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# The “Redskins” Trademark: Turn-over on Downs

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For decades, the National Football League’s “REDSKINS” marks[1] have been under siege[2]. Activists, concerned citizens, Native American groups, lawyers, and politicians have boisterously levied meritorious arguments against a trademark that has defined an American professional football team for almost a century. While this coalition has attracted a great deal of societal attention, it has only recently secured judicial support.

## Background

The Washington “Redskins” is a trademark denoting a well-known professional football team within America’s National Football League (“NFL”). The Redskins have openly operated under the team name “Redskins” since 1933[3]. However, American law and policy have evolved considerably since 1933, and certain racial terms that once enjoyed common usage have become appropriately recognized to be insulting, disparaging, and/or inappropriate. The term “redskin,” for example, was once a common descriptor of Native Americans, but has largely “dropped out of written and most spoken language as a reference to Native Americans” as of the 1960’s[4]. Dictionary definitions of the term “redskin” help illuminate the reasons behind the term’s gradual colloquial extinction. Oxford American Dictionary, for example, has characterized the term “redskin” as “contemptuous” back in 1980[5], while numerous other dictionaries have consistently noted that the term is “usu[ally] taken to be offensive” by Native Americans[6]. The American Heritage Dictionary of the English Language endeavored to label the term racially offensive “slang” in its 1982 edition[7]. Though society’s appreciation of the offensive nature of the term “redskin” developed gradually, dictionaries have been acknowledging the term’s “contemptuous” nature as early as 1898[8].

Eventually, American society got the hint. As the U.S. demographic gradually shifted from a population dominated by whites to a population comprising mostly of minority groups in 2010[9], American society has gone from a population that embraces racial discrimination to one that is willing, albeit “uncertain” of how, to rectify racial disparities[10]. Perhaps due

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to this demographic shift, America has become more sensitive to racial issues, and its people now generally acknowledge the contemptuous nature of terms like “redskin” in a racial context[11]. The term “redskin” subsequently no longer enjoys widespread use in America as a word describing the Native American people. The term “redskin” does, however, continue to populate the NFL’s ‘offensive line’.

Over the past few decades, numerous Native Americans have spoken vehemently against the use of the contemptuous term in *any* context. For example, Brian Gladoosby, president of the National Congress of American Indians, warned that the term “redskin” is the “[t]he single most offensive name that you can call an American Indian.”[12] Kevin Gover, director of the Smithsonian’s National Museum of the American Indian and a Native American himself, has also expressed similar sentiments, and publicly analogized the term “redskin” to the “N-word.”[13] Native American activist Suzan Shown Harjo has further explained that the term “is one of the last vestiges of racism that is held right out in the open in America.”[14]

These outcries have not gone unheard; in fact, these sentiments compelled over “two-thirds of the roughly 3,000 American [sports] teams with American Indian mascots” to adopt new names, mascots, and logos that are unrelated to Native Americans.[15] As early as 1970, prominent academic institutions such as Stanford University and Dartmouth College voluntarily scrapped their “Indian monikers” mascots, sparking a “trend at colleges and high schools that continues today.”[16] Certain sports teams that chose to retain their controversial Native American mascots have since been compelled by state law to abandon those mascots deemed offensive as a matter of law. California, for example, has introduced legislation expressly prohibiting high schools from using “Redskins” as a team name or mascot.[17] California State Assemblyman Luis Alejo, when introducing that legislation, argued that “Native Americans are people, not mascots,” and should not be represented as such by schools.[18] While two-thirds of approximately 3,000 sports teams across the nation have abandoned their controversial Native American mascots, the most lucrative and prominent of those 3,000 teams remains firmly attached to both its mascot and its trademark; the flag of the Washington Redskins continues to fly high.



[19]

For decades, the NFL has stood firmly behind the “REDSKIN” mark, as has the majority of Redskins fans. A June 2013 poll reported by the *Washington Post* that 80% of Redskins fans were in favor of the team keeping its name, despite the fact that over half of those polled individuals acknowledged that the term “redskin” is racially offensive[20]. Interestingly enough, certain NFL players, including Fred Davis, a former Redskins tight end, have expressed ambivalence towards the team name. Davis noted that “at the end of the day . . . [a]ll I do is put a jersey on and play football. If they call it Washington Redskins, Redskins, I mean whatever you want to call it.”[21] Daniel Snyder, the owner of the Washington Redskins, does not share Davis’s ambivalent attitude. Mr. Snyder also refuses to believe, or at least refuses to publicly acknowledge, that the “Redskins” team name is the slightest bit disparaging to Native Americans. Instead, he argues that his team name actually *honors* Native American heritage and bravery. As such, he animatedly proclaimed in May of 2013 that the Redskins will “never change [its] . . . name. It’s that simple. NEVER – you can use

caps.” [22]

