

Law Offices

1500 K Street, N.W.
Washington, DC
20005-1209

202-842-8800 phone
202-842-8465 fax
www.drinkerbiddle.com

- CALIFORNIA
- DELAWARE
- ILLINOIS
- NEW JERSEY
- NEW YORK
- PENNSYLVANIA
- WASHINGTON DC
- WISCONSIN

February 24, 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: NFL Properties, LLC :

Serial No.: 74/494,169 :



Trademark: :

Filed: February 23, 1994 :

To: Letter of Protest
Attn: Deputy Commissioner for Trademark Examination Policy
600 Dulany Street
MDE-4B89
Alexandria, VA 22314-5793

LETTER OF PROTEST

Dear Deputy Commissioner:

Pursuant to Trademark Manual of Examining Procedure (“TMEP”) § 1715, *et seq.* (6th ed., 2009), Suzan Shown Harjo, Manley A. Begay, Jr., Duke Ray Harjo II, Robert I. Holden, William A. Means, and Mateo Romero (“Protestors”) respectfully protest the registration of Application Ser. No. 74/494,169 for the mark BOSTON REDSKINS and Design, filed February 23, 1994 by NFL Properties, LLC. (“NFL Properties”), for “*knit tops, hats, jackets and jerseys,*” pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).¹ Specifically, in light of the use of the term

¹ Protestors are simultaneously filing six letters of protest, including this letter, regarding pending applications that incorporate the term “REDSKINS,” specifically: 1) Ser. No. 74/300,713 – WASHINGTON REDSKINS; 2) Ser. No. 74/494,169 – BOSTON REDSKINS and Design; 3) Ser. No. 76/228,476 – WASHINGTON REDSKINS CHEERLEADERS and Design; 4) Ser. No. 75/771,166 –

February 24, 2010

Page 2

REDSKINS, which is harmful to persons of Native American descent, the applied-for mark “[c]onsists of or comprises . . . matter which may disparage . . . persons, living or dead . . . or bring them into contempt, or disrepute.” 15 U.S.C. § 1052(a).

A. Standard of Review

The TMEP provides that the Deputy Commissioner shall grant a letter of protest, filed before publication, “in all cases where it is determined that the evidence is relevant and supports any reasonable ground for refusal appropriate in ex parte examination.” TMEP § 1715.02(a). The information provided herein meets that standard. It is relevant and supports refusal of the applied-for mark as a term that “may disparage” Native Americans. 15 U.S.C. § 1052(a).

To determine whether a proposed mark is disparaging, the Trademark Trial and Appeal Board (“TTAB”) applies the following two-part test:

- 1) what is the likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements in the mark, the nature of the goods or services, and the manner in which the mark is used in the marketplace in connection with the goods or services; and
- 2) if that meaning is found to refer to identifiable persons, institutions, beliefs or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.

See In re Squaw Valley Development Co., 80 U.S.P.Q.2d 1264, 1267 (TTAB 2006); *In re Heeb Media, LLC*, 89 U.S.P.Q.2d 1071, 1074 (TTAB 2008); *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1740-41 (TTAB 1999) (subsequent history omitted).

“Whether a proposed mark is disparaging must be determined from the standpoint of a *substantial composite of the referenced group (although not necessarily a majority)* in the context of contemporary attitudes.” *Heeb*, 89 U.S.P.Q.2d at 1077 (emphasis added). In *Heeb*, the TTAB affirmed the Examining Attorney’s refusal to register a trademark on grounds that the term “heeb” may be disparaging to a substantial composite of people of Jewish descent. “Heeb” was found disparaging based on dictionary definitions of “heeb” and the statements of some members of the Jewish community, even though many leading Jewish philanthropies and cultural organizations supported the

(Continued)

REDSKINS BROADCAST NETWORK and Design; 5) Ser. No. 78/026,545 – 12th REDSKIN; and, 6) Ser. No. 77/811,811 – REDSKINS PUSH IT UP.

February 24, 2010

Page 3

applicant's HEEB magazine and were not offended by the term. *Heeb*, 89 U.S.P.Q. at 1077. Similarly, the TTAB in *Squaw Valley* held that the Examining Attorney had met his burden of proof in demonstrating that the term "squaw" may disparage Native Americans. The Examining Attorney relied on dictionary definitions, newspaper articles and editorials, as well as state statutes and resolutions denouncing use of the term "squaw." See *Squaw Valley*, 80 U.S.P.Q.2d at 1273-1275.

