

10TH ANNUAL FREE WINTER CLE

University of Arkansas

School of Law

E.J. Ball Courtroom

Leflar Law Center

Saturday, February 28, 2015

9:00 am - 12:00 pm

Registration 8:30 am

2015 Free Winter CLE Presenters

2 Hours General CLE plus 1 Hour Ethics CLE

Pre-Register here: <http://attend.com/LAWwinterCLE2015>

Making Sense of Executive Action – Recent Issues in Immigration

Elizabeth Young

Professor, University of Arkansas School of Law

“The Godfather” Teaches Legal Ethics

Howard Brill

Vincent Foster University Professor of Legal Ethics & Professional Responsibility
University of Arkansas School of Law

*The Washington Redskins, Mardi Gras and High End Fashion:
Selected Hot Topics in Intellectual Property Law*

Uche Ewelukwa

Professor, University of Arkansas School of Law



UNIVERSITY OF
ARKANSAS
SCHOOL OF LAW

*Making Sense of Executive Action:
Recent Issues in Immigration*

Professor Elizabeth Young

Executive Action

Winter Ct E
University of Arkansas School of Law
February 28, 2015

Immigration Background

- 11.5 million undocumented immigrants
- Pathway to citizenship
 - Family
 - Business
 - Humanitarian
- Limited numbers of visa available
- Restrictions on who is eligible

Visa Issuance

- **Family - 400,000 - 600,000**
 - **Unlimited** = Nuclear Family - spouses, minor children, parents of adult USC (typically between 300,000 - 500,000)
 - **23,400** = Unmarried adult children of USC
 - **114,200** = Spouses, children (minor and unmarried adult), parents of adult LPR
 - **23,400** = Married adult children of USC
 - **65,000** = Brothers and sisters of USC
- **Business - 150,000**
 - Limited to specialized workers, those with advanced degrees, or specialized skills
- **Humanitarian - 150,000 - 200,000**
 - Asylum and refugee - ~80,000
 - Diversity - 50,000
 - Other -

Visa Eligibility

- Must be admissible
- Household income requirements
- Criminal background check
- Immigration violations

Executive Action – November 2014

Deferred Action-based

- Expand Deferred Action for Childhood Arrivals Program
- Extend Deferred Action to Parents of US Citizens and LPRs
- Expand Provisional Waivers to Spouses and Children of LPRs
- Revise Parole Rules
- Support High-skilled Business and Workers

Enforcement-based

- Revise Removal Priorities
- End Secure Communities and Replace with New Priority Enforcement Program

Structural-based

- Personnel Reform for ICE officers
- Promote the Naturalization Process
- Strengthen Border Security

Expand Deferred Action for Childhood Arrivals (DACA)

- No age restriction [v. under 30]
- Came to the United States before 16th birthday
- Continuous residence since January 1, 2010 [v. 2007]
- Education/military requirement
- Exclude those with (1) felony, (2) significant misdemeanor, or (3) three or more misdemeanors
- Valid for three years [v. 2 years]

Extend Deferred Action to Parents of US Citizens and LPRs

- Child born before November 20, 2014
- Continuous residence since January 1, 2010
- Not an enforcement priority under "Removal Priorities" issued November 20, 2014

Sharing Information

- If denied, will refer if meet criteria for issuance of NTA
- If granted, will not refer
- Will share if
 - Threat to public safety or national security
 - To identify or prevent fraudulent claims
 - For investigation or prosecution of a criminal offense
- Does not prevent sharing if program ends with a new administration

End Secure Communities and Replace with New Priority Enforcement Program

- End Secure Communities
- Fingerprint-based biometric data submitted during booking
- Only if listed in Priority 1 and 2 or are a threat to national security
- No more immigration detainers – only immigration "notifications"

Revise Removal Priorities

- Priority 1
 - Terrorist/national security
 - Apprehended at border
 - Gang activity
 - Felonies (as defined by local jurisdiction)
 - Aggravated felonies (as defined by 101(a)(43))
- Priority 2
 - 3 or more misdemeanors
 - Significant misdemeanors
 - Those that entered after January 1, 2014
- Priority 3
 - Issued a final order after January 1, 2014

- Does not prohibit removal detention, but directs resources to be dedicated to these individuals
- ICE will review cases of those in custody and set for removal, *may* agree to admin close if before ECHR
- Training will take place, implemented on January 5, 2015
- Texas, et al. v. United States of America, et al.
 - Preliminary injunction granted at District Court level
 - IXM filed an emergency stay at Circuit Court level

Structural-based

- Strengthen Border Security
 - Joint Task Forces with USCG, CBP, ICE, CIS
 - Re-assess goals
- Personnel Reform for ICE officers
 - Job series realignment
 - Premium ability pay coverage
- Promote the Naturalization Process
 - Promote citizenship education and public awareness for IPRs
 - Allow naturalization applicants to use credit cards
 - Assess potential for partial fee waivers in the next biennial fee study