### ***Litigation***

Perhaps in recognition of the futility of negotiation with Mr. Snyder, Native American activists instead turned to the law to defeat the “Redskins” trademark. In 1992, Suzan Harjo and six other Native Americans petitioned the Trademark Trial and Appeal Board (“TTAB”) to cancel the Washington Redskins’ trademark registrations on the grounds that the term disparages a substantial composite of Native Americans in violation of Section 2(a) of the Lanham Act.[23] Section 2(a) allows the federal government to cancel a trademark registration when it has been proven that a mark “may disparage . . . persons, living or dead,” or otherwise tends to bring individuals into “contempt, or disrepute.”[24] Under Section 2(a), marks that are “shocking to the sense of truth, decency, or propriety,” or that are otherwise “disgraceful; offensive; [and] disreputable” may be denied registration by the United States Patent and Trademark Office (“USPTO”).[25] Throughout the years, this provision has barred the registration of several “disparaging” marks. For example, in 1969, the TTAB found that a proposed mark containing an “X” over a hammer and sickle was disparaging and calculated to hold in contempt and disrepute the national symbol of the U.S.S.R.[26] The mark was subsequently denied registration as a trademark.[27] Later, in *Greyhound Corp. v. Both Worlds Inc.*[28], the TTAB found that the design of a dog defecating was disparaging because the TTAB determined that the dog was an alter-ego of the design of a business competitor, portraying that design in an overtly negative and crude light. Later still, in the context of religion, the TTAB determined in 2010 that the mark “KHORAN” was disparaging in designating alcoholic beverage products.[29] In this case, the TTAB found that “KHORAN” was the “phonetic equivalent of ‘Koran,’ the sacred text of Islam,” which famously forbids the consumption of alcohol.[30] Therefore, “the use of KHORAN for wine is disparaging to the beliefs of Muslims.”[31] Registration was denied on these grounds.[32]

Along these lines, Susan Harjo and her fellow Native American petitioners sought to prove to the TTAB, through survey evidence, dictionary definitions, and a linguistic expert, that the term “redskin” had indeed become a “condescending” and “derogatory” racial term that is calculated to offend the Native American people in violation of Section 2(a).[33] The petitioners’ efforts were successful, and convinced the TTAB that the mark is, in fact, disparaging to a “substantial composite of Native Americans,” and that this substantial composite has felt this way for a “significant period of time.”[34] Accordingly, the TTAB cancelled all of Pro-Football’s “REDSKIN” trademark registrations.[35]

This victory for Native American activists, however, was short-lived. The Washington Redskins reacted quickly by successfully appealing the TTAB determination through the District Court of Columbia in 2003.[36] The district court determined that, given perceived evidentiary shortcomings in the TTAB proceeding, the Board’s finding of disparagement “was not supported by substantial evidence, and must [therefore] be reversed.”[37] What the court did not determine, though, was whether the term “redskins” does, in fact, disparage Native Americans. Instead, the court acknowledged its reluctance to “venture into this thicket of public policy” surrounding the term’s implications, and confined its analysis to issues of evidentiary sufficiency.[38] This 2003 decision from the District Court of Columbia was appealed, remanded, and then ultimately affirmed by the Court of Appeals for the District of Columbia Circuit in 2009.[39] As the judicial door appeared to slam shut on the Native Americans’ campaign, eyes turned instead to Congress to advance the Native American’s campaign.

In 2013, members of Congress attempted to eradicate the “Redskins” trademark by introducing a bill that would amend the Trademark Act of 1946 by voiding any trademark registration of a term, including “Redskins,” that is calculated to “disparage” the Native American population.[40] This legislative action was clearly intended, in whole or in part, to directly address the trademark registration status of the Washington Redskins. Mike Honda, Congressman from California, justified this amendment by asserting that “[i]t is unbelievable to me that, in the twenty-first century, a prominent NFL franchise is calling itself by a racial slur. Team names should not be offensive to anyone.”[41] This bill,

however, was stalled in Congress, and has not gained traction. In the meantime, a bipartisan Congressional coalition in favor of a “Redskins” name change has also sent personalized letters to the team respectfully requesting that the name be discontinued.[42] To date, both Congressional initiatives have yet to bear fruit.

