

Response to Call for Paper Proposals for 37th Annual Congress ATRIP, 5-8 2018

Dr Vicki T. Huang, LLB (Melb), LLM (Columbia), PhD (Melb)

Law Lecturer, Deakin Law School, Australia

vicki.huang@deakin.edu.au

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Title: An Inter-Disciplinary Analysis of THE SLANTS Case

This paper is the first to examine the Supreme Court case of *Matal v Tam* 582 U. S. _____ (2017) (*Tam*) against a broader social science framework. It argues that the legal scholarship surrounding Tam's 'slur-appropriation as a form of self-empowerment' rhetoric fails to acknowledge critical social facts. Those being, that not all minorities face inequity in an equal way and that self-appropriation is critically different from appropriation of a slur by a non-affected group.

The decision in *Tam*, allowed the applicant to register THE SLANTS but equally empowered any other persons desirous of registering a disparaging mark. Controversially, the decision effectively neutered the protracted efforts by some Native Americans to de-register NFL-owned racist trademarks such as REDSKINS on disparagement grounds. The outcome of the *Tam* case – in effect the support of equal rights to freedom of speech – left the Native Americans legally disenfranchised. Arguably, the case is illustrative of the common legal aphorism that what is 'fair' is occasionally inconsistent with what is morally right.

This paper integrates literature from psychology and linguistics that provides empirical evidence of the nuanced differences in the efficacy of reclamation as an empowerment tool for different minorities. This literature demonstrates that efficacy of reclamation varies with the applicant's individual status and the perceived social power of the impugned minority group. Since the *Tam* decision there has been a flurry of applications for racist trademarks. This paper provides a new framework (informed by the social sciences) to discuss the long-term impact on trademark law due to the *Tam* case and due to the changing dynamics in minority social activism.

Keywords: The Slants, Redskins, disparagement, self-appropriation, re-appropriation, slurs, race, trademarks, psychology and law, semiotics and law