

No. _____

In The
Supreme Court of the United States

BEVERLY JACKSON,

Petitioner,

v.

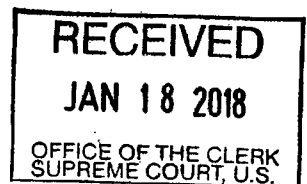
STATE OF CONNECTICUT
DEPARTMENT OF HEALTH, et al.,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether federal trademark law can preempt or abrogate state law that is interfering with, undermining the value of, and usurping the use of a federal Certification Mark, in this case the mark Doctor of Nedicine® owned by a professional association, by improperly identifying the Certification Mark with a different class of health professionals than the one approved by the commissioner of trademarks thereby diluting the mark in violation of 15 U.S.C. § 1125?
2. Whether the State of Connecticut Department of Public Health, et al., can contest the incontestable Certification Mark in violation of 15 U.S.C. § 1065 by attempting to regulate the practice of Nedicine® ultra vires Connecticut General Statute Chapter 370 § 20-9, which is intended to regulate only allopathic medicine; thereby interfering with the rights of a qualified person to employ the Certification Mark to practice within the scope practice of Nedicine®?
3. Whether the State of Connecticut Department of Public Health, et al., in an effort to prohibit Petitioner from employing the Certification Mark to identify herself as a Doctor of Nedicine® violated the Dormant Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution; by improperly interfering with Petitioner's right under the Certification Mark to practice *Natural Medicine* in interstate commerce and to hold herself out as a licensed Doctor of Nedicine®?

QUESTIONS PRESENTED – Continued

4. Whether the State of Connecticut Department of Public Health, et al., violated an Act of Congress by misidentifying the Ñedicine® trademark, which is a distinctive trademark by surreptitiously changing it to Medicine, a generic trademark, in violation of 15 U.S.C. § 1121 and by prohibiting Petitioner to practice Ñedicine®, an unregulated profession licensed by the Doctor of Ñedicine® Certification Mark?
5. Whether or not Petitioner may use the mark to practice Ñedicine®, a healing art that does not constitute the practice of medicine as defined in Connecticut General Statute Chapter 370 § 20-9, and authorized under Article VI Clause 2, of the Supremacy Clause of the United States Constitution, since the Certification Mark was issued under an Act of Congress and federal law preempts state law, or is the Certification Mark and, more importantly, the power of Congress rendered of no import and of nil effect, only to grant colorful decorative insignias?
6. Whether the Court can abrogate 15 U.S.C. § 1064(5), an Act of Congress, that mandates that the owner of a Certification Mark must license/certify the mark for use in interstate commerce by ruling that the owner of the mark cannot issue an occupational license to individuals to render alternative medical services related to functional diagnostics and natural medicine as authorized by the Certification mark issued by the United States Patent and Trademark Office?

QUESTIONS PRESENTED – Continued

7. Whether the State of Connecticut Department of Public Health, et al., can violate Petitioner's rights under 42 U.S.C. § 1983 and Petitioner's First Amendment right to Free Expression, Fourth Amendment right to Due Process and Fourteenth Amendment right to Equal Protection of the Law under the Constitution of the United States by investigating and subjecting Petitioner, who is not licensed by the Department in any capacity, to the disciplinary powers of the Department in contravention of Connecticut General Statute Chapter 368a § 19a-14?
8. Whether the State of Connecticut Department of Public Health, et al., can create a monopoly by divesting the American Medicine Licensing Board of its licensing power granted under 15 U.S.C. § 1064(5), thereby eliminating all physicians certified by the Doctor of Medicine® license in violation of the Sherman Antitrust Act, 15 U.S.C. § 1 and § 2?

LIST OF PARTIES

All parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

ADRIENNE ANDERSON, Investigations Supervisor
of the State of Connecticut Department of Public
Health, in her official capacity and individual capacity,
Respondent

BEVERLY JACKSON, N.D., Pro se Petitioner

CONNECTICUT DEPARTMENT OF PUBLIC HEALTH,
Respondent.

RAUL PINO, M.D., MPH, Commissioner of the State of
Connecticut Department of Public Health, in his official
capacity, Respondent.

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OPINIONS BELOW

The October 17, 2017, opinion of the United States Court of Appeals for the Second Circuit, ordering a *Mandate* is reported at 2017, 16-2282 (2nd Cir., Oct. 17, 2017) and attached as Appendix A. The October 17, 2017, *Judgment* of the United States Court of Appeals for the Second Circuit and the *Revocation of Oral Arguments* is reported at 2017, 16-2282 (2nd Cir., Oct. 17, 2017) and is attached as Appendix B. The June 22, 2016 *Judgment* of the United States District Court for the District of Connecticut at New Haven is reported at 2016, 3:15-cv-00750 (Dist. Court., June 22, 2016) and is attached as Appendix C. The June 20, 2016 *Ruling and Memorandum of Law* of the United States District Court for the District of Connecticut at New Haven, is reported at 2016, 3:15-cv-00750 (Dist. Court., June 22, 2016) and is attached as Appendix D. The March 13, 2017 *Order* of the Second Circuit to reschedule the oral arguments that were previously scheduled for April 21, 2017 is reported at 2017, 16-2282 (2nd Cir., Oct. 17, 2017) and attached as Appendix E. The November 8, 2017 opinion of the Court of Appeals denying rehearing en banc is available at 2017, 16-2282 (2nd Cir., Nov. 8, 2017) and attached as Appendix F.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C.