In 2015, however, the Eastern District of Virginia turned the tide of this campaign by issuing a decision which finally endorsed the TTAB’s refusal to renew registration of the “Redskins” trademark. The legal dispute behind this action began in 2006, when a group of Native American activists, led by Amanda Blackhorse of the Navajo Nation, filed a petition with the TTAB to once again cancel the trademark registration of six variations of “Redskins.” [43] The TTAB agreed to cancel the trademark registrations pursuant to the Lanham Act’s “may disparage” provision, finding that the petitioners alleged sufficient evidence that the term is calculated to offend a substantial composite of Native Americans.[44] Pro-Football, Inc., the owner of the Washington Redskins trademarks, once again appealed the TTAB determination, this time to the Eastern District of Virginia.[45] Unlike the District Court of Columbia, however, the Eastern District of Virginia showed no reluctance to “venture into [the] . . . thicket of public policy” surrounding the question of disparagement.[46] Instead, the court dove willingly into that “thicket,” examining the use and history of the term “redskin.” This case, *Pro-Football Inc. v. Blackhorse*, [47] offers an extensive analysis of the term and its implications. After carefully weighing the evidence before it, the Eastern District of Virginia ultimately determined that the term “redskin” is disparaging to the Native American population, and is subsequently undeserving of continued federal registration.[48]

In *Blackhorse*, Pro-Football – the party defending its registrations on “REDSKINS” marks – argued that the court should not even consider the issue of disparagement on constitutional grounds. First, Pro-Football argued that Section 2(a) of the Lanham Act, which contains the Act’s disparagement provisions, is unconstitutionally vague because it is silent as to which trademarks “may disparage.”[49] The court rejected this argument, and determined that Section 2(a) affords “people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” [50] According to the court, the Patent & Trademark Office’s guidelines for which marks “may disparage” under Section 2(a) are sufficiently comprehensive, and discourage arbitrary enforcement.[51] The court also noted that the term “disparage” had been found by the Supreme Court to be “an appropriate term to use in a test for the Establish Clause as recently as [2014].”[52] Accordingly, the district court “decline[d] [Pro-Football’s] . . . invitation to now find the term vague in the context of trademark registration.”[53] First down for Blackhorse.

Pro-Football’s second constitutional argument held that Section 2(a) violates the First Amendment by “restricting protected speech, imposing burdens on trademark holders, and conditioning access to federal benefits on restrictions of trademark owners’ speech.”[54] The Eastern District of Virginia formulated a rather clever response in rejecting this second argument. It argued that the registration decisions of the TTAB amount to “government speech” over which the government may, notwithstanding the First Amendment, exercise editorial discretion. [55] The court reasoned that because the TTAB is empowered to refuse the registration of certain disparaging trademarks, the TTAB’s approval of a trademark registration amounts to a “manifestation of the federal government’s recognition of the mark.”[56] This federal recognition of a mark, the court explained, equates to affirmative federal *approval* of the mark. This approval is, in turn, an instance of “government speech.” The district court cited the Supreme Court in holding that “[t]he Free Speech Clause [of the First Amendment] does not regulate government speech,”[57] and the government may therefore “determine the contents and limits of its programs . . . without violating the First Amendment.”[58] So, the TTAB’s refusal to continue registering the “REDSKINS” trademarks was deemed a proper exercise of the TTAB’s inherent editorial power.

Once the district court dismissed Pro-Football’s constitutional arguments, it proceeded to examine whether the term “Redskins” was, in fact, disparaging to Native Americans in violation of Section 2(a) of the Lanham Act. The Court explained that this inquiry is not governed by a “mathematical equation,” but rather by a composite of “(1) dictionary



definition and accompanying editorial designations, (2) scholarly, literary and media references, and (3) statements of individuals or group leaders of the referenced group on the term.”[59] The Blackhorse Defendants offered a bounty of evidence encompassing all three of these categories.

Unlike the District Court of Columbia in 2003, the Eastern District of Virginia was quite receptive to the dictionary definitions characterizing the term “redskin” as “contemptuous.” In its opinion, the court for the Eastern District of Virginia noted that the record contained “several dictionaries defining ‘redskins’ as a term referring to North American Indians and characterizing ‘redskins’ as offensive or contemptuous.”[60] The dictionary definitions offered by the Blackhorse Defendants ranged from Webster’s Collegiate Dictionary from 1898, defining the term redskin as “often contemptuous,” to the Oxford English Dictionary of 1989, characterizing “redskins” as “[n]ot the preferred term.”[61] Though many dictionaries utilized the term “contemptuous” rather than “disparaging” to characterize the slur, the district court was persuaded that the distinction between the two adjectives “is one without a difference,” and that the dictionary labels provided sufficient evidence to render the term ‘redskin’ disparaging under Section 2(a).[62]

