

Seattle band Thunderpussy awaits Supreme Court ruling on controversial names

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Seattle band Thunderpussy (Whitney Petty, Leah Julius, Ruby Dunphy and Molly Sides) has been fighting for years for a federal trademark. (Lindsey Wasson/The Seattle Times)

This week, the U.S. Supreme Court heard arguments about whether the name of the all-Asian, Portland band the Slants is too “disparaging” for a federal trademark. The fate of other names — from Seattle band Thunderpussy to the Washington Redskins — hangs in the balance, too.

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Imagine the most vile, offensive thing a person could say to you.

Now ask yourself two questions. First: Should the federal government allow that person to register the offending phrase as a trademark, print it on T-shirts and coffee mugs, and potentially make millions of dollars? Or should the government have the power to draw a line against the worst thing a person could say to you and deny that trademark — a

line that might, depending on which attorney you ask, violate First Amendment rights to free speech?

That is the crux of a seven-year case tied to a Portland-based, all-Asian, dance-rock band named the Slants and will also affect an all-female rock band in Seattle called Thunderpussy, as well as the Washington Redskins football team. On Wednesday, the U.S. Supreme Court [heard oral arguments](#) in the case, with a decision expected sometime this summer.

If the Slants win, so will Thunderpussy — and the Redskins.

The case began in earnest back in 2011, when the federal Patent and Trademark Office (PTO) rejected a second trademark application from the Slants, saying the band's name could "disparage" Asians.

The Slants' founder, Simon Shiao Tam, appealed, saying he chose the name as a "gesture of empowerment — we need to be able to take stigmatizing labels and repurpose them."

Thunderpussy, an all-female rock band from Seattle, has made the same argument and was denied for the same reason: language in a 1946 law known as the Lanham Act, which gives the PTO authority to prohibit trademarks that are "immoral" or "scandalous," or "disparage" individuals or groups.

And while the Slants and Thunderpussy want their names approved, Native American advocates like Suzan Harjo (Cheyenne and Hodulgee Muscogee) and Amanda Blackhorse (Navajo) hope that doesn't happen.

They worked for years, in separate cases, to get the PTO to revoke the Washington Redskins' trademarks on the grounds that the football team's name counts as disparaging under the Lanham Act. (In 2014, The Seattle Times announced a standing policy [against using the name "Redskins" in our coverage](#), unless the story is about the name. Around the same time, [other news outlets announced they'd stop using the name](#), including The Detroit News, The Washington Post editorial board, the Kansas City Star and Mother Jones.)

Federal courts have ruled in favor of Blackhorse, and the PTO canceled the Redskins' trademarks. But the team, said Blackhorse attorney Jesse Witten, has appealed and a decision from the Fourth Circuit Court in Richmond, Va., is pending. If the U.S. Supreme Court rules in the Slants' favor, Witten said, "It will dictate the legal result in our case."

The case, *Lee v. Tam* (named for PTO director Michelle K. Lee and the Slants' Tam), raises a thicket of questions: The First Amendment protects private speech (like naming a band Thunderpussy), but how far should it reach into protecting commercial speech (like a trademark)? Does the intent behind the trademark matter? Should a federal

agency be the judge of what counts as “immoral” or “disparaging” speech when it comes to the marketplace?

Those are some of the questions that came up during Wednesday’s hearing.

Justice Stephen Breyer asked whether the Lanham Act dictates that “you can say something nice about a minority group, but you can’t say something bad about them.” Justice Ruth Bader Ginsburg wondered whether “Slants Are Superior” as a trademark would pass the PTO’s test of generalizing about minority groups. Attorney Malcolm Stewart, representing the PTO, answered that some kinds of disparaging trademarks — like the Slants — can be “more distracting than a positive message.”

In an earlier brief, PTO director Lee argued that “Although the First Amendment gives (Tam) broad latitude to use racial slurs in his own communications ... it does not require the government to assist him in that endeavor.”

Reclaiming slurs

“Ultimately, I’m a First Amendment guy,” said attorney Ben Kerr, who represents Thunderpussy pro bono and wrote the application for the band’s federal trademark. “Who is the government to say these traditionally disenfranchised groups can’t appropriate language that has been used to hold them down?”

“The government isn’t saying, ‘You’re not allowed to say this,’ but it is saying ‘We’re going to severely restrict your ability to profit off your entity because we don’t like it.’”

In her 2015 opinion about the Slants’ case, Federal Circuit Court Judge Kimberly Moore agreed, writing that denying the band’s trademark application would “chill exercise” of the First Amendment and that the “disparage” prohibition of the Lanham Act is unconstitutional. The act, she added, “burdens some speakers and benefits others.”

Thunderpussy sometimes makes as much selling its merchandise — T-shirts, hoodies — as it does with its artists’ fee for a gig.

If the band became successful enough for someone to bootleg their merchandise, others would be taking money out of the musicians’ pockets.

