

Supreme Court Allows Disparaging Trademarks

Summary: The Supreme Court has ruled that disparaging terms can be trademarked.

On Monday, the Supreme Court struck down a federal law that blocked offensive trademarks.

The case that the Supreme Court heard involved musician, Simon Tan. The Asian-American created a rock band called "The Slants," and he used the offensive term against Asians as a way for him to take back the insult. When he tried to register the name with the trademark office, he was denied a trademark on the grounds that the word was disparaging to "persons of Asian descent."

After hearing Tan's case, the high court rejected the Lanham Trademark Act of 1946 that denies trademark protections to terms that disparage the living and the dead.

"Holding that the registration of a trademark converts the mark into government speech would constitute a huge and dangerous extension of the government-speech doctrine, for other systems of government registration (such as copyright) could easily be characterized in the same way," Justice Samuel Alito wrote.

In Alito's majority opinion, he added that suppressing disparaging speech "endangered" the First Amendment.

"The commercial market is well stocked with merchandise that disparages prominent figures and groups, and the line between commercial and non-commercial speech is not always clear, as this case illustrates," Alito stated. "If affixing the commercial label permits the suppression of any speech that may lead to political or social 'volatility,' free speech would be endangered."

Supreme Court Justice Neil Gorsuch did not hear the case, but all of the other justices ruled in Tan's favor.

After the announcement, legal pundits have already stated that it is very likely that football team The Washington Redskins will benefit from this ruling. After using the name for decades, they had their trademark revoked in 2014 after protests that the name was offensive towards Native Americans.

"The case also has obvious implications for the similar dispute involving the Washington Redskins, who had their trademark canceled under the same statute and theory that the justices invalidated today," Steve Vladeck, CNN legal analyst and professor at the University of Texas School of Law, said to the network. "It should now follow that their trademark also should not have been invalidated."

Tan wrote on Facebook that he was thrilled his nearly decade-long battle was over and won. When he had first filed the case, he had lost several legal rounds before eventually making his way to the Supreme Court.

"After an excruciating legal battle that has spanned nearly eight years, we're beyond humbled and thrilled to have won this case at the Supreme Court. This journey has always been much bigger than our band: it's been about the rights of all marginalized communities to determine what's best for ourselves," Tan said.

The Washington Redskins had their trademark revoked in 2014 because of the Lanham Trademark Act, and they had shown their support for Tan's case by filing an amicus brief. Their own appeal to win back their trademark, however, is a separate legal matter.

"The team is thrilled with today's unanimous decision as it resolves the Redskins' long-standing dispute with the government," Redskins attorney Lisa Blatt said in a statement. "The Supreme Court vindicated the team's position that the First Amendment blocks the government from denying or canceling a trademark registration based on the government's opinion."

- [New poll shows 9 out of 10 Native Americans not offended by "Redskins" name](#)
- [Cancellation of Redskins trademark ordered](#)

What do you think of the Supreme Court's ruling? Let us know in the comments below.

