal trademark case, the determination of whether a

violation of the Divorce Orders occurred did not involve a question of federal law. The state-court decisions (appellate and trial court) were determinations of state law, and even more narrowly, determinations of the meanings of court orders. As such, the rulings should have been given deference by federal courts.

Unquestionably, the idea that case-critical state-court rulings deserve no deference in a “trademark action in federal court” constitutes a dangerous and insupportable carve-out to this Court’s pronouncements on comity between state and federal courts. Rare must be the circumstances in which a federal court is free to ignore state-court decisions interpreting state-court orders. Concluding otherwise works a tear-down of the Rules of Decision Act and the decades of jurisprudence requiring comity between state and federal courts.

Further, by ignoring the state-court rulings and the fact that the provisions here were not just a license, but a division of marital property, the Eighth Circuit’s ruling does immense violence to the concept of spousal rights. In this respect, if the Eighth Circuit’s interpretation of the Divorce Orders were correct, it means that in 2012 Linda effectively relinquished her 50% share of Respondent solely in exchange for a promise by Randy to defer soliciting her awarded customers for a mere two years. The absurdity of that conclusion was entirely lost on the Eighth Circuit because, this case being a “trademark infringement action in federal court,” it could casually treat the Divorce Orders as mere licenses with no “marital property” concerns.

The Court's domestic relations jurisprudence certainly does not countenance the manner in which the Eighth Circuit and District Court treated the Divorce Orders and ignored the state court proceedings. Not just in the *Windsor* case, but in legions of other cases, the Court has strongly proclaimed that federal courts owe a heightened duty to avoid acting in cases in a manner that may conflict or interfere with state-court domestic cases. See, e.g., *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 13 (2004) ("Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue . . . in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts."); *Santosky v. Kramer*, 455 U.S. 745, 771 (1982) (Rehnquist, J., dissenting) ("Throughout this experience the Court has scrupulously refrained from interfering with state answers to domestic relations questions."); *United States v. Yazell*, 382 U.S. 341, 352 ("Both theory and the precedents of this Court teach us solicitude for state interests, particularly in the field of family and family-property arrangements. They should be overridden by the federal courts only where clear and substantial interests of the National Government, which cannot be served consistently with respect for such state interests, will suffer major damage if the state law is applied."); *In re Burrus*, 136 U.S. 586, 593–94 (1890) ("The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states, and not to the laws of the United States."); *Barry v. Mercein*, 46 U.S. 103, 115 (1847) ("All questions arising

out of the domestic relations are peculiarly and appropriately within the province of the State governments; and the court will be slow in countenancing any principle, or giving any construction of the constitution and laws that shall decree to itself this branch of local authority.”).

Here the Missouri Court of Appeals found the operative language of the Divorce Orders ambiguous.⁷ In the face of this determination, the Eighth Circuit’s summary assertion of there being no “relevant ambiguity” in the text of the MSA begs credulity. Likewise, the Eighth Circuit’s determination that under the MSA and 2014 Order Respondent could freely solicit specifically awarded customers after July 2016 flatly conflicts with the extensive proceedings before, and lengthy rulings produced by, the Circuit Court of Jefferson County, Missouri.⁸

By categorizing the case as simply a federal trademark matter, the Eighth Circuit gave itself carte blanche to ignore precedent of the Court and announce an interpretation of the Divorce Orders that conflicted with that of the state courts charged with enforcing

⁷ A determination which *Terminiello* and *Stoner* would indicate should be conclusive.

⁸ Notably, even though the latest ruling from the state trial court sets aside the contempt finding, the preceding interpretations of the Divorce Orders by the trial court in favor of Linda and its determination that those Orders violated by Randy have never been overturned. In fact, the Missouri Court of Appeals went out of its way to point out that it was not deciding that those interpretations were incorrect.

those decrees. The end result is not just that the federal court rulings are in conflict with the state-court interpretations of state-court orders, but the refusal of the federal District Court to defer to the state-court determinations led to the absurd situation in which Randy argued at both levels in state court that the Missouri courts charged by state law with enforcing those orders were bound by a contradictory interpretation of those orders issued by a federal court. *Zweifel*, 595 S.W.3d at 531. The tail was allowed to wag the dog, which is precisely what this Court's precedents strongly caution against, especially in the domestic relations arena.