Consistent with *Heeb* and *Squaw Valley*, Protestors offer significant objective evidence that the term "redskins" "may disparage," and in fact does disparage, a "substantial composite" of Native Americans, in reference to sporting events and related goods and services. The evidence consists of dictionary definitions of "redskin," statements and resolutions of Native American tribes and organizations, governmental bodies, civil rights organizations, religious groups, professional societies, newspaper articles and editorials, and evidence that many sports teams have changed their name from "Redskins" due to the term's disparaging nature.

In light of the relevance and depth of this evidence, Protestors respectfully request that the Administrator grant this Protest and forward these materials to the Examining Attorney to review in light of Section 2(a) of the Lanham Act.

B. Dictionary Definitions Establish that the Term "Redskin" May Disparage Native Americans

As noted, in *Heeb* and *Squaw Valley*, the TTAB relied heavily upon dictionary definitions to find that "heeb" and "squaw" may be disparaging under Section 2(a) of the Lanham Act. See also *In re Boulevard Entertainment*, 334 F.3d 1336, 67 U.S.P.Q.2d 1475 (Fed. Cir. 2003) (trademark application denied as scandalous based on dictionary definitions); *In re Tinseltown, Inc.*, 212 U.S.P.Q. 863 (TTAB 1981) (same); TMEP § 1203.01 ("dictionary definitions alone may be sufficient to establish that a proposed mark comprises scandalous matter, particularly where multiple dictionaries, including at least one standard dictionary, all indicate that a word is vulgar, and the applicant's use of the word is limited to the vulgar meaning of the word").

Here, the following definitions from multiple well-respected dictionaries establish that the term "redskins" is disparaging toward Native American peoples, and none of these definitions points to a non-disparaging meaning of the term:

- "Slang: often disparaging and offensive. a Native American Indian."
Dictionary.com. Unabridged. Random House, Inc.
<<http://dictionary.reference.com/browse/redskin>> (accessed: January 27, 2010).

- “Slang (often disparaging and offensive). A North American Indian.” *Random House Webster’s Unabridged Dictionary* (Random House, Inc., 2001).
- “Usage. This term is rarely used today. It is perceived as insulting to Native Americans. – *n.* *Older Use: Offensive.* American Indian. [1690-1700].” *Random House Webster’s College Dictionary* (2nd ed. revised, Random House, 2001).
- “*Offensive slang.* Used as a disparaging term for a Native American.” *The American Heritage Dictionary of the English Language* (3rd ed., Houghton Mifflin Company, 1997).
- “*Offensive Slang.* Used as a disparaging term for a Native American.” *The American Heritage College Dictionary* (4th ed., Houghton Mifflin Company, 2002).
- “a North American Indian (usually construed as offensive).” *The New Lexicon Webster’s Dictionary of the English Language* (Vol. 2, Lexicon Publications, Inc., 2004).
- “a North American Indian (usually construed as offensive).” *The New Webster’s Dictionary of the English Language* (International Edition, Lexicon International – Publishers Guild Group, 2004).
- “*usually offensive: American Indian.*” *Merriam-Webster Online Dictionary*. <<http://www.merriam-webster.com/dictionary/redskin>> (accessed: January 27, 2010).
- “a No. American Indian – use, taken to be offensive.” *Webster’s Third New International Dictionary of the English Language Unabridged* (3rd ed., Merriam-Webster, 1993).
- “offensive old-fashioned for a Native American.” *Cambridge Advanced Learner’s Dictionary*. <<http://dictionary.cambridge.org/define.asp?key=66269&dict=CALD&topic=people-of-specific-racial-or-ethnic-background>> (accessed: January 27, 2010).
- “1. offensive term: an offensive term for a Native North American (dated); 2) Caribbean somebody of European and African ancestry: a light-skinned person with African features, usually of mixed European and African origin (sometimes offensive).” *Encarta World English Dictionary (Online*

February 24, 2010

Page 5

edition) <http://encarta.msn.com/dictionary_1861700097/definition.html> (accessed: February 10, 2010).

- “colloq. offens. A Native American.” *The Oxford American Dictionary and Thesaurus* (2nd ed., Oxford University Press, Inc. 2003).

See Exhibit A.

On their face, these dictionary definitions demonstrate that the term “redskin” “may disparage” Native Americans.

