Proceedings

A monthly newsletter from McGraw-Hill

August 2015 Volume 7, Issue 1

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Dear Professor,

The new academic year is upon us, with all of its excitement and promise! Welcome to McGraw-Hill's August 2015 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 7, Issue 1 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the August 2015 newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. A federal judge's cancellation of the Washington Redskins' trademark registration;

2. Oklahoma Governor Mary Fallin's refusal to take down the 10 Commandments monument displayed on Oklahoma State Capitol grounds;

3. The United States Supreme Court's support for anti-discrimination housing law;

4. Videos related to a) the United States Supreme Court's legalization of gay marriage nationwide and b) the United States Supreme Court's decision to uphold the Affordable Care Act;

5. An "ethical dilemma" related to South Carolina Governor Nikki Haley's effort to remove the Confederate flag from South Carolina state Capitol grounds; and

6. "Teaching tips" related to Article 1 ("Redskins Trademark Ordered Cancelled by Judge") and Video 2 ("Supreme Court Upholds Affordable Care Act" of the newsletter.

I wish all of you an educationally enriching 2015-2016 academic year!

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) A federal judge's cancellation of the Washington Redskins' trademark registration;

2) Oklahoma Governor Mary Fallin's refusal to take down the 10 Commandments monument displayed on Oklahoma State Capitol grounds; and

3) The United States Supreme Court's support for anti-discrimination housing law.

Hot Topics in Business Law

Article 1: "Redskins Trademark Ordered Cancelled by Judge"

http://www.usatoday.com/story/sports/nfl/redskins/2015/07/08/washington-redskins-trademark-cancelled/29857765/

Note: In addition to the article, please also see the accompanying video included at the above-referenced internet address.

According to the article, a federal judge recently ordered the cancellation of the Washington Redskins' trademark registration, ruling that the team name may be disparaging to Native Americans.

The ruling by Judge Gerald Bruce Lee affirms an earlier finding by an administrative appeal board. Bruce ordered the federal Patent and Trademark Office to cancel the registration.

Lee emphasized in his 70-page ruling that the organization is still free to use the name if it wishes — the team would just lose some legal protections that go along with federal registration of a trademark.

The team had sued to overturn a ruling against it by the Trademark Trial and Appeal Board. The team argued that cancellation of its trademark infringed on its free-speech rights because it required the government to judge whether the name is offensive.

The organization can appeal. Calls to team spokesman Tony Wyllie and the lawyers who represented the team in court were not immediately returned.

Jeff Lopez, lawyer for the Native Americans who challenged the team's name, said he expects the Redskins to appeal the ruling to the 4th U.S. Circuit Court of Appeals in Richmond. But he said that Lee's ruling was an across-the-board victory for his clients and that he is confident it will be upheld.

Lopez said his clients are hopeful that the team will take heed of the decision and change its name.

In rejecting the team's free-speech argument, Lee cited a U.S. Supreme Court ruling last month allowing the state of Texas to bar depiction of the Confederate battle flag on specialty license plates sought by the Sons of Confederate Veterans.

Specifically, Lee said federal law allows the government to exercise editorial control over the content of the trademark registration program, and he equated trademark registration to government speech as opposed to private speech.

Lee said the legal standard for canceling the registration is whether the name "may disparage" a substantial composite of the Native American community. Though the team has maintained that the name honors Native Americans, Lee said there is ample evidence that the name may be perceived as disparaging. He cited the fact that Native American leaders have been objecting to the name for decades, along with dictionary citations that the word is typically considered offensive.

Discussion Questions

1. Define trademark.

A trademark is any name, term, sign or symbol used to identify a good. Upon receiving trademark protection from the United States Patent and Trademark Office, the trademark holder is entitled to a 10-year renewable right of exclusivity, meaning that the holder can control the use of the mark. If the trademark holder's right of exclusivity is violated, the holder can request an injunction against the violator, and sue the violator for lost profits (or profits gained by the violator through the wrongful use of the mark).

2. In your reasoned opinion, is the term "Redskins" offensive to Native Americans? Explain your response.

This is an opinion question, so student responses will likely vary. Perhaps this question is best answered by using a "reasonable person" standard, or by determining whether Native Americans are offended by the use of the term "Redskins." By analogy, would it be appropriate to name a team "Whiteskins" or "Blackskins?"

