



SCOTUS to Hear The Slants' Case

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The Supreme Court of the United States will hear the case of The Slants, the Portland, Ore.-based pop band that has spent the better part of the past six years' trying trademark its name.

It's unlikely the court will hear the case before 2017, with a decision to come without prior notice months later, but it's a huge win for the band to make it this far.

If you're late to this dance-pop party, here's a little recap:

More than five years ago, a friend suggested to Simon Tam, the band's bassist and founder, that he file a trademark for the name for marketing purposes, but the US Patent and Trademark Office rejected the registration, claiming the name was offensive to Asian Americans. In a series of court hearings and trials, Tam often has been unable to speak on his own behalf, relying instead on teams of largely Caucasian attorneys to argue his case for him while another team of Caucasian attorneys cite the Lanham Act, an archaic and often forgotten part of US law adopted in 1946 to establish a national system for the registration and issuance of trademarks. Tam has noted in conversations with former sister site *Geeks & Beats* and other publications that several other trademarks have been issued using the word "slant," but only his bands' application has been rejected. This court case has drawn support from varied groups often at odds with each other, including the Cato Institute and the American Civil Liberties Union, along with the NFL's Washington Redskins, whose own name has been the subject of a similar lawsuit filed with the Patent office.

There's plenty of background to be read [here](#), [here](#) and [here](#), but let's move to the present.

On Thursday, the Supreme Court announced it would hear The Slants' case and, at the same time, denied the case of the Washington Redskins. The Washington, DC-based NFL team had tried to convince the high court it was better positioned to argue its case, going so far as to say the Slants' case was "a necessary and ideal companion" to the team's suit.

As Andrew Chung reports for *Reuters*, the Supreme Court decided to hear the case and consider whether the US Patent and Trademark Office, which has used an archaic law in denying The Slants their trademark for the better part of a decade, is infringing upon otherwise denying the

band an aspect of their right to free speech. It is possible the court could later take up the football team's case, depending on the outcome of this one.

“John Connell, a lawyer for The Slants, said he was pleased with the court's decision to hear the appeal and looked forward to vindicating the band's First Amendment rights,” Chung wrote.

The Supreme Court, in announcing at least some of its docket for the upcoming year, seems to be paying particular attention to First Amendment cases. As noted by Lyle Denniston of the *Constitution Center* blog, four of the eight new cases added to the docket involve constitutional questions, and half of those are squarely focused on the First Amendment. In all, there are 35 cases on the docket for the term beginning Monday (Oct. 3) and stretching until next June.

“The two First Amendment cases new on the decision docket are very different,” Denniston says. “One involves the question of whether it violates the guarantee of free speech for the government to refuse to grant a trademark that would ‘disparage,’ or be offensive, to someone; the other tests whether it violates the concept of free commercial speech for a state to control how merchants explain to their customers a higher price they incur when they use a credit card.”

In The Slants' case—officially referred to as *Lee v. Tam*—the law in question is the Lanham Act, which the US Patent and Trademark Office has said gives it the right to refuse a trademark to the band because the name is offensive and harmful to a particular segment of the population, namely Asian Americans. (That the band is exclusively populated by Asian Americans and has the strong support of several Asian American activists groups apparently doesn't matter.) Last December, the federal appeals court ruled that the USPTO was restricting the band's free speech rights in denying their request for a trademark.

In June, The Slants asked the Supreme Court to review their appellate court victory in the hopes of settling the case once and for all.

“The law against disparaging trademarks has existed since 1946, but the Supreme Court has never interpreted its meaning or scope,” Denniston says. “That has meant that the Patent and Trademark Office had wide discretion about what would or would not be banned under the law.” It's possible that will be the main, if not only, focus of the court's ruling once the case is argued and decided.

To draw a line between The Slants' case and that of the football team, Denniston says that case is a “slight variation” on the same theme. “That case does not involve denial of a trademark, but revoking one that already existed. The team wanted the Supreme Court to take on its case along with the rock band case, to have the court make a broader look at the trademark question under the First Amendment.”

As always, we'll continue monitoring this case as it progresses. In the meantime, there's a ton of information and opinion out there on this case. Read more [here](#), [here](#) and [here](#) for starters.