

## Justices raise doubts over a trademark law

By Sam Hananel  
Associated Press

WASHINGTON (AP) — In a First Amendment clash over a law barring offensive trademarks, the Supreme Court on Wednesday raised doubts about a government program that favors some forms of speech but rejects others that might disparage certain groups.

The justices heard arguments in a dispute involving an Asian-American band called the Slants that was denied a trademark because the U.S. Patent and Trademark Office said the name is offensive to Asians.

Justice Elena Kagan reflected the concerns of several justices when she said government programs are not supposed to make a distinction based on viewpoint.

“The point is that I can say good things about something, but I can’t say bad things about something,” she said. “And I would have thought that that was a fairly classic case of viewpoint discrimination.”

The Oregon-based band says the 70-year-old law violates free-speech rights. A federal appeals court had ruled that the law is unconstitutional, but the government appealed.

A victory for the band would be welcome news for the Washington Redskins, embroiled in their own legal fight over the team’s name. The trademark office canceled the football team’s lucrative trademarks in 2014 after finding the word “Redskins” is disparaging to Native Americans.

But the justices also seemed concerned that imposing absolutely no limits on trademark names might go too far.

At issue is a law that prohibits registration of marks that “may disparage ... persons, living or dead, institutions, beliefs or national symbols.” A trademark

confers certain legal benefits, including the power to sue competitors that infringe upon the trademark.

Slants founder Simon Tam says his goal was to reclaim a derisive slur and transform it into a badge of ethnic pride. But the trademark office said a term can be disparaging even when used in a positive light. A federal appeals court sided with the band, ruling that the law violates the First Amendment.

The Obama administration wants the high court to overturn that ruling. Justice Department lawyer Malcolm Stewart told the justices that the law does not restrict speech because the band is still free to use the name even without trademark protection.

Stewart said the government was concerned about allowing trademarks for racial slurs, religious insults and the “vilest racial epithets” that distract consumers and hinder commerce.

Justice Stephen Breyer wasn’t impressed, saying he could think of “perhaps 50,000 examples of instances where the space the trademark provides is used for very distracting messages.

“What business does Congress have picking out this one, but letting all the other distractions exist?” Breyer asked.

Justice Anthony Kennedy compared the trademark program to copyrights, noting that the government can’t bar disparaging copyrights.

“We have a culture in which we have tee shirts and logos and rock bands and so forth that are expressing a point of view,” Kennedy said. “They are using the market to express views.”

Justice Ruth Bader Ginsburg said the law wasn’t being enforced consistently, noting that the term “Heeb” was approved in one trademark application, but not in another. The term is considered offensive to Jews.

John Connell, attorney for the Slants’ founder, said the First Amendment should allow trademark approval of virtually any expression without limits. But some justices seemed to think his argument went too far. The trademark law, for example, places restrictions on words that are libelous or cause confusion in the marketplace.

“You want us to say that trademark law is just like a public park” where people can say whatever they want, Kennedy told Connell. “Good-bye. That’s it. That’s your argument.”

Justice Sonia Sotomayor wondered about libelous trademarks. What if someone tried to register “Trump is a thief” before the president-elect became a public figure, she asked.

Connell said that should be allowed.

“That makes no sense,” Sotomayor said.

Breyer noted that the Slants are free to use their name in all kinds of ways, just not in the trademark itself.

“This is not a general expression program,” Breyer said. “It stops nobody from saying anything.”

Like the Slants, the Redskins say their name is meant to honor American Indians. But the team has spent years fighting legal challenges from Native American groups that say it’s a racial slur. A federal judge upheld the trademark office’s cancellation of the name and the team is appealing. The matter is on hold pending the outcome of the Slants case.

A ruling in that case is expected by the end of June.

## Sisters salutes...

ALERT Camp Sherman Committee wrote:

Thank you to everyone who helped our community during the recent extreme winter weather: Ellen Wood, chairperson, Road District 18 provided excellent communication during a confluence of circumstances that included heavy snowfall, equipment failures and the expert plow driver temporarily away.

Thanks to Deputy Dave and the guys from Madras and Sisters driving plows,

road graders and front-end loaders. Appreciation also to the local guys using bobcats or pickup trucks with blades, especially those using snow blowers or roof rakes to clear our roofs.

And, neighbor checking on neighbor, lending rakes when none could be found in town.

Gratitude to Mark Foster who cleared a single lane on the Camp Sherman Road and in Metolius Meadows so emergency vehicles could respond.

