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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046185
Party	Plaintiff Amanda Blackhorse, Marcus Briggs, Phillip Gover, Shquanebin Lone-Bentley, Jillian Pappan, and Courtney Tsotigh
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,

Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,

Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,

Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,

Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,

and Registration No. 836,122 (THE REDSKINS—STYLIZED LETTERS)
Registered September 26, 1967

Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Papan and Courtney Tsotigh, Petitioners, v. Pro-Football, Inc., Registrant.	)	Cancellation No. 92/046,185

PETITIONERS' TRIAL BRIEF

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I. INTRODUCTION

In *Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705 (T.T.A.B. 1999), the Board ruled that the same six registrations challenged in this petition should be canceled because they contain matter ("redskin(s)" or derivations of "redskin(s)") that may disparage Native Americans or bring them into contempt or disrepute. In *Harjo*, the Board stated its conclusions as follows:

- "[W]e 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."

- "[W]e 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."

- "As to each of the registrations subject to the petition to cancel herein, the petition to cancel under Section 2(a) of the [Lanham] Act is granted on grounds that the subject marks may disparage Native Americans and may bring them into contempt or disrepute."

Harjo, 50 U.S.P.Q.2d at 1748, 1749.

Petitioners and Registrant Pro-Football, Inc. ("PFI" or "Registrant") have stipulated that the record in *Harjo* shall serve as the record in this matter. Since the registrations are the same, the record is the same, and the legal standards are the same, the result should be the same: the Board should order cancellation of the registrations.

Indeed, as demonstrated below, at all relevant times, "redskin(s)" has been a disparaging term used to refer to Native Americans. The trademarks were not eligible under the Lanham Act for registration and the registrations should now be canceled.

II. BACKGROUND

A. Procedural History

On August 11, 2006, pursuant to Section 14(3) of the Lanham Act, 15 U.S.C. § 1064(3), Petitioners Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Pappan and

Courtney Tsotigh filed this petition to cancel six trademark registrations that are registered in the name of PFI, the owner of the Washington NFL Football Team.[1] Section 14(3) provides for cancellation of a registration granted contrary to Section 2(a), and Section 2(a) provides that a trademark is not eligible for registration if it "consists of or contains … matter which may disparage … persons, … or bring them into contempt or disrepute…." 15 U.S.C. §§ 1052(a) & 1064(3).

Here, each of the challenged registered marks contains the term "REDSKIN" or a form of "REDSKIN" and, as a result, consists of or comprises matter that may disparage Native American persons or that may bring them into contempt, ridicule, and disrepute. On that basis, Petitioners seek cancellation of the registrations in question.

On September 26, 2006, PFI filed an Answer that asserted twelve affirmative defenses. The Board then suspended this matter until the federal court proceedings in *Harjo* were concluded. The Board resumed proceedings in this matter on March 18, 2010.

On May 5, 2011, the Board struck ten of PFI's affirmative defenses, leaving only laches and "secondary meaning." *See* Order Summarizing Pretrial Conference (May 5, 2011) [Dkt. 39] at 12-18. "Secondary meaning" is not an affirmative defense, but the Board explained that it "interpret[s] this affirmative defense as an elaboration of respondent's denial that the term REDSKINS is disparaging," *i.e.*, a theory as to why the term REDSKINS is supposedly not disparaging. *See id*. at 14.

On May 31, 2011, after inviting the parties to submit briefs, the Board issued an Order setting forth the legal standards that it intends to apply for "disparagement," "contempt or disrepute," and laches.

[1] A sixth petitioner withdrew the petition as to her alone in July 2010 [Dkt. 24].

B. The Parties' Stipulation Regarding Admissibility Of *Harjo* Evidence

On March 14, 2011, the parties filed a stipulation intended to reduce discovery burdens and expenses by letting the *Harjo* record serve as the record in this petition. The parties stipulated that, with certain exceptions, evidence submitted in *Harjo v. Pro-Football, Inc.*, Cancellation No. 21,069 (T.T.A.B.), shall be admissible in this proceeding, unless the Board ruled in *Harjo* that the evidence was not admissible in which case all arguments as to admissibility were preserved.[2] The parties, however, preserved their rights to argue that any particular piece of evidence submitted in *Harjo* lacks relevance.[3] The parties further stipulated that the *Harjo* materials may be submitted in this matter through a Notice of Reliance.[4]

In addition to stipulating as to the admissibility of *Harjo* evidence, the parties stipulated to limits regarding introducing new evidence. The parties agreed that Petitioners would be subject to only one deposition apiece, and that transcripts of discovery deposition of the Petitioners would be admissible to the same extent as if the deposition were taken during the testimony period. They further stipulated that PFI could introduce evidence relevant to its affirmative defenses of laches. In other respects, the parties agreed to forego introducing additional evidence, agreeing instead to rest on the *Harjo* record.[5] The Board commended the parties for reaching these stipulations, in contrast to the excessively litigious nature of *Harjo*.[6]

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[2] *See* Joint Stipulation Regarding Admissibility Of Certain Evidence And Regarding Certain Discovery Issues (March 14, 2011) [Dkt 31] ¶ 1.

[3] *See id.* ¶ 2.

[4] *See* Order Summarizing Pre-Trial Conference (May 5, 2011) [Dkt. 39] at 5.

[5] *See* Joint Stipulation Regarding Admissibility Of Certain Evidence And Regarding Certain Discovery Issues (March 14, 2011) [Dkt. 31] ¶¶ 5-7.

[6] *See* Order Summarizing Pre-Trial Conference (May 5, 2011) [Dkt. 39] at 2-5.

C. The *Harjo* Proceedings

The seven *Harjo* petitioners filed their petition in 1992. In a 145-page opinion issued in April 1999, the Board ruled in favor of the *Harjo* petitioners and directed that the registrations be canceled. *See Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705 (T.T.A.B. 1999).