Criminal Definitions

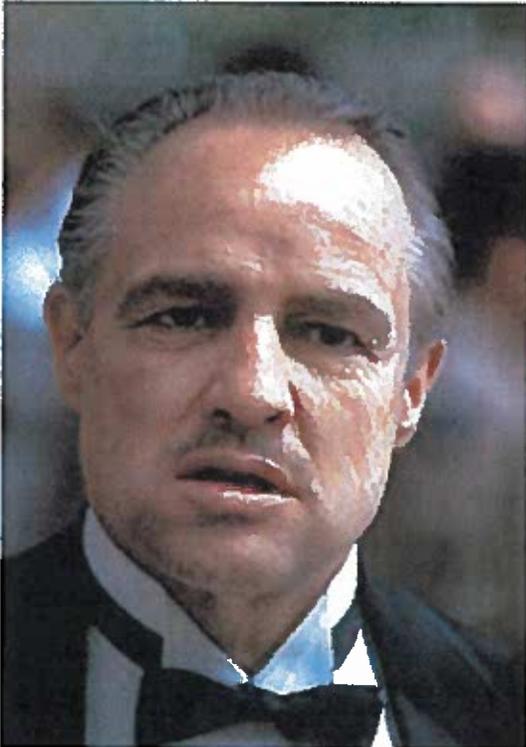
- Significant Misdemeanor
 - Domestic violence
 - Sexual abuse or exploitation
 - Burglary
 - Unlawful possession or use of a firearm
 - Drug distribution or trafficking; or
 - DWI or DUI
- OR
 - Sentenced to more than 90 days (meaning time in custody so no suspended sentence)
- Misdemeanor
 - Less than 90 days
 - Does not categorically include minor traffic violations
- Expunged convictions and juvenile convictions
- Totality of circumstances review

*“The Godfather”
Teaches Legal Ethics*

Professor Howard Brill

“THE GODFATHER”

TEACHES LEGAL ETHICS



Lessons for lawyers from the story, the characters and the words in the Godfather trilogy.

10th Annual Winter CLE

Howard W. Brill
University of Arkansas
February 28, 2015

“The Godfather” teaches Legal Ethics

Introduction: The novel of Mario Puzo was published in 1969. The Godfather was released in 1972. The characters of the Corleone family soon became a part of American culture, as did their language. The Godfather II (1974) and The Godfather III (1990) cemented their status.

This CLE program is not built on the plot of the Godfather trilogy. Indeed much of the plot does not contain positive role models, including attorney Tom Hagen (the consigliere to the family). Instead the intent is to take phrases and dialogue from the movies, and suggest that those statements have relevance to attorneys in their practice of law. The words may give positive advice to attorneys, but may also provide warnings.

Notes:

- (1) This program is a work in progress.
- (2) This program incorporates some thoughts from a 2010 article (in For the Defense) written by Attorney Daniel E. Cummins of Scranton, Pennsylvania.

Arkansas Rules of Professional Conduct

Preamble, ¶ 16: Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Rule 1.2: Scope Of Representation And Allocation Of Authority Between Client And Lawyer:

- (a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's

decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.7: Conflict Of Interest: Current Clients.

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another clients; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;(2) the representation is not prohibited by law;
 - (2) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (3) each affected client gives informed consent, confirmed in writing.

Rule 1.8: Conflict of Interest: Current Clients: Specific Rule

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
 - (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in the transaction; and
 - (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

- (b) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include the spouse or a person within the third degree of relationship to the lawyer or the client. The following persons are relatives with the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grand child, great-grand child, nephew or niece.

Rule 1.17: Sale Of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of law practice, including good will, if the following conditions are satisfied:

- (a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the State in which the practice has been conducted;
- (b) The practice, or the entire area of practice, is sold to one or more lawyers or law firms;
- (c) The seller gives written notice to each of the seller's clients regarding:
 - (1) the proposed sale;
 - (2) the client's right to retain other counsel or to take possession of the file; and,

- (3) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by the court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.
- (d) The fees charged clients shall not be increased by reason of the sale.
- (e) In every instance in which a law practice in its entirety is sold, the selling attorney, or the legal representative thereof, in the case of a deceased, disabled or disappeared attorney, shall within twenty (20) days of the completion of the sale, file an affidavit with the Committee on Professional Conduct that he or she has complied with the requirements of notice contained within this provision, to include proof of publication, along with a list of clients so notified and an exemplar of such notice. Such affidavit shall also contain the address where communications may thereafter be directed to the affiant.

Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 3.3: Candor Toward The Tribunal.

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal; or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or had engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.9: Advocate In Nonadjudicative Proceedings

A lawyer representing a client before a legislative or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Rule 4.1: Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 4.4: Respect For Rights Of Third Persons

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably

should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.

Rule 5.1: Responsibilities Of A Partner, Managers, And Supervisory Lawyers

- (a) A partner in a law firm and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 6.1: Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

- (a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:
 - (1) persons of limited means or
 - (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and
- (b) provide any additional services through:
 - (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's

- (2) economic resources or would be otherwise inappropriate; delivery of legal services at a substantially reduced fee to persons of limited means; or
- (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

American Bar Association Formal Opinions

92-363 (Use of threats of criminal prosecution in connection with a civil matter)

95-397 (Duty to disclose death of client)

2014- 468 (Facilitating the sale of a law practice)

Applicable Case Law and Secondary Authorities:

Sexton v. Committee on Professional Conduct, 299 Ark. 439, 774 S.W.3d 114 (1989) (Improper business relationship with client under Rule 1.8(a).)

Sexton Law Firm, P.A. v. Milligan, 329 Ark. 285, 948 S.W.3d (1997) (Law firm sued former associate over fees and cases).

Mobley Law Firm, P.A. v. Lisle Law Firm, P.A., 353 Ark. 828, 120 S.W.3d 537 (2003) (Litigation between firms).

Sims v. Moser, 373 Ark. 491, 284 S.W.3d 505 (2008) (Judicial dissolution of firm).

Jewell v. Fletcher, 2010 Ark. 195, 377 S.W.3d 176 (2010) (Judicial dissolution of firm).

Morgan v. Turner, 2010 Ark. 245, 386 S.W.3d 888 (Action against former member of firm over class action fees).

Grayson & Grayson, P.A. v. Couch, 2012 Ark. App. 20, 388 S.W.3d 96 (2012) (Litigation between firms over fees).

See Judith Kilpatrick, Changing Offices or Firms: Doing It Right, 2002 Ark. L. Notes 39.