3. In your reasoned opinion, does Redskins team owner Daniel Snyder have an ethical obligation to rename the team? Why or why not?

This is an opinion question, so student responses will likely vary. Most business practices will likely offend some, but if a business practice offends many in an entire race or culture, should not the business owner at least consider remedial measures?

Article 2: "Despite Court Ruling, Mary Fallin Won't Remove 10 Commandments Statue"

http://www.msnbc.com/msnbc/despite-court-ruling-gov-mary-fallin-wont-remove-10-commandments-statue

According to the article, despite an Oklahoma Supreme Court ruling recently that a 10 Commandments monument on Capitol grounds violates the state's Constitution and must be removed, Governor Mary Fallin said the statue won't be budging anytime soon.

The Republican released a statement recently calling the court decision "impermissible," and that the decision was "deeply disturbing to many in our legislature, many in the general public, and to me." Fallin said the monument will remain in place during a legal appeals process and while potential legislative options are also being considered.

The Oklahoma Supreme Court had decided, however, in a 7-2 decision that the monument violated Article 2, Section 5 of the state's Constitution, which prohibits the use of public property "for the benefit of any religious purpose." While the statue was paid privately by GOP Rep. Mike Ritze and erected in 2012, the court said the statue was obviously religious in nature and that it's "an integral part of the Jewish and Christian faiths."

The American Civil Liberties Union of Oklahoma – which represented three plaintiffs in the case—had argued the monument sent a message to some Oklahomans that they were less than equal because of their religious beliefs.

Ryan Kiesel, the executive director of the ACLU Oklahoma chapter, said that he was baffled by Fallin's decision. "We were astonished that the governor would pretend she has the authority to enforce laws that may exist in some hypothetical future instead of doing her job and enforcing the law as it exists today," said Kiesel.

Still, Fallin said Attorney General Scott Pruitt, with her support, has already filed a petition requesting a re-hearing of the case. In addition, some in the Legislature have indicated they will pursue changes to the state Constitution to clearly indicate the monument is legal.

Michael McNutt, a spokesperson for the governor, said that there is no deadline for the Supreme Court to decide whether or not they will re-hear the case. In terms of the legislative route, lawmakers would have to decide whether or not to put forth a ballot question to voters to weigh in on whether or not to appeal Article 2, section 5 of the state Constitution. That ballot initiative would likely take place in November 2016 and would require a simple majority vote, explained McNutt.

"The Ten Commandments monument was built to recognize and honor the historical significance of the Commandments in our state's and nation's systems of laws," Fallin argued in a statement. "The monument was built and maintained with private dollars. It is virtually identical to a monument on the grounds of the Texas State Capitol, which the United States Supreme Court ruled to be permissible. It is a privately funded tribute to historical events, not a taxpayer funded endorsement of any religion, as some have alleged," she added.

Kiesel said the ACLU was preparing to respond to the state's motion asking the Supreme Court for a re-hearing, something he anticipates will be denied. After that, he explained, a district court would

lay out steps to officially remove the statue. "I would be surprised, at that point (if the governor) actively stood in the way of a lawful order of the court."

"This is not how a democracy works," Kiesel continued. "You have to enforce the law as it exists today. Governors do not have the luxury to say 'well I think the law may be different and to my liking at a future date, so that's the law I'm going to enforce."

Discussion Questions

1. As the article indicates, Article 2, Section 5 of the Oklahoma state Constitution prohibits the use of public property "for the benefit of any religious purpose." Discuss this provision as it relates to the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution.

In your author's opinion, Article 2, Section 5 of the Oklahoma state Constitution is constituent with the Establishment and Free Exercise Clauses of the First Amendment to the United States Constitution. The Establishment Clause states that "Congress shall make no law respecting an establishment of religion," while the Free Exercise Clause states that "Congress shall make no law...prohibiting the free exercise (of religion)." Taken together, the Establishment and Free Exercise Clauses prohibit government from endorsing/mandating a particular religion, while promoting the freedom of citizens to worship as they see fit. Apparently, Article 2, Section 5 of the Oklahoma State Constitution seeks to prohibit government establishment of religion, while simultaneously allowing citizens to worship freely.

2. What is the primary responsibility of the executive branch of government? The legislative branch? The judicial branch?