The district court was also receptive to the statements made by prominent Native American figures and organizations characterizing the term “redskin” as, among other things, “bigoted, discriminatory, and offensive to Native Americans.”[63] In addition to these statements, the court also took note of personal narratives submitted by Native Americans describing their personal experiences with the word “redskin.” The court’s opinion recalled an anecdote from one Native American individual who remembered being called “redskin” as a child by peers “as a form of bullying or ‘trash talking’ on the [sports] field.” The sheer volume of these sentiments and anecdotes proved persuasive to the court. Collectively, the scholarly, literary, and media references advanced by the Blackhorse Defendants convinced the court that the term “redskins” is, in fact, a derogatory “racial slur against Native Americans [and has been] since the 1960s.”[64] After a judicial dismissal of the issue in 2003, the “thicket of public policy” surrounding the term “redskins” had finally been breached.[65]

The district court also dismissed Pro-Football’s “laches” defense, under which Pro-Football attempted to argue that the Native American activists unreasonably delayed petitioning the TTAB to cancel the Redskins marks after allowing the team to openly operate under that name since 1933.[66] According to Pro-Football, the energy and expenditure that helped launch the “Redskins” team should preclude legal challenges made later down the road that jeopardize the ends of that energy and expenditure. The court, however, exercised its discretion in dismissing that argument as well, holding that “laches [defense] does not apply” here due to the “overriding public interest in removing from the register marks that are disparaging to a segment of the population beyond the individual petitioners.”[67] The court’s recognition of the term’s disparaging nature, therefore, was essential to the court’s dismissal of Pro-Football’s argument in favor of the greater public interest.

In sum, the Eastern District of Virginia affirmed the TTAB determination that the term “redskins” would not enjoy continued registration as a trademark on the basis that the term is, and was always, likely to disparage a “substantial composite” of the Native American population.[68] While the decision does not prohibit the NFL Redskins from continuing to use its marks going forward, the term “Redskins” is now, as a matter of law, a disparaging racial term that no longer enjoys federal protection or endorsement. This ruling is, according to Native American activists, invigorating. Ray Halbritter, a member of the Oneida Indian Nation, observed that, in the wake of the district court’s decision, “[t]he stonewall by the NFL and the Washington team was shattered.”[69] He also stated that the campaign against the “Redskins” trademark is a “permanent movement now.”[70]

### ***The proverbial turn-over on downs***

So, what does this ruling mean for the Washington Redskins? Well, several things. For one, the team will have trouble continuing to “vociferously claim[ ] that its name is not [as] racist as some Native American groups contend.”[71] Indeed, in the wake of this judicial decision, Daniel Snyder will have a much tougher time arguing that the term “Redskin” actually *honors* the Native American people, since this argument that now stands in stark contradiction with a federal ruling. In fact, many members of Congress have actually ridiculed Mr. Snyder’s position in the wake of this decision. Congresswoman Maria Cantwell, a Democrat from Washington, explained that “it remains clear that [the Redskins] are on the wrong side of history for continuing to defend [their] name.”[72] She further forecasted that “the profits [that the Redskins will] . . . make from this slur will be severely impacted by this decision.”[73] Whereas a federal ruling may be overlooked by Mr. Snyder and the NFL, a significant decrease in profitability certainly won’t be.

Additionally, as a result of this decision, the Washington Redskins no longer enjoy a presumption of ownership of the “REDSKINS” marks.[74] Given the controversial nature of the mark, it is admittedly unlikely that other teams or individuals will jump at the opportunity to use the mark in commerce or as an entity designation. Moreover, the Redskin’s retention of its team name is limiting the team’s relocation prospects. Daniel Snyder has publicly admitted that he hopes to move the Redskins from FedEx Field in Landover, Maryland, to a location in Washington D.C. [75] The federal government, however, does not share those hopes so long as the team continues to bear the “Redskin” name. Interior Secretary Sally Jewell has admitted that she will refuse to accommodate that move as long as the team calls itself the “Redskins,” explaining that the name is the equivalent of calling a sports team the “Blackskins,” “Brownskins,” or “Whiteskins.”[76]

Still, while the position of those in favor of retaining the team name “Redskins” has been indubitably shaken, it has by no means been abandoned. Bruce Allen, the Redskin team president, noted after the 2015 decision that the team is “look[ing] forward to winning on appeal after a fair and impartial review of the case.”[77] He claimed that he is “convinced” that the team will win that appeal “because the facts and the law are on the side of [the] . . . franchise that has proudly used the name Redskins for more than eighty years.”[78]

Perhaps most importantly, though, the Washington Redskins may still continue to use the “REDSKINS” marks to signify its football team. Under U.S. law, entities are not required to register their trademarks to enjoy protectable rights. [79] Under common law, those protectable rights are acquired through mere use of a distinctive mark in commerce. There is no question that the American public has come to generally associate the term “Redskins” with the “Washington Redskins,” at least in the context of football. Because the Washington Redskins possesses a team value of \$2,850 million and an annual revenue of \$439 million, it is also fairly safe to say that the Washington Redskins will satisfy this “use in commerce” prerequisite.[80] Basically, this means that NFL players may continue to sport “Redskins” jerseys, and redskin fans may also continue to wear and collect “Redskins” gear.