Thompson v. Supreme Court Committee on Professional Conduct, 369 Ark. 186, 252 S.W.3d 127 (2007)(attorney sanctioned under Rule 4.4(a) for filing lis pendens notices without merit).

Culpepper v. Smith, 302 Ark. 558, 729 S.W.3d 293 (1990): an attorney is charged with knowledge “that neither he nor his client should use the criminal process as an affirmative weapon to force or coerce payment of any debt, whether disputed or undisputed.”

Jones v. Clinton, 36 F. Supp. 2d 1118 (E.D. Ark. 1999)(attorney held in contempt for intentionally false statements during deposition, and referral made to disciplinary authorities).

Howard W. Brill
February 28, 2015

*The Washington Redskins,
Mardi Gras and High End Fashion:
Selected Hot Topics in Intellectual
Property Law*

Professor Uche Ewelukwa

Lanham Act Excerpts

§ 1: Registration of trademarks

(a)

- (1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.
- (2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.
- (3) The statement shall be verified by the applicant and specify that--
 - (A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;
 - (B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;
 - (C) the mark is in use in commerce; and
 - (D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall--
 - (i) state exceptions to the claim of exclusive use; and
 - (ii) shall specify, to the extent of the verifier's knowledge--
 - (I) any concurrent use by others; (II) the goods on or in connection with which and the areas in which each concurrent use exists; (III) the periods of each use; and (IV) the goods and area for which the applicant desires registration.
- (4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(b)

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify--

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant's bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 44 [[15 USC 1126](#)], no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(c) Amendment of application under subsection (b) to conform to requirements under subsection (a). At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this Act, by amending his or her application to bring it into conformity with the requirements of subsection (a).

(d) Verified statement that trademark is used in commerce.

(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 13(b)(2) [[15 USC 1063\(b\)\(2\)](#)] to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark

Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 2 [15 USC 1052]. The notice of registration shall specify the goods or services for which the mark is registered.

- (2) The Director shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Director may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.
- (3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.
- (4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period

not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

- (e) If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

§ 2: Trademarks registrable on the principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it--

- (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; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 2(9) of the Uruguay Round Agreements Act [19 USC §3501(9)]) enters into force with respect to the United States.
- (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 any simulation thereof.
- (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.
- (d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: Provided, That if the Director determines that confusion, mistake, or deception is not likely to result from the

continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this Act; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

- (e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 4 [15 USC 1054], (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.
- (f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before the date of the enactment of the North American Free Trade Agreement Implementation Act [enacted Dec. 8, 1993].

A mark which when used would cause dilution under section 43(c) [[15 USC 1125\(c\)](#)] may be refused registration only pursuant to a proceeding brought under section 13 [[15 USC 1063](#)]. A registration for a mark which when used would cause dilution under section 43(c) [[15 USC 1125\(c\)](#)] may be canceled pursuant to a proceeding brought under either section 14 [[15 USC 1064](#)] or section 24 [[15 USC 1092](#)].

§ 7: Certificates of registration

- (a) Issuance and form. Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon, and a record thereof shall be kept in the Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this Act, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.
- (b) Certificate as prima facie evidence. A certificate of registration of a mark upon the principal register provided by this Act shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.
- (c) Application to register mark considered constructive use. Contingent on the registration of a mark on the principal register provided by this Act, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing--
- (1) has used the mark;
 - (2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or
 - (3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 44(d) [[15](#)

USC 1126(d)] to register the mark which is pending or has resulted in registration of the mark.

- (d) Issuance to assignee. A certificate of registration of a mark may be issued to the assignee or the applicant, but the assignment must first be recorded in the Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of original period.
- (e) Surrender, cancellation, or amendment by registrant. Upon application of the registrant the Director may permit any registration to be surrendered for cancelation, and upon cancelation appropriate entry shall be made in the records of the Patent and Trademark Office. Upon application of the registrant and payment of the prescribed fee, the Director for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the Patent and Trademark Office and upon the certificate of registration or, if said certificate is lost or destroyed, upon a certified copy thereof.
- (f) Copies of Patent and Trademark Office records as evidence. Copies of any records, books, papers, or drawings belonging to the Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the Patent and Trademark Office and certified by the Director, or in his name by an employee of the Office duly designated by the Director, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the prescribed fee shall have such copies.
- (g) Correction of Patent and Trademark Office mistake. Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.
- (h) Correction of applicant's mistake. Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a

new certificate upon the payment of the prescribed fee: Provided, That the correction does not involve such changes in the registration as to require republication of the mark.

§ 13: Opposition to registration

(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including as a result of dilution under section 43(c) [[15 USC 1125\(c\)](#)], may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 12 of this Act [[15 USC 1062](#)] of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

(b) Unless registration is successfully opposed--

- (1) a mark entitled to registration on the principal register based on an application filed under section 1(a) [[15 USC 1051\(a\)](#)] or pursuant to section 44 [[15 USC 1126](#)] shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or
- (2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1(b) [[15 USC 1051\(b\)](#)].

