is inferior, slight, deprecate, degrade, or affect or injure by unjust comparison.

Considering the "ordinary and common" meanings of the words "scandalous" and "disparage," we find that distinct differences in these meanings dictate that we apply different standards for determining disparagement from those enunciated by the Court and Board for determining scandalousness. In particular, the "ordinary and common meaning" of "scandalous" looks at the reaction of American society as a whole to specified matter to establish whether such matter violates the mores of "American society" in such a manner and to such an extent that it is "shocking to the sense of truth, decency or propriety," or offensive to the conscience or moral feelings, of "a substantial composite of the general public." On the other hand, the "ordinary and common meaning" of the word "disparage" has an entirely different focus, as disparagement has an identifiable object which, under Section 2(a) of the Trademark Act, may be "persons, living or dead, institutions, beliefs or national symbols."

A further difference between scandalousness and disparagement is found in the language of Section 2(a). While Section 2(a) precludes registration of matter that **is** scandalous, it does not preclude registration of matter

that **is** disparaging. It precludes registration of matter that **may be** disparaging. There is no legislative history or precedent that specifically addresses this distinction between the two statutory provisions. Respondent's linguistics experts herein have testified that, as they understand the meaning of the word "disparage," disparagement of someone or something usually requires some degree of intent by the speaker to cause offense, although, as petitioners' expert notes, this may be inferred from the circumstances and from evidence regarding the acceptability of the language or imagery used. Thus, we believe the use of the term "may" is necessary in connection with "disparage" in Section 2(a) to avoid an interpretation of this statutory provision that would require a showing of intent to disparage. Such a showing would be extremely difficult in all except the most egregious cases. Rather, this provision, as written, shifts the focus to whether the matter may be perceived as disparaging.[100]

In seeking guidance for determining, under Section 2(a), whether matter may be perceived as disparaging, we look to the limited precedent of the courts and the Board

[100] Thus, as with scandalousness, the intent, or lack thereof, to ensure that the disparaging connotation of matter in a mark is so perceived is merely one factor to consider in determining whether a mark may be disparaging. It is not dispositive of the issue of disparagement.

on the issue of disparagement, as well as to the previously enunciated precedent on the related issue of scandalousness. As with most trademark issues, including scandalousness, the question of disparagement must be considered in relation to the goods or services identified by the mark in the context of the marketplace. *See, In re Riverbank Canning Co., supra at 269. See also, Doughboy Industries, Inc. v. The Reese Chemical Company*, 88 USPQ 227 (Pat. Off. 1951), wherein the Patent Office denied, *ex parte*, the registration of DOUGH-BOY for an anti-venereal medication. In that case, the Patent Office concluded that, as with scandalousness, the question of disparagement must be determined by reference to the particular goods in connection with which the mark is used. The Patent Office found the mark DOUGH-BOY, a name for American soldiers in the first World War, to be disparaging as used in connection with the identified goods, particularly in view of the packaging which pictured an American soldier.

To ascertain the meaning of the matter in question, we must not only refer to dictionary definitions, but we must also consider the relationship between the subject matter in question and the other elements that make up the mark in its entirety; the nature of the goods and/or services; and

the manner in which the mark is used in the marketplace in connection with the goods and/or services.

If, in determining the meaning of the matter in question, such matter is found to refer to an identifiable "[person or] persons, living or dead, institutions, beliefs, or national symbols," it is only logical that, in deciding whether the matter may be disparaging, we look, not to American society as a whole, as determined by a substantial composite of the general population, but to the views of the referenced group.[101] The views of the referenced group are reasonably determined by the views of a substantial composite thereof. In this regard, we follow the precedent established by the Board in *In re Hines*, 31 USPQ2d 1685, 1688 (TTAB 1994),[102] *vacated on other grounds*, 32 USPQ2d 1376 (TTAB 1994), wherein the Board stated the following:

> In determining whether or not a mark is disparaging, the perceptions of the general public are irrelevant. Rather, because the

[101] It is very possible that disparaging matter may provoke a negative reaction from only the relevant group. Thus, matter that may disparage does not necessarily provoke the same widespread societal reaction as scandalous matter. However, if allegedly disparaging matter provokes a widespread negative societal reaction, it is reasonable to infer that the relevant group will, similarly, perceive the matter as disparaging. Further, depending on the facts, matter that may disparage can be found, also, to be scandalous under Section 2(a).

[102] In *Hines*, the Board found the mark BUDDA BEACHWEAR and design for various casual clothing items to be disparaging in view of the particular depiction of Buddha therein.

> portion of Section 2(a) proscribing disparaging marks targets certain persons, institutions or beliefs, only the perceptions of those referred to, identified or implicated in some recognizable manner by the involved mark are relevant to this determination.

Who comprises the targeted, or relevant, group must be determined on the basis of the facts in each case. For example, if the alleged disparagement is of a religious group or its iconography, the relevant group may be the members and clergy of that religion; if the alleged disparagement is of an academic institution, the relevant group may be the students, faculty, administration, and alumni; if the alleged disparagement is of a national symbol, the relevant group may be citizens of that country. *See also, In re Reemtsma Cigarettenfabriken G.m.b.H.*, 122 USPQ 339 (TTAB 1959)[103]; *In re Waughtel*, 138 USPQ 594, 595 (TTAB 1963)[104]; and *In re Anti-Communist World Freedom Congress, Inc.*, 161 USPQ 304, 305 (TTAB 1969).[105]

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[103] The mark in *Reemtsma*, SENUSSI, which is the name of a Moslem group that forbids the use of cigarettes, for cigarettes, was found to be an affront to the members of this group and tended to disparage their beliefs.