§ 1254(1) to review the final judgment on the United States Court of Appeals for the Second Circuit rendered on October 17, 2017 and the ruling entered on rehearing on November 8, 2017. Federal Jurisdiction in the Court of first instance over this cause of action is pursuant to 28 U.S.C. § 1331 in that this cause of action arises under the Lanham Act and the Constitution and/or laws of the United States. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Plaintiff is therefore entitled to relief. In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983), the Supreme Court granted declaratory relief to a party challenging a state statute on preemption grounds, reaffirming the general rule that “[a] plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is preempted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.”

Title 15 U.S.C. § 1121 of the Lanham Act, furthermore, provides: “The district and territorial courts of the United States shall have original jurisdiction, the courts of appeal of the United States shall have appellate jurisdiction, of all actions arising under this Act”. Original Jurisdiction suits before the Supreme Court pursuant to Article III, Section 2, Clause 2 and 15 United States Code § 1122(b) are not barred by sovereign immunity. “The Eleventh Amendment does not bar . . . the principle of state sovereignty . . . limited by the enforcement provisions of § 5 of the Fourteenth

Amendment . . . ” “The prohibitions of the Fourteenth Amendment are directed to the States, and they are to a degree restrictions of State power. . . . Congress is empowered to enforce, and to enforce against State action . . . Such enforcement is no invasion of State sovereignty.” *Fitzpatrick v. Bitzer*, 427 U.S. 445, 446, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

These are the relevant Constitutional and Statutory provisions involved and may be found in the Appendix.

Article I, Section 8, Clause 3

Article VI, Clause 2

15 U.S.C. § 1

15 U.S.C. § 2

15 U.S.C. § 1064(5)

15 U.S.C. § 1065

15 U.S.C. § 1121(a)

15 U.S.C. § 1121(b)

15 U.S.C. § 1122(b)

15 U.S.C. § 1125(a)

15 U.S.C. § 1125(c)

21 U.S.C. § 321

28 U.S.C. § 1331

28 U.S.C. § 1391

42 U.S.C. § 1983

United States Constitution, Amendment I

United States Constitution, Amendment IV

United States Constitution, Amendment XI

United States Constitution, Amendment XIV
Section 1 and Section 5
Conn. Gen. Stat. 368a § 19a 14
Conn. Gen. Stat. § 21a-240(49)
Conn. Gen. Stat. 400j § 20-571(13-14)

STATEMENT OF THE CASE

This case raises an extraordinary and pressing issue of national concern related to a trademark that is in crisis; whether and to what extent the Second Circuit can put the more than 300,000, trademarks issued by the United States Patent and Trademark Office at risk by failing to honor the Certification Mark, Doctor of Medicine®, a distinctive trademark registered on the Principal Register, for the practice of *Natural Medicine*, pursuant to 15 U.S.C. § 1051(a) of the Lanham Act. If not reversed, the decision of the Second Circuit Court of Appeals will cause irreparable harm to the substantial government agency because the public will not be able to rely on the Court to protect their trademarks. By any measure the decision of the Second Circuit is unduly burdensome because it imposes an extraordinary ruling that fails to recognize the trademark certificate as prima facie evidence that Medicine® is an inherent prerogative of God, protected by the First Amendment to the Constitution of the United States. Ignorance of the law should not be allowed to be used as a prosecutorial tool. Specifically, did the Second Circuit impose an improper decision that contravenes this Court's precedent and deepens

two circuit splits when it imposed a mandate depriving Beverly Jackson, N.D., of her religious liberty to freely express her faith as guaranteed by the First Amendment to the Constitution of the United States. The Constitution recognizes our right to life, liberty and the pursuit of happiness, should not the opinion of the Court be consistent with the spirit of the Constitution.

