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The Mascot Manifesto

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The Mascot Manifesto

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Abstract

My law review article analyzes the constitutionality of the Lanham Act, a federal trademark statute. Under the Lanham Act, trademark owners are prohibited from registering trademarks that may be considered "disparaging" or "scandalous" to others. However, what is considered "disparaging" or "scandalous" is determined under a subjective standard. What is offensive to one trademark examiner for purposes of registering a trademark may not be offensive to another.

Today, the Washington Redskins, a professional football franchise, finds themselves at the heart of the Lanham Act controversy. But underlying this trademark litigation is a deeper concern: whether the Lanham Act itself is unconstitutional and an encroachment on the freedom of speech.

History of the Redskins

- 1930 → Began as the Boston Braves.
- 1932 → Rebranded from the Braves to the Redskins.
- 1937 → Moves as a franchise to Washington, D.C.
- 1967 → Granted federal registration status for the Redskins trademark by the Patent and Trademark Office.
- 1974 → Granted five additional Redskins trademarks associated with the football club.
- 1992 → Retroactively loses federal registration status.

Since 1992, the Washington Redskins have been fighting to maintain their federally protected trademark status.

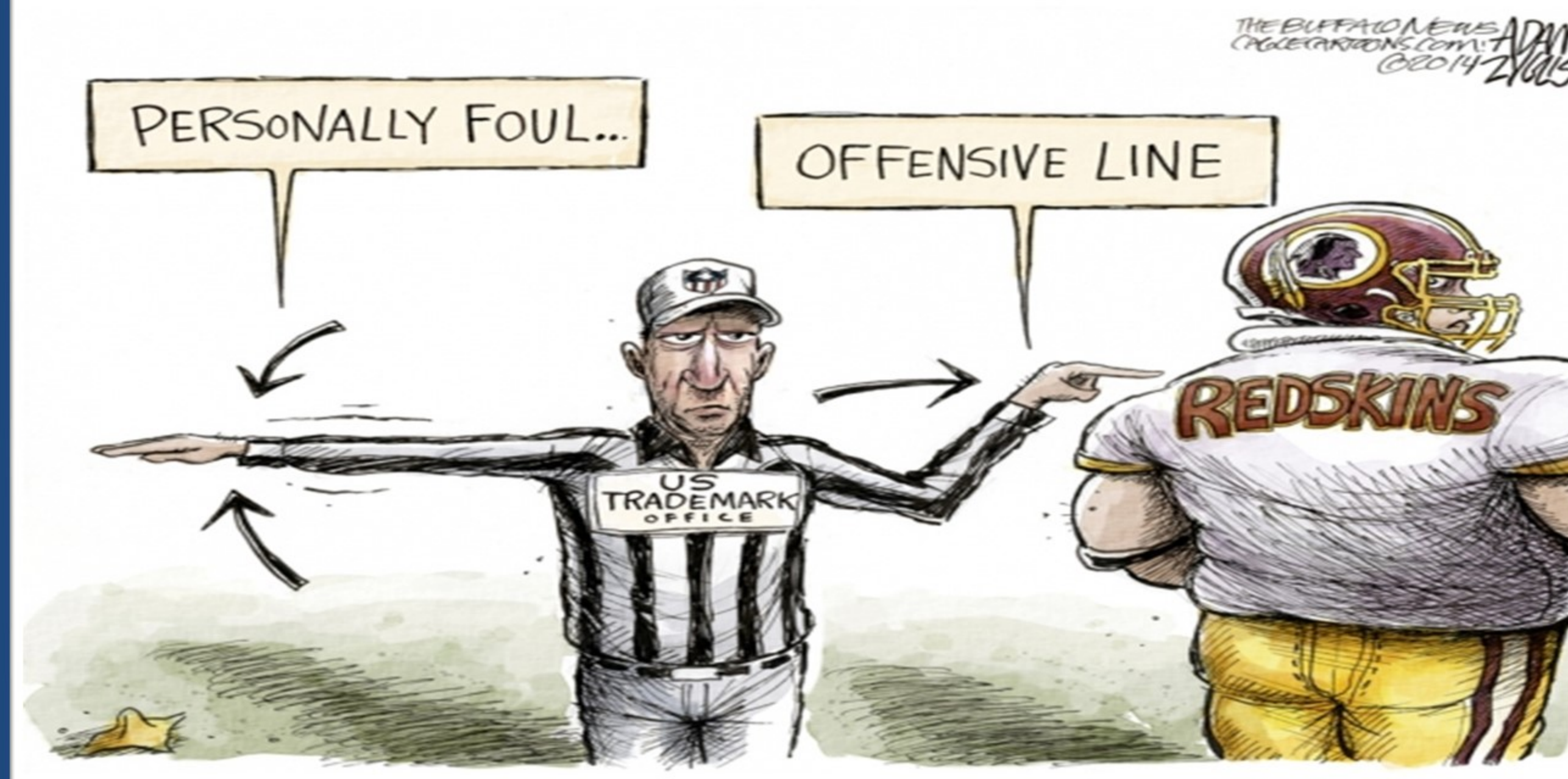
Without federal protection, the Washington Redskins lose several benefits bestowed upon a trademark owner such as constructive notice for ownership of the mark and the right to use the registration symbol ®.



The Lanham Act: Section 1052(a)

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 . . .



Recent Developments: The Slants

- 2006 → Simon Shiao Tam starts an Asian-American rock band.
- 2007 → The band is officially named The Slants.
- 2007 → The band chose The Slants as a prideful manifestation of their cultural heritage as opposed to an ethnical slur.
- 2011 → The Slants are denied trademark registration by the Patent and Trademark Office.
- 2013 → The Trademark Trial and Appeal Board upholds the PTO's denial of the trademark.
- 2014 → The Slants appeal to the Federal Circuit Court of Appeals.
- 2015 → In a 9-3 decision, the Federal Circuit held that the exclusion of "disparaging" trademarks violates the First Amendment.

THE SLANTS

Analysis

"I disapprove of what you say, but I will defend to the death your right to say it."

- Voltaire

- The First Amendment unequivocally protects the freedoms of speech from being infringed by federal legislation.
- Free speech, established by our founding fathers, is pivotal to a free society.
- Disparaging speech, no matter how offensive in content, is still protected by the First Amendment.
- It is up to society to recognize and voice these encroachments on the First Amendment.



Conclusion

- The Federal Circuit's holding in finding the Lanham Act unconstitutional is the correct analysis.
- Therefore, the Court of Appeals for the Fourth Circuit should follow the Federal Circuit's interpretation when determining the Washington Redskins decision.

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Credits / References

- Capital University Law Review
- Franklin University
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- Professor Looper-Friedman