SEEING RED:• NATIVE AMERICANS TRY • BUT FAIL • TO CANCEL THE WASHINGTON REDSKINS• TRADEMARK REGISTRATIONS

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On September 30, 2003, in the midst of the professional football season, a Federal District Court in Washington, D.C. held that the team trademarks of the Washington Redskins were improperly cancelled by the Trademark Trial and Appeal Board (TTAB) of the U.S. Patent and Trademark Office (PTO) because there was no substantial evidence to support the conclusion that the term was disparaging to Native Americans.• In a long opinion, the court also found that because the petitioners had delayed for twenty-five years in bringing their cancellation petition, the team would be prejudiced and therefore the petitioners were barred by laches from prevailing on their petition.• Pro-Football, Inc. v. Harjo, No. 99-1385• (D.D.C. 2003).

The Redskins began their existence as a National Football League franchise in 1932 as the Boston Braves, taking their name from the• major league baseball team with whom they shared a stadium.• After their first season, the football team changed its names to the Redskins, and in 1937, they moved to Washington, where they won a championship.•• The baseball Braves eventually moved to Milwaukee and later Atlanta, leaving Beantown to a team of the same hue as the Redskins, the Boston Red Sox (their blushing color may reflect their embarrassment at not winning a World Series since 1918).

The Redskins registered their team name and logos with the United States Patent and Trademark Office (PTO) over a period from 1967 to 1990.• They maintained their politically incorrect name throughout, even in the face of criticism from many people, including Native Americans, who over the past several years succeeded in convincing several colleges to change their ethnic nicknames to less offensive ones.• Examples include the Dartmouth Indians (now the Big Green), Stanford• Indians (Cardinal), St. John's Redmen (Red Storm), and Marquette Warriors (Golden Eagles).• Professional teams have been more resistant to change:• thus the Atlanta Braves and Cleveland Indians (with their particularly non-PC caricature of a grinning Indian, Chief Wahoo) in baseball, the Kansas City Chiefs joining• the Redskins in football, and the Golden State Warriors in basketball.

After years of trying to convince the Redskins to change their name, seven Native Americans, including the named plaintiff Suzan Shown Harjo, petitioned the TTAB in 1992 to cancel the Redskins• registrations on the grounds that the use of the word •redskins• is •scandalous,• •may . . . disparage• Native Americans, and may cast Native Americans into •contempt, or disrepute• in violation of •2(a) of the• U.S. Trademark (Lanham) Act.• In 1999, the TTAB agreed and cancelled the registrations.• The team•s owner, Pro-Football, Inc., then sued the petitioners in federal district court for review of the TTAB•s order.

The U.S. Trademark (Lanham) Act• provides a number of grounds for cancellation of a trademark and permits persons to file a petition with the TTAB to cancel a registration.• Under •14 of the Act, a petitioner must allege that he or she will be damaged by continuing registration of a mark, and state one or more statutory grounds.• These include allegations that the mark has become the generic name for the goods or services for which it is registered, or is functional, or has been abandoned, or is being used to misrepresent the registrant•s goods or services, or was registered fraudulently or contrary to portions of •2 of the Act, namely that the mark:

(a) consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection• with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute ...
(b) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, ... or
(c) consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the• name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

In her decision, U.S. District Judge Colleen Kollar-Kotelly indicated that her ruling was based on the sufficiency of the evidence supporting the TTAB•s decision and should not be read as making any statement on the appropriateness of Native American imagery for team names.• She said that there was no direct evidence of disparagement on the record before the TTAB, and that the TTAB•s finding was based only on •the cumulative effect of the entire record.••• She found further that disparagement must exist at the time a mark is registered, not at the time the cancellation petition is filed.

The judge ruled further that the petitioners could not prevail because of the doctrine of laches, in that they had waited too long before they took action to cancel the Redskins• marks.• By taking so long to exercise their rights, the petitioners made it difficult for a fact-finder to conclude that the term was disparaging in 1967, the year the first of the trademarks was registered.• She said that laches may be applied to a claim of disparagement even in a case in which the public interest may be involved.• In conclusion, she found that the TTAB•s finding of disparagement was not supported by substantial evidence and that, in view of the doctrine of laches, the TTAB•s decision cancelling the marks must therefore be reversed.

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