If, as the Court has observed, “federal-court interference with the State’s [civil] contempt process is an offense to the State’s interest,” it follows that a federal court that knowingly contradicts a state court’s interpretation of its own order in an ongoing contempt proceeding should be expected to at least provide a rationale for doing so. *Juidice v. Vail*, 430 U.S. 327, 336 (1977). That was not done here.

The bottom line is that there is no “hall pass” in federal-question cases, particularly not under the Lanham Act, that allows a federal court to deviate from the Rules of Decision Act and the Court’s pronouncements on comity and domestic relations. The same principles underlying the statutory requirement that federal courts recognize preclusion from final state-court decisions as a matter of full faith and credit support according deference in federal-question cases even when collateral estoppel may not apply, namely to “foster

reliance on adjudication” by preventing inconsistent decisions and “also promote the comity between state and federal courts that has been recognized as a bulwark of the federal system.” *Allen v. McCurry*, 449 U.S. 90, 95-96 (1980). At minimum, the determinations of the Missouri state courts deserved consideration and deference. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350, 367–68 (1989); *Juidice*, 430 U.S. at 336. Nothing in the Court’s jurisprudence supports the notion that, because this is a federal trademark case, principles of comity do not apply.

B. The Eighth Circuit Has Effectively Excised the Doctrine of Abandonment by Naked Licensing from the Lanham Act by Excusing the Licensor’s Failure to Retain Control over the Mark Based upon a Prior Relationship.

“This is the first time a court has approved a license without an *ongoing* relationship to monitor and prevent misleading uses of the mark.” *Lawn Managers, Inc. v. Progressive Lawn Managers, Inc.*, 959 F.3d 903, 915 (8th Cir. 2020) (Kobes, J., dissenting). The Eighth Circuit, in going to great lengths to avoid the conclusion that Respondent granted an uncontrolled license—and therefore abandoned its mark—has reached a novel conclusion of law that is not supported by any of the myriad precedents on the doctrine of naked licensing.

Specifically, it is undisputed that Linda, as the licensee, was not subject to any contractual restrictions

on the quality of services that Petitioner delivered under the licensed mark, nor did Respondent exert any control over use of the mark, unless one could call occasional incidental observation of serviced lawns “control.” *Lawn Managers, Inc. v. Progressive Lawn Managers, Inc.*, 959 F.3d 903, 909–11 (8th Cir. 2020). Nevertheless, the Circuit Court upheld the trial court’s determination that a *past* working relationship between the parties that had turned adversarial was sufficient to ensure that the parties employed uniform quality standards, reasoning that Petitioner did not overcome a “stringent standard” to prove abandonment via naked licensing. This supposedly astronomical burden of proof is an alien concept that contorts the precedent on this matter to its breaking point.

The “stringent” standard stems from a line of cases that is not nearly as strict as the Circuit Court suggests. *See Taco Cabana Int’l, Inc. v. Two Pesos, Inc.*, 932 F.2d 1113, 1121 (5th Cir. 1991) (finding a lack of naked licensing in the context where there was a “record of at least some bilateral quality monitoring”); *Ky. Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368, 387 (5th Cir. 1977) (describing a “heavy” burden of proof to establish forfeiture and finding no such forfeiture had occurred in the context of fast-food franchises). The Eighth Circuit also cites *Barcamerica Int’l USA Tr. v. Tyfield Importers, Inc.*, 289 F.3d 589, 596 (9th Cir. 2002), in resting its conclusion that Petitioner did not meet the stringent standard of proving involuntary abandonment by granting the uncontrolled license to Petitioner. Yet the court in *Barcamerica*,

despite describing the relevant standard as “stringent,” found that the holder of the mark *had* abandoned it via naked licensing because there was no demonstration of “any ongoing effort to monitor quality.” *Barcamerica*, 289 F.3d at 597 (finding informal wine tastings were not a sufficient means of quality control for a vintner to its licensee). “What matters is that [the mark holder] played no meaningful role in holding the [product] to a standard of quality.” *Id.* at 598.

