

“US Patent Office Cancels Redskins Trademark”: What Does It Mean?

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Today the news media is abuzz with discussion of the cancellation of the “Redskins trademarks” belonging to a U.S. football team, the Washington Redskins. News anchors are reporting to their audiences statements like, “U.S. Patent Office Cancels Redskins Trademarks” and that the team “cannot have trademarks for its name.” There are comments by “legal analysts” (supposedly knowledgeable about the legal issues discussed) saying that the Redskins “now have been deprived of the ability, really, to use that name in a commercial context.” Such statements can be seen here -

http://money.cnn.com/2014/06/18/news/companies/patent-office-redskins/index.html?hpt=hp_t2.

Despite the comments by television talking heads on the ruling, the fact is that the name “Redskins” has not been taken away from the team.

WASHINGTON



REDSKINS

*One of the registered
trademarks*

The ruling by the Trademark Trial and Appeal Board (“TTAB”), *Blackhorse v. Pro Football, Inc.*, affected the registration of the team’s trademarks. Five Native Americans brought a petition to the TTAB to cancel six federal registrations for trademarks containing the word “Redskins.” The TTAB found that the petitioners proved by a “preponderance of the evidence” that “Redskins” disparaged Native Americans when used for football. Note, you can still buy red-skinned potatoes. Federal law does not allow registration of trademarks that disparage

A trademark, like the Redskins’ trademarks, tells you that they are not other football teams, such as the Minnesota Vikings or the Green Bay Packers. The trademark is owned by the team and the team may choose to register a trademark. For example, you may own a house and you should register the deed with the government. If you do not register the deed to your house or your ownership of your car, you will be at a disadvantage. The system is set up so that it is better to be registered. If you do not register, you still own your property, such as a house, car, or a trademark, but you miss out on the benefits of registration.

For trademarks, registration is optional. The benefits of registration include a legal presumption of ownership, blocking imports of counterfeit foreign products, and using the well-known federal registration ® symbol.

So, what did the Redskins lose today when they lost their trademark registrations? They can still sue someone for infringing their trademarks, but

anyone they sue may have additional defenses that would not exist for a registered trademark. So, I do not advise you to run to a screen printer and make a bunch of T-shirts with this logo on them.

The team is not required to change its name and they do not have to stop using the trademarks involved in today's decision.

The ruling said that although the Redskins' trademarks are canceled, the Trademark Office records will not show "canceled" until all appeals and other proceedings are exhausted. The Redskins are allowed to appeal today's cancellation and they have already indicated that they will appeal. The team can take the issue to a federal court to attempt for an independent judge to review the ruling. The Redskins also may consider appealing the decision to a federal appellate court. The team may also choose to pursue trademark registration in individual states or in the District of Columbia, where the state authorities may not see the issues the same way as the TTAB.

So, despite what you may hear from the boob tube, the Redskins did suffer a loss today, but they still own their trademarks and can sue anyone that infringes those trademarks. If the TTAB decision is reversed, then their trademarks will not be taken off the registration list. You can read the TTAB opinion here - <http://ttabvue.uspto.gov/ttabvue/v?pno=92046185&pty=CAN&eno=199>.

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