However, because federal customs officials are no longer obligated to confiscate Redskins merchandise entering the country, fans shopping for “Redskins” gear now risk purchasing imported, counterfeit gear.[81] This change is significant; agencies such as the U.S. Immigration and Customs Enforcement and the U.S. Customs and Border Protection have historically played pivotal roles in guarding against counterfeit NFL goods.[82] Collectively, these agencies seized more than \$21 million in counterfeit NFL merchandise in the second half of 2013 alone. The loss of “REDSKINS” registration invites an insurgence of counterfeit merchandise sales that “could increase at the expense of legitimate merchandise sales – an effect that would be felt by all NFL franchises.”[83]

## Conclusion

Although the Washington Redskins may continue to use their marks in commerce, the Eastern District of Virginia’s decision serves as an important reminder that just because something *may* be done does not mean that it should be. For the Redskins, it will be an uphill battle to argue against the reasoning of a federal court, and it will be debatably even more difficult for them to argue against the very definition of a word. Today, it is largely undisputed that the term “redskin” is, by definition, offensive as a descriptor for Native Americans. *Dictionary.com*, a popular and accessible online dictionary, has recently revised its definition of “redskin” from “often offensive” to simply “offensive,” reflecting a prevailing societal recognition that the term is inappropriate in *any* context, even as the name of a football team. [84] This longstanding dispute has proved that racial sensitivities may, at times, impose boundaries and pressures that the law does not.

While the judiciary has now chosen a team with respect to this controversy, the forfeiture of federal trademark protection will not, for the moment, compel the Redskins to abandon their team name. While the “Redskin” registration status is, for the meantime, a turn over on downs, its use by the NFL team remains functionally unrestricted. The Redskins flag may, therefore, legally continue to fly. The momentum, however, behind the campaign for a name change continues to grow as both social and political forces impose immense pressure on both the Redskins and the NFL to adopt a new name and mascot. As the district court’s recent ruling invigorates Native American activists, that pressure on the NFL franchise will likely continue to grow. The tide has shifted in favor of change. The question becomes how long, and at what risk of disenfranchising new and existing fans, the NFL will remain recalcitrant in its prideful use of a disparaging term.

On August 4, 2015, Pro-Football, Inc. filed its notice of appeal to the United States Court of Appeals for the Fourth Circuit (USCA Case Number 15-1874) with more briefing to come. With an appeal pending, the Eastern District of Virginia’s ruling is, for now, only a tentative victory for Native American activists. Still, it is a victory nonetheless, and one that has turned the tide.

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#### **Footnotes:**

[1] A “trademark” is legally defined as “any word, name, symbol, or device, or any combination thereof – (1) used by a person, or (2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.” 15 U.S.C. § 1127.

[2] A total of six “Redskins” marks were registered by Pro Football, Inc., including “The Redskins” (USPTO Registration Number 1606810), “Redskins” (USPTO Registration Number 1085092), “The Redskins” (USPTO Registration Number 987127), “Washington Redskins” (USPTO Registration Number 986668), “Washington Redskins” (USPTO Registration Number

978824), and “The Redskins” (USPTO Registration Number 0836122). See “Redskins Summary,” United States Patent and Trademark Office, *available at* <http://ttabvue.uspto.gov/ttabvue/v?qt=adv&procstatus=All&pno=&propno=&q=Redskins&propnameop=&propname=&pop=&pn=&pop2=&pn2=&cop=&cn=> (last visited Sept. 18, 2015).

[3] See *History by Decades*, Redskins.com, *available at* <http://www.redskins.com/team/history/history-by-decades.html> (last visited September 22, 2015).

[4] Pro-Football, Inc. v. Harjo, 284 F.Supp.2d 96, 108 (D.C.C. 2003) (citing linguistics expert Geoffrey Nunberg).

[5] Oxford American Dictionary 682 (1898).