§14: Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of dilution under section 43(c) [[15 USC 1125\(c\)](#)], by the registration of a mark on the principal register established by this Act, or under the Act of March 3, 1881, or the Act of February 20, 1905:

- (1) Within five years from the date of the registration of the mark under this Act.
- (2) Within five years from the date of publication under section 12(c) hereof [[15 USC 1062\(c\)](#)] of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

- (3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 4 [15 USC 1054] or of subsection (a), (b), or (c) of section 2 [15 USC 1052] for a registration under this Act, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.
- (4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 12 of this Act [15 USC 1062].
- (5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this Act, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

Foreign Law

Canada:

Trade-marks Act (R.S.C., 1985, c. T-13)

Section 7: UNFAIR COMPETITION AND PROHIBITED MARKS

9. PROHIBITED MARKS:

- (1) No person shall adopt in connection with a business, as a trade-mark or otherwise, any mark consisting of, or so nearly resembling as to be likely to be mistaken for,
- (j) any **scandalous, obscene or immoral word** or device;

Australia:

Paris Convention for the Protection of Industrial Property

Article 6 quinquies: Marks: Protection of Marks Registered in One Country of the Union in the Other Countries of the Union

- B. Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

- (iii) when they are **contrary to morality or public order** and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

New Zealand:

Trade Marks Act 2002

Subpart 2—Absolute grounds for not registering trade mark

17. Absolute grounds for not registering trade mark: general

- (1) The Commissioner must not register as a trade mark or part of a trade mark any matter—
- (1) the use of which would be likely to deceive or cause confusion; or
 - (2) the use of which is contrary to New Zealand law or would otherwise be disentitled to protection in any court; or
 - (3) the use or registration of which would, in the opinion of the Commissioner, be **likely to offend a significant section of the community**, including Māori.
- (2) The Commissioner must not register a trade mark if the application is made in bad faith.

United Kingdom:

Trade Marks Act 1994

Part I: Registered Trade Names

Grounds for refusal of registration

- (3) A trade mark shall not be registered if it is-
- (a) **contrary to public policy or to accepted principles of morality**

Appendix A – Petitioners’ Submissions of <i>Harjo</i> Petitioners’ First, Fifth, Sixth & Tenth Notices of Reliance (“NR”), Deposition Testimony & Deposition Exhibits			
NR Ex.	Entry Type	Source	TTABVue Ref. No.
10	Business letter	Redskin Review to Redskin Park, May 2, 1994, requesting player autograph	68, p. 17
10	Business letter	Redskin Review to Redskin Park, Aug. 9, 1994, requesting issuance of game credentials	68, p. 18
10	Business letter	Redskin Review to Redskin Park, Aug. 23, 1994, requesting issuance of game credentials	68, p. 20
10	Business letter	Redskin Review to Redskin Park, Aug. 23, 1994, requesting player autographs	68, p. 21
10	Business letter	Redskin Review to Redskin Park, Aug. 30, 1994, requesting issuance of game credentials	68, p. 22
10	Business letter	Redskin Review to Redskin Park, Sept. 13, 1994, requesting issuance of game credentials	68, p. 23
10	Business letter	Redskin Review to Redskin Park, Sept. 20, 1994, requesting press and photo passes	68, p. 24
10	Business letter	Redskin Review to Redskin Park, Sept. 27, 1994, requesting press and photo passes	68, p. 25
10	Business letter	Redskin Review to Redskin Park, Sept. 28, 1994, requesting player autographs	68, p. 26
10	Business letter	Redskin Review to Redskin Park, Oct. 11, 1994, requesting press and photo passes	68, p. 27
10	Business letter	Redskin Review to Redskin Park, Oct. 18, 1994, requesting issuance of game credentials	68, p. 28
10	Business letter	Redskin Review to Redskin Park, Nov. 1, 1994, requesting issuance of game credentials	68, p. 29
10	Business letter	Redskin Review to Redskin Park, Nov. 15, 1994, requesting issuance of game credentials	68, p. 30
10	Business letter	Redskin Review to Redskin Park, Nov. 22, 1994, requesting issuance of game credentials	68, p. 31
10	Business letter	Redskin Review to Redskin Park, Nov. 29, 1994, requesting issuance of game credentials	68, p. 32
10	Business letter	Redskin Review to Washington Redskins, Nov. 30, 1995, regarding 1995 press passes	68, pp. 33-34
10	Business letter	Redskin Review to Redskin Park, Dec. 13, 1994, requesting press and photo passes	68, p. 35
10	Business letter	Progressive Publ’g Grp. to Washington Redskins, July 17, 1995, regarding ownership change of Redskin Review	68, pp. 36-37
10	Business letter	Redskin Review to Redskin Park, Aug. 29, 1995, requesting issuance of game credentials	68, p. 38
10	Business letter	Redskin Review to Redskin Park, Oct. 26, 1995, requesting issuance of game credentials	68, p. 39
10	Business letter	Redskin Review to Redskin Park, Nov. 14, 1995, requesting issuance of game credentials	68, p. 40

To: Bethel, James (trademarks@legalforce.com)
Subject: U.S. TRADEMARK APPLICATION NO. 86052159 - REDSKINS HOG RINDS - 72225
Sent: 12/29/2013 4:28:55 PM
Sent As: ECOM107@USPTO.GOV
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[Attachment - 22](#)
[Attachment - 23](#)

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

U.S. APPLICATION SERIAL NO. 86052159

MARK: REDSKINS HOG RINDS

86052159

CORRESPONDENT ADDRESS:

RAJ ABHYANKER
RAJ ABHYANKER, P.C.
1580 W EL CAMINO REAL STE 8
MOUNTAIN VIEW, CA 94040-2462

CLICK HERE TO RESPOND TO
<http://www.uspto.gov/trademarks/tcas/r/>

APPLICANT: Bethel, James

CORRESPONDENT'S REFERENCE/DOCKET NO :

72225

CORRESPONDENT E-MAIL ADDRESS:

trademarks@legalforce.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 12/29/2013

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES that applicant must address:

- REFUSAL TO REGISTER - DISPARAGING MARK
- ADDITIONAL INFORMATION REQUIRED
- DISCLAIMER REQUIRED

SEARCH RESULTS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

REFUSAL TO REGISTER – DISPARAGING MARK

Registration is refused because the applied-for mark **REDSKINS HOG RINDS** consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs, or national symbols. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see In re Tam*, 108 USPQ2d 1305, 1309 (TTAB 2013); *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); TMEP §§1203.03, 1203.03(b).