C. Numerous Organizations Object to the Term “Redskins” And the Use of American Indian Sports Names and Mascots

Many different organizations have publicly taken the position that the use “Redskins” and other so-called Indian names and images in sports are offensive and demeaning to Native American peoples. See Exhibits B through M provide documentation of the many organizations that have done so. These groups include Native American nations, tribes and organizations, federal and state governmental bodies, professional member organizations, and civil rights and religious groups. The resolutions and statements of these organizations are direct evidence establishing that the term “redskins” “may disparage” a substantial composite of Native Americans. See *Squaw Valley*, 80 U.S.P.Q.2d at 1267 (legislation and resolutions passed by several states constituted prima facie evidence that the term “squaw” may disparage a substantial composite of Native Americans).

Native American Nations, Tribes and Organizations

All major national Native American organizations have called for sports teams to stop using “Native American” names, mascots and symbols, and most have especially objected to the name “Redskins.” No national Native American organizations support the continued use of “Native” sports references or the term “Redskins.”

The National Congress of American Indians (“NCAI”), an organization consisting of over 250 American Indian and Native Alaskan tribal governments, has repeatedly denounced the use of so-called “Native American” references in sports. See Exhibit B. The NCAI repeatedly spoke out in favor of the cancellation of the registered marks of the Washington Redskins NFL football team during the course of the *Harjo* proceedings. *Id.*

The National Indian Education Association, the largest organization of Native American educators, and the National Indian Youth Council have called for the elimination of so-called Indian references in sports since the inception of each organization in the 1960s. See Exhibits C and M.

Other Native American nations and organizations have similarly called for the end of the use of "Native American" names and mascots in sports, such as:

- Affiliated Tribes of Northwest Indians
- Alliance Against Racial Mascots
- Alliance of Native Americans of Southern California
- American Indian College Fund
- American Indian Higher Education Consortium
- American Indian Language and Culture Education Board
- Americans for Indian Opportunity
- Cedarville Rancheria Tribal Office
- Cherokee Nation
- Comanche Nation of Oklahoma
- Concerned American Indian Parents
- Eagle and Condor Indigenous Peoples' Alliance
- First Peoples Nation
- Garbieleno/Tongva Nation
- The Great Lakes Inter-Tribal Council
- Greater Tulsa Area Indian Affairs Commission
- International Indian Treaty
- The Inter-Tribal Council of the Five Civilized Tribes (representing the Cherokee, Chickasaw, Choctaw, Muscogee and Seminole Nations)
- The Juaneño Band of Mission Indians
- Kansas Association for Native American Education
- Lakota/Dakota Advocates for Human & Civil Rights
- Little Traverse Bay Bands of Odawa Indians
- Menominee Tribe of Indians
- Midwest Alliance of Sovereign Tribes
- Minnesota Indian Education Association
- The Morning Star Institute
- National Indian Child Welfare Association
- National Indian Youth Council
- National Institute for Native Leadership in Higher Education
- National Native American Law Student Association
- Native American Finance Officers Association
- Native American Journalists Association
- Native American Rights Fund
- Oneida Tribe of Indians of Wisconsin
- Pauma Indian Reservation
- Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation

February 24, 2010

Page 7

- The Peoria Tribe of Indians
- Ramona Band of Cahuilla Mission Indians
- San Bernardino/Riverside Counties Native American Community Council
- Seminole Nation
- Soboba Band of Luiseño Mission Indians
- The Southern California Indian Center
- Standing Rock Sioux Tribe
- Torres Martinez Band of Cahuilla Mission Indians
- Tulsa Indian Coalition Against Racism
- United Indian Nations in Oklahoma
- Vallejo Inter-Tribal Council
- Wisconsin Indian Education Association

See Exhibit D.

Federal and State Governmental Bodies

Numerous federal and state governmental bodies have also called for an end to the use of so-called American Indian images and names, like “Redskins,” in sports.

In 2001, the U.S. Commission on Civil Rights (the “Commission”), an independent, bipartisan agency of the federal government,² issued a report objecting to the use of “Native American” names and images for sports teams. *See* Exhibit E. The Commission found that the use of “Native American” references results in the “perpetuation of harmful stereotypes” that hurt Native American students and indeed may “create a racially hostile educational environment that may be intimidating to Indian students.” *Id.* Furthermore, according to the Commission:

Schools that continue to use Indian imagery and references claim that their use stimulates interest in Native American culture and honors Native Americans. These institutions have simply failed to listen to the Native groups, religious leaders, and civil rights organizations that oppose these symbols. These Indian-based symbols and team names are not accurate representations of Native Americans. . . . Sadly, they also encourage biases and prejudices

² Created by the Civil Rights Act of 1957, the Commission’s mission includes studying and collecting information relating to discrimination, serving as a national clearinghouse for information with respect to discrimination, and preparing reports, findings and recommendations to the President and Congress. *See* 42 U.S.C. § 1975a.

that have a negative effect on contemporary Indian people. . . . The fight to eliminate Indian nicknames and images in sports is only one front of the larger battle to eliminate obstacles that confront American Indians. . . . The elimination of stereotypes will make room for education about real Indian people, current Native American issues, and the rich variety of American Indian cultures in our country.