[104] The mark in *Waughtel*, AMISH and design of an Amish man smoking a cigar, for cigars and cigar boxes, was found not to affront members of that sect or disparage their religious or moral beliefs because evidence established that nothing in Amish religious principles or teachings prohibits the raising or use of tobacco and, in fact, at least seventy-five percent of the male members of the Amish sect smoke cigars and/or chew tobacco.

[105] The mark in *Anti-Communist World Freedom Congress*, consisting of a design of a large "X" superimposed over a hammer and sickle design, for "patriotic educational services, namely, dissemination of information

We distinguish *Hines* and the case herein from the case of *Greyhound Corp. v. Both Worlds, Inc.*, 6 USPQ2d 1635 (TTAB 1988). In *Greyhound*, on summary judgment, the Board sustained the opposition on the grounds of scandalousness, disparagement, and likelihood of confusion. The mark in question was a design of a defecating greyhound dog, for polo shirts and T-shirts. Citing the *Restatement (Second) of Torts* §629 (1977), wherein disparagement is defined as the publication of a statement, which the publisher intends to be understood, or which the recipient reasonably should understand, as tending "to cast doubt upon the quality of another's land, chattels, or intangible things," the Board established the following standard:

> The two elements of such a claim [of disparagement] are (1) that the communication reasonably would be understood as referring to the plaintiff, and (2) that the communication is disparaging, that is, would be considered offensive or objectionable by a reasonable person of ordinary sensibilities. (*citations omitted*)

The disparagement in the *Greyhound* case involved an "offensive" design that disparages a commercial corporate entity and, thus, is akin to the commercial disparagement of property described in §629 of the *Restatement (Second)*

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relative to United States laws concerning activities of the communist party," was found to disparage the national symbol of the Soviet Union. Applicant's intent to disparage the Communist Party rather than the Soviet Union was considered irrelevant.

of Torts, supra. The disparaging trademark casts doubt upon the quality of opposer's corporate goodwill, as embodied in its running greyhound dog trademarks. The standard in that case, namely, the perception of a "reasonable person of ordinary sensibilities," may be appropriate in cases involving alleged disparagement of individuals or commercial entities. However, the standard enunciated in *In re Hines, supra*, namely, the perceptions of "those referred to, identified or implicated in some recognizable manner by the involved mark," is appropriate for determining whether matter may disparage a non-commercial group, such as a religious or racial group, or beliefs or national symbols.

Matter Which May Bring Persons Into Contempt Or Disrepute

We turn, finally, to the Section 2(a) provisions regarding contempt or disrepute. We find no guidance in the legislative history for interpreting this provision and note that this provision is addressed in the case law, generally, in a conclusory manner with few, if any, guidelines. In view of the "ordinary and common" meanings of the words "contempt" and "disrepute," as they were defined in 1947[106] and more recently,[107] we believe that the

[106] In *Webster's New International Dictionary*, Unabridged, 2nd ed., G. & C. Merriam Company (1945), "*contempt*" is defined as "1. Act of contemning, or despising; the feeling with which one regards that which

guidelines enunciated herein in connection with determining whether matter in a mark may be disparaging are equally applicable to determining whether such matter brings "persons, living or dead, institutions, beliefs, or national symbols into contempt or disrepute."

Legal Analysis

We preface our analysis herein by emphasizing the very narrow nature of the question before us. We are determining whether, under the Section 2(a) grounds asserted, the service marks that are the subjects of the six registrations in this proceeding shall remain registered. We do not decide whether the subject marks may be used or whether the word REDSKINS may be used as part of the name of respondent's professional football team.

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is esteemed mean, vile, or worthless; disdain; scorn; as, familiarity breeds contempt; 2. State of being despised; disgrace; shame …"; and "*disrepute*" is defined as "*vt.* To bring into discredit; disesteem *obs.*; *n.* loss or want of reputation; ill character; low estimation; dishonor." In the *New Standard Dictionary of the English Language* (1947), Funk & Wagnalls Company, "*contempt*" is defined as "1. N.the act of despising, or of viewing or considering and treating as mean, vile, and worthless; hatred and scorn of what is deemed mean or vile; disdain; scorn; 2. The state of being despised; disgrace; shame"; and "*disrepute*" is defined as "lack or loss of reputation; ill repute; a bad name or character; disesteem."

[107] In the *Random House Dictionary of the English Language*, 2nd ed., unabridged (1987), "*contempt*" is defined as "1. the feeling with which a person regards anything considered mean, vile, or worthless; disdain; scorn; 2. The state of being despised; dishonor; disgrace"; and "*disrepute*" is defined as "*n.* bad repute; low regard; disfavor (*usually* preceded by *in* or *into*): *some literary theories have fallen into disrepute; syn.* Disfavor, disgrace."

In all of the reported cases discussed above, the issue was whether the involved marks were scandalous or may be disparaging because of the marks' sexual explicitness or innuendo, vulgarity, religious significance, or reference to illicit activity. The case before us differs factually from the aforementioned types of cases in that petitioners contend, principally, that the word REDSKINS in the marks in question is "a deeply offensive, humiliating, and degrading racial slur" in connection with Native Americans. The primary focus of the parties' evidence and arguments is petitioners' allegation that the marks in the subject registrations may disparage Native American persons. We therefore begin our analysis with petitioners' claim of disparagement.