*The primary responsibility of the executive branch of government is to **enforce** the law. The primary responsibility of the legislative branch of government is to **make** the law. Finally, the primary responsibility of the judicial branch is to **interpret** the law, particularly in situations where the law is ambiguous.*

3. In your reasoned opinion, is Oklahoma Governor Mary Fallin fulfilling her gubernatorial responsibilities by refusing to remove the 10 Commandments monument from state Capitol grounds? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, Governor Fallin is not fulfilling her gubernatorial responsibilities by refusing to remove the 10 Commandments monument from state Capitol grounds. The relevant law is set forth in Article 2, Section 5 of the Oklahoma state Constitution, which prohibits the use of public property "for the benefit of any religious purpose." In fulfilling its judicial responsibility of interpreting the law, the Oklahoma Supreme Court ruled that the 10 Commandments monument on Capitol grounds violated the state's Constitution and must be removed. Essentially, Governor Fallin is refusing to carry

through on her responsibility as chief executive of the state (governor) to enforce the law; in so doing, she is disregarding the constitutional powers of both the legislative and judicial branches of government.

Article 3: "Supreme Court Upholds Housing Discrimination Law"

http://www.usatoday.com/story/news/nation/2015/06/25/supreme-court-housing-discrimination/26097319/

According to the article, a deeply divided Supreme Court delivered an unexpected reprieve to civil rights groups recently, ruling that housing discrimination need not be intentional in order to be illegal.

The justices said people objecting to lending, zoning, sales and rental practices can base their legal claim on the disparate impact those practices have on blacks or other minorities.

The court's 5-4 decision, written by Justice Anthony Kennedy, was an unlikely conclusion to a years-long effort by opponents of the civil rights-era law to reduce its effectiveness against housing policies and practices used by many builders, lenders and insurers. Twice before, the justices had agreed to hear a challenge to the law, only to see the cases withdrawn or settled before reaching court.

"The court acknowledges the Fair Housing Act's continuing role in moving the nation toward a more integrated society," Kennedy wrote.

Justice Samuel Alito, in a dissenting opinion joined by the court's other conservatives, accused his colleagues of "a serious mistake," which he said "will have unfortunate consequences for local government, private enterprise, and those living in poverty."

The use of disparate impact is one of the Fair Housing Act's key enforcement tools. It prohibits exclusion on the basis of race, color, religion, national origin, gender, disability, or family status, unless it's for an otherwise legitimate reason.

Kennedy stressed from the bench that the court was not ruling out such legitimate government policies when enacted by municipal housing authorities or private developers.

"Courts should avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision," he wrote.

The ruling was heralded by civil rights groups, which had feared the court's conservative justices intended to change the standard.

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"At a time of heightened concern across the country over threats to racial justice, as seen in places like Ferguson, Missouri, and Baltimore, Maryland, a fully functioning and effective Fair Housing Act is more important than ever," said Wade Henderson, president of the Leadership Conference on Civil and Human Rights.

At the White House, press secretary Josh Earnest said the decision will help "victims of more subtle forms of discrimination, such as predatory lending, exclusionary zoning, and development policies that limit affordable housing."

Under Chief Justice John Roberts, the court has scaled back other civil rights laws, most notably the 1965 Voting Rights Act. In 2013, Roberts wrote the 5-4 decision striking down a key section of the law, which had required states and localities with a history of discrimination to get federal approval before making changes in their voting practices.

The court in recent years also has whittled away at the use of racial preferences by public universities. But this year, it upheld objections to a state redistricting plan raised by black lawmakers in Alabama.

The difference between intent and impact is at the root of many civil rights laws, from education and employment to disability and voting rights. In most cases, showing that minorities are disproportionately affected is enough.

But while the court has ruled that some employment and age discrimination laws protect against disparate impact, those words were not included in the Fair Housing Act, passed in the wake of Rev. Martin Luther King Jr.'s assassination. That left opponents hopeful the justices would limit violations to those shown to be intentionally discriminatory.

The nation's lending industry had argued that the law was misused for decades to penalize practices that had a disparate effect on minority groups, even if unintentional. Facing lawsuits based on the statistical results of their policies, they often were forced to settle lawsuits at considerable expense.