Id.

Also in 2001, the District of Columbia City Council passed a resolution calling on the Washington Redskins to change its name because the name is a “demeaning and dehumanizing racist insult. . . .” Exhibit F. In 2002, the Metropolitan Washington Council of Governments followed suit. *Id.*

Likewise, numerous other states and school districts have adopted resolutions or position statements calling for sports teams to discontinue the use of “Native American” mascots. These include:

- Hutchinson (Kansas) Human Relations Commission
- Los Angeles Unified School District
- Louisville (Kentucky) Combined School Districts
- Maryland Commission on Indian Affairs
- Michigan Board of Education
- Minnesota State Board of Education
- Nebraska Commission on Indian Affairs
- New Hampshire State Board of Education
- New York State Education Department
- North Carolina Commission of Indian Affairs
- Tennessee Commission on Indian Affairs
- Washington State Board of Education

See Exhibit G.

Professional Member Organizations

Professional membership organizations have also condemned the use of “Native American” names, such as “Redskins,” because of the negative and stereotyping impact on Native Americans.

In 2001, the American Counseling Association (“ACA”), an organization of nearly 45,000 counseling professionals, passed a resolution noting that “Native American

February 24, 2010

Page 9

imagery as mascots and sports symbols creates a hostile environment for [the] development and dignity [of students],” and calling upon members to “work toward the elimination of stereotypical Native American images. . . .” Exhibit H.

Subsequently, in 2005, the American Psychological Association (“APA”), the leading professional society of psychologists, with over 150,000 members worldwide, adopted a resolution calling for the immediate cessation of the use of American Indian mascots, symbols, images and personalities with respect to sports teams and educational institutions. The APA resolution declared that the use of “American Indian” mascots, symbols, images, and personalities “is an offensive and intolerable practice,” “is disrespectful of the spiritual beliefs and values of American Indian nations,” “is a form of discrimination . . . that can lead to negative relations between groups,” and “has a negative impact on other communities by allowing for the perpetuation of stereotypes and stigmatization of another cultural group.” Exhibit I.

In addition, the Society of Native American Psychologists (“SNAP”) has condemned the use of “Native American” names and mascots for sports teams. In a Statement against the Mascots, SNAP expressed concern that the use of the mascots and names “compromises our ability to engage in ethical professional practice and service to the campus and community.” Exhibit J. Due to the symbols’ “culturally inaccurate, stereotypic image . . . we believe that the continuation of the use of Indians as symbols and mascots is incongruous with the philosophy espoused by many Americans as promoting inclusivity and diversity.” *Id.*

In 2007, the American Sociological Association (“ASA”), an organization of sociologists with over 14,000 members, also adopted a resolution calling for discontinuing the use of “Native American” names, logos and mascots in sports. The resolution declared that “social science scholarship has demonstrated that the continued use of Native American nicknames, logos and mascots in sport reflect and reinforce misleading stereotypes of Native Americans in both past and contemporary times,” that so-called “Native American” names, logos and mascots “harm Native American people in psychological, educational, and social ways,” and that their use “shows disrespect for Native American spiritual and cultural practices.” Exhibit K.

Included among other membership organizations calling for the elimination of “Indian” sports references are:

- American Anthropological Association
- Modern Language Association
- National Education Association
- North American Society for the Sociology of Sport
- Society of Indian Psychologists of the Americas

- Society for the Study of Social Problems
- Unity: Journalists of Color

Id.

Civil Rights and Religious Organizations

Leading civil rights and religious organizations have also found the use of “Native American” names and mascots disparaging and have called for the end of their use.

In 1999, the National Association for the Advancement of Colored People (“NAACP”) adopted a resolution calling upon “all professional sports teams, and public and private schools and universities . . . to reject the use of Native Americans . . . as sports mascots and symbols, and affirm their commitment to respectful racial and cultural inclusion in all aspects of their institutions.” The NAACP found that the use of “Native American” mascots “perpetuates racist stereotypes and undermines the self-determination and dignity of Indian people.” Exhibit L.

