



Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION

RESOLUTION # 2016 - 6

TITLE: To Support the Discontinued Use of the Sports Name R*Dskins and Legal Bar To Trademark Registration of the Name

WHEREAS, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

WHEREAS, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, the Washington D.C. National Football League franchise operates using the name Redskins (“R*dskins”¹) and owns U.S. trademark registrations for the name;

WHEREAS, members of the Native American community have protested the use of the name, and since at least as early as 1992 have formally challenged the registrability of the name as a trademark; and

WHEREAS, in 1993, the National Congress of American Indians, the oldest and largest alliance of Native Nations in the nation, representative of more than 250 Native Nations, passed Resolution 93-11, publicly stating that “the term R*DSKINS is not and has never been one of honor or respect, but has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native American’s [sic]”²; and

WHEREAS, the United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) in October 1994 and Article 7 of CERD requires the national government “to adopt immediate and effective measures, particularly in the

¹ All further references to the official team name have been altered with an asterisk out of respect for the human rights of indigenous peoples and in an attempt to avoid continued use of the name.

² Quoted in *Blackhorse et al v. Pro-Football, Inc.*, Cancellation No. 92046185, 65 (USPTO 2014), available at <http://ttabvue.uspto.gov/ttabvue/v?pno=92046185&pty=CAN&eno=199>.



field of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination and to promote understanding, tolerance and friendship”; and

WHEREAS, the United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the “Declaration”) on December 16, 2010 and Article 15 of the Declaration recognizes the right of Indigenous Peoples “to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information” and places an obligation on the national government to “take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society”; and

WHEREAS, Article 22 of the Declaration provides that the national government “shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination”; and

WHEREAS, Article 24 of the Declaration recognizes that “[i]ndigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health” and places a duty on the national government to “take the necessary steps with a view to achieving progressively the full realization of this right”; and

WHEREAS, Indigenous Peoples have the right and authority to determine and define for themselves what actions, logos, and names serve to honor them, their history, their heritage, and their ancestors; and

WHEREAS, Psychologist Dr. Michael Friedman, author of the report *The Harmful Psychological Effects of the Washington Football Mascot*, cautions that “[n]ot only does the use of this slur risk causing direct damage to the mental and physical health of our country’s Native American population, it also puts us all at risk for both participating in and being harmed by ongoing prejudice” and “use of the term may cause stress among the nation as a whole”³; and

WHEREAS, studies show that “prejudice perpetuates major mental disorders such as depression, anxiety and alcoholism, as well as physical health problems” as a result of both increased stress and “worsening self-concept as a result of prejudicial behavior”⁴; and

³ <http://indiancountrytodaymedianetwork.com/2013/09/27/harmful-psychological-effects-washingtons-redskins-mascot>.

⁴ <http://indiancountrytodaymedianetwork.com/2013/09/27/harmful-psychological-effects-washingtons-redskins-mascot>.



WHEREAS, “[t]he rate of suicide among Native Americans has risen 65% in the past decade”⁵; and

WHEREAS, the American Psychological Association in 2005 strongly urged the banning of all Native American mascots from sports teams in “acknowledgment of the catastrophic effects of prejudice on the Native American population”⁶; and

WHEREAS, the term “R*dskins” has a lengthy history that harkens to the early days of our republic when Indigenous Peoples were openly treated as subhuman; the name “is rooted in the commodification of native skin and body parts as bounties and trophies” and was based on a European history of “chopping off enemies’ heads and mounting them on stakes, and of scalping, skinning, dismembering, and other tortures and trophy-hunting”⁷; and

WHEREAS, the term “R*dskins” has a pejorative meaning historically used to degrade and dehumanize Indigenous Peoples, who continued throughout this nation’s history to suffer national efforts to eliminate their physical, cultural, and political existence; and

WHEREAS, the term “R*dskins” continues to have a pejorative meaning for Indigenous Peoples, as recognized in at least eight mainstream dictionaries,⁸ and serves as a shocking and constant reminder to indigenous peoples of the American legacy of death, dispossession, and almost entire elimination of their race and of their status as sovereign nations; and