Disparagement

As stated previously herein, our analysis is essentially a two-step process in which we ask, first: What is the meaning of the matter in question, as it appears in the marks and as those marks are used in connection with the services identified in the registrations? Second, we ask: Is this meaning one that may disparage Native Americans? As previously stated, both questions are to be answered *as of the dates of registration of the marks herein.* The oldest registration

involved in this case is of the mark THE REDSKINS, in stylized script, issued in 1967. Registrations of three marks, THE WASHINGTON REDSKINS, WASHINGTON REDSKINS and a design including a portrait of a Native American in profile, and THE REDSKINS and a design including a portrait of a Native American in profile and a spear, issued in 1974. The registration of the mark REDSKINS issued in 1978, and the registration of the mark REDSKINETTES issued in 1990. Thus, while we have properly considered evidence spanning a broad period of time, we focus our determination of the issue of disparagement on the time periods, between 1967 and 1990, when the subject registrations issued.

As we must consider the question of disparagement in connection with the services identified in the subject registrations, we note that, although there are some minor differences in the identifications of services among the six registrations herein, each registration can be described, generally, as pertaining to entertainment services in connection with, or in the nature of, professional football games.

1. Meaning of the Matter in Question.

While the marks in the majority of the subject registrations include matter in addition to the word "Redskins," the principal focus of the evidence and

arguments in this case is the word "redskin(s)" as it appears in each mark. Therefore, we begin by looking at the meaning of the word "redskin(s)." It is clear from the dictionary definitions and other evidence of record herein, and respondent does not dispute, that one denotative definition of "redskin(s)" is a Native American person.[108] The evidence establishes the use of the term "redskin(s)" to refer to Native Americans since at least the mid-nineteenth century. Both parties agree that since approximately the 1930's, and certainly by the 1960's, the occurrences in print or in other media of "redskin(s)" as a term denoting Native Americans declined dramatically. However, there is no question, based on this record, that "redskin(s)" has remained a denotative term for Native Americans throughout this century, in particular, from the 1960's to the present.[109]

Considering the meaning of the term "redskin(s)" in connection with the services identified in the challenged registrations, respondent contends that the term

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[108] There is some indication in the record that "redskin(s)" also identifies a type of potato, a brand of motorcycle, and perhaps, a type of peanut, but there is no evidence in the record that any of these possible meanings of the word "redskin(s)" would pertain to the word as it is used in respondent's marks in connection with the identified services.

[109] Evidence sufficient to warrant this conclusion includes, at a minimum, dictionary definitions and articles that refer to the word "redskin(s)" in connection with Native Americans.

"Redskins," considered in connection with professional football games, denotes respondent's football team and its entertainment services. Respondent contends that, over its six decades of use, respondent's marks have "acquired a strong and distinctive meaning identifying respondent's entertainment services … in the context of professional football"[110]; that "Redskins" has become "denotative of the professional football team"; and that, although "deriving from the original, ethnic meaning of 'redskin'," the word "'Redskins' was perceived in 1967, and today, to be a distinct word, entirely separate from 'redskin' and the core, ethnic meaning embodied by that term."

We agree that there is a substantial amount of evidence in the record establishing that, since at least the 1960's and continuing to the present, the term "Redskins" has been used widely in print and other media to identify respondent's professional football team and its entertainment services. But our inquiry does not stop here. Our precedent also requires us to consider the

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[110] As we stated in an interlocutory decision in this case, *Harjo et. al. v. Pro Football, Inc., supra at* 1832, proof that respondent's marks have acquired secondary meaning does not establish a defense to petitioners' claims under Section 2(a). However, as respondent expressly states, it "is not raising a traditional secondary meaning defense addressing the issue of the protectability of Respondent's marks." Rather, we view this contention in the context of respondent's arguments regarding the meaning of the word "redskin(s)."

manner in which respondent's marks appear and are used in the marketplace. In this regard, while petitioners concede that, from at least the 1960's to the present, the word "Redskins," in the context of professional sports, identifies respondent's football team, petitioners contend, essentially, that all professional football teams have themes that are carried through in their logos, mascots, nicknames, uniforms and various paraphernalia sold or used in connection with their entertainment services. Petitioners point to the Native American theme evident in respondent's logos and the imagery and themes used by respondent in connection with its football team and games. This imagery is also evident in the writings and activities of the media and in the activities and writings of the team's fans. Petitioners contend that, in view of the team's Native American theme, one cannot separate the connotation of "redskin(s)" as a reference to Native Americans from the connotation of that word as it identifies respondent's football team and is used in connection with respondent's entertainment services.

Respondent correctly notes that the evidence herein establishes that the vast majority of uses of the word "redskin(s)" in the press and other media, since at least the 1960's, refer to respondent's professional football

team, rather than to Native Americans. At the same time, we find that, in determining the meaning of the term "redskin(s)" as it appears in respondent's registered marks, it would be both factually incomplete and disingenuous to ignore the substantial evidence of Native American imagery used by respondent, as well as by the media and respondent's fans,[111] in connection with respondent's football team and its entertainment services. Respondent admits that it "does not claim that its marks bear no association with American Indians, nor that when the team name was first adopted in 1933 it connoted anything other than an ethnic group." However, the evidence simply does not support respondent's further contention that, in view of its use since 1933, the meaning of the word "Redskins," as part of its registered marks, is as "a purely denotative term of reference for the professional football team [with] no connotative meaning whatsoever." As used by respondent in connection with its professional football team and entertainment services, the word "Redskins," as it appears in the marks herein, clearly carries the allusion to Native Americans.