## F.S. seeks input on special-use permits

The Sisters Ranger District is seeking public input regarding a project proposal to renew several existing special-use permits throughout the district.

Examples of existing special-use permits include road access, power lines, irrigation lines, recreation residences, recreation events, and outfitter and guides. Permits are generally authorized for a term between one and 20 years, depending on the use. At the time of expiration, a special-use permit with a new term must be reissued if the permit holder wishes to continue the use. The decision to reissue an existing permit varies on a case-by-case basis, and is usually issued if there is still a need for the permit and the holder is in compliance with Forest Service regulations.

There are 10 expired permits that need to be reissued for 2017. None of the

uses will have changes on the ground or to existing operations.

Permits include usage of a City of Sisters dam and sewer lines, the Camp Sherman Store and a variety of irrigation and water transmission permits.

Information on permits may be obtained by submitting questions or comments to this project. Submit your written comments by February 20, so they can be considered in the analysis, to S. Mike Bishop, Admin Support/Special Use Assistant, P.O. Box 249, Sisters, OR 97759; Telephone (541) 549-7737; FAX (541) 549-7746. Email comments should be sent to: comments-pacificnorthwest-sisters@fs.fed.us. Those submitting hand-delivered comments may do so during the regular office hours of 8 a.m. to 4:30 p.m. Monday through Friday except legal holidays.



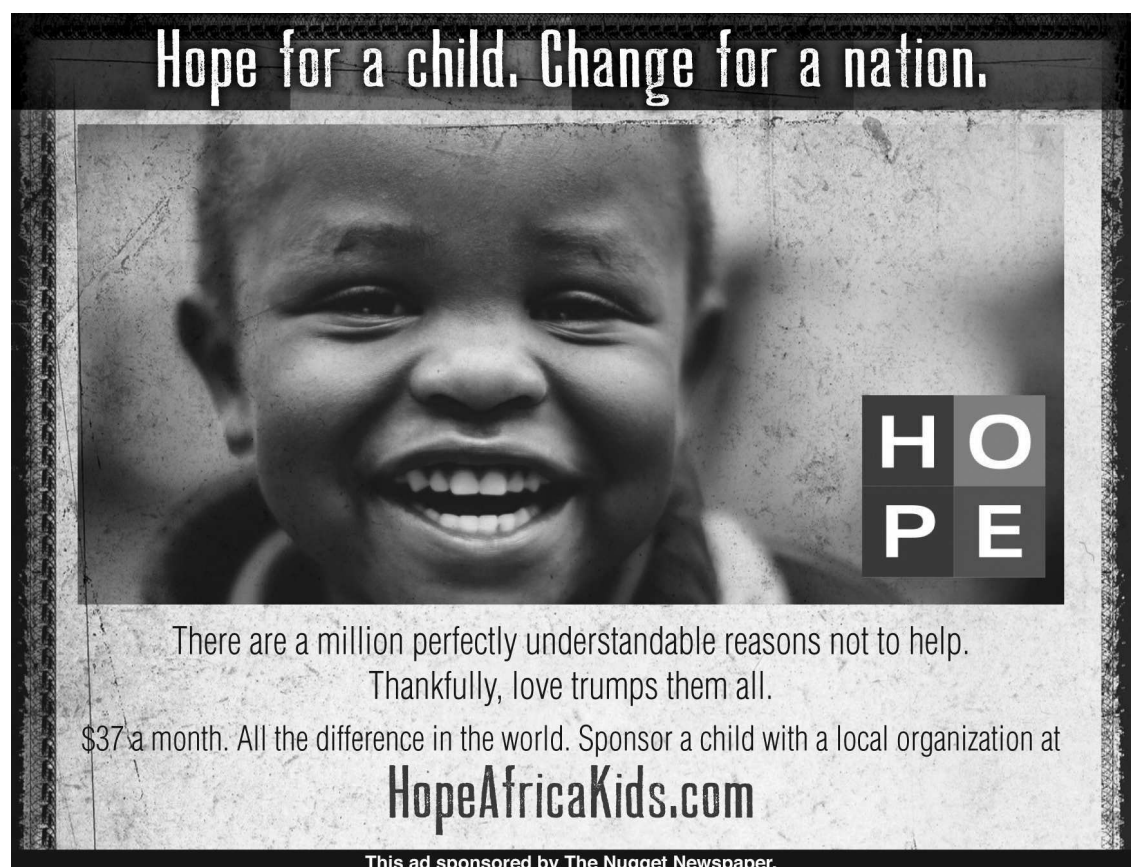
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