

The Supreme Court - June 30, 2020

Today, the Supreme Court of the United States issued the following two opinions:

Patent and Trademark Office v. Booking.com B. V., No. 19-46: Federal trademark law makes generic names, *i.e.*, the name of a class of products or services, ineligible for federal trademark registration. Here, respondent Booking.com – a company that maintains a travel-reservation website by the same name – sought to register the mark “Booking.com.” The U.S. Patent and Trademark Office (“PTO”) refused registration, under a rule that the combination of a generic word and “.com” is generic. Booking.com took that ruling to the courts. The District Court, relying on new evidence of consumer perception of “Booking.com,” found that the mark met the distinctiveness requirement for registration. The Fourth Circuit affirmed. Today, the Court likewise affirmed, rejecting the PTO’s sweeping rule and holding that in circumstances like those presented here, a “generic.com” term is not generic and can be eligible for federal trademark registration. A term styled “generic.com” is a generic name for a class of goods or services only if the term has that meaning to consumers. Justice Ginsburg issued the Court’s opinion, joined by Chief Justice Roberts, and Justices Thomas, Alito, Sotomayor, Kagan, Gorsuch, and Kavanaugh. Justice Breyer dissented.

The Court’s decision is available [here](#).

Espinoza v. Montana Dept. of Revenue, No. 18-1195: The Montana Legislature created a program to provide tuition assistance to parents who send their children to private schools. Tax credits were given to people who donated to organizations that in turn awarded scholarships to students attending private schools. The Montana Constitution, however, contains a “no-aid” provision which bars government aid to sectarian schools. Citing the no-aid provision, the Montana Department of Revenue promulgated a rule (“Rule 1”) that prohibited families from using scholarships at religious schools. Three mothers whose children attend Stillwater Christian School and were blocked by Rule 1 from using scholarship funds at that school, brought suit in Montana state court. The trial court enjoined Rule 1. The Montana Supreme Court reversed,

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holding that the program violated the Montana Constitution's no-aid provision and required invalidating the entire scholarship program. The Court today reversed, holding that the application of the Montana Constitution's no-aid provision to a state program providing tuition assistance to parents who send their children to private schools discriminated against religious schools and the families whose children attend or hope to attend them in violation of the Federal Constitution's Free Exercise Clause. Chief Justice Roberts issued the Court's opinion, joined by Justices Thomas, Alito, Gorsuch, and Kavanaugh. Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented through a number of separate opinions.

The Court's decision is available [here](#).