[111] Respondent argues vociferously, and correctly, that it is not responsible for the writings and actions of the media and respondent's fans. However, such evidence is relevant herein because it indicates the public's perceptions of the meanings attributable to, and associations made in connection with, respondent's service marks.

Two of the registered marks include a portrait that respondent acknowledges is a profile of a Native American and a spear that we presume is a Native American spear. We believe these two elements reinforce the allusion to Native Americans that is present in the word "Redskins" in both marks. Because of the manner of use of respondent's marks in connection with Native American themes and imagery, as discussed herein, this same allusion is also present in the marks that include the word "Washington," to indicate the full name of the football team, *i.e.*, "Washington Redskins." Further, the registered mark, REDSKINETTES, clearly consists of the root word "redskin" with the diminutive or feminine "ettes" added as a suffix. Thus, our conclusions regarding the word "Redskins" are equally applicable to the mark REDSKINETTES.

We note that, in considering the meaning of the matter in question, respondent misunderstands the issue when it states, in reaction to newspaper headlines in the record, such as "Skins Scalp Giants, 23-7," that "no Redskins fan truly believes that the players huddled on the ten yard line are in fact tribal bounty hunters primed to scalp their opponents upon scoring a touchdown." Clearly, the connection being made between the quoted headline and respondent's football team by the media, fans, and

respondent itself is metaphorical rather than literal, as acknowledged by respondent's written statement (Cooke Exhibit 10, *see* Cooke testimony, vol. II, pgs. 90-91) that states, in part, "[o]ver the long history of the Washington Redskins, the name has reflected positive attributes of the American Indian such as dedication, courage and pride."

This is not a case where, through usage, the word "redskin(s)" has lost its meaning, in the field of professional football, as a reference to Native Americans in favor of an entirely independent meaning as the name of a professional football team. Rather, when considered in relation to the other matter comprising at least two of the subject marks and as used in connection with respondent's services, "Redskins" clearly both refers to respondent's professional football team and carries the allusion to Native Americans inherent in the original definition of that word. This conclusion is equally applicable to the time periods encompassing 1967, 1974, 1978 and 1990, as well as to the present time.

2. Whether the Matter in Question May Disparage Native Americans.

We turn, now, to the second part of our analysis, the question of whether the matter in question may disparage Native Americans. We have found that, as an element of

respondent's marks and as used in connection with respondent's services, the word "redskin(s)" retains its meaning as a reference to Native Americans, as do the graphics of the spear and the Native American portrait. In view thereof, we consider the question of whether this matter may disparage Native Americans by reference to the perceptions of Native Americans. Our standard, as enunciated herein, is whether, as of the relevant times, a substantial composite of Native Americans in the United States so perceive the subject matter in question. In rendering our opinion, we consider the broad range of evidence in this record as relevant to this question either directly or by inference.

Several of petitioners' witnesses expressed their opinions that the use of Native American references or imagery by non-Native Americans is, essentially, *per se* disparaging to Native Americans or, at the very least, that the use of Native American references or imagery in connection with football[112] is *per se* disparaging to Native Americans. We find no support in the record for either of

[112] Petitioners' linguistics expert expressed his opinion that names of football teams are chosen either to indicate geographic location or to indicate ferocity, and, thus, the choice of "Redskins" as a team name somehow establishes that the word carries negative connotations of savagery. We find this reasoning to be circular and based primarily on conjecture.

these views. Consequently, we answer the question of disparagement based on the facts in this case by looking to the evidence regarding the views of the relevant group, the connotations of the subject matter in question, the relationship between that matter and the other elements that make up the marks, and the manner in which the marks appear and are used in the marketplace.

While petitioners' have framed their allegations broadly to include in their claim of disparagement all matter in the subject marks that refers to Native Americans, their arguments and extensive evidence pertain almost entirely to the "Redskins" portion of respondent's marks. We note that there is very little evidence or argument by either side regarding the other elements of respondent's marks that refer to Native Americans, namely, the spear design and the portrait of a Native American in profile. Both graphics are realistic in style. Respondent acknowledges that the portrait depicts a Native American individual, although it is unclear if it is a portrait of a real individual. There is no evidence that these graphics are used in a manner that may be perceived as disparaging, or that a substantial composite of the Native American population in the United States so perceives these graphics as used in the subject marks in connection with the

identified services.[113] Thus, with respect to the spear design and the portrait of a Native American in profile, as these elements appear in two of the registered marks herein, we find that petitioners have not established, under Section 2(a), that this matter may disparage Native Americans.

The remaining question in relation to disparagement is whether the word "redskin(s)" may be disparaging of and to Native Americans, as that word appears in the marks in the subject registrations, in connection with the identified services, and during the relevant time periods.