The following two factors are considered when determining whether matter may be disparaging under Trademark Act Section 2(a):

(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 and/or services, and the manner in which the mark is used in the marketplace in connection with the goods and/or services

(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

In re Tam, 108 USPQ2d at 1309; *In re Lebanese Arak Corp.*, 94 USPQ2d at 1217; *In re Heeb Media LLC*, 89 USPQ2d 1071, 1074 (TTAB 2008); TMEP §1203.03(b)(i).

“REDSKIN” is defined as follows:

“*Offensive Slang* Used as a disparaging term for a Native American” (see attached evidence from <http://education.yahoo.com/reference/dictionary/entry/redskin> captured 12/29/13);

“an old-fashioned informal name, now considered taboo, for a Native American” (see attached evidence from <http://www.collinsdictionary.com/dictionary/english/redskin> captured 12/29/13);

“(slang) offensive term for Native Americans” (see attached evidence from <https://www.vocabulary.com/dictionary/Redskin> captured 12/29/13);

“*dated offensive* an American Indian” (see attached evidence from http://www.oxforddictionaries.com/us/definition/american_english/redskin?q=redskin captured 12/29/13);

“*Slang (often disparaging and offensive)* a North American Indian” (see attached evidence from <http://dictionary.infoplease.com/redskin> captured 12/29/13).

As evidence that American Indians find the term “REDSKINS” offensive, see the attached news article, “*NCAI Report: Redskins Name Has ‘Ugly and Racist Legacy’*” (Indian Country Today online, October 11, 2013) located at <http://indiancountrytodaymedianetwork.com/2013/10/11/ncai-report-redskins-name-has-ugly-and-racist-legacy-151714> (captured 12/29/13). In fact, the National Congress of American Indians (NCAI) now uses the designations “R*dskins” and “R Word” when referring to “REDSKINS” sports teams mascots (see, e.g., attachment from http://www.ncai.org/resources/ncai_publications/ending-the-legacy-of-racism-in-sports-the-era-of-harmful-indian-sports-mascots) captured 12/29/13.

As additional evidence that American Indians find the term “REDSKINS” offensive, see the attached article, “*Oneida Indian Nation pressures NFL’s Redskins to change name*” (MSNBC, September 9, 2013) located at <http://www.msnbc.com/martin-bashir/oneida-indian-nation-presses-nfls-redskins> (captured 12/29/13). See also the attached article, “*Native American Activists Want Supreme Court to Hear Redskins Case*” (Washington Post, September 16, 2009) located at <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/15/AR2009091500973.html> (captured 12/29/13), which states that “Native American activists are trying to get the Supreme Court involved in its long-running dispute with the Washington Redskins about whether the team’s name is so offensive that it

does not deserve trademark protection.”

Given that “REDSKINS” in the mark is a derogatory slang term that refers to, and is considered offensive by, American Indians, registration of the applied-for mark must be refused under Section 2(a) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal by submitting evidence and arguments in support of registration.

Applicant must respond to the requirements set forth below.

ADDITIONAL INFORMATION REQUIRED

Applicant must specify whether the word “REDSKIN” and/or “REDSKINS” has any significance in the pork rind trade or industry or as applied to the goods described in the application, or if such wording is a “term of art” within applicant’s industry. See 37 C.F.R. §2.61(b); TMEP §814.

Failure to respond to a request for information is an additional ground for refusing registration. See *In re Cheezwhse.com, Inc.*, 85 USPQ2d 1917, 1919 (TTAB 2008); *In re DTI P'ship LLP*, 67 USPQ2d 1699, 1701 (TTAB 2003); TMEP §814.

DISCLAIMER REQUIRED

Applicant must disclaim the descriptive wording “HOG RINDS” apart from the mark as shown because it merely describes a feature of applicant’s goods. See 15 U.S.C. §§1052(e)(1), 1056(a); *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 1251, 103 USPQ2d 1753, 1755 (Fed. Cir. 2012) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Steelbuilding.com*, 415 F.3d 1293, 1297, 75 USPQ2d 1420, 1421 (Fed. Cir. 2005).

“HOG” means “a domesticated pig” (see attached evidence from <http://www.collinsdictionary.com/dictionary/english/hog> captured 12/29/13). Applicant’s goods are pork RINDS; therefore, the wording “HOG RINDS” merely describes the nature of the goods.

Applicant should submit a disclaimer in the following standardized format:

No claim is made to the exclusive right to use “HOG RINDS” apart from the mark as shown.

For an overview of disclaimers and instructions on how to satisfy this disclaimer requirement online using the Trademark Electronic Application System (TEAS) form, please go to <http://www.uspto.gov/trademarks/law/disclaimer.jsp>.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal and/or requirements in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant’s rights. See TMEP §§705.02, 709.06.

/Kathy de Jonge/
Examining Attorney

Law Office 107
(571) 272-9152
kathleen.dejonge@USPTO.gov (informal use only)

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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Definition of redskin

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red snapper >

red·skin (rɛd'skɪn) KEY

NOUN:
Offensive Slang

Used as a disparaging term for a Native American.

Word of the Day

perfunctory
Definition (adjective)
unenthusiastic,
routine, or
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redskin (ˈrɛd skɪn)

Definitions

noun

an old-fashioned informal name, now considered taboo, for a [Native American](#)

Word Frequency ●●●●○

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Redskin

DEFINITIONS OF: Redskin

1

(slang) offensive term for Native Americans

Synonyms: [Injun](#), [red man](#)

Type of: [American Indian](#), [Indian](#), [Red Indian](#)
a member of the race of people living in America when Europeans arrived

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Uneasy relationships, ill fated decisions and lingering mistrust have left the Redskins in ruins four years into Coach Mike Shanahan's tenure

Washington Post | Dec 29, 2011

The Redskins potentially could also restructure their front office this offseason

Washington Post | Dec 29, 2011

The next Redskins coach will be the team's eighth since Snyder purchased the franchise from the Jack Kent Cooke estate in 1999

Washington Post | Dec 29, 2011

The Redskins had no official comment on Shanahan's status, but his dismissal — which has been speculated on for weeks — would come as no surprise

Washington Post | Dec 29, 2011

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Definition of redskin in English

redskin
Syllabification: (red skin)
Pronunciation: /ˈrɛd skɪn/

noun
dated offensive
an American Indian.