The Court presented a bizarre and objectionable decision on the central issue of dispute in the case that Nedicine® is Medicine as proscribed by the state controlled substances law. The opinion of the Court concerning Nedicine® is deeply troubling and left no doubt that it unconstitutionally contravenes the establishment clause of the First Amendment to the Constitution of the United States. The Second Circuit Court of Appeals ignored the fact that Nedicine® contravenes *Medicine*. Nedicine® means *Natural Medicine*, as stated on the Certificate of Registration. *Natural Medicine* made with the infinite wisdom and principles of God in the laboratories of Nature cannot be superseded by Medicine created by finite minds in secular laboratories. Nedicine® is under the jurisdiction of Almighty God because he is the Creator and Orchestrator of *Natural Medicine*. The mandate of the Second Circuit is inconsistent with the First Amendment and has far reaching implications not only for this temporal world but for eternity. The ruling imposed by the Second Circuit is a detriment to Petitioner's soul because it unconstitutionally forces Petitioner to bury her God given talents in the sand in contravention to the Holy Writ consistent with the oracles of *Matthew 25:14-34*.

Petitioner's constitutional right to practice the religious tenets of *Natural Medicine* according to the dictates of her conscience consistent with 21 U.S.C. § 321 and the moral code, has been substantially burdened by the ruling of the Second Circuit Court of Appeals.

In *Smith* the United States Supreme Court held, "The law defines 'controlled substance' as a drug classified in Schedules I through V of the Federal Controlled Substances Act, 21 U.S.C. §§ 811-812 (1982 ed. and Supp. V)." *Employment Division, Department of Human Resources of Oregon v. Smith* (No. 88-1213). (See *Jackson v. Department of Health, Motion for Reconsideration* p.p. 6-9 §§ 10-13). Of particular importance is the fact that Connecticut concedes that Beverly Jackson, N.D., did not use or prescribe any controlled substances classified in Schedules I through V, of Conn. Gen. Stat. § 21a-240(49) neither used nor prescribed any legend drug or legend device proscribed by Conn. Gen. Stat. Chapter 400j § 20-571(13-14).

Nedicine® is approved under IRC § 501(c)3 for religious, educational and scientific purposes; this reaffirms that Nedicine®, the science of quantum electrodynamic information, is faith based. The opinion of the Second Circuit is inconsistent with the separation of Church and State principle of the First Amendment. The Court misrepresented the definition of Nedicine® so that it could fit a square peg into a round hole. The decision of the Second Circuit Court of Appeals shows a remarkable unfamiliarity and constitutional insensitivity with the law because it imposes an extraordinary ruling that stifles the right to choose by failing to

recognize that *Nedicine*® is under the jurisdiction of our Sovereign Lord and is protected by the establishment clause of the First Amendment to the Constitution of the United States.

The opinion of the Second Circuit Court of Appeals undermines the Fourth Amendment by upholding an improper and unduly burdensome ruling holding that Respondents have a right to exercise their police power, to investigate Petitioner in contravention to Conn. Gen. Stat. 368a § 19a 14 because Respondents conceded that Petitioner never engaged in the practice of medicine proscribed by the state controlled substance law. The opinion of the Second Circuit Court of Appeals is extraordinary because the police power of the state does not extend to the religious tenets of *Nedicine*®; especially because the risk to the public associated with Medicine that causes it to be regulated by the police power is not an element of *Nedicine*®. The opinion of the Court contravenes the equal protection clause of the Fourteenth Amendment by depriving Petitioner the protections extended to other Christian science practitioners pursuant to 42 U.S.C.A. § 1983.

The opinion of the Second Circuit Court of Appeals contravenes this Court's precedent by holding that the State can dilute the Certification Mark in violation of 15 U.S.C. § 1125; contest the incontestable Certification Mark in violation of 15 U.S.C. § 1065; violate the Dormant Commerce Clause, Article I, Section 8, Clause 3, by prohibiting the use of the Certification Trademark in interstate commerce; misidentify the *Nedicine*® trademark as Medicine in violation of 15 U.S.C.

§ 1121; violate Article VI Clause 2, of the Supremacy Clause by rendering the Lanham Act and the Constitution of no import and of nil effect by ruling that state law preempts federal law; overturn Congress' mandate under 15 U.S.C. § 1064(5), that compels the owner of the Certification Mark to license a qualified Doctor of Ñedicine® to provide the services approved on the Certificate of Registration; thereby enabling the state to create a monopoly in violation of the Sherman Antitrust Act, 15 U.S.C. § 1 and § 2. The opinion of the Second Circuit is extraordinary by any measure because it sanctions the emotional distress and economic duress these wrongs caused Petitioner and all the beneficiaries of the trademark. The State's Coup d'état of the power of Congress to regulate interstate commerce presents a risk of harm to Petitioner that is both actual and imminent.

