

THIS OPINION IS A
PRECEDENT OF THE T.T.A.B

Mailed:
September 26, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Simon Shiao Tam

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Serial No. 85472044

Ronald D. Coleman of Goetz Fitzpatrick, LLP for Simon Shiao Tam.

Mark Shiner, Trademark Examining Attorney, Law Office 102 (Mitchell Front, Managing Attorney).

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Before Rogers, Chief Administrative Trademark Judge, and Kuhlke and Taylor, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

Applicant, Simon Shiao Tam, seeks registration on the Principal Register of the mark THE SLANTS in standard characters for services identified as “entertainment in the nature of live performances by a musical band,” in International Class 41.¹

¹ Application Serial No. 85472044 was filed on November 14, 2011, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), based on an allegation of first use and use in commerce on November 15, 2006.

Registration has been refused under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the ground that applicant's mark "consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or national symbols under Trademark Act Section 2(a)."² E.A. Br. p. 3.

When the refusal was made final, applicant appealed and requested reconsideration. On December 20, 2012, the examining attorney denied the request for reconsideration. Subsequently, the appeal was resumed and has been fully briefed. We affirm the refusal.

Arguments and Evidence

The examining attorney contends that THE SLANTS is a highly disparaging reference to people of Asian descent, that it retains this meaning when used in connection with applicant's services, and that a substantial composite of the referenced group finds it to be disparaging. In support of this contention the examining attorney has submitted several definitions from various dictionaries and reference works that label "slant" as a derogatory word, including the following definitions:

Slant/Slant-eye n. a derog. Term for an Oriental person The Cassell Dictionary of Slang (1999);

Slant 1. A derogatory term used to refer to those of Asian descent. More accurately, it tends to refer to anybody with slanted eyes. Urban Dictionary (www.urbandictionary.com);

Slant noun US, derog. and offensive = slant-eye noun. Oxford Reference Online www.oxfordreference.com;

² This is applicant's second application for the mark THE SLANTS for nearly identical services. Application Serial No. 77952263 was also refused under Section 2(a) as disparaging. Applicant appealed that refusal to the Board, but the case was dismissed for failure to file a brief. E. A. Br. n.1; Office Action n.1 (June 20, 2012).

Slant noun a. South Asian person US 1942 Offensive The New Partridge Dictionary of Slang and Unconventional English Vol. II (2006) (<http://books.google.com>); and

[S]lant a derogatory nickname for any Oriental. From the shape of the Oriental eyes. Slang and Euphemism (2d abridged ed. 1991).³

In one of the submissions other contextual meanings are included in the definition:

Slant n. 1. a. A line, plane, course, or direction that is other than perpendicular or horizontal, a slope, b. A sloping thing or piece of ground; 2. *Printing* A virgule; 3. a. A personal point of view or opinion, b. A bias; 4. **Offensive Slang Used as a disparaging term for a person of East Asian birth or descent.** The American Heritage

³ Other definitions from reference works and websites include:

“Slant-eye, Slant pejorative term for a person of Far Eastern origin (Chinese, Japanese, Korean, Vietnamese etc.) Derived from the term for those who have epicanthic folds.” List of ethnic slurs (www.wikipedia.org);

“Slant ... The noun is from 1655. Derogatory slang sense of ‘Oriental, slant-eyed person’ is recorded from 1943, from earlier slant-eyes (1929).” Online Etymology Dictionary (www.etymonline.com);

“Slant - Asians - Facial Description – referring to the eyes.” Ethnic Slurs www.asianjoke.com;

“Slant, slanteye, slant-eye. A derogatory reference to Asians, based on the epicanthic fold, or flap, over the eyes of some Asian peoples, giving the eyes a slanted look.” The color of words: an encyclopaedic dictionary of ethnic bias in the United States (1997);

“Forbidden Terminology Derogatory Racial Terms Slant refers to the perceived shape of Asian eyelids” 21st Century American English Compendium (3rd rev. ed. 2006);

“slope and slant, slanteye(s) an East Asian [including Japanese] or Southeast Asian person having the ‘oriental’ epicanthic folds. (Intended and perceived as derogatory. User is considered to be racially bigoted. ...)” Forbidden American English (1995); and

“‘Jap’ is a derogatory term! ... And, so are terms like ‘chink’ ... and ‘slant.’” Japanese American Citizens League Anti-Hate Program www.jacl.org. “The Japanese American Citizens League is a national organization whose ongoing mission is to secure and maintain the civil rights of Japanese Americans and all others who are victimized by injustice and bigotry.” www.jacl.org.

Dictionary of the English Language retrieved from Credo Reference www.credoreference.com and Wordnik www.wordnik.com (emphasis added).

The examining attorney also included printouts from applicant's web page located at www.myspace.com/theslants, including the one depicted below:



Further, the band's entry in Wikipedia is of record and references that "The band name, The Slants, is derived from an ethnic slur for Asians." www.wikipedia.org.⁴ This entry also includes the following quote attributed to applicant: "We want to take on these stereotypes that people have about us, like the slanted eyes, and own them. We're very proud of being Asian – we're not going to hide that fact. The reaction from the Asian community has been positive."

⁴ This Wikipedia entry was attached to the First Office Action (January 6, 2012); therefore, applicant had an opportunity to rebut it. *In re Cook Medical Technologies LLC*, 105 USPQ2d 1377, 1382 n.2 (TTAB 2012); *In re Carrier Consulting Group*, 84 USPQ2d 1028, 1032-33 (TTAB 2007). Applicant did not do so. As will be discussed *infra*, applicant does not dispute the historical pejorative use of the term but, rather, can be characterized as intending to embrace and redefine the term.

Finally, the examining attorney submitted printouts of online articles which report that individuals representing Asian groups or in their individual capacity consider the term “slant,” its plural “slants” and even specifically applicant’s mark **THE SLANTS** to be disparaging terms. A few examples are set forth below:

A few years back, the **Oregon Commission on Asian Affairs** AND the **Asian American Youth Leadership Conference**, both LOCAL Oregon organizations, pulled support from the Slants, citing their offensive name. I’ve got nothing against the Slants other than their name, which is racially offensive... “bigWOWO” at www.bigwowo.com (2010) (emphasis in original);

Earlier this year, the band experienced first-hand the complex and diverse political perspectives of Asian Americans. Young⁵ was initially slated to give the keynote address at the 2009 Asian American Youth Leadership Conference in Portland. But some conference supporters and attendees felt the name of the band was offensive and racist, and out of respect for these opinions the conference organizers decided to choose someone less controversial. “The Asian Reporter” (August 4, 2009);

“Young [applicant] called the new band The Slants – a name that has been controversial from the start. ... It wasn’t until he posted advertisements for Asian bandmates and people responded by calling him racist that Young realized the name pushed some hot buttons.” The Oregonian (December 4, 2010); and

Oregon Governor Cancels Asian Band the Slants’ Performance at Asian Youth Conference ... However, the OCAA withdrew support of the event because they found The Slants’ name to be offensive towards the Asian community. Fearing that the action would trigger similar responses with other supporters, the AAYLC had no choice but to select an alternate speaker and cancel the band’s appearance. “The Daily Swarm” <http://64.34.174.165/headlines> (2010);

⁵ Applicant, Simon Shiao Tam, is also known as Simon Young. See Office Action (January 6, 2012) p. 57 (www.bigwowo.com/2011/04/the-slants-and-bigwowos-support-of-the-u-s-patent-and-trademark-office).

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