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# Supreme Court Declines to Review “Redskins” Trademark Decision

October 3, 2016

Days after granting the US Patent and Trademark Office's petition for review of a Federal Circuit Court of Appeals striking as unconstitutional a law barring registration of trademarks that "may disparage," the Supreme Court today denied a bid by the Washington Redskins to bypass the Court of Appeals and have its similar case heard at the same time.

The team's petition for certiorari in *Pro-Football, Inc. v. Blackhorse*, No. 15-1874, asked the high court to review a decision of a federal district court in Virginia upholding the PTO's cancellation of its "Redskins" trademarks as disparaging to Native Americans.

That case is now on appeal to the Fourth Circuit Court of Appeals, but the team hoped to skip the appellate level so that its case could be heard at the same time as the one concerning Simon Tam's attempt to register "The Slants" as a trademark for his Asian-American dance band of that name, *Lee v. Tam*, No. 15-1293.

The Supreme Court accepted Tam's case for review on September 29.

The two cases had reached different results in the lower courts. Tam, who argued that his band chose its name ironically, to "reclaim" a slur and challenge stereotypes of Asian-Americans, had persuaded the Federal Circuit that the bar on disparaging trademarks violated the Constitution's guarantee of the right to free speech. The PTO asked the Supreme Court to review that decision, and declare the law constitutional.

In the team's case, however, six Native Americans had asked the PTO to cancel the "Redskins" trademarks on the ground that they were disparaging. The PTO found that the marks may disparage a "substantial composite" of Native Americans.

A judge of the US District Court for the Northern District of Virginia agreed, rejecting the team's argument that the law infringed free speech and was unconstitutional. That ruling was on appeal to the Fourth Circuit when the team made the unusual request to have the Supreme Court consider it before the appellate court had a chance to issue its judgment.

Although the team will not be able to argue its own case at the Supreme Court at this stage, it will try to get its arguments before the court in an amicus ("friend of the court") brief. Meanwhile, the Fourth Circuit will probably wait to see what the Supreme Court decides in Tam's case before deciding the team's appeal.

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