

Noli IP Newsletter

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The Slams Decision, its Effect to Redskins and All Future Disparagement Cases

By Judit Marai

From time to time, a legal dispute quickly becomes well-known and famous among the public mainly due to its subject matter

Speech Clause in the *Matal v. Tam case*. The *Slams case* will not just pave the road for the future of the Redskin case,



and/or the parties involved.

One of the latest ones is the Washington Redskins case. Interestingly, on June 19, 2017 the Supreme Court issued another decision finding the disparagement clause of the Lanham Act unconstitutional under the First Amendment's Free

but this decision will have a great impact on the principles of trademark law in general.

"The Slams" band was founded by Asian American musicians. Although, the band members stated that the word "SLAM" may have

Until Next ECTA!



Almost a month ago, Ms. Marai and Ms. Mariana Noli participated for the first time of the ECTA Annual Meeting in Budapest, Hungary.



This conference provided many interesting workshops and seminars, as well as the possibility of networking with new colleagues in our field.



For more information about the work of this organization, please visit the following:
<http://www.ecta.org/>

a derogatory meaning to some Asian-Americans, they intended to change the attitude and eventually its derogatory meaning by using the word.

The USPTO rejected the registration because the mark was disparaging to the majority of Asian descendants but after many years of legal disputes, the Supreme Court made a constitutional decision in this case. The Supreme Court held that the “provision of federal law prohibiting the registration of trademarks that may “disparage . . . or bring . . . into contemp[t] or disrepute” any “persons, living or dead.” 15 U. S. C. §1052(a). . . violates the Free Speech Clause of the First Amendment. It offends a bedrock First Amendment

principle: Speech may not be banned on the ground that it expresses ideas that offend.”

The Supreme Court based its decision on the finding that trademarks are not governmental, but private speech, so they cannot constitute exemption from the Free Speech Doctrine. Also, the Supreme Court refused the Government’s two other arguments that trademarks are governmental subsidiaries and trademarks should be tested under the new government-program doctrine.

Why and how does this decision affect the future of the Washington Redskin case? The history of this dispute is decades-long back to 1992. The latest step in the story was the decision of the Fourth Circuit of

Appeal in the Pro-Football Inc. v Amanda Blackhorse case when it postponed the oral hearing in the Redskins disparagement case until the Supreme Court issued the decision in The Slams case. Clearly, the Fourth Circuit noticed strong connections between the possible cancellation of six Redskins trademarks and the constitutionality of the disparagement clause (or the lack of it). Although, we cannot predict the decision of the Fourth Circuit, it is well known that the owner of the Washington Redskins was very happy about the decision. As he said: He was thrilled. “Hail to the Redskins!”

We will have to wait and see what the decision will be on this case.

The Borges Case: Copyright Infringement in Argentina

By Luciana Noli

The novelist and poet Pablo Katchadjian is facing trial for “intellectual property fraud” for publishing a reworking of one of the best known stories by the

author Jorge Luis Borges in 1945 “The Aleph” under the name of “*The Fattened Aleph*.” The story was originally published in 2009 and it extended Borges’s work from its original.

Alterations consist of the addition of adjectives and descriptive passages without changing the original plot, which revolves around “a small

iridescent sphere” in a Buenos Aires basement.

After its publication in 2011, Maria Kodama, Borges’s 79-year-old widow launched her legal action arguing that Katchadjian had used the story without seeking her permission. This case has brought lots of attention into scene.

Kodama’s lawyer, Mr. Soto, dismissed Katchadjian’s claims that the work was a literary experiment. *“Only Katchadjian’s name appears on the cover. It doesn’t say ‘The Aleph by Borges, altered by Katchadjian’. Borges is not mentioned in the index or the*

copyright page either. The only place Borges appears is in a brief postscript at the end of the text,” Soto said. Major contemporary novelists expressed their support for Katchadjian and demanded that Kodama drop her lawsuit.

Katchadjian who has rarely spoken in public about the case, has expressed *“The Fattened Aleph is not plagiarism because no plagiarism is open about its source,”* Katchadjian said. *“Neither is it a joke that went wrong, or one that went right. It is a book I wrote based on a previous text.”*

PEN International, the world’s leading association of writers, has also come out strongly in Katchadjian’s defense, describing his prosecution as *“a disproportionate reaction to a literary experiment”*. Katchadjian’s lawyer, Mr. Strafacce, said he was confident the lawsuit would not prosper.

So far in the first instance and in the second one, Katchadjian has been dismissed of fault. However, Kodama can appeal again in ‘Cassation and eventually in the Supreme Court.

Westside Bar Association CLE Seminar at the W Hotel

Last Thursday July 27th, 2017, Ms. Mariana Noli and Ms. Diane Fisher participated of a CLE Seminar organized by the Westside Bar Association (www.westsidebarassociation.com), where Ms. Knox and Mr. Antony shared their experiences of being victims of a “not always fair” judicial system. Ms. Knox was acquitted after a wrongful conviction while being an exchange student in Italy. Mr. Anthony was wrongfully convicted and spent 17+ years in prison in the US.

While this topic is outside of our area of expertise, we are passionate about the pursuit of justice and the rule of law. We congratulate the WBA for putting on this incredibly interesting CLE seminar, and to our colleagues, Mr. Shapiro, Ms. Tang and Mr. Forouzan for the invite.