We find petitioners have clearly established, by at least a preponderance of the evidence, that, as of the dates the challenged registrations issued, the word "redskin(s)," as it appears in respondent's marks in those registrations and as used in connection with the identified services, may disparage Native Americans, as perceived by a substantial composite of Native Americans. No single item

[113] At least two of the petitioners testified that some types of feathers have religious significance to some Native American tribes and, thus, the secular use of such feathers is offensive. However, there is insufficient evidence regarding this allegation to warrant a conclusion that the mere representation of feathers in the marks herein may disparage Native Americans. Additionally, several of the petitioners testified that the portrait in two of the marks is a stereotypical representation of a Native American. There is insufficient evidence for us to conclude that this portrait is a stereotypical rendering of a Native American or that it may disparage Native Americans. The views of petitioners, alone, do not inform us of the views of a substantial composite of Native Americans.

of evidence or testimony alone brings us to this conclusion; rather, we reach our conclusion based on the cumulative effect of the entire record. We discuss below some of the more significant evidence in the record. We look, first, at the evidence establishing that, in general and during the relevant time periods, the word "redskin(s)" has been a term of disparagement of and to Native Americans. Then we look at the evidence establishing that, during the relevant time periods, the disparaging connotation of "redskin(s)" as a term of reference for Native Americans extends to the word "Redskin(s)" as it appears in respondent's subject marks and as used in connection with respondent's identified services. We have considered the perceptions of both the general public and Native Americans to be probative. For example, we have found that the evidence supports the conclusion that a substantial composite of the general public finds the word "redskin(s)" to be a derogatory term of reference for Native Americans. Thus, in the absence of evidence to the contrary, it is reasonable to infer that a substantial composite of Native Americans would similarly perceive the word. This is consistent with the testimony of the petitioners.

We look, first, at the evidence often considered in the decisional law concerning Section 2(a) scandalousness and disparagement, namely, dictionary definitions. Both petitioners and respondent have submitted excerpts defining "redskin" from numerous well-established American dictionary publishers from editions covering the time period, variously, from 1966 through 1996. Across the time period, the number of publishers including in their dictionaries a usage label indicating that the word "redskin" is disparaging is approximately equal, on this record, to those who do not include any usage label. For example, *Random House* publishers include the label "often offensive" in dictionaries published from 1966 onward. *American Heritage* publishers indicate that "redskin" is "informal" in 1976 and 1981 editions and that it is "offensive slang" in 1992 and 1996 editions. The *World Book Dictionary* includes no usage label regarding "redskin" in either its 1967 or 1980 edition and more recent editions are not in evidence. From the testimony of the parties' linguistics experts, it is clear that each entry in a dictionary is intended to reflect the generally understood meaning and usage of that word. Thus, from the fact that usage labels appear in approximately half of the dictionaries of record at any point in the time period

covered, we can conclude that a not insignificant number of Americans have understood "redskin(s)" to be an offensive reference to Native Americans since at least 1966.[114]

Discussing the substantial body of historical documents he reviewed in connection with his testimony herein, Dr. Geoffrey Nunberg, petitioners' linguistics expert, concluded that the word "redskin(s)" first appeared in writing as a reference to Native Americans in 1699 and that, from 1699 to the present, the word "redskin(s)," used as a term of reference for Native Americans, evokes negative associations and is, thus, a term of disparagement. Additional evidence of record that is consistent with the opinions expressed Dr. Nunberg includes excerpts from various articles and publications about language. These writings include, often in a larger discussion about bias in language, the assumption or conclusion that the word "redskin(s)" as a term of

[114] In view of the contradictory testimony of the parties' linguistics experts regarding the significance of a lack of usage label for a dictionary entry, we cannot conclude that the lack of such labels in the other excerpts of record establishes that the word "redskin(s)" was *not* considered offensive during the relevant time period. Similarly, the single dictionary excerpt which contains a separate entry for "Redskins" defined as respondent's football team, does not affect this conclusion.

reference for Native Americans is, and always has been, a pejorative term.[115]

Petitioners made of record a substantial number of writings, including, *inter alia*, excerpts from newspapers and other publications, encyclopedias, and dictionaries, evidencing the use of the word "redskin(s)" from the late 1800's through the first half of this century. As agreed by both parties' linguistics experts, the vast majority of newspaper headlines, newspaper articles, and excerpts from books and periodicals from the late 1800's and early 1900's, which include the word "redskin(s)" as a reference to Native Americans, clearly portray Native Americans in a derogatory or otherwise negative manner.[116] For example, the newspaper articles in evidence from the late 1800's

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[115] See, for example, petitioners' exhibits entitled "Defining the American Indian: A Case Study in the Language of Suppression," by Haig A. Bosmajian, in the book, *Exploring Language*, by Gary Goshgarian (1983); by Irving Lewis Allen: *Unkind Words - Ethnic Labeling from Redskin to WASP* (1990) and *The Language of Ethnic Conflict - Social Organization and Lexical Culture* (1983); "I have Spoken: Indianisms in Current English," in *English Language Notes* (March 1992); and "Hostile Language: Bias in Historical Writing about American Indian Resistance," by Robert H. Keller, Jr., in the *Journal of American Culture - Studies of a Civilization* (Winter 1986).

[116] One of respondent's linguistics experts, Mr. Barnhart, challenges this conclusion and points to a number of historical references to Native Americans as "redskin(s)" that he concludes are neutral, if not positive. We disagree with Mr. Barnhart's conclusion and find the specified references to Native Americans to be, in fact, negative. However, even if we agreed with Mr. Barnhart's conclusions about these specified statements, we find these few references to be inconsequential in comparison to the substantial number of undisputedly negative historical references to Native Americans as "redskin(s)" in newspapers and other writings in the record.

reflect a view by Anglo-American society of Native Americans as the savage enemy and the events reported are armed conflicts.[117] The entry for "North American Indian" in the *Encyclopedia Britannica* (11th edition, 1910) clearly refers to "the aboriginal people of North America" as "primitive" people, and includes a detailed table describing the degree to which individual tribes have been "civilized" or remain "wild and indolent." An excerpt from a book entitled *Making the Movies*, by Ernest Dench (MacMillan Company, 1919), includes a chapter entitled "The Dangers of Employing Redskins as Movie Actors," which states: "The Red Indians … are paid a salary that keeps them well provided with tobacco and their worshipped 'firewater,'" and "It might be thought that this would civilise (*sic*) them completely, but it has had a quite reverse effect, for the work affords them an opportunity to live their savage days over again …."