[6] Pro-Football, Inc. v. Blackhorse, — F.Supp.3d — (E.D. Va. 2015) (noting that “[d]ictionary evidence is commonly considered when deciding if a term is one that ‘may disparage’”; see *Am. Freedom Def. Initiative v. Mass Bay Transp. Auth.*, 781 F.3d 571, 585 (1<sup>st</sup> Cir. 2015); see *In re Geller*, 751 F.3d 1355, 1358 (Fed. Cir. 2014)); see, e.g., *The Random House Dictionary of the English Language* 1204 (1996) (characterizing “redskin” as “Often Offensive”); *Thorndike-Barnhart Intermediate Dictionary* 702 (2d ed. 1974) (describing “redskin” as “a term often considered offensive”); *Webster’s Ninth New Collegiate Dictionary* 987 (1983) (defining “redskin” as “usu[ally] taken to be offensive”); *Collier’s Dictionary* (1986) (noting that the term “redskin” is “considered offensive”).

[7] Pro-Football, Inc., — F. Supp. 3d — (E.D. Va. 2015) (citing *The American Heritage Dictionary of the English Language: Second College Edition* 1037 (1982)).

[8] *Webster’s College Dictionary* 682 (1898) (describing “redskin” as “often contemptuous”); see *id.*

[9] Danielle Restuccia, *A Study on the Changing Racial Makeup of America*, Huffingtonpost.com (April 13, 2014), [http://www.huffingtonpost.com/2014/04/13/changing-racial-makeup\\_n\\_5142462.html](http://www.huffingtonpost.com/2014/04/13/changing-racial-makeup_n_5142462.html) (noting that the Pew Research Center demonstrated that “white Americans will have gone from making up 85 percent of the [U.S.] population [in 1960] to comprising [only] 43 percent [in 2010].”).

[10] See Maribel Morey, *Are Americans Really Champions of Racial Equality?* *The Atlantic* (Apr. 12, 2015), <http://www.theatlantic.com/politics/archive/2015/04/are-americans-champions-of-racial-equality/389826/>.

[11] See *‘Redskins’ Is Officially a Dictionary-Defined Racial Slur – in All Cases*, Indian Country Today Media Network (July 2, 2014), <http://indiancountrytodaymedianetwork.com/2014/07/02/redskins-officially-dictionary-defined-racial-slur-all-cases-155614> (noting that Dictionary.com has “recognized that the word’s offensiveness has changed over the last half-century.”)

[12] Kenya Downs, *Could the Battle Over ‘Redskins’ Change Trademark Law?* *NPR.org* (January 23, 2015), <http://www.npr.org/sections/codeswitch/2015/01/23/378643872/could-the-battle-over-redskins-change-trademark-law>.

[13] See *id.*

[14] *Id.*

[15] Ken Belson, *Redskins’ Name Change Remains Activist’s Unfinished Business*, *The New York Times* (Oct. 9, 2013), *available at* <http://www.nytimes.com/2013/10/10/sports/football/redskins-name-change-remains-her->

unfinished-business.html?\_r=0.

[16] Jack Shafer, *Will anyone defend the Washington Redskins name?* Reuters.com (October 10, 2013), <http://blogs.reuters.com/jackshafer/2013/10/10/will-anyone-defend-the-washington-redskins-name/>.

[17] School or Athletic Team Names: California Racial Mascots Act, Cal. A.B. No. 30 (2015-2015).

[18] Travis Waldron, *California Advances Bill to Ban ‘Redskins’ Name*, Huffingtonpost.com (June 17, 2015), *available at* [http://www.huffingtonpost.com/2015/06/17/california-bill-redskins\\_n\\_7607356.html](http://www.huffingtonpost.com/2015/06/17/california-bill-redskins_n_7607356.html).

[19] “Burgundy and gold” by Bill Dickinson, <https://www.flickr.com/photos/skynoir/20463320891/in/photolist-xbgSnr-pNpYeB-axnWVU-wpYhp6-xnq5Ka-wpPDL3-wpPoVb-xnpUP8-xmQ4At-xm3rSS-x55oi5-6RSeUx-wpY1Mp-xjvyTs-xmPPkz-p91SnA-pNqDm2-x5dKK7-x5dH9Y-x5dEco-wpP3z1-x5diQo-DoBt2-dG5vAF-xmPUAe-ceEC8S-tQYJL-xnph7k-xnp876-axnUrS-gUCHHE-axkc7M-axnSCb-qNqZDG-8UgkQ5-8UdfNt-axk9Zr-3boxog-axnQ4y-8UgkPb-axk97n-axkexP-axnTqL-8wkoa6-foGFye-7HURY-uEiR8d-8rzzfH-8UgkNb-7HURE>, is licensed under Creative Commons Attribution 2.0 Generic License, <https://creativecommons.org/licenses/by-nc/2.0/>.