The specific facts of the case -- *Texas Department of Housing and Community Affairs v. Inclusive Communities Project* -- were considered less important than the potential nationwide impact of the court's decision.

The Texas case involved a decision by Dallas officials to make most federal low-income housing vouchers available in poor, minority neighborhoods rather than majority-white suburbs. In his ruling, Kennedy said, "Race may be considered in certain circumstances and in the proper fashion."

Discussion Questions

1. Define “disparate impact” discrimination.

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"Disparate impact" discrimination theory does not require evidence of intentional discrimination; instead, it allows recovery when the plaintiff, who is part of a protected class of individuals, can demonstrate that the defendant's policy or practice has the effect of discrimination. As an example, suppose that a corporation operates in an area with an overall workforce population of 51 percent women and 49 percent men. The corporation itself has a workforce of 97 percent men and 3 percent women. Several women who applied for positions at the corporation and were well-qualified did not receive employment; instead, men with comparable education, experience and skills were hired. Disparate impact discrimination theory would allow the female plaintiffs to sue for gender discrimination, even though they may not have any "smoking gun" evidence of discrimination (For example, a human resource manager of the corporation stating "We don't like to hire women, because they prefer their families over work.") In this example, disparate impact theory would contend that the "numbers do not lie," and that such a discrepancy between the overall workforce population percentages and the corporate workforce percentages is sufficient evidence alone to make a case for gender discrimination.

2. How is "disparate impact" discrimination theory different from "disparate treatment" discrimination theory?

"Disparate impact" discrimination theory does not require evidence of intentional discrimination, while "disparate treatment" theory does require such evidence. Consider again the example given in response to Article 3, Discussion Question 1 above. If a human resource manager of the corporation had proclaimed to one of the female applicants "We don't like to hire women, because they prefer their families over work," that would be strong evidence of disparate treatment discrimination. The distinction between disparate impact and disparate treatment discrimination theory is important, because punitive damages (designed to punish the defendant transgressor) are recoverable in a disparate treatment case, while such damages are not recoverable in a disparate impact case. Of course, compensatory damages (designed to compensate the plaintiff for losses directly related to the defendant's wrongful actions) are recoverable in both disparate impact and disparate treatment cases.

3. In your reasoned opinion, was the United States Supreme Court correct in its decision to uphold the use of disparate impact theory in housing discrimination cases? Explain your response.

This is an opinion question, so student responses may vary. However, in addressing this question with students, ask students whether it would make "legal sense" to allow plaintiffs to use disparate impact theory in employment discrimination cases, but not allow them to use the theory in housing discrimination cases. In terms of individual security, is not housing just as important as employment?

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Video Suggestions

Video 1: "Landmark U.S. Supreme Court Ruling Legalizes Gay Marriage Nationwide"

http://www.reuters.com/article/2015/06/27/us-usa-court-gaymarriage-idUSKBN0P61SW20150627

Note: In addition to the video, please see the following article also included at the above-referenced internet address:

"Landmark U.S. Supreme Court Ruling Legalizes Gay Marriage Nationwide"

According to the article, the Supreme Court ruled recently that the U.S. Constitution provides same-sex couples the right to marry, handing a historic triumph to the American gay rights movement.

The court ruled 5-4 that the Constitution's guarantees of due process and equal protection under the law mean that states cannot ban same-sex marriages. With the landmark ruling, gay marriage becomes legal in all 50 states.

Immediately after the decision, same-sex couples in many of the states where gay marriage had been banned headed to county clerks' offices for marriage licenses as officials in several states said they would respect the ruling.

President Barack Obama, appearing in the White House Rose Garden, hailed the ruling as a milestone in American justice that arrived "like a thunderbolt."

"This ruling is a victory for America," said Obama, the first sitting president to support gay marriage. "This decision affirms what millions of Americans already believe in their hearts. When all Americans are treated as equal, we are all more free."

As night fell, the White House was lit in rainbow colors - a symbol of gay pride - to mark the high court's decision.

The ruling, the culmination of a long legal fight by gay rights advocates, follows steady gains in public approval in recent years for same-sex marriage. In 2004 Massachusetts became the first state to legalize gay marriage. But the

decision may provoke fresh legal fights in some conservative, Republican-governed states.