Likewise, the National Conference of Christians and Jews (“NCCJ”) (now known as the National Conference of Community and Justice) has called on sports teams to stop using the name “Redskins.” The NCCJ resolution declared that the use of the term “redskins” was “racist, derogatory and demeaning to the American Indian.” Exhibit M.

Similarly, in 1992, the Central Conference of American Rabbis, the organized rabbinate of Reform Judaism, adopted a resolution condemning the use of the name “redskins” in connection with the NFL football team in Washington, DC. *See* Exhibit N.

On numerous occasions, the United Methodist Church has likewise called on sports teams to cease using disparaging “Native American” mascots and names. According to the 2008 Book of Resolutions, the Church denounced the continued use of “Native American” names for sport teams as “racist and dehumanizing.” Exhibit O. As recently as November 2009, the Church stated, “we stand with Native Americans, especially Native American children, across the country who are continually confronted by racially offensive sports mascots.” *Id.*

The following civil rights and/or religious organizations are also among those that have adopted resolutions calling for the end of “Native American” sports names and mascots:

- Alianza Indigena Sin Fronteras
- American Jewish Committee
- Catholics in Alliance for the Common Good

- The Episcopal Diocese of Los Angeles, Native American Ministries
- Friends Committee on National Legislation
- The Interfaith Center on Corporate Responsibility
- Interfaith Conference of Metropolitan Washington
- Leadership Conference on Civil Rights
- The League of United Latin American Citizens
- The Presbyterian Church, U.S.A.
- Rainbow Coalition
- Rio Grande Native American Church
- The Southern Christian Leadership Conference
- Tulsa Interfaith Alliance
- Tulsa Metropolitan Ministry
- Unitarian Universalist Association of Congregations
- The United Church of Christ

See Exhibit P.

D. Newspaper Editorials and Columnists Also Have Called for the Cessation of the Term “Redskins”

Many newspapers and magazines have published columns and editorials calling for the Washington NFL football team to change its name from “Redskins” and calling more generally for an end to the use of “Native American” names and mascots in sports. These publications are also relevant to the Examining Attorney’s determination of whether the applied-for mark “may disparage” Native Americans. *See Squaw Valley*, 80 U.S.P.Q.2d at 1267-1268.

For example, the editorial boards of *The Washington Post*, *Los Angeles Times* and *Indian Country Today* have all condemned the Washington Redskins football team for its continued use of a disparaging and racist nickname:

- “Sports teams with Native American names tend to use derogatory images and symbols, which is why the U.S. Civil Rights Commission in 2001 urged schools to stop the practice. Plenty do so anyway. . . , but very few professional or college teams have names as pejorative as ‘redskins.’ The Washington franchise’s name is an embarrassment to the nation’s capital and a blight on the NFL.” Editorial, “The ‘Redskins’ Should Go,” *Los Angeles Times* (November 29, 2009).
- “We share in the excitement, but in truth we also are embarrassed to embrace a team that is so terribly named. . . . We take team

February 24, 2010

Page 12

owner Daniel M. Snyder at his word that he sees the nickname as an honor. . . . By the same token, it really is not up to the offender to characterize the nature of the offense. We can't imagine Mr. Snyder, or anyone else for that matter, sitting in a room with Native Americans and referring to them as Redskins." Editorial, "Go Redskins. But let the Name Go, Too," *The Washington Post* (September 11, 2006).

- "It speaks to American obtuseness that so many sports people and media are so thick-headed about the brazen insult and the easy dismissal of the predominate Indian position on the subject." Editorial, "Abusive Mascots Still a Serious Issue," *Indian Country Today* (August 17, 2005).

Exhibit Q.