Redskin is first recorded in the late 17th century and was applied to the Algonquian peoples generally, but specifically to the Delaware (who lived in what is now southern New York State and New York City, New Jersey, and eastern Pennsylvania). Redskin referred not to the natural skin color of the Delaware, but to their use of vermilion face paint and body paint. In time, however, through a process that in linguistics is called *pejoration*, by which a neutral term acquires an unfavorable connotation or denotation, redskin lost its neutral, accurate descriptive sense and became a term of disparagement. Red man is first recorded in the early 17th century and was originally neutral in tone. Red Indian is first recorded in the early 19th century and was used by the British, far more than by Americans, to distinguish the Indians of the subcontinent from the Indians of the Americas. All three terms are dated or offensive. American Indian and Native American are now the standard umbrella terms. Of course, if it is possible or appropriate, one can also use specific tribal names (Cheyenne, Nez Percé, etc.).

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Word of the day

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red-skin

Pronunciation (red'skin'), (key)
—n. Slang (often disparaging and offensive)
a North American Indian.

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<< Red Sindh

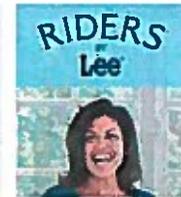
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redskin (Thesaurus)

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NCAI Report: Redskins Name Has "Ugly and Racist Legacy"

NCIMN STAFF | 10/11/13

The National Congress of American Indians released a report yesterday that explains just how offensive the legacy of the name Redskins is.

According to the NCAI, the report titled, "Ending the Legacy of Racism in

Sports & the Era of Harmful 'Indian' Sports Mascots," lays out the Washington football team's "ugly and racist legacy" and details the organization's position in explaining why the name is derogatory.

"The report NCAI has released today provides the history of an overwhelming movement to end the era of harmful 'Indian' mascots," Jacqueline Pata, NCAI's



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Executive Director, said in a statement. "Including the fact that Native peoples have fought these mascots since 1963 and no professional sports team has established a new 'Indian' mascot since 1964."

The NCAI called on the NFL, MLB, NHL, other professional sports leagues, and all associated businesses to end the era of harmful 'Indian' mascots.

In a press release, the organization said that as sports teams' brands emerged, they hoped to gain financially from mocking Native American culture.

"Each of these professional sports businesses attempt to establish a story of honoring Native peoples through the names or mascots; however, each one—be it through logos or traditions — diminishes the place, status, and humanity of contemporary Native citizens."

In a public letter, dated October 9th and addressed to season ticket holders, the Redskins owner, Dan Snyder, said that the team's 81-year history is not founded on racism. "As some of you may know, our team began 81 years ago -- in 1932 -- with the name 'Boston Braves.' The following year, the franchise name was changed to the 'Boston Redskins.' On that inaugural Redskins team, four players and our Head Coach were Native Americans. The name was never a label. It was, and continues to be, a badge of honor."



Dan Snyder (Associated Press)

The NCAI disagrees. Pata cites the team's well-documented history of racism: "The team's original owner, George Preston Marshall, named the team the 'Redsk'ns' in 1932, just months before he led a 13-year league-wide ban on African American players in the NFL," Pata wrote in a release. "Nearly 30 years after the race-based name was chosen, Marshall was forced by the league to hire the team's first black player in 1962. He was the last NFL owner to do so."

In his letter, Snyder says that he respects those who are offended by the name,

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and will continue to "listen and learn from them," but will preserve the team's heritage.

That heritage, he says, includes support from Native tribes who are not offended by the team's name. Snyder writes about Robert Green, the longtime Native American Chief of the Fredericksburg-area Patowomeck Tribe, who said, according to the letter, "Frankly, the members of my tribe -- the vast majority -- don't find it offensive. I've been a Redskins fan for years. And to be honest with you, I would be offended if they did change [the name, Redskins...]"

RELATED Retired Patowomeck Chief Would Be 'Offended' if D.C. Team Changes Name

Jefferson Keel, NCAI President and Lt. Governor of the Chickasaw Nation of Oklahoma, has rejected the idea that the name is not offensive to Native persons. "[That name] originated in the bounty paid for Native body parts and human flesh. It does not honor Native people in any way, and has no place in modern American society," he told ICTMN.

The report does not specifically address Green's comments, but it does state that there were false claims made by the football team, which at one point claimed that NCAI leadership endorsed the use of the Redskins mascot.

The report, which can be read [here](#), was released after Snyder's letter circulated the web and stirred up an opportunity for provocative comments among readers, journalists, and activists.

RELATED Columnist Laments Dan Snyder's Letter to Redskins Fans

The organization's report also solidly relays its main concern that the use of stereotypical Indian mascots will harm youth - and lists 28 high schools that have dropped the 'R' word. "Removing these harmful mascots is just one part of our effort to encourage our children to achieve their greatest potential," Pata said in the news release. "We're focused on their future; these mascots keep society focused on the negative stereotypes of the past."