Justice Anthony Kennedy, writing on behalf of the court, said the hope of gay people intending to marry "is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right."

"Without the recognition, stability and predictability marriage offers, their children suffer the stigma of knowing their families are somehow lesser," Kennedy wrote.

Kennedy, a conservative who often casts the deciding vote in close cases, was joined in the majority by the court's four liberal justices.

Appointed by Republican President Ronald Reagan in 1988, Kennedy has now authored all four of the court's major gay rights rulings, with the first in 1996.

The ruling is the Supreme Court's most important expansion of marriage rights in the United States since its landmark 1967 ruling in the case Loving v. Virginia that struck down state laws barring interracial marriages.

At least two states, Louisiana and Mississippi, said they would not immediately issue marriage licenses to same-sex couples while awaiting legal formalities. Supreme Court rulings generally take 25 days to go into effect.

Discussion Questions

1. Define the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

According to the Fourteenth Amendment to the United States Constitution, "(n)o state shall…deny to any person within its jurisdiction the equal protection of the laws."

2. Define the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

According to the Fifth Amendment to the United States Constitution, "(n)o person shall be…deprived of life, liberty, or property, without due process of law."

According to the Fourteenth Amendment to the United States Constitution, "(n)o state shall…deprive any person of life, liberty, or property, without due process of law."

3. Does a state have the legal right to refuse to honor the United States Supreme Court's decision regarding gay marriage? Why or why not?

According to federal law, an individual state does not have the legal right to refuse to honor the United States Supreme Court's decision regarding gay marriage. First, in its decision, the Supreme Court has clearly established the constitutional right of gay couples to wed, regardless of their state of habitation and/or citizenship. Second, according to the Supremacy Clause set forth in Article VI of the United States Constitution, "(t)his Constitution, and the laws of the United States which shall be made in pursuance thereof…shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." The law is quite clear regarding this issue: The United States Supreme Court has spoken, and every state is legally bound to comply with the dictate of the Court.

Video 2: "Supreme Court Upholds Affordable Care Act"

http://www.msnbc.com/jose-diaz-balart/watch/supreme-court-upholds-affordable-care-act-471163459847

Discussion Questions

1. What was the legal argument for the most recent challenge to the Affordable Care Act?

The legal argument for the most recent challenge to the Affordable Care Act was a technical one. A passage of the Affordable Care Act said that tax credits (subsidies) were authorized for those who purchase health care insurance on marketplaces that are "established by the state." The plaintiffs in the current case argued that subsidies were not permitted for those who did not purchase health care insurance on a state exchange, this despite the fact that thirty-six states have not established their own state run-exchanges, and that federal exchanges were authorized for the thirty-six states that have not established their own exchanges.

2. What was the United States Supreme Court's rationale in this case for upholding the Affordable Care Act?

According to Chief Justice John G. Roberts, Jr., who wrote for the majority, "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible we must interpret the Act in a way that is consistent with the former, and avoids the latter." Without a federal subsidy, the majority of people who live in the thirty-six states that have not established their own state-run exchanges would not be able to afford health care insurance. In the collective mind of the Supreme Court majority, wide-scale non-participation in the health insurance markets would hinder the markets rather than improve them.

3. As Teaching Tip 2 ("Original United States Supreme Court Decision Regarding the Affordable Care Act") included later in this newsletter indicates, the United States Supreme Court first addressed the legality of the Affordable Care Act in the 2011 case *National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al.* In your reasoned opinion, should the Supreme Court have addressed the Affordable Care Act a second time? Will the Court likely address the legality of Affordable Care Act yet again?

Many legal experts were surprised that the United States Supreme Court chose to address the legality of the Affordable Care Act for a second time. The first case, National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., addressed the issue of whether the federal government had the legal right to assess a fine on individuals who did not purchase mandatory health care insurance (The United States Supreme Court concluded that the federal government did have such right, pursuant to its constitutional taxing authority.) The second case, King et al. v. Burwell, Secretary of Health and Human Services, et al., addressed the issue of whether the federal government had the legal right to provide tax credits (subsidies) to individuals purchasing health care insurance on federal exchanges in states that have not established state-operated exchanges (The United States Supreme Court concluded that the federal government did have such right, consistent with the Affordable Care Act's legislative intent of improving health insurance markets.)