The Circuit Court below appears to recognize that, like in *Barcamerica*, there was no ongoing effort to monitor quality in this case, and the dissent aptly concluded that “Progressive did more than show Lawn Managers’s [sic] lacked sufficient control, it proved the ‘extreme case’ where the licensor had none.” *Lawn Managers*, 959 F.3d at 916 (Kobes, J., dissenting) (citing *Eva’s Bridal Ltd. v. Halanick Enters., Inc.*, 639 F.3d 788, 791 (7th Cir. 2011)). Nevertheless, the majority below found that no abandonment occurred, suggesting the standard it used was not so much the “stringent” one described in *Barcamerica*, but rather something entirely novel, far more austere, and ultimately insurmountable.

So entrenched is the Eighth Circuit’s reluctance to declare abandonment by naked licensing that it manufactured an untenably high standard to avoid the conclusion that Respondent abandoned the “Lawn Managers” mark—effectively rewriting the Lanham Act in the process. To uphold this ascetic restraint from judicially decreed abandonment would herald a

significant upheaval of the status quo and create a circuit split by effecting a *de facto* abrogation of the well-settled doctrine of involuntary abandonment through naked licensing. See 15 U.S.C. § 1127 (defining “abandonment” in part as “any course of conduct by the owner . . . [that] causes the mark to . . . lose its significance as a mark”); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 99 (2013) (“[U]ncontrolled and ‘naked’ licensing can result in such a loss of significance of a trademark that a federal registration should be cancelled.” (quoting 3 J. McCarthy, *Trademarks & Unfair Competition* § 18:48 (4th ed. 2012))).

Crucially, the far-reaching exceptions espoused in the Circuit Court’s opinion would swallow the rule and render it little more than an academic concept. Such relegation of the doctrine to purely theoretical status flies in the face of the ample consideration given to it by federal courts (including the Eighth Circuit itself and all of its sister Circuit Courts except the First Circuit) over the last several decades. See, e.g., *Tumblebus Inc. v. Cranmer*, 399 F.3d 754, 764 (6th Cir. 2005) (“‘[N]aked licensing’ . . . occurs ‘[w]hen a trademark owner fails to exercise reasonable control over the use of a mark by a licensee,’ such that ‘the presence of the mark on the licensee’s goods or services misrepresents their connection with the trademark owner since the mark no longer identifies goods or services that are under the control of the owner of the mark’ and the mark can no longer provide ‘a meaningful assurance of quality.’”) (citing Restatement (Third) of Unfair

Competition § 33 cmt. b (1995)); *Heaton Distrib. Co. v. Union Tank Car Co.*, 387 F.2d 477, 485 (8th Cir. 1967).

While the Circuit Court acknowledges that naked licensing will result “when a trademark owner licenses a mark without exercising sufficient quality control over the services provided under the mark” and that Respondent neither imposed any contractual rights to control nor had the ability to control the quality of Petitioner’s services, it nevertheless concludes that no naked licensing occurred based on the notion that Respondent could reasonably rely on Petitioner’s own, undisclosed quality-control measures because the parties had a “special relationship.” *Lawn Managers*, 959 F.3d at 911. As the dissent below aptly points out, although a close working relationship may sometimes substitute for formal controls, no court has *ever* found that a prior working relationship was sufficient without ongoing controls on the licensee’s quality; to the contrary, there is a “consensus” among the other Circuit Courts that “a prior relationship is insufficient without some indicia of control.” *Id.* at 915 (Kobes, J., dissenting) (citing *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 518–19 (9th Cir. 2010)). Thus, the Circuit Court’s opinion “extends the ‘reasonable reliance’ doctrine too far.” *Id.* (“Our sister circuits have found that a licensor who does ‘not retain *any* control’ has engaged in naked licensing and forfeited its rights.”) (quoting *Eva’s Bridal*, 639 F.3d at 791).

