

Free The Slants to trademark 'offensive' name

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January 16, 2017

Asian-American band wants to own 'the language of oppression.' The Supreme Court should let it.

A hot-button Supreme Court case usually attracts a flurry of legal briefs and commentary. A case the court will consider Wednesday has done all that and also inspired something unique: a song by a rock-and-roll band.

The band is called The Slants, and its members are all Asian-American. Led by founder Simon Tam, the group has waged a lengthy First Amendment battle with the federal government for refusing to grant it a trademark. Why? Because the U.S. Patent and Trademark Office views its name as “disparaging” toward Asian Americans, and federal law prohibits granting such trademarks. The case gives the justices a chance to reiterate what it has correctly said many times: Under the First Amendment, it is not the government’s job to shield the public from speech that offends.

The word “slants” does have an insulting history, stereotyping Asians because of their eyes. But that was precisely why Tam wanted his band to be named The Slants. He says, “We want to take on these stereotypes that people have about us, like the slanted eyes, and own them. ... Everyone in the band really loves the fact that we can try and empower Asian Americans and say, ‘You know what? We are slant(ed). Who cares? We’re proud of that.’ ”

Or, as Tam put it in his song about the controversy, *From the Heart*:

Sorry if we try too hard

To take some power back for ours

The language of oppression

Will lose to education

Until the words can't hurt us again

The band is the latest example of “appropriation” — taking ownership, in a sense, of pejorative terms and turning them into badges of pride. The words “queer,” “dyke” and “nigger” have been reframed in that way to varying degrees. A brief filed with the court by Dykes on

Bikes asserts that it chose the name “to highlight and confront the controversial history of that term and dispel the notion that it is disparaging.”

Not everyone embraces that rationale. “While empowering to a young social justice rock band, that same (trademark) may be debilitating for those who remember life in American internment camps during World War II,” according to a group of civil rights legal organizations led by the Fred T. Korematsu Center for Law and Equality.

But other groups support The Slants by noting all the disparaging words that have become accepted over time. A Cato Institute brief points out that some insulting words “long ago entered our political vocabulary, encapsulating criticisms more succinctly than any polite term ever could.” Some examples: the Know-Nothing Party, the Democratic Party's donkey and even “suffragette” — a word whose diminutive suffix once trivialized women fighting for the right to vote.

The Slants and others also argue that the trademark office has been wildly inconsistent in denying disparaging trademarks, making it impossible for applicants to predict whether their names will be protected. A brief filed by the owners of the Washington Redskins — which lost its trademark for the same reason used in denying The Slants’ — contains a jaw-dropping list of offensive and vulgar names that the government has approved.

How does the government respond to these powerful arguments? By asserting that denial of a trademark to an entity such as The Slants is not censorship but merely a decision not to grant a government benefit. “Nothing in the First Amendment requires Congress to encourage the use of racial slurs in interstate commerce,” the government brief states, adding that The Slants can continue to use their name as long as they like without a trademark.

But denying a trademark is no small thing. Trademarks give businesses — including rock bands — exclusive rights to use their name, preventing copycats from siphoning away the value that goes along with it. The Slants argue that because trademarks are so valuable, denying that protection has a chilling effect on their freedom of speech.

The case is a difficult one, but the Supreme Court usually, though not always, rules in favor of First Amendment protection. So I am predicting — and hoping — that the justices, average age 69, give a favorable listen to the youthful words of The Slants:

Sorry if you take offense

But silence will not make amends

The system’s all wrong

And it won't be long

Before the kids are singing our song