It is difficult to determine whether the Supreme Court will address the legality of Obamacare yet again (remember that many legal experts did not predict a Supreme Court reconsideration of the legality of Obamacare in King v. Burwell); however, the political will to challenge the Affordable Care Act may be "losing steam," especially since millions of Americans have already subscribed to health care coverage under federal and state exchanges.

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Of Special Interest

This section of the newsletter addresses South Carolina Governor Nikki Haley's effort to remove the Confederate flag from South Carolina state Capitol grounds.

Ethical Dilemma

Ethical Dilemma: "South Carolina Governor Urges Lawmakers to Take Down Confederate Flag at State House"

http://abcnews.go.com/WNT/video/south-carolina-governor-urges-lawmakers-confederate-flag-state-31954901

Note: In addition to the above-referenced video, please also see the following internet address, which includes a video and an accompanying article addressing South Carolina's historic decision to take down the Confederate flag:

"South Carolina Takes Down Confederate Flag"

http://www.usatoday.com/story/news/nation/2015/07/10/south-carolina-confederate-flag/29952953/

Discussion Questions

1. Is the Confederate flag a symbol of Southern heritage, states' rights, or racial animosity? Explain your response.

In all fairness, the Confederate flag may be a multi-faceted symbol of Southern heritage, states' rights ***and*** *racial animosity, given that those who fly the flag do so for their own subjective reason(s).*

2. In your reasoned opinion, did South Carolina have a legal obligation to remove the Confederate flag from state Capitol grounds? Why or why not?

In your author's view, this is an incredibly complicated question. Before the recent Charleston shooting that rekindled the Confederate flag debate, South Carolina state legislation authorized the flying of the Confederate flag on Capitol grounds and prohibited its removal without additional legislation. Obviously, when the South Carolina legislature voted in response to the recent Charleston AME Zion Church shootings to remove the flag, the issue was settled. From a legal perspective, it would have been interesting to see what the federal government would have done had South Carolina voted ***not*** *to remove the flag.*

3. In your reasoned opinion, did South Carolina have an ethical obligation to remove the Confederate flag from state Capitol grounds? Why or why not?

This is an opinion question, so student responses may vary. However, do keep in mind that when nine African-Americans were (allegedly?) murdered in the recent Charleston AME Zion church shootings, the shooter purportedly stated that he wanted to start a "race war," and he was identified in at least one picture flying the Confederate flag. For those who view the Confederate flag as a symbol of racial animosity, divisiveness and hatred, South Carolina had an ethical obligation to remove the "Stars and Bars" from state Capitol grounds.

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Of Special Interest

This section of the newsletter will assist you in addressing Article 1 ("Redskins Trademark Ordered Cancelled by Judge") and Video 2 ("Supreme Court Upholds Affordable Care Act") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1: "Redskins Trademark Ordered Cancelled by Judge")—"There's Never Been a Trademark as Offensive as Redskins"

http://www.huffingtonpost.com/2014/06/19/redskins-trademark_n_5509239.html

Note: The following article is an opinion piece written by Jillian Berman.

Note: In addition to the article, please also see the video "Plaintiff Lawyer in Redskins Case: Revoked Trademark Only the First Step" included at the above-referenced internet address.

The U.S. Patent and Trademark Office is clearly not a big fan of the Washington Redskins.

The normally sleepy U.S. Trademark Trial and Appeal Board, an arm of the PTO, made headlines on Wednesday when it canceled six trademarks registered by the team. Only twice on record has the office tried to use its power to strip away a trademark for being offensive to an ethnic group, and both cases involved the Redskins.

The office's first attempt to stop the team from using the term, which many consider outdated and offensive, was in 1999. That decision was later reversed, and the office's new one might be also. But the PTO seems to think it's worth another try anyway.

"It's almost like they're saying, 'As a matter of conscience, we are going to give our view on this, even if we recognize that it might be overturned,'" said Barton Beebe, a professor of intellectual property law at New York University.

The board's decision was such a statement that the notoriously conservative Wall Street Journal accused the body of taking a political stance, writing, "even the lowly patent clerks are following liberal orders and deputizing themselves as George Custers to drive the Washington Redskins out of America."

The latest effort could be more damaging to the Redskins, at least in terms of publicity, because it happened in the age of social media -- which has amplified the decision and turned it into huge news.