Numerous journalists have written columns and opinion pieces calling for an end to "Native American" sports names, with many singling out the "Redskins" as especially disparaging. The following excerpts are illustrative:

- "Of them all [Native American sports nicknames], the most offensive is Redskins. . . . So long as we reflexively think of Indians as perpetual fighters in war paint, we cannot so easily connect with the real Native Americans of today, understand their plight, and appreciate how desperately they battle poverty, alcoholism, drug addiction along with a general hopelessness that result in such a high suicide rate. Sport nicknames may seem like a small, even foolish, thing, but their visibility helps keep Indians trapped in history, cartoon figures frozen on the warpath." Frank Deford, "Heap big Hypocrisy. American Indian Nicknames do not Honor the Culture," *Sports Illustrated On-line* (SI.com) (May 25, 2005) (available at: http://sportsillustrated.cnn.com/2005/writers/frank_deford/05/25/indians.deford/).
- "Above all, it's the Redskins who continue to use, and profit from, what is by far the most offensive nickname in sports. Defending the name 'Redskins' on any grounds – except that it rakes in a bundle of marketing bucks – is farcical. . . . The last thing Snyder needs is to fuss about the 'trademark' rights to a nickname that insults countless Native Americans – and plenty of others, too." Thomas Boswell, "Hard to Cope With Latest Embarrassment," *The Washington Post* (December 20, 2000).

February 24, 2010

Page 13

- “The most startling aspect is that universities are supposed to be halls of enlightenment, not dark corridors of ignorance. They should not stand for discriminatory practices. . . . Native American imagery is so engrained in our nation’s consciousness that many never recognize the psychological damage it inflicts upon a group already all but annihilated.” Jon Saraceno, “Native Americans Should Decide for Themselves on Offensive Mascots,” *USA Today* (February 21, 2007).
- “There can be no doubt that the nickname is about only one thing – skin color. Hail to the Washington Redskins. They are the team Washingtonians cheer Sundays. But we also know, deep down, that nobody would have dared suggest that a team be named as a reference to any other skin color. No one ever would have suggested calling the capital city’s team the Washington Whiteskins or Blackskins or Yellowskins or Palefaces or Darkies.” Martin Schram, “A Washington Wrong that Can be Fixed,” *Ventura County Star* (October 20, 2009).
- “He [Dan Snyder] should find some name that isn’t offensive to millions of Americans – that isn’t casually or cheerfully racist. Some name that doesn’t evoke past episodes that fill many people with shame. Some name, any name, that sounds more like the 21st century than the 19th. . . . Well, can you imagine a team called the Washington Darkies? . . . What about the Houston Hispanics for a new soccer franchise? What is it, except numbers, that makes those names unacceptable but Indian-derived names just fine?” Eugene Robinson, “Name Change Could Truly Wipe Clean Redskins’ Slate,” *Saint Paul Pioneer Press* (August 24, 1999).
- “Why, whether you’re black, or white, Hispanic or Asian, whether you’re well off or getting by on public assistance, on the left or on the right, is most everyone okay with the term ‘Redskin?’ Why am I still waiting for Daniel Snyder to understand that if his team’s logo featured Mandingo tribesmen or orthodox Hasidics, it would be labeled racist and anti-Semitic? . . . ‘I mean if you look at that logo and you really think about the name, it is racist.’” Mike Wise, “Questionable Naming Rights,” *The Washington Post* (September 17, 2005) (quoting former Washington Redskins kick returner Chad Morton).
- “But some nicknames have taken on a different hue in modern times, and have come to offend people, and not just those who

have a soft spot in their heart for a Raptor, et al. They are the nicknames associated with American Indians.” Ira Berkow, “It’s Time for Redskins to Exit,” *The New York Times* (November 15, 1996).

- “But as the new football season approaches, enough is enough: Washington Redskins is a horrendously racist name. . . . Redskins! Just sit with that word for a while. Because of the nature of the historic conflict between white man and Indian, the word redskin carries another, more implicit meaning — it marks the people described as a different, hence exotic, hence somehow threatening tribe. Here, the equivalency is with Jews. Could we imagine the Washington Hebes?” Michael Tomasky, “What’s In A Name? Prospect: Seriously, ‘Washington Redskins’ Really is Racist,” *CBSNews On-Line* (August 20, 2006) (available at: <http://www.cbsnews.com/stories/2006/08/16/opinion/main1901662.shtml>)

Exhibit R.

Protestors provide, as Exhibit S, copies of the following articles and columns, including several from *The Washington Post*, the leading hometown newspaper for the Washington NFL football team:

- Perspectives, “American Indian Mascots. Respectful Gesture or Negative Stereotype?,” *Indian Country Today* (August 7, 2001) (81% of respondents believed that Indian mascots are offensive and disparaging to Native Americans).
- Eva Rodriguez, “Time for ‘Redskins’ to Go,” *The Washington Post* (November 16, 2009).
- Courtland Milloy, “It’s Time to Let Karma Work on Changing Redskins’ Name,” *The Washington Post* (January 6, 2010).
- Courtland Milloy, “On the Sidelines, The Sad Symbol of a Sorry Tradition,” *The Washington Post* (October 21, 2009).
- Martin Schram, “Renaming Redskins a Cause We Can All Support,” *Scripps News* (October 13, 2009).
- Gavin Clarkson, “Using Indian Mascots Continues Racial Harm,” *The Detroit News* (November 11, 2004).
- Roger I. Abrams, “What’s In a Name?,” *The Huffington Post* (January 20, 2010).