Writings in evidence from the 1930's through the late 1940's, which include the word "redskin(s)" as a reference to Native Americans, reflect a slightly less disdainful, but still condescending, view of Native Americans. For

[117] Interestingly, the word "Indian" is primarily used to refer to Native Americans in the text of these newspaper articles, whereas the word "redskin(s)" appears almost exclusively in the headlines. This would appear to indicate a distinction between the connotations of the two words, although neither party's linguistics experts discuss this point.

example, an article entitled "Redskin Revival - High Birthrate Gives Congress a New Overproduction Headache," in *Newsweek*, February 20, 1939, while complaining about the financial and administrative burden of "caring" for Native Americans, recognizes that the inequities suffered by Native Americans are a result of actions by the U.S. government.

From the 1950's forward, the evidence shows, and neither party disputes, that there are minimal examples of uses of the word "redskin(s)" as a reference to Native Americans. Most such occurrences are in a small number of writings about the character of the word itself, or in writings where we find that "redskin(s)" is used in a metaphorical sense juxtaposed with "white man" or "paleface." Both parties agree that, during this same time period, the record reflects significant occurrences of the word "redskin(s)" as a reference to respondent's football team.

We agree with respondent's conclusion that the pejorative nature of "redskin(s)" in the early historical writings of record comes from the overall negative viewpoints of the writings. However, this does not lead us to the conclusion that, as respondent contends, "redskin(s)" is an informal term for Native Americans that

is neutral in connotation.[118] Rather, we conclude from the evidence of record that the word "redskin(s)" does not appear during the second half of this century in written or spoken language, formal or informal, as a synonym for "Indian" or "Native American" because it is, and has been since at least the 1960's, perceived by the general population, which includes Native Americans, as a pejorative term for Native Americans.

We find the context provided by Dr. Hoxie's historical account, which respondent does not dispute, of the often acrimonious Anglo-American/Native American relations from the early Colonial period to the present[119] to provide a useful historical perspective from which to view the writings, cartoons and other references to Native Americans in evidence from the late 19th century and throughout this century.

Finally, we note petitioners' telephone survey, as described herein, purporting to measure the views, at the time of the survey in 1996, of the general population and,

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[118] We agree with petitioners that, although the evidence shows that the word "Indian" became an acceptable term of reference for Native Americans, we cannot conclude from this fact alone that the same is true for the word "redskin(s)."

[119] As Dr. Hoxie recounts, the policies of, first, the colonial government and, then, the U.S. government towards Native Americans reflect the general views of Anglo-Americans towards Native Americans at each point in history.

separately, of Native Americans towards the word "redskin" as a reference to Native Americans. When read a list of seven words referring to Native Americans, 46.2% of participants in the general population sample (139 of 301 participants) and 36.6% of participants in the Native American sample (131 of 358 participants) indicated that they found the word "redskin" offensive as a reference to Native Americans. We have discussed, *supra*, several of the flaws in the survey that limit its probative value. Additionally, the survey is of limited applicability to the issues in this case as it sought to measure the participants' views only as of 1996, when the survey was conducted, and its scope is limited to the connotation of the word "redskin" as a term for Native Americans, without any reference to respondent's football team. However, considering these limitations, we find that the percentage of participants in each sample who responded positively, *i.e.*, stated they were offended by the word "redskin(s)" for Native Americans, to be significant.[120] While the survey polls a relatively small sample and the positive

[120] We note that in cases considering other trademark issues, such as likelihood of confusion or secondary meaning, the courts have found that, respectively, confusion or recognition by an "appreciable number of customers" may be much less than a majority. *See, McCarthy on Trademarks and Unfair Competition*, 4th ed. (West Group, 1998), Vol. 5, Section 32.185.

results reflect less than a majority of that sample, we find these results supportive of the other evidence in the record indicating the derogatory nature of the word "redskin(s)" for the entire period from, at least, the mid-1960's to the present, to substantial composites of both the general population and the Native American population.[121]

The evidence we have discussed so far pertains, generally, to the word "redskin(s)" as it refers to Native Americans. From this evidence we have concluded, *supra*, that the word "redskin(s)" has been considered by a substantial composite of the general population, including by inference Native Americans, a derogatory term of reference for Native Americans during the time period of relevance herein. We have also concluded, *supra*, that the word "Redskins" in respondent's marks in the challenged registrations, identifies respondent's football team and carries the allusion to Native Americans inherent in the original definition of the word. Evidence of respondent's use of the subject marks in the 1940's and 1950's shows a

[121] Respondent has presented no evidence suggesting that, as a term identifying Native Americans, the perception of the derogatory nature of the word "redskin(s)" by any segment of the general population, including Native Americans, changed significantly during this time period. To the contrary, the evidence of record suggests that, as a term identifying Native Americans, "redskin(s)" has been perceived consistently, by both the general population and Native Americans as a derogatory term since, at least, the 1960's.

disparaging portrayal of Native Americans in connection with the word "Redskin(s)" that is more egregious than uses of the subject marks in the record from approximately the mid-1960's to the present. However, such a finding does not lead us to the conclusion that the subject marks, as used in connection with the identified services during the relevant time periods, are not still disparaging of and to Native Americans under Section 2(a) of the Act. The character of respondent's allusions to Native Americans in its use of the subject marks is consistent with the general views towards Native Americans held by the society from approximately the 1940's forward.