“The decision does not legally force the team to change its name, but I think it adds to the pressure,” said Rebecca Tushnet, a professor focusing on intellectual property at Georgetown University’s Law Center. Neither she nor Beebe could think of another case, aside from those involving the Redskins, in which a trademark was canceled for being disparaging.

But even if the PTO lets some offensive trademarks stand, it doesn't allow for new ones to be created. The 1946 Lanham Act bars the registration of trademarks that are deemed disparaging.

There aren't too many common ethnic slurs trademarked these days, based on a quick search of the USPTO database. Still, there are a few live marks that use the word “cracka” and many using the word “slut.”

Disparaging trademarks are denied registration pretty regularly, according to Beebe. For example, the office recently denied a push to register the phrase “Stop the Islamization of America," USA Today reported.

When the rare cancellation does happen, it’s typically for things like lapse of use or deception, said Tushnet. In fact, according to USPTO's online records, which only go back to 1999, the only other time the PTO has wielded its power to cancel a trademark for being offensive was in April 1999, in another case against the Redskins. In that case, called Harjo v. Pro Football, Inc., an appeals court threw out the ruling mostly on the basis that the petitioners had waited too long to assert their rights.

This new case uses much of the same evidence as the Harjo case, and it’s likely lawyers will argue in appeal that so much time has passed that it's hard to prove that the word "Redskins" was disparaging to Native Americans at the time the trademarks were registered. Courts consider how a word was used during the time it was trademarked when reviewing these cases.

“I’ve never seen a case of this nature that has had to go back in time to cancel a mark that was registered 40 years ago,” Beebe said. “We’re talking about the meaning of the term in the mid-1960s.”

Andrew Baum, a partner at the law firm Foley & Lardner who focuses on intellectual property, said the case's notoriety may have influenced the PTO's decision to take a stand against the trademarks.

“I suspect that they were trying to decide the case in terms of contemporary sensibilities, and as the defense points out that’s not the standard,” Baum said. “It’s unusual for the Trademark Trial and Appeal Board to deal with an issue that is so fraught with racial and ethnic sensitivity that is under such a big spotlight. These are trademark professionals, they are administrative-law judges that normally work in obscurity, and here they are in a case that gets decided and immediately The Huffington Post is calling for comments on it.”

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**Teaching Tip 2 (Related to Video 2: "Supreme Court Upholds Affordable Care Act")—
"Original United States Supreme Court Decision Regarding the Affordable Care Act"**

Note: For the original (2011) United States Supreme Court Obamacare decision, National Federation of Independent Business et al. v. Sebelius, Secretary of Health and Human Services, et al., please see the following internet address.

http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf

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Chapter Key for McGraw-Hill/Irwin Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 5 and 12	Chapter 5	Chapter 5	Chapters 5 and 12
Kubasek et al., Dynamic Business Law: Summarized Cases	Chapters 5 and 12	Chapter 5	Chapter 5	Chapters 5 and 12
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 4 and 7	Chapter 4	Chapter 4	Chapters 4 and 7
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3 and 8	Chapter 3	Chapter 3	Chapters 3 and 8
Barnes et al., Law for Business	Chapters 4 and 8	Chapter 4	Chapter 4	Chapters 4 and 8
Brown et al., Business Law with UCC Applications	Chapters 2 and 33	Chapter 2	Chapter 2	Chapters 2 and 33
Reed et al., The Legal and Regulatory Environment of Business	Chapters 6 and 11	Chapter 6	Chapter 6	Chapters 6 and 11
McAdams et al., Law, Business & Society	Chapters 5 and 16	Chapter 5	Chapter 5	Chapters 5 and 16
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2 and 25	Chapter 2	Chapter 2	Chapters 2 and 25
Bennett-Alexander & Harrison, The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society	Chapters 9 and 15	Chapter 9	Chapter 9	Chapters 9 and 15

Proceedings

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 12th Edition 2015© (0078023815)
Bennett-Alexander et al., The Legal Environment of Business in A Diverse Society, 1st Edition 2012© (0073524921)
Brown et al., Business Law with UCC Applications Student Edition, 13th Edition 2013© (0073524956)
Kubasek et al., Dynamic Business Law, 3rd Edition 2015© (0078023785)
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