[20] Jon Cohen & Rick Maese, *Washington Redskins name: Washington Post poll finds most D.C. area fans support it*, The Washington Post (June 25, 2013), *available at* [https://www.washingtonpost.com/sports/redskins/washington-redskins-name-washington-post-poll-finds-most-dc-area-fans-support-it/2013/06/24/84bc2d0e-dd03-11e2-a484-7b7f79cd66a1\\_story.html](https://www.washingtonpost.com/sports/redskins/washington-redskins-name-washington-post-poll-finds-most-dc-area-fans-support-it/2013/06/24/84bc2d0e-dd03-11e2-a484-7b7f79cd66a1_story.html).

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[22] Lakshmi Gandhi, *Are You Ready for Some Controversy? The History of ‘Redskin,’* NPR.org (September 9, 2013), *available at* <http://www.npr.org/sections/codeswitch/2013/09/09/220654611/are-you-ready-for-some-controversy-the-history-of-redskin>.

[23] *See* Harjo, 284 F.Supp.2d at 99.

[24] 15 U.S.C. § 1052(a).

[25] *In re* Fox, 702 F.3d 633 (Fed. Cir. 2012).

[26] *In re* Anti-Communist World Freedom Congress, Inc. 161 USPQ 304 (T.T.A.B. 1969).

[27] *Id.*

[28] 6 USPQ2d 1635, 1639-40 (T.T.A.B. 1998).

[29] *In re* Lebanese Arak Corporation, 94 U.S.P.Q.2D 1215 (T.T.A.B. 2010).

[30] *Id.* at 2.

[31] *Id.*

[32] *See generally id.*

[33] Harjo v. Pro-Football Inc., 50 U.S.P.Q. 2d 1705, 46 (T.T.A.B. 1999).

[34] *Id.* at 46.

[35] *See id.*

[36] *See* Harjo, 284 F.Supp.2d at 107.

[37] *Id.* at 145.

[38] *Id.* at 99.

[39] *See* Pro Football, Inc. v. Harjo, 565 F.3d 880 (Ct. App. D.C.C. 2009).

[40] H.R. 3487, 114<sup>th</sup> Cong. (2015); *see also* Cristina Marcos, *Dem bill would strip Redskins of Trademark*, TheHill.com (February 4, 2015), *available at* <http://thehill.com/blogs/floor-action/house/231705-dem-bill-would-strip-redskins-of-trademark>; *see also* Catalina Camia, *Bill in Congress challenges Redskins trademark*, USA Today (March 20, 2013), *available at* <http://www.usatoday.com/story/news/politics/2013/03/20/redskins-football-trademark-congress/2003529/>.

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[43] Amanda Blackhorse, Marcus Briggs-Cloud, Philip Gover, Jillian Pappan, and Courtney Tsotigh v. Pro-Football, Inc., 111 U.S.P.Q.2d 1080 (P.T.O. June 18, 2014).

[44] *See* 15 U.S.C. § 1052(a).

[45] Pro-Football, Inc. v. Blackhorse, — F. Supp. 3d – (E.D. Va. 2015).

[46] *Id.*, *see* Harjo, 284 F.Supp.2d at 99.

[47] Pro-Football, Inc., — F. Supp. 3d – (E.D. Va. 2015)

[48] *Id.*

[49] *Id.* at 1.

[50] *Id.* at 18 (citing *Hill v. Colorado*, 530 U.S. 703, 732 (2000)).

[51] *Id.* at 19.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 1.

[55] *Id.* at 11-15.

[56] *Id.* at 12.

[57] *Id.* at 17 (citing *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467, 129 S.Ct. 1125, 172 L.Ed.2d 853 (2009)).

[58] *Id.* at 16 (citing *Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L.Ed. 2d 233 (1991)).

[59] *Id.* at 35.

[60] Pro-Football, Inc. v. Blackhorse, — F.Supp.3d — (E.D. Va. 2015) (noting that “[d]ictionary



evidence is commonly considered when deciding if a term is one that ‘may disparage’; *see* Am. Freedom Def. Initiative v. Mass Bay Transp. Auth., 781 F.3d 571, 585 (1<sup>st</sup> Cir. 2015); *see In re Geller*, 751 F.3d 1355, 1358 (Fed. Cir. 2014)); *see, e.g.*, The Random House Dictionary of the English Language 1204 (1996) (characterizing “redskin” as “Often Offensive”); Thorndike-Barnhart Intermediate Dictionary 702 (2d ed. 1974) (describing “redskin” as “a term often considered offensive”); Webster’s Ninth New Collegiate Dictionary 987 (1983) (defining “redskin” as “usu[ally] taken to be offensive”); Collier’s Dictionary (1986) (noting that the term “redskin” is “considered offensive”).