In particular, the evidence herein shows a portrayal in various media of Native Americans, unrelated to respondent's football team, as uncivilized and, often, buffoon-like characters from, at least, the beginning of this century through the middle to late 1950's. As we move through the 1960's to the present, the evidence shows an increasingly respectful portrayal of Native Americans. This is reflected, also, in the decreased use of "redskin(s)," as a term of reference for Native Americans, as society in general became aware of, and sensitive to, the disparaging nature of that word as so used.

The evidence herein shows a parallel development of respondent's portrayal of Native Americans in connection with its services. For example, various covers of respondent's game program guides and other promotional efforts, including public relations stunts presenting players in Native American headdresses, from the 1940's through the middle to late 1950's show caricature-like portrayals of Native Americans as, usually, either savage aggressors or buffoons. Similarly, for the same time period, the costumes and antics of the team, the Redskins Marching Band, and the "Redskinettes" cheerleaders reflect a less than respectful portrayal of Native Americans.[122]

During the late 1950's and early 1960's, the evidence shows respondent's game program covers with realistic portraits of actual Native American individuals, reflecting society's increased respect for, and interest in, Native American culture and history. During the 1960's through to the present, the evidence establishes that respondent has largely substituted football imagery for Native American imagery on its game program covers; that it has modified the lyrics of its theme song, "Hail to the Redskins" and

[122] See petitioners' Exhibits Nos. 12 and 29. We note that the record clearly establishes a relationship between respondent and both the "Redskinettes" cheerleader organization and the Redskins Band organization warranting attribution of their respective uses of the subject marks and Native American imagery to respondent.

modified its cheerleaders' uniforms; and Mr. Cooke testified that respondent has, for several years, had a strict policy mandating a restrained and "tasteful" portrayal of Native American imagery by its licensees. Of course, the allusion to Native Americans in connection with respondent's team has continued unabated, for example, in respondent's name, its trademarks, and through the use of Native American imagery such as the headdresses worn for many years by the Redskins Band.

Both parties have submitted voluminous excerpts from newspapers, including cartoons, headlines, editorials and articles, from the 1940's to the present, that refer to respondent's football team in the context of stories and writings about the game of football. These excerpts show that, despite respondent's more restrained use of its Native American imagery over time, the media has used Native American imagery in connection with respondent's team, throughout this entire time period, in a manner that often portrays Native Americans as either aggressive savages or buffoons. For example, many headlines refer to the "Redskins" team, players or managers "scalping" opponents, seeking "revenge," "on the warpath," and holding "pow wows"; or use pidgin English, such as "Big Chief Choo

Choo - He Ponder."[123] Similarly, petitioners have submitted evidence, both excerpts from newspapers and video excerpts of games, showing respondent's team's fans dressed in costumes and engaging in antics that clearly poke fun at Native American culture and portray Native Americans as savages and buffoons.[124] As we have already stated, we agree with respondent that it is not responsible for the actions of the media or fans; however, the actions of the media and fans are probative of the general public's perception of the word "redskin(s)" as it appears in respondent's marks herein. As such, this evidence reinforces our conclusion that the word "redskin(s)" retains its derogatory character as part of the subject marks and as used in connection with respondent's football team.

Regarding the views of Native Americans in particular, the record contains the testimony of petitioners themselves stating that they have been seriously offended by respondent's use of the word "redskin(s)" as part of its marks in connection with its identified services. The record includes resolutions indicating a present objection to the use of this word in respondent's marks from the

[123] See, for example, petitioners' Exhibit 12, notice of reliance.

[124] See, for example, petitioners' Exhibit 13, notice of reliance.

NCAI, which the record adequately establishes as a broad-based organization of Native American tribes and individuals; from the Oneida tribe; and from Unity 94, an organization including Native Americans. Additionally, petitioners have submitted a substantial number of news articles, from various time periods, including from 1969-1970, 1979, 1988-1989, and 1991-1992, reporting about Native American objections, and activities in relation thereto, to the word "Redskins" in respondent's team's name. These articles establish the public's exposure to the existence of a controversy spanning a long period of time. Also with respect to Native American protests, we note, in particular, the testimony of Mr. Gross regarding his 1972 letter, in his role as director of the Indian Legal Information Development Service, to Mr. Williams, then-owner of the Washington Redskins, urging that the name of the team be changed; and regarding his 1972 meeting with Mr. Williams, along with colleagues from several other Native American organizations. Mr. Gross testified that the individuals representing the Native American organizations expressed their views to Mr. Williams that the team name, "Washington Redskins," is disparaging, insulting and degrading to Native Americans. This evidence reinforces the conclusion that a substantial composite of

Native Americans have held these views for a significant period of time which encompasses the relevant time periods herein.

We are not convinced otherwise by respondent's contentions, argued in its brief, that Native Americans support respondent's use of the name "Washington Redskins"; and that Native Americans regularly employ the term "redskin" within their communities. Respondent has presented no credible evidence in support of either contention. In particular, respondent submitted, by notice of reliance, *inter alia*, letters from fans in support of the team name[125]; several letters and resolutions purported to be from Native American tribal chiefs expressing their support for respondent's team name "Washington Redskins";[126]

[125] Respondent's case includes no testimony by the authors of these letters to establish any foundation for the letters. Thus, this evidence has not been considered for the truth of the statements contained therein. Even if we were to accept these letters for the truth of the statements contained therein, which we do not, the vast majority of letters are from non-Native Americans, some of whom report the views of Native Americans with whom they are acquainted. The contents of the letters are, themselves, hearsay, and the reports by the letter-writers of third-party opinions are also hearsay.

