

ADDITIONAL DEVELOPMENTS—ENTERTAINMENT TRADEMARK

PRO-FOOTBALL, INC. v. HARJO

284 F. Supp. 2d 96 (D.D.C. 2003)

The district court for the District of Columbia reversed a decision by the Trademark Trial and Appeal Board (“TTAB”) that the trademarks for the football team the Washington Redskins were disparaging to Native Americans.

Harjo brought an action to cancel six of a professional football team’s trademark registrations under § 2(a) of the Lanham Act, which prohibits registration of marks “which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols.” The TTAB found for Harjo and cancelled the trademark registrations. Defendant Pro-Football sought judicial review of the decision.

On cross-motions for summary judgment, the district court reversed. First, the court found that Harjo had not presented substantial evidence that the term was disparaging to Native Americans. Specifically, there was little or no evidence that during the relevant time period, namely when the marks were registered, that a “substantial composite” of the Native American population found the term “redskins” to be disparaging.

Second, the court found that the suit was barred by laches. Laches is an available defense in an action to cancel a trademark as potentially disparaging upon satisfaction of three conditions: (1) substantial delay by plaintiff prior to filing suit; (2) plaintiff’s awareness of the mark during the delay; and (3) reliance interest resulting from defendant’s continued development of good-will during this period of delay. In this case, the court found that the substantial and unexcused delay of twenty-five years in bringing suit brought prejudice to the mark holder.