In the Tam case, said Thunderpussy guitar player Whitney Petty, context is everything.

“If we weren’t an all-girl band, and if the Slants weren’t an all-Asian band, it’d be different,” she said. “But it is important for minorities to be able to take the words that cause them pain — and take them back.”

Thunderpussy singer Molly Sides said she’s seen the positive effects of the band’s name on audience members — even people in her family who recoiled from it at first.

“When we started, my mom couldn’t even say the name. She would call and ask: ‘How’s Thunder Meow-Meow?’ Now she reps us hard — she’s got her Thunderpussy hoodie on all the time.”

Sides and Petty said they didn’t choose the name “Thunderpussy” for political reasons — but when the PTO rejected their trademark application in late August, the politics came to them.

Seven weeks after the PTO’s rejection, newspapers around the country began grappling with whether to print the word “pussy” in their reporting of the leaked Donald Trump tape in which he used that word when boasting about sexually assaulting women.

The stark disjunction between their trademark rejection and Trump’s language isn’t lost on the band. “We can’t trademark the name ‘Thunderpussy’ and the new president is using that word while he brags about sexual assault?” Petty asked. “That’s insane.”

Maybe, Sides added with a sardonic smile, the band could reapply for a trademark, “and tell them our name is just ‘locker-room talk.’”

The name “Thunderpussy” started as a joke among friends — its origin story, Petty said, “is shrouded in myth, legend and pot smoke” — but Tam’s decision to name his band the Slants was more pointed.

Tam is a Quentin Tarantino fan and came up with the idea in 2004, when he was on a break from touring with another band and watching a DVD of Tarantino’s film “Kill Bill.”

There was, he said, “this distinct moment — the iconic scene where a Japanese woman (played by Lucy Liu) walks into a sushi bar with her gang the Crazy 88. It was a typical Tarantino scene with the drama, the music. But for me, there was something different.” He paused the film and re-watched the moment, trying to figure out what caught his attention. “I realized,” he said, “that it was the first time I had seen an American-produced film with Asians who were unambiguously cool, confident and sexy.”

When Tam started to form an all-Asian dance-rock band, he asked his friends “what all Asian people have in common.” Their answer: the stereotype of slanted eyes. The Slants stuck.

“It’s about our own slant on life, our slant on what it’s like to be a person of color, and it has all these other meanings — slant guitar-amp cabinets, slant chords. I wanted to turn this stereotype of Asian Americans on its head.”

When the PTO rejected Tam’s trademark application, he said, “They cited an urbandictionary.com page with a photo of Miley Cyrus pulling her eyes back. I think they’re off-base on this.”

So he appealed, chased the Slants' case up the legal ladder, and flew to Washington, D.C., to watch the oral arguments.

Arguing for humor

What about the Redskins controversy? Is Tam concerned, like Blackhorse's attorney Witten, that a victory in his case would open the floodgates for more offensive names? As the PTO argued in one of its briefs for the case: "The government has enormous, legitimate interests in regulating trademarks that ply on such racist imagery" as the Redskins.

"No," Tam said. "I agree with the ACLU: The cure for bad speech isn't censorship, it's better speech and more nuanced speech. I strongly believe that irony, wit, humor — those things can provide power."

Petty agreed. Without legal leverage to protect the band's name, its ability to go after people who would use the name in a pejorative way — or use it to bootleg band merchandise — is restricted.

"For us to do our small part to take 'pussy' off the marketplace as a pejorative term — that would be great," she said. "We'd have legal grounds to prevent people from using 'Thunderpussy' as a way to degrade women — or even cats!"

Kerr, the lawyer for Thunderpussy, puts the argument this way: "I support the right of an awful hate group to assemble and peacefully march down the street — so when the next Susan B. Anthony or Martin Luther King Jr. wants to do so, he or she is able to." And, he pointed out, the PTO has granted trademarks to other names with "pussy," including "Pussy Team" and "Pussy Power Revolution." The PTO also registered "Dykes on Bikes," after the applicants argued that "dyke" was a term of pride. It also rejected an acronym — a traditional three-letter slur for gay men — followed by "Forever a Genius!" but approved the same acronym followed by "Fabulous and Gay."

The Supreme Court case has brought the Slants and Thunderpussy together. Sides said Tam recently emailed her to see if Thunderpussy wanted to share a bill with the Slants at an upcoming Seattle show.

The whole ordeal, Petty said, began with the band "literally just trying to protect our entity." But, she added, "All these little hurdles forces us to grow as people ... We're never going to give up."

Tam sounded just as defiant. He described the band's new song "From the Heart" as "an open letter to the trademark office." Toward the end, vocalist Ken Shima sings: "So 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."

Information in this article, originally published Jan. 19, 2017, was changed Jan. 19, 2017, to clarify that The Washington Post editorial board — not the entire paper — has stopped using the name “Redskins”.

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