[126] Respondent's case includes no testimony by the authors of these letters and resolutions to establish any foundation for the letters and resolutions. Further, the lack of testimony about the letters and resolutions makes it impossible to determine the extent to which the views contained therein speak for a group of Native Americans or just for the authors, or what is the basis for the views expressed. Thus, this evidence has not been considered for the truth of the statements contained therein. Further, this small number of letters would not change our determination herein even if we were to so consider this evidence.

and unidentified photographs purported to have been taken on Indian reservations.[127]

Finally, we note that both parties' briefs have made and debated, and we have considered additional arguments, the majority of which we find irrelevant and all of which we find unnecessary to discuss.

Thus, we conclude that the evidence of record establishes that, within the relevant time periods, the derogatory connotation of the word "redskin(s)" in connection with Native Americans extends to the term "Redskins," as used in respondent's marks in connection with the identified services, such that respondent's marks may be disparaging of Native Americans to a substantial composite of this group of people.

Contempt or Disrepute

We incorporate by reference our preceding analysis, discussion of the facts, and conclusions with respect to disparagement. As we have indicated, *supra*, the guidelines

[127] There is no testimony in the record establishing a foundation for consideration of these photographs. Respondent's counsel referred to the photographs primarily during cross examination of petitioners' witnesses, none of whom professed any knowledge regarding the subject matter of the photographs. Any information about the photographs herein consists merely of the statements of respondent's counsel. Respondent's witness, Mr. Cooke, indicated during his testimony a general awareness of other teams with the word "redskin(s)" as part of their names; however, he presented no specific testimony about such teams. Thus, we find no probative value in the photographs and counsel's statements in connection therewith, and little probative value to Mr. Cooke's vague statement.

for determining whether matter in the marks in the challenged registrations may be disparaging to Native Americans are equally applicable to determining whether such matter brings Native Americans into contempt or disrepute. Thus, we conclude that the marks in each of the challenged registrations consist of or comprise matter, namely, the word or root word, "Redskin," which may bring Native Americans into contempt or disrepute.

Scandalousness

As we have indicated, *supra*, determining whether matter is scandalous involves, essentially, a two-step process. First, the Court or Board determines the likely meaning of the matter in question and, second, whether, in view of the likely meaning, the matter is scandalous to a substantial composite of the general public. Regarding the conclusions drawn with respect to disparagement, we incorporate by reference our discussion and conclusion that the meaning of the matter in question, namely, the word or root word "Redskin," as used by respondent in connection with its professional football team and entertainment services and as it appears in the marks herein, clearly carries the allusion to Native Americans; and that this allusion to Native Americans is reinforced by the design elements in the registered marks incorporating the profile

of a Native American and a Native American spear. However, while we incorporate by reference the analysis of the facts in the discussion, *supra*, of whether the matter in question may disparage Native Americans, as well as the conclusions reached therein regarding the design elements in the subject marks,[128] we reach a different conclusion with respect to the alleged scandalousness of the "Redskin" portions of the marks in respondent's challenged registrations.

In particular, we find that, based on the record in this case, petitioners have not established by a preponderance of the evidence that the marks in respondent's challenged registrations consist of or comprise scandalous matter. We find that the evidence, as discussed above, *does* establish that, during the relevant time periods, a substantial composite of the general population would find the word "redskin(s)," as it appears in the marks herein in connection with the identified services, to be a derogatory term of reference for Native Americans. But the evidence *does not* establish that, during the relevant time periods, the appearance of the

[128] We found, *supra*, that petitioners have not established that these designs are disparaging to Native Americans. Similarly, we find that these design elements, as shown in the subject marks and as used in connection with the identified services, are not scandalous as of any of the relevant time periods.

word "redskin(s)," in the marks herein and in connection with the identified services, would be "shocking to the sense of truth, decency, or propriety" to, or "giv[e] offense to the conscience or moral feelings [of,] excit[e] reprobation, [or] call out for condemnation" by, a substantial composite of the general population. *See, In re Mavety Media Group Ltd., supra at 1925.*

The record reflects the clear acceptance by a substantial composite of the general population of the use of the word "Redskins" as part of the name of respondent's football team and in connection with its entertainment services, regardless of the derogatory nature of the word vis-à-vis Native Americans. This evidence includes the voluminous number of references, in both letters[129] and news articles, to respondent's football team by a substantial number of fans and the media over a long period of time from, at least, the 1940's to the present. Such continuous renown in the sport of football and acceptance of the word "Redskin(s)" in connection with respondent's football team is inconsistent with the sense of outrage by a substantial composite of the general population that would be necessary

[129] We consider the letters in this regard, not for their content, but for the fact that they evidence knowledge by the writers about the team and the use of the word "Redskins" in the team's name.

to find this word scandalous in the context of the subject marks and the identified services.

Decision: As to each of the registrations subject to the petition to cancel herein, the petition to cancel under Section 2(a) of the Act is granted on the grounds that the subject marks may disparage Native Americans and may bring them into contempt or disrepute. As to each of the registrations subject to the petition to cancel herein, the petition to cancel under Section 2(a) of the Act is denied on the ground that the subject marks consist of or comprise scandalous matter. The registrations will be canceled in due course.

J. D. Sams

R. F. Cissel

C. E. Walters
Administrative Trademark Judges,
Trademark Trial and Appeal Board