WHEREAS, Section 2(a) of the Lanham Act prohibits federal registration of trademarks that disparage, bring into contempt, or bring into disrepute others; and

WHEREAS, Amanda Blackhorse, an indigenous woman and lead plaintiff in *Blackhorse et al v. Pro-Football, Inc.*, has challenged the federal trademark registration of the trademark “Washington R*dskins” under Section 2(a) of the Lanham Act, because it is disparaging and brings Indigenous Peoples into contempt or disrepute⁹; and

⁵ <http://indiancountrytodaymedianetwork.com/2013/09/27/harmful-psychological-effects-washingtons-redskins-mascot>.

⁶ <http://indiancountrytodaymedianetwork.com/2013/09/27/harmful-psychological-effects-washingtons-redskins-mascot>.

⁷ <http://www.theguardian.com/commentisfree/2013/jan/17/washington-redskins-racism-pro-football>. For additional history on the Team name see <http://www.bostonglobe.com/sports/2013/12/29/redskins-wonder-what-name-the-answer-traces-back-boston/GmfYbPTnHx1Ht5NgqN1EOM/story.html>.

⁸ <http://www.azcentral.com/story/news/local/arizona/2014/09/25/amanda-blackhorse-nfl-washington-suing-defiant/16128077/>.

⁹ *Blackhorse et al v. Pro-Football, Inc.*, Cancellation No. 92046185, 1 (USPTO 2014), available at <http://ttabvue.uspto.gov/ttabvue/v?pno=92046185&pty=CAN&eno=199>.



WHEREAS, on June 18, 2014, the Trademark Trial and Appeal Board of the United States Patent and Trademark Office voted to cancel the six trademarks held by the Team in a two-to-one decision that the term “r*dskins” is disparaging to a “substantial composite of Native Americans” as demonstrated by NCAI Resolution 93-11 and “the near complete drop-off in usage of ‘r*dskins’ as a reference to Native Americans beginning in the 1960’s”¹⁰; and

WHEREAS, the application of Section 2(a) and this decision does not at all impact the team’s ability to use the name, nor does it prevent the team from protecting the name as a trademark from use by others under multiple other sources of law, e.g., state statutory and common law trademark protection; and

WHEREAS, Pro Football, Inc. argues that Section 2(a) of the Lanham Act is an unconstitutional restriction of speech under the First Amendment, a position that if successful would create the opportunity for all racial slurs to be registrable U.S. trademarks;

NOW THEREFORE BE IT RESOLVED that NNABA denounces the use of racial slurs generally, and the specific use of the R*dskins slur by the Washington, D.C. N.F.L. team;

NOW THEREFORE BE IT FURTHER RESOLVED that NNABA does not support the federal trademark registration of racial slurs and the extension of the legal benefits provided by such registration to slurs used in commerce;

NOW THEREFORE BE IT FURTHER RESOLVED that NNABA does not view the First Amendment as requiring that racial slurs be eligible for federal trademark registration, noting that trademark registration does not impact a party’s ability to use a trademark and also, ironically, that in the context of trademark registration, any restriction on speech follows from granting registration, as registration provides registrants a limited monopoly to use of a mark; and

NOW THEREFORE BE IT FINALLY RESOLVED, that National Native American Bar Association authorizes its officers and staff to communicate the content of this Resolution to other bar associations, advocacy groups, members of Congress, the Administration, the press, the Washington, D.C. N.F.L. team owner, and N.F.L. Commissioner Roger Goodell, and to whomever else NNABA board deems suitable to receive the information.

¹⁰ Id. At 71-72.



NATIONAL
NATIVE AMERICAN
BAR ASSOCIATION

CERTIFICATION

The foregoing resolution was adopted by the Board of the National Native American Bar Association on January 22, 2016 with a quorum present.

Linda Benally, President

ATTEST:

Makalika Naholowa'a, Recording Secretary