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Government Can't Refuse Disparaging Trademarks, Supreme Court Rules

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By [Sam Hananel](#)

Government Can't Refuse Disparaging Trademarks, Supreme Court Rules

The Supreme Court on Monday struck down part of a law that bans offensive trademarks in a ruling that is expected to help the Washington Redskins in their legal fight over the team name. The justices ruled that the 71 year old trademark law barring disparaging terms infringes free speech rights.

The ruling is a victory for the Asian American rock band called the Slants, but the case was closely watched for the impact it would have on the separate dispute involving the Washington football team.

Slants founder Simon Tam tried to trademark the band name in 2011, but the U.S. Patent and Trademark Office denied the request on the ground that it disparages Asians. A federal appeals court in Washington later said the law barring offensive trademarks is unconstitutional.

The Redskins made similar arguments after the trademark office ruled in 2014 that the name offends American Indians and canceled the team's trademark. A federal appeals court in Richmond put the team's case on hold while waiting for the Supreme Court to rule in the Slants case.

In his opinion for the court, Justice Samuel Alito rejected arguments that trademarks are government speech, not private speech. Alito also said trademarks are not immune from First Amendment protection as part of a government program or subsidy.

Tam insisted he was not trying to be offensive, but wanted to transform a derisive term into a statement of pride.

The Redskins also contend their name honors American Indians, but the team has faced decades of legal challenges from Indian groups that say the name is racist.

Despite intense public pressure to change the name, Redskins owner Dan Snyder has refused, saying it "represents honor, respect and pride."

In the Slants case, government officials argued that the law did not infringe on free speech rights because the band was still free to use the name even without trademark protection. The same is true for the Redskins, but the team did not want to lose the legal protections that go along with a registered trademark. The protections include blocking the sale of counterfeit merchandise, and working to pursue a brand development strategy.

A federal appeals court had sided with the Slants in 2015, saying First Amendment protects "even hurtful speech that harms members of oft stigmatized communities."

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<http://news.adidas.com/US/Latest-News/adidas-Announces-Support-For-Mascot-Name-Changes-Ahead-Of-White-House-Tribal-Nations-Conference/s/7197ec89-d0fe-4557-b737-cd27dc76aba1>

High schools interested in changing their mascot identity can email their request to mascotchange@adidas.com.



Lee Juan Tyler of Idaho, and other audience members wait for the arrival of President Barack Obama to speak at the 2015 White House Tribal Nations Conference, Thursday, Nov. 5, 2015, in Washington. In conjunction with the conference, shoe company and apparel Adidas announced it will provide free design resources to schools looking to shelve Native American mascots, nicknames, imagery or symbolism. (AP Photo/Evan Vucci)

By ANNE M. PETERSON AP Sports Writer
PORTLAND, Ore. (AP) - Adidas is offering to help high schools nationwide drop Native American mascots.

Nov 5, 2015

The athletic shoe and apparel maker said Thursday it will provide free design resources to schools looking to shelve Native American mascots, nicknames, imagery or symbolism. The German company also pledged to provide financial support to ensure the cost of changing is not prohibitive.

Adidas announced the initiative in conjunction with the White House Tribal Nations Conference on Thursday in Washington. Adidas executives were among those attending the conference, which includes leaders from the 567 federally recognized tribes.

The company, which has its North American headquarters in Portland, Oregon, also said it will be a founding member of a coalition that addresses Native American mascots in sports.

According to the group Change the Mascot, there are about 2,000 schools nationwide that have Native American mascots.

The advocacy group says about a dozen schools have dropped Native mascots over the past two years and another 20 are considering a change.

Eric Liedtke, Adidas head of global brands who traveled to the conference, said sports must be inclusive.

"Today's announcement is a great way for us to offer up our resources to schools that want to do what's right - to administrators, teachers, students and athletes who want to make a difference in their lives and in their world," Liedtke said in a statement to The Associated Press. "Our intention is to help break down any barriers to change - change that can lead to a more respectful and inclusive environment for all American athletes."

The voluntary program would give schools access to the company's design team for logo redesign and uniform design across all sports. It seeks to be a collaborative effort with schools.

Adidas emphasized the initiative only involves high schools, and that the company is not mandating that schools change mascots and nicknames. The program does not involve its other agreements or sponsorships with professional or college teams, or with individual athletes.

The company said it embarked on the initiative because it became clear - through conversations with the White House - that schools "wanting to make a change had very little avenues to do so."

"We are committed to continuing a dialogue to look at the issue of Native images in sports and work to find solutions. Ultimately, it's the teams, athletes, coaches and fans who decide what changes they want to make. And if they want to make a change and we can help, then we want to help," the company said.

The use of such mascots has drawn increased attention and controversy in recent years. The NFL's Washington Redskins have resisted appeals by Native American and civil rights groups to change their name and mascot.

In 2005, the NCAA warned schools that they would face sanctions if they didn't change Native American logos or nicknames. Some colleges kept their nicknames by obtaining permission from tribes, including the Florida State Seminoles and the University of Utah Utes.

Some states have taken action at the high school level. Last month, California Gov. Jerry Brown signed a law that prohibits schools from using the term "Redskins."

Colorado Gov. John Hickenlooper recently ordered the creation of a commission to study the use of Native American mascots and come up with a list of recommendations for possible legislation.

In Oregon, the state Board of Education in 2012 ordered high schools to ban such mascots or risk losing public funding. The schools have until 2017 to comply.

Change the Mascot's Jackie Pata, executive director of the National Congress of American Indians, and Oneida Nation Representative Ray Halbritter applauded Adidas' move in a joint statement.

"We hope that a number of companies including FedEx, whose name adorns the Washington NFL team's stadium, will step forward and follow Adidas's lead," the statement said. "Adidas clearly understands that in 2015, businesses cannot sit on the sideline on this issue and that they must choose which side they are on. It is inspiring to see that Adidas has chosen to be on the side of inclusivity and mutual respect and has set an example for others to follow."