[61] Pro-Football, Inc. v. Blackhorse, — F. Supp. 3d – (E.D. Va. 2015) (citing Webster’s College Dictionary 682 (1898); Oxford English Dictionary 429 (2d ed. 1989)).

[62] *Id.* at 24.

[63] *Id.* at 32 (noting that representatives of the American Indian Movement, the National Indian Youth Council, and the Americans for Indian Opportunity all agreed at a meeting of the National Congress of American Indians that their groups “shared a common interest in opposing the ‘Washington Redskins’ name as it was ‘bigoted, discriminatory, and offensive to Native Americans.’”).

[64] *Id.* at 31 (citing Raymond Apodaca, former Executive Director of the Texas Indian Commission and former Tribal Administrator for the Yselta Del Sur Pueblo).

[65] *See* Harjo, 284 F.Supp.2d at 99.

[66] Pro-Football, Inc. v. Blackhorse, — F. Supp. 3d –, 38 (E.D. Va. 2015).

[67] *Id.* (citing Resorts of Pinehurst, Inc. v. Pinehurst Nat’l Corp., 148 F.3d 417, 423 (4<sup>th</sup> Cir. 1998)).

[68] *Id.* at 39.

[69] Travis Waldron, *The Epic Battle to Save the Most Offensive Team Name in Professional Sports*, Thinkprogress.org (Jan. 30, 2014), available at <http://thinkprogress.org/sports/2014/01/30/3205071/redskins/>.

[70] *Id.*

[71] Ken Belson, *Redskins Lose Round in Battle Over Name*, New York Times (July 8, 2015), available at [http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?\\_r=1](http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?_r=1).

[72] *See id.*

[73] *Id.*

[74] *See* 15 U.S.C.A. § 1115.

[75] Jay Bushbee, “Obama administration blocking any Redskins move to D.C. over name, per report,” Yahoo!Sports.com (July 2, 2015), <http://sports.yahoo.com/blogs/nfl-shutdown-corner/obama-administration-blocking-any-redskins-move-to-d-c-over-name-per-report-140341570.html>.

[76] Michael David Smith, *Obama Administration: Team should change name before returning to D.C.*, NBCSports.com (July 1, 2015), available at <http://profootballtalk.nbcsports.com/2015/07/01/obama-administration-team-should-change-name-before-returning-to-d-c/>.

[77] Ken Belson, *Redskins Lose Round in Battle Over Name*, New York Times (July 8, 2015), available at [http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?\\_r=1](http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?_r=1).

against-redskins.html?\_r=1.

[78] *Id.*

[79] “Protecting your Trademark: Enhancing your Rights through Federal Registration,” USPTO.gov, at 10, <http://www.uspto.gov/sites/default/files/trademarks/basics/BasicFacts.pdf> (last visited Sept. 18, 2015).

[80] “Washington Redskins,” Forbes.com, <http://www.forbes.com/teams/washington-redskins/> (last visited Sept. 18, 2015).

[81] Ken Belson, *Redskins Lose Round in Battle Over Name*, New York Times (July 8, 2015), available at [http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?\\_r=1](http://www.nytimes.com/2015/07/09/sports/football/trademark-ruling-goes-against-redskins.html?_r=1).

[82] Michele M. Riley, Duke J. Schaeffer, *Hail to the . . . Redskins? How the TTAB’s Cancellation of a Historic Mark Impacts Brand Value and the NFL*, Stout Risius Ross (Fall 2014), available at <http://www.srr.com/article/hail-the%E2%80%A6-redskins-how-ttab%E2%80%99s-cancellation-historic-mark-impacts-brand-value-and-nfl>.

[83] *Id.*

[84] “Redskins is Officially a Dictionary-Defined Racial Slur – in All Cases,” Indian Country Today Media Network (July 2, 2014), <http://indiancountrytodaymedianetwork.com/2014/07/02/redskins-officially-dictionary-defined-racial-slur-all-cases-155614> (citing Jane Solomon, senior content editor and lexicographer at Dictionary.com); *see also* *Redskin*, Dictionary.com, <http://dictionary.reference.com/browse/redskin?s=t> (last visited Sept. 18, 2015) (defining “redskin” as “noun, Older Slang: Disparaging and Offensive. 1. A contemptuous term used to refer to a North American Indian.”).

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