

# Supreme Court Strikes Down Law Banning Offensive Trademark Registrations

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The U.S. Supreme Court on [Monday](#) struck down a federal trademark law containing a clause that restricted the federal registration of "disparaging trademarks."

[Section 1052\(a\)](#) of the Lanham Act, which is the federal statute governing trademarks, allows the United States Patent and Trademark Office ("USPTO") to refuse the registration of any that "[c]onsists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute." In a 8-0 decision, the Court held that the law violates the First Amendment's free speech protections.

In the case before the Court, *Matal v. Tam*, Simon Tam, an Asian American, applied to register a trademark for his band name "The Slants." The USPTO refused registration on the assertion that the term "slants" is disparaging to individuals of Asian descent.

## Why is it important?

In his opinion for the Court, Justice Alito addressed the common concern that the USPTO applies a subjective standard in refusing an applicant's mark based on what the USPTO feels is disparaging. While Justice Alito noted that "[s]peech may not be banned on the ground that it expresses ideas that offend," the holding really addresses many concerns that this law was neither content nor viewpoint neutral.

## What is the effect?

The USPTO has famously refused or canceled registrations of many well-known marks, including the Washington Redskins. Their decision was not view-point neutral, but rather, the decision was based on what the government would determine is disparaging. This subjective standard is now no longer relevant, and the USPTO will now have to focus on whether the applied-for-mark meets more relevant requirements for registration, such as distinctiveness, no likelihood of confusion and priority of use.

If you have any questions about this latest court ruling, feel free anyone in our [Intellectual Property Practice Group](#).

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