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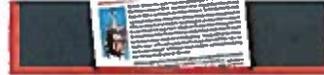
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Abridged History of Harjo/Blackhorse v. Pro-Football Litigation:

Harjo Petitioned to Cancel Redskins Mark	9/10/1992:	Petition to Trademark Trial & Appeal Board (TTAB) to cancel six Redskins Marks Harjo v. Pro-Football, Inc., Cancellation No. 21,069 (T.T.A.B.)
	3/1994:	Pretrial Order: - TTAB dismissed Pro-Football's Constitutional - Laches defense was unavailable as well Harjo V. Pro Football, Inc., 30 U.S.P.Q.2d 1828, 1833, 1994 W> 262249 (Trademark Tr. & App. Bc.1994) ("Harjo I") .
	1997:	Resolution of the National Congress of American Indians (NCAI) Released
TTAB Canceled Redskins Federal Registration	4/2/1999:	TTAB Issued Cancellation Order of the Federal registrations Harjo II, 50 U.S.P.Q.2d at 1748, 1999 WL 375907.
	6/1/1999:	Pro-Football sought de-novo review
	12/11/2000:	Pro-Football v. Harjo, 57 U.S.P.Q.2d 1140, 1142-43, 2000 WL 1923326 (D.D.C.2000) ("Harjo III") .
	7/12/2002:	Filed Cross Motions for Summary Judgment
District Court Granted Pro-Football's Summary Judgment	9/30/2003:	U.S. District Court reversed the TTAB decision and granted Summary Judgment to Pro-Football Pro-Football, Inc. v. Harjo, 284 F.Supp.2d 96 (2003) ("Harjo Summ. J. Op.")
Pro-Football Appealed to D.C. Circuit	7/15/2005:	Petitioners Appeal to the D.C. Circuit: - Never addressed the district court's disparagement ruling Pro-Football, Inc. v. Harjo, 415 F.3d 44 (2005), 367 U.S.App.D.C. 276, 75 U.S.P.Q.2d 1525
Blackhorse Petitioners Sought Cancellation	8/11/2006:	Defendants Amanda Blackhorse and four others petitioned the TTAB to cancel the federal registrations of the Redskins Marks based on the same claims as Harjo
	9/26/2006:	Pro-Football filed an answer
	9/28/2006:	TTAB agreed to suspend proceedings in Blackhorse pending final disposition of the related Harjo case

Summary Judgement granted to Pro-Football	6/25/2008:	District court granted Pro-Football's Motion for Summary Judgement - Laches barred Harjo's claim Football, Inc. v. Harjo , 567 F. Supp.2d 46 (2008), 87 U.S.P.Q.2d 1891.
Harjo Appealed to D.C. Circuit	5/15/2009:	Back up to the D.C. Circuit where the court upheld the District Court's decision - Case was resolved solely on the issue of laches, and the Court never addressed the Board's finding of disparagement on the merits Football, Inc. v. Harjo , 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009).
D.C. Circuit Upheld District Court		
SCOTUS denied cert.	11/16/2009:	Harjo appealed to The Supreme Court of the United States - denied the Harjo petition for Writ of Certiorari, ending the Harjo case
	3/2010:	Blackhorse proceedings resumed in TTAB
	2011:	Joint Stipulation in Discovery
	2011:	TTAB Interlocutory Orders
TTAB Cancels Redskins Registration	6/18/2014:	TTAB scheduled the cancellation of the registrations for the Redskins Marks Blackhorse v. Pro-Football, Inc. , Cancellation No. 92046185 (T.T.A.B.)
Pro-Football Filed Complaint in District Court	8/14/14:	Complaint filed by Pro-Football in the United States District Court for the Eastern District of Virginia, Alexandria Division
	9/22/2014:	Blackhorse's Memo of Law in Support of Defendant's Motion to Dismiss filed
	11/25/2014:	Motion to Dismiss denied Case No. 1:14-cv-01043-GBL-IDD
	01/09/2015:	Notice of Intervention by the United States of America to Defend the Constitutionality of the Federal Statute

Navajo Nation v. Urban Outfitters, Inc. Litigation History

- 3/16/2009: Earliest infringing use noted
- 10/12/2011: Navajo Nation Department of Justice sent Urban Outfitters a "Cease and Desist" letter, dated June 30, 2011
- 2/28/2012: Plaintiffs filed action against Defendants
- 4/30/2012: Defendants filed Motion to Dismiss the Complaint
- 5/21/2012: Plaintiffs filed Amended Complaint
- 6/22/2012: Defendants filed Motion to Dismiss Amended Complaint
- 9/20/2012: Defendants filed Motion to Transfer Venue
- 10/9/2012: Plaintiffs filed a Response to Defendant's Motion to Transfer
- 1/16/2013: Court decided against Transfer of Venue
[Navajo Nation v. Urban Outfitters, Inc.](#), 918 F. Supp. 2d 1245, 1248 (D.N.M.2013)
- 3/26/2013: Motion to Dismiss is Granted in part, Denied in part, and Reserve Ruling pending consideration of parties' supplemental briefs.
[Navajo Nation v. Urban Outfitters, Inc.](#), 935 F. Supp. 2d 1147, 1178 (D.N.M. 2013)
- 4/4/2013: Second Amended Complaint filed
- 8/2/2013: Unsuccessful attempt to mediate
- Parties filed a Stipulation and Proposed Case Management Order
- 8/7/2013: Court entered a Scheduling Order adopting the proposed Case Management Order of the parties
- 8/12/2013: Plaintiffs filed a Motion and Memorandum for Leave to file a Third Amended Complaint
- 11/6/2013: Court granted Plaintiffs' Motion and Memorandum for Leave to File a Third Amended Complaint and Plaintiffs may add their claims for Contributory Trademark Infringement and Vicarious Liability
- 11/18/2013: Third Amended Complaint filed
- 12/2/2013: Defendants filed Answer to Amended Complaint
- 2014: Series of filings with the court
- 9/19/2014: Court granted Plaintiffs' Motion to Dismiss Counterclaim V pursuant to 12(b)(1) and 12(b)(6)
- 12/11/2014: Order Granting Unopposed Motion to Extend Deadlines
- 1/8/2015: Deadline for Compliance with the portions of the Court's order pertaining to additional ESI discovery
- 2/21/2015: Deadline for Dispositive Motions and Motions *in Limine* pertaining to expert reports and expert discovery
- 06/10/2015: Pretrial Order (Plaintiffs to Defendants)
- 07/01/2015: Pretrial Order (Defendants to Court)
- Seven calendar days after the Final Pretrial Conference or as the Court instructs: Trial Motions *in Limine*

