



### **Panel Session IX: Funny, bad taste or out of order? Morality and public order in trademarks**

According to article 6quinquies(B)(iii) of the Paris Convention, trademarks may be denied registration or invalidated if they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. National trademark laws contain similar provisions.

In Switzerland, an applicant wanted to protect "Madonna" as trademark for a variety of goods. While the application was accepted in other jurisdictions, Switzerland's highest court held that such a trademark would violate the religious feelings at least of the catholic part of the Swiss population and must therefore be denied protection. In the US, four musicians of Asian origin are trying to protect their band name "The Slants" as a trademark. The USPTO refused the application under the disparagement clause of US trademark law on the ground that this phrase is a generally disparaging slang term for Asians. The US Supreme Court reversed this refusal in a June 19, 2017, decision finding the disparagement clause to be a violation of the free speech clause of the First Amendment to the US Constitution.

This panel session will canvass decisions refusing or invalidating trademarks on these grounds across jurisdictions, illustrating differing cultural or religious values and exploring when trademarks should be refused or invalidated on such grounds.