As made clear from *Eva’s Bridal*, which involved an uncontrolled license to siblings of the licensor who purchased a location of the business that they had

operated for years, there is nothing about a longstanding *prior* working relationship that insulates a naked license from constituting abandonment—even where licensor and licensee have a familial relationship. *Id.* at 917. That the two businesses’ common genesis may have resulted in them offering many of the same services and employing similar procedures is also completely irrelevant. To borrow that court’s analogy, “Safeway could not license its marks to a corner grocery store, while retaining no control over inventory, appearance, or business methods, just because every grocery store is sure to have Coca-Cola and Wheaties on the shelf.” 639 F.3d at 791.

The Circuit Court’s finding is likewise directly at odds with a Tenth Circuit decision interpreting the exact same cases on which the Circuit Court below relies to find that this was a “special relationship” not requiring any indicia of control. *Stanfield v. Osborne Indus., Inc.* involved an inventor licensor and manufacturer licensee who “had no contact with each other [during the license period] except as adversaries in litigation.” 52 F.3d 867, 872 (10th Cir. 1995), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). “Under these circumstances, [a licensor] could not rely on [the licensee’s] quality control as a substitute for his own control as a licensor.” *Id.* Respondent and Petitioner’s relationship during the license term in the case at bar was little more than as adversaries in parallel state and federal litigation, yet the majority below offers no distinguishing feature as to why this adversarial relationship

could still be considered “special” when the one in *Stanfield* could not.

Despite observing that Respondent was not in a position to ask to oversee the quality of work of Petitioner during the license because Randy testified he was not on speaking terms with Linda, the Circuit Court brushes aside Petitioner’s contention that no close working relationship existed at the time of the license. *Lawn Managers*, 959 F.3d at 911. In doing so, the Circuit Court perplexingly declares that “there is no evidence in the record that the *companies* . . . Lawn Managers and Progressive . . . were adversarial toward one another in ways that would affect the quality of the parties’ lawn care services.”⁹ *Id.* But even were the parties not inextricably intertwined with their principals—who have been locked in a years-long series of contempt proceedings in state court concerning how they were operating their businesses—the *only* evidence of any indicia of control by Respondent the Circuit Court cites is the testimony of an employee of Respondent that he casually, irregularly, and ostensibly without direction observed the quality of Petitioner’s work and concluded that it “seemed fine.” *Id.*; *contra Barcamerica*, 289 F.3d at 597 (finding informal wine tastings conducted at random, coupled with licensor’s impression that licensee’s products were “good,”

⁹ This is a remarkable conclusion, considering that the Complaint characterized Petitioner as “a competing business” (App.140a, ¶ 8) and at least two of the contempt actions in state court related to Respondent’s allegedly illegal conduct toward Petitioner (App.86a–App.125a).

were not a sufficient means of quality control for a vintner licensor).

But if, as the Circuit Court suggests, one licensor employee's purely incidental and informal observation of a licensee's work product constitutes sufficient "control" of that licensee's quality, when could a licensor ever be said to lack sufficient control? A trademark holder could reasonably be expected to give that same casual level of observation and more with regard to *any* of its competitors, even absent a licensee relationship. To hold that such *de minimis* observation of a licensee precludes naked licensing is tantamount to a declaration that naked licensing cannot exist.

The Circuit Court's conclusion also foregoes any consideration of why naked licensing constitutes abandonment in the first place. As noted by both the Circuit Court and the District Court, before the expiration of Petitioner's right to use the "Lawn Managers" name, "there was constant and obvious consumer confusion, due to the post-divorce proceedings and the resulting . . . license agreement." *Lawn Manager*, 959 F.3d at 907. Thus, regardless of the terms of the divorce orders, this admitted fact about the *effect* of the orders should have doomed Respondent's case before it was filed. The crux of involuntary abandonment of a trademark is that the mark can no longer be deemed protectable because it has lost its ability to signify a particular origin for goods or services marketed under that mark.