113TH CONGRESS
1ST SESSION

H. R. 1278

To amend the Trademark Act of 1946 regarding the disparagement of Native American persons or peoples through marks that use the term “redskin”, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 2013

Mr. FALCOMVAEGA (for himself, Mr. COLE, Ms. MCCOLLUM, Ms. NORTON, Mr. GRIJALVA, Ms. BASS, Ms. MOORE, Mr. LEWIS, Mr. HONDA, and Mrs. CHRISTENSEN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Trademark Act of 1946 regarding the disparagement of Native American persons or peoples through marks that use the term “redskin”, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Non-Disparagement
5 of Native American Persons or Peoples in Trademark
6 Registration Act of 2013”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The use of the terms “redskin” and “red-
4 skins” in trademarks is widely understood to refer
5 to or imply a negative reference to Native American
6 persons or peoples, or both.

7 (2) The term “redskin” has been demonstrated
8 by overwhelming linguistic and historical evidence to
9 constitute a disparaging epithet insulting to Native
10 American persons or peoples, or both.

11 (3) Major Native American organizations, in-
12 cluding the National Congress of American Indians,
13 the National Indian Education Association, the Na-
14 tive American Journalists Association, the Native
15 American Rights Fund, the Morning Star Institute,
16 the International Indian Treaty Council, and the
17 National Indian Youth Council, have opposed the
18 continued use of the term “redskin” in trademarks
19 or as the name of sports teams.

20 (4) Recent psychological evidence has dem-
21 onstrated the general negative effects associated
22 with references in sports to Native American people.

23 (5) Trademarks containing the term “redskin”,
24 or any derivation of the term, should not continue
25 to enjoy the benefits of Federal registration.

1 **SEC. 3. REFERENCES TO TRADEMARK ACT OF 1946.**

2 In this Act, the term "Trademark Act of 1946"
3 means the Act entitled "An Act to provide for the registra-
4 tion and protection of trademarks used in commerce, to
5 carry out the provisions of certain international conven-
6 tions, and for other purposes", approved July 5, 1946
7 (commonly referred to as the "Lanham Act"; 15 U.S.C.
8 1051 et seq.).

9 **SEC. 4. REGISTRATION OF MARKS CONTAINING CERTAIN**
10 **TERMS.**

11 Section 2(a) of the Trademark Act of 1946 (15
12 U.S.C. 1052(a)) is amended by adding at the end the fol-
13 lowing: "A mark consisting of or including the term 'red-
14 skin' or any derivation of the term 'redskin' shall be con-
15 clusively presumed to consist of matter which may dispar-
16 age persons if (1) the mark has been, is, or is intended
17 to be used in commerce in connection with references to
18 or images of one or more Native American persons or peo-
19 ples, or to Native American persons or peoples in general;
20 or (2) the Director determines that the term as included
21 in the mark is commonly understood to refer to one or
22 more Native Americans persons or peoples, or to Native
23 American persons or peoples in general."

24 **SEC. 5. CANCELLATION OF MARKS.**

25 Section 14 of the Trademark Act of 1946 (15 U.S.C.
26 1064) is amended—

1 (1) in the text before paragraph (1), by striking
2 “A petition to cancel” and inserting “(a) PETITIONS
3 TO CANCEL.—A petition to cancel”; and

4 (2) by adding at the end the following:

5 “(b) CANCELLATION OF MARKS CONTAINING CER-
6 TAIN TERMS.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of this Act, the Director shall cancel a reg-
9 istration of a mark containing the term ‘redskin’ or
10 any derivation of the term ‘redskin’ if—

11 “(A) the mark has been or is used in com-
12 merce in connection with references to or im-
13 ages of one or more Native American persons
14 or peoples, or to Native American persons or
15 peoples in general; or

16 “(B) the Director determines that the term
17 as included in the mark is commonly under-
18 stood to refer to one or more Native American
19 persons or peoples, or to Native American per-
20 sons or peoples in general.

21 “(2) RENEWAL.—A registration cancelled under
22 paragraph (1) shall not be subject to renewal pursu-
23 ant to section 9 of this Act.”.

1 SEC. 6. CONFORMING AMENDMENTS.

2 (a) CANCELLATION DUE TO BLURRING OR DILU-
3 TION BY TARNISHMENT.—Section 2(f) of the Trademark
4 Act of 1946 (15 U.S.C. 1052(f)) is amended in the final
5 sentence by striking “section 14” and inserting “section
6 14(a)”.

7 (b) EXCEPTION TO INCONTESTABILITY.—Section 15
8 of such Act (15 U.S.C. 1065) is amended in the text be-
9 fore paragraph (1) by striking “section 14 of this Act,”
10 and inserting “section 14(a) of this Act or for which a
11 registration is required to be cancelled under section 14(b)
12 of this Act,”.

13 SEC. 7. EFFECTIVE DATE.

14 This Act shall take effect on the date of the enact-
15 ment of this Act and shall apply to—

16 (1) any mark that is registered under the
17 Trademark Act of 1946 before, on, or after such
18 date; and

19 (2) any application to register a mark under
20 that Act that is pending on, or filed on or after,
21 such date.

