

Government Organizations Shouldn't Enjoy Trademark Protection

According to its web site, Shields of Strength “provides fashionable, functional, and durable Christian fitness jewelry and accessories.” Those items include military “dog tags” engraved with quotes from scripture and sometimes the logo of the armed forces branch the customer belongs to.

When the Military Religious Freedom Foundation complained, the Marine Corps Trademark Licensing Office ordered the company to stop combining scripture references and the Corps' emblem.

Most commentary on the dispute centers around “religious freedom” versus “separation of church and state,” but those seem like side issues to me.

When I served in the Marine Corps, many of my comrades wore crosses, St. Christopher Medals, and other religious symbols on the same chains as their dog tags. As long as a Marine is paying to have his own custom dog tag made with such things incorporated in them rather than hanging separately, and as long as that tag includes the relevant identification information, I just don't see the problem.

What IS the problem?

According to MCTLO, “[T]he USMC Trademark Licensing Program exists to regulate the usage of Marine Corps trademarks such as the Eagle, Globe and Anchor worldwide. ”

Even assuming the correctness of “intellectual property” claims like copyright, patent, and trademark, such claims don't past muster when asserted by the US government or its subsidiary agencies such as the Marine Corps. This is especially true of trademarks.

While the justifications for copyright and patent law have their own clause in the US Constitution (“to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”) US trademark law is justified in terms of Congress's power to regulate interstate commerce.

The Marine Corps isn't a private commercial entity. Nor should its symbols — which date back to 1868 in current form, to 1775 in various forms, and ultimately to the British marines the US based its service's composition and mission on — be treated as the Marine Corps' commercial property.

Just as written works created by government employees pursuant to their jobs fall into the

public domain under copyright law, official government symbols should fall into the public domain under trademark law.

The Marine Corps logo is a piece of evolving history. It doesn't belong to the Marine Corps as an organization, or even to the individual Marines who make up that organization. It belongs to all of us.