- Kevin Blackiston, "Dear Redskins, Do the Right Thing," *Fanhouse* (November 17, 2009) (available at: <http://kevin-blackistone.fanhouse.com/2009/11/17/dear-redskins-do-the-right-thing/>).
- Diana Gore, "Law Students Celebrate Native American Heritage Month", *The GW Hatchet* (November 19, 2007).
- Charly Edsitty, "Native American Stereotypes Perpetuates by Sports Mascots", *The Lariat Online* (September 22, 2008).
- Doug George, "Do Right Thing: End Native Stereotyping," *The Post-Standard* (October 11, 1998).
- Sumya Hasan, "Native American Mascots a Concern," *Campus Times* (February 19, 2009) (available at: <http://www.campustimes.org/native-american-mascots-a-concern-1.1485996>).
- Deborah Mathis, "Redskins, Want to Win? Change Your Name," *Black America Web* (October 26, 2009).
- Mickey Alvarado, "Petition Drive Looks to – Eliminate Redskins," *Tecumseh Herald* (October 8, 2008).
- Rick Wormwood, "Last of the Redskins," *The Phoenix* (December 2, 2008).
- Mandi Linder, "Redskins' Insults Native Americans," *Marquette Tribune* (December 3, 2009).
- Gary Norris Gary, "Change the Name Please!!!," *BlackAthlete* (October 17, 2007).

Numerous other newspaper articles and media pieces make the same points, but have not been provided in the interests of brevity.

E. Many Sports Teams Have Stopped Using "Redskins"

Over the past few decades, numerous sports teams have stopped using the name "Redskins." In the most high-profile example, Miami University in Ohio changed the disparaging name of its sports teams from "Redskins" to "Red Hawks." The University took this action after a 1996 resolution of the Miami Tribe of Oklahoma called for the University to change the name. As the University's newspaper, *The Voice*, recognized:

Some elements are without question slurs against this race of people. The name "redskins" would seem to be such a slur, regardless of the intention of the person who says it, in the same way that "nigger" is now commonly regarded as such a slur against African-Americans. We continue to do things to or with Native Americans that we would never consider doing to or with African-Americans or Asian-Americans.

February 24, 2010

Page 16

Exhibit T.

In addition to Miami University, the following non-exhaustive list of schools and school districts have ceased using the nickname “Redskins”:

- Arvada Senior High School (Arvada, CO) – to Reds
- Bell-Chatham, Illinois Board of Education school district
- Canajoharie, New York school district
- Frontier High School (Deefield, MA) – to Redhawks
- Grand Forks Central High School (Grand Forks, ND) – to Knights
- Hiawatha, Kansas school district
- Monticello High School (Monticello, MN) – to Magic
- Naperville Central High School (Naperville, IL) – to Redhawks
- Parsipanny-Troy Hills High School (Parsipanny, NJ) – to Redhawks
- Rickards High School (Tallahassee, FL) – to Raiders
- Saranac Lake, New York school district
- Scarborough High School (Scarborough, ME) – to Red Storm
- Seneca High School (Louisville, KY) – to Redhawks
- Southern Nazarene University (Bethany, OK) – to Crimson Storm

See Exhibit U.

Numerous additional high schools, colleges and universities have stopped using other “Native American” names (*i.e.*, other than “Redskins”) for their athletic teams. See Exhibit V.

Some schools changed their team names, logos and/or mascots in response to a position taken by the National Collegiate Athletic Association (“NCAA”), the governing body for college athletics. Specifically, in 2005, the NCAA condemned the use of these disparaging references and banned the use of “Native Indian” names, logos and mascots by colleges and universities during its championship tournaments. See Exhibit W.