If these extraordinary distinctions between Medicine and Ñedicine® with overwhelming precedent from this Court that federal law preempts state law, do not justify review, for the first time, of the police power over faith based *Natural Medicine* authorized by the Commissioner of trademarks, then the Constitution is of nil effect. The decision of the Second Circuit Court of Appeals undermines the substantial government agency by its failure to enforce the trademark and makes a mockery of the justice system overall because there is overwhelming precedent from this Court that federal law preempts state law. Yet, when presented with these extraordinary facts exposing these inherent wrongs and arguable basis in law the Second Circuit opined that Petitioner's case "lacks an arguable basis

either in law or in fact” and had not made even a minimal showing that her case is exceptional. The opinion of the Second Circuit is remarkably flawed. As a result, the Second Circuit concluded that Petitioner had not reached the threshold required to grant relief and dismissed the case. The opinion of the Second Circuit is extraordinary by any standard of review because the facts of the instant case are meritorious and the principles of law are at least debatably extraordinary.



REASONS FOR GRANTING THE WRIT

The United States Supreme Court should grant review not only because the Second Circuit’s opinion is extraordinary but because, by doing so, the Court can clarify ambiguities in both the Trademark Act and the Constitution. The United States Supreme Court has consistently ruled that federal law preempts state law. The opinion of the Second Circuit Court of Appeals undermines confidence in the justice system as a whole because it conflicts with relevant decisions of this Court. In *Gibbons*, the United States Supreme Court held: “State laws that interfere with, or are contrary to the laws of congress, made in pursuance of the constitution are invalid” *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991) (quoting *Gibbons v. Ogden*, 22 U.S. 1 (1824)).

In *Gade*, the United States Supreme Court said: “We recognize that the States have a compelling interest in the practice of professions within their boundaries, and that, as part of their power to protect the

public health, safety, and other valid interests, they have broad power to establish standards for licensing practitioners and regulating the practice of professions." But under the Supremacy Clause, from which our pre-emption doctrine is derived, "any state law, however clearly within a State's acknowledged power, which interferes with or is contrary to federal law, must yield." *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975); see also *Ferguson v. Skrupa*, 372 U.S. 726, 731 (1963); *Dent v. West Virginia*, 129 U.S. 114, 122 (1889). *Felder v. Casey*, 487 U.S. 131 (quoting *Free v. Bland*, 369 U.S. 663, 666 (1962)); see also *De Canas v. Bica*, 424 U.S. 351, 357 (1976).

"Even state regulation designed to protect vital state interests must give way to paramount federal legislation". *Gade v. Nat'l Solid Waste Mgmt. Ass'n*, 505 U.S. 88, 108 (1992) "Thus, the court held that the matters regulated by the Federal Act cannot be regulated by the States; that, on those matters, a federal licensee is subject to regulation by one agency and by one agency alone. That is to say, Congress did more than make the Federal Act paramount over state law in the event of conflict. It remedied the difficulties, which had been encountered in the Act's administration by terminating the dual system of regulation." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).

The opinion of the United States Court of Appeals for the Second Circuit is extraordinarily in conflict with the opinion of the United States Court of Appeals for the Ninth Circuit on the same important matter. The United States Court of Appeals for the Ninth Circuit held that a licensee may use the trademark Doctor

of Nedicine® to provide religious medical services protected by the First Amendment and as authorized by the Certificate of Registration; while the United States Court of Appeals for the Second Circuit held that a licensee may not use the trademark Doctor of Nedicine® to provide religious medical services, in contravention to the First Amendment. The United States Supreme Court should grant review of the extraordinary opinion of the Second Circuit that contravenes the free exercise clause because it violates the religious tenets of *Natural Medicine* espoused in the Holy Writ and as clearly authorized on the face of the Certification Mark, Doctor of Nedicine®.

Certiorari must be granted because reasonable jurists could indisputably debate the extraordinariness of the State's blunderbuss use of the word Nedicine®.

CONCLUSION

Certiorari must be granted because the Second Circuit Court of Appeals has decided an important federal question that conflicts with relevant decisions of this Court and with the decision of another United States Court of Appeals, creating a great gulf between two circuits on the same important matter. If the ruling of the Second Circuit is not overturned this will create irreparable harm to the credibility of the United States Patent and Trademark Office and unless the United States Supreme Court acts, Congress' power to regulate interstate commerce would have been ceded to the State by the Court of Appeals. Except the

First Amendment right to freedom of religion and freedom of speech, inherent in the trademark Doctor of Medicine® can be expressed without uncanny State interference, Congress' power to regulate interstate commerce will not be absolute. The ruling of the Second Circuit endangers the international prestige enjoyed by the United States due to the large number of inventors around the world that register their intellectual property in the United States because of the indisputable respect commanded by the laws of patents and trademarks that guarantee the inviolability of their intellectual property registered at the United States Patent and Trademark Office.

Comes now, Beverly Jackson, N.D., in the name of our Lord and Savior Jesus Christ to petition this honorable Court for a writ of certiorari to review the extraordinary judgment of the United States Court of Appeals for the Second Circuit and that by its magnanimous spirit this Court grant this petition for writ of certiorari.

Respectfully submitted,

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Dated: January 15, 2018