As the Eighth Court previously observed, "[a] registered mark is deemed abandoned . . . when an owner

causes the mark to ‘lose its significance as a mark.’” *Cnty. of Christ Copyright Corp. v. Devon Park Restoration Branch of Jesus Christ’s Church*, 634 F.3d 1005, 1010 (8th Cir. 2011) (quoting 15 U.S.C. § 1127). Reinforcing this basic tenet, the Fifth Circuit underscored why naked licensing must result in abandonment by reasoning that “[i]f a trademark owner allows licensees to depart from its quality standards, the public will be misled, and the trademark will cease to have utility as an informational device.” *Ky. Fried Chicken Corp. v. Diversified Packaging Corp.*, 549 F.2d 368, 387 (5th Cir. 1977). The Ninth Circuit similarly observed that “[u]ncontrolled or ‘naked’ licensing may result in the trademark ceasing to function as a symbol of quality and controlled source.” *Barcamerica*, 289 F.3d at 596 (quoting *McCarthy on Trademarks and Unfair Competition* § 18:48, at 18–79 (4th Ed. 2001)). This goes to the essence of why trademarks are protectable.

Such recitations of the public-policy justification for naked licensing resulting in abandonment are difficult to reconcile with the Circuit Court’s acknowledgment that by 2015, when infringement is alleged to have begun, the public’s understandable confusion over the seemingly shared identity of the parties was already “constant and obvious.” Respondent does not contest that assessment, and such a result is hardly surprising, given that Respondent allowed its competitor to use not only its name but its very identity—even in the formal, non-marketing context of obtaining credit and in the collection of payments by sharing the same P.O. Box with Petitioner. A615. Further, during

the license period, as Petitioner masqueraded as Respondent with the imprimatur of the divorce court, the record reflects that an explosion of confusion occurred.

Here, two highly adversarial competitors agreed, as the Circuit Court put it, to “operate virtually the same business for a fixed period,” intentionally keeping the public in the dark about their separate legal existence, yet they did not establish (let alone adhere to) any uniform quality or operating procedures. *Lawn Managers, Inc.*, 959 F.3d at 910. With Petitioner acting in accordance with the Divorce Orders and impersonating Respondent, potential customers of each party had no way of knowing that referrals or reviews they may have received or read were likely to refer to the work of a separately operated company that had no common quality-control system with the company that would ultimately service their account. Did the “Lawn Managers” mark, then, not “cease[] to function as a symbol of quality and controlled source”? *Barc-america*, 289 F.3d at 596. Moreover, how can the “Lawn Managers” mark still be said “to have utility as an informational device” after both parties deliberately obfuscated the information it originally conveyed? *Ky. Fried Chicken*, 549 F.2d at 387.

What the Circuit Court overlooks is that by the time Petitioner’s right to use the mark expired, the parties had already become so inexorably and indelibly conflated in the minds of their customers that the mark had failed in its essential purpose of signifying that “Lawn Managers” meant services provided under the direction of Respondent. *See Already, LLC v. Nike*,

Inc., 568 U.S. 85, 99 (2013). A trademark holder that has expressly bargained for an arrangement it should have known would create such irreparable damage to the significance of its mark should not be permitted to avail itself of statutory remedies against its licensee for the inevitable diminution in value of that mark once the license has expired. Allowing it do so constitutes a departure from the purpose of the law. After all, “[t]he trademark’s function is to tell shoppers what to expect—and whom to blame if a given outlet falls short.” *Eva’s Bridal*, 639 F.3d at 790. To allow Respondent’s flippant dereliction of its duty to guard that function to go without consequence would set a dangerous and far-reaching precedent.¹⁰

In addition to an opinion on the validity of abandonment via naked licensing being a question of first impression for this Court (outside of dicta), certiorari is warranted to remove the storm clouds the Eighth Circuit has cast over this fundamental and widely recognized doctrine and whether, as a practical matter, the defense of involuntary abandonment continues to be available in federal courts in light of the holding below.



¹⁰ As of this writing, the case below has already been cited in numerous treatises and practice manuals, indicating that experts believe this to be a significant development in the field of trademark law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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