F. The TTAB Has Previously Held that the Term “Redskins” May Disparage Native Americans

The Trademark Trial and Appeal Board has already found that “redskins” may disparage Native Americans. Eleven years ago, the TTAB found the term may be disparaging to a substantial composite of Native Americans and may bring them into contempt or disrepute. Accordingly, under 15 U.S.C. § 1052(a), the TTAB cancelled six trademark

registrations using the term “redskins” held by the owner of the Washington NFL football team. *See Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q. 2d 1705, 1749 (TTAB 1999).³

The foregoing exhibits and evidence make clear that the disparaging nature of the term “redskins” has not changed since the TTAB decided *Harjo*. The term “redskins,” whether used in connection to a professional football team or paraphernalia sold or ancillary services provided in connection therewith, or in other contexts, inherently retains its disparaging connection to and with Native Americans. The dictionary definitions provided above demonstrate that the term “redskins” lacks a “separate non-derogatory character.” *See Heeb* 89 U.S.P.Q.2d, 1076.

Finally, the existence of previously registered marks incorporating the term “redskins” is not relevant. “The fact that, whether because of administrative error or otherwise, some marks have been registered even though they may be in violation of the governing statutory standards does not mean that the agency must forgo applying that standard in all other cases.” *Boulevard Entertainment*, 67 U.S.P.Q.2d 1475, at 1480 (Fed. Cir. 2003); *Heeb*, 89 U.S.P.Q.2d 1071, 1078.

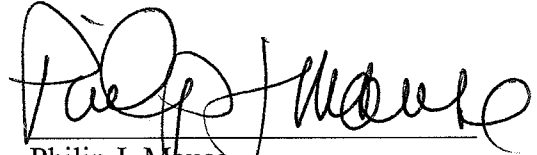
³ On appeal from the TTAB, the district court granted summary judgment to Pro-Football, Inc., ruling that laches barred the petitioners’ claims and, in the alternative, that the TTAB had not based its “disparagement” finding on substantial evidence because the TTAB supposedly failed to resolve certain contested issues of fact. *See Pro-Football, Inc. v. Harjo (Harjo I)*, 284 F. Supp.2d 96, 127-28, 68 U.S.P.Q.2d 1225, 1254-1255 (D.D.C. 2003). The D.C. Circuit Court subsequently reversed and remanded because the district court applied an incorrect standard for laches, and did not reach the question whether the TTAB’s decision was supported by substantial evidence. *See Pro-Football, Inc. v. Harjo (Harjo II)*, 415 F.3d 44, 75 U.S.P.Q.2d 1525 (D.C. Cir. 2005). On remand, the district court again granted summary judgment on laches and the D.C. Circuit affirmed, again without addressing whether the TTAB’s decision was supported by substantial evidence. *See Pro-Football, Inc. v. Harjo (Harjo III)*, 567 F. Supp.2d 46, 87 U.S.P.Q.2d 1891 (D.D.C. 2008), *aff’d* 565 F.3d 880, 90 U.S.P.Q.2d 1593 (D.C. Cir. 2009), *cert. denied*, 130 S.Ct. 631 (2009). The district court’s un-reviewed ruling in *Harjo I* regarding substantial evidence does not bind the Examiner Attorney or the PTO in this application, as a different district court or the D.C. Circuit could well reach a different conclusion, especially based on a different record or if the TTAB resolves the issues of fact that the district court believed had not been resolved. Furthermore, in *Harjo*, the TTAB and district court were analyzing whether “redskins” was disparaging in the late 1960s or 1970s whereas this application concerns whether the term is currently disparaging. *Harjo*, 50 U.S.P.Q.2d at 1741; *Harjo I*, 68 U.S.P.Q.2d at 1248. And, finally, had laches not barred the petitioners’ claims, the district court plainly erred in reversing the TTAB; the district court should have remanded the case to the TTAB for additional fact-finding if it believed that the TTAB’s failure to resolve factual disputes meant that its ruling was not supported by substantial evidence. *See Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (“[i]f the record before the agency does not support the agency action, if the agency has not considered all relevant factors, or if the reviewing court simply cannot evaluate the challenged agency action on the basis of the record before it, the proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation”).

February 24, 2010
Page 18

CONCLUSION

Protestors respectfully request that the Deputy Commissioner grant this Protest and provide the exhibits to the Examining Attorney for consideration.

Respectfully submitted,



Philip J. Mause
Jesse A. Witten
Alain J. Lapter
DRINKER BIDDLE & REATH, LLP
1500 K Street NW
Suite 1100
Washington, DC 20005
(202) 842-8800

Counsel for Protestors Suzan Shown
Harjo, Manley A. Begay, Jr., Duke
Ray Harjo II, Robert I. Holden,
William A. Means, and Mateo
Romero

PJM/AJL/am

Enclosures