

Conference Session 44:

**Roll (Over) Tide! Free Speech Trumps Trademark Rights  
in *University of Alabama v. Moore***

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Daniel Moore has earned his reputation by painting scenes from football games involving the University of Alabama. Moore began painting these scenes in 1979, and has gained fame for his realistic portrayals of famous plays in Crimson Tide history. His paintings included depictions of various items for which the University owned trademark rights.

Prior to 1991, Moore had no licensing agreement with the University. Both before and after entering the licensing agreement in 1991, the University had never requested that Moore pay royalties for using the trademarked items in his paintings. That changed in 2002, when the University notified Moore that he would need to license all of his University-related paintings and products because they featured the University's trademarks, including the football jersey and helmet designs, and the crimson and white colors. Moore countered that he used the trademarks only within his paintings, which constituted an exercise of his expressive Free Speech rights, and accordingly, there was no violation of the University's trademark rights. The University ultimately sued Moore for violation of the Lanham Act (15 U.S.C. §§ 1051 *et. seq.*).

The court addressed the issue of trademark infringement in the context of balancing the conflict between rights provided under the Lanham Act and First Amendment rights of expressive speech. The court held that it should narrowly construe the Lanham Act when an artistically expressive work is alleged to violate trademark rights. The court determined that it must carefully "weigh the public interest in free expression against the public interest in avoiding consumer confusion." *University of Alabama v. Moore*, 683 F.3d 1266 (11<sup>th</sup> Cir. 2012).

The court ultimately found that using the trademarks within Moore's paintings constituted artistic expressions, and, therefore, did not violate the trademark rights of the University. This presentation will review the court's rationale in holding for Moore, and highlight the criteria for finding that First Amendment Free Speech trumps intellectual property rights.