



National Asian Pacific American Bar Association

News Release

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NAPABA Files Amicus Brief in Federal Circuit Case Affecting Trademark Registration of Disparaging Marks

WASHINGTON – The National Asian Pacific American Bar Association (NAPABA), the South Asian Bar Association of Washington, D.C., (SABA-DC) and the Fred T. Korematsu Center for Law and Equality (Korematsu Center) jointly filed an amicus brief to support the U.S. government’s denial of trademark registration to an Asian American rock band in a case before the Federal Circuit. Amici were represented by Charanjit (Charan) Brahma, Michael Hobbs, and Daniel Sharpe at Troutman Sanders LLP.

Simon Shiao Tam applied to register a federal trademark for his band, “The Slants.” The U.S. Patent and Trademark Office denied his application based on Section 2(a) of the Lanham Act that permits it to deny registration of disparaging marks. Though Tam’s appeal was rejected by a panel of the Federal Circuit, the en banc court on its own accord vacated that decision and ordered an en banc hearing on whether Section 2(a) violates the First Amendment.

“Asian Pacific Americans are all too familiar with the harm, including violence, that often accompanies racial slurs and epithets,” said NAPABA President George C. Chen. “Although I recognize the band’s intent to reclaim a historically disparaging term, as an intellectual property attorney, I also am cognizant that changing the U.S. trademark regulations to allow the registration of ‘The Slants’ could result in the trademarking of offensive terms by individuals and groups without similarly positive intentions.”

“SABA-DC deplores the use of racial slurs and epithets, and while the particular epithet involved in this case is not one that is usually directed to our South Asian constituency, we believe slurs against any racial or ethnic group are damaging to us all,” added SABA-DC President Habib F. Ilahi. “The First Amendment protects free speech, but it does not entitle those who wish to use such derogatory terms for branding purposes to receive the stamp of government approval that comes with federal trademark registration.”

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