PFI then filed an action in the United States District Court for the District of Columbia, pursuant to 15 U.S.C. § 1071(b). On September 30, 2003, the district court entered summary judgment in favor of PFI. *See Pro-Football, Inc. v. Harjo*, 284 F. Supp. 2d 96, 68 U.S.P.Q.2d 1225 (D.D.C. 2003). It held that the *Harjo* petition was barred by laches, and also stated that the Board's decision was not supported by substantial evidence.

The district court emphasized, however, that its decision "should *not* be interpreted as reflecting, one way or the other, this Court's views as to whether the term 'Washington Redskins' may be disparaging to Native Americans." *Id*., 284 F. Supp. 2d at 98, 68 U.S.P.Q.2d at 1228 (emphasis original). Rather, the district court asserted (erroneously) that the Board did not make necessary findings of fact to support its ruling and also faulted the Board for not conducting a live hearing:

> [T]he TTAB only made specific findings of fact in two areas – linguistic evidence and survey evidence. These findings are very limited, because in most instances, the TTAB merely drew from the undisputed portions of the record to make these findings of fact. Indeed, the TTAB heard no live testimony, and the testimony cited in its opinion merely came from the deposition transcripts. For the rest of the voluminous record, the TTAB decided not to make findings of fact, and instead simply cataloged the evidence put forth by both parties.

Id., 284 F. Supp. 2d at 102, 68 U.S.P.Q.2d at 1230.[7]

[7] The district court further asserted that "by making minimal findings on the disputed evidence and focusing almost exclusively on the undisputed portion of the record, the TTAB's findings of disparagement is supported by inferential fact-based judgments, unsubstantiated with concrete evidentiary proof." *Id*. at n.4. The district court repeated its unfounded criticisms of the Board's supposed failure to make findings of fact or conduct a live hearing. "With these two exceptions [the testimony of linguistic

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Because of the Board's supposed failure to make fact findings, the district court severely restricted its review of the record that was before the Board:

> The Court's review of the TTAB's findings of fact is limited by necessity given the paucity of actual findings made by the TTAB. Even though it spent fourteen pages cataloging the evidence in the case, the TTAB made specific findings of fact in only two areas: (1) the linguists testimony; and (2) survey evidence. *Since the TTAB only made specific findings of fact in two areas, it is only these two areas that are subject to court-scrutiny under the substantial evidence test*.

Id., 284 F.Supp. 2d at 119, 68 U.S.P.Q.2d at 1243 (emphasis added) (citations omitted).

The district court's critique of the Board's *Harjo* decision is mistaken and represents a very inaccurate portrayal of the Board's thoughtful 145-page decision. In *Harjo*, the Board thoroughly and carefully reviewed and weighed the factual record, and fully explained the reasons for its conclusions. By severely limiting its review of the record that the Board considered, the district court's ruling is plainly erroneous.

On appeal, the D.C. Circuit did not comment on the district court's dubious substantial-evidence analysis. Instead, it addressed only laches. The D.C. Circuit affirmed the district court ruling that laches barred the petition as to six of the *Harjo* petitioners, and remanded the matter to the district court to consider further whether laches barred the remaining petitioner. *See Pro-Football, Inc. v. Harjo*, 415 F.3d 44, 75 U.S.P.Q.2d 1525 (D.C. Cir. 2005). On remand, the district court ruled that the remaining *Harjo* petitioner was barred by laches, and the D.C. Circuit affirmed that laches ruling. *See Pro-Football, Inc. v. Harjo,* 567 F. Supp. 2d 46, 87 U.S.P.Q.2d

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experts and survey evidence], the TTAB made no other findings of fact regarding the voluminous record and instead merely presented the evidence of each of the parties in the form of summaries…. Again, it should be noted that the testimony supporting these findings was in the form of depositions and not in the form of live testimony before the finders of fact." *Id.*, 284 F. Supp. 2d at 107, 68 U.S.P.Q.2d at 1234.

1891 (D.D.C. 2008), *aff'd* 565 F.3d 880, 90 U.S.P.Q.d 1593 (D.C. Cir.), *cert denied*, 130 S. Ct. 631 (2009).

Here, in contrast to *Harjo*, subsequent federal court proceedings in this matter (if any) will not occur in the D.C. federal courts. In September 2011, Congress enacted the Leahy-Smith America Invents Act, which changed the venue for subsequent federal court proceedings from the District of Columbia to the Eastern District of Virginia (as the alternative to an appeal to the Federal Circuit). *See* Pub. L. No. 112-29 § 9(a), 125 Stat. 284; 15 U.S.C. § 1071(b)(4) (2012). Thus, subsequent judicial proceedings, if any, will occur in either the Fourth Circuit or in the Federal Circuit, but not in the D.C. Circuit.

III. DESCRIPTION OF THE RECORD

On March 15, 2012, pursuant to the March 14, 2011 Stipulation, Petitioners filed portions of the *Harjo* record and, on March 21, 2012, filed their deposition transcripts. For ease of reference, Petitioners assigned Bates label to the *Harjo* record portions that they submitted (BLA-TTAB-00001 through BLA-TTAB-07031). In addition, pursuant to the Board's May 5, 2011 Order, Petitioners have attached a Table of Evidence as Appendix B. The portions of the record on which Petitioners rely include:

- The Patent and Trademark Office file histories for each of the challenged registrations;
- The Answer and other filings of PFI in this matter;
- PFI's responses to Interrogatories and Requests for Admission in *Harjo*;
- Deposition testimony of each of the Petitioners, Amanda Blackhorse, Marcus Briggs-Cloud, Phillip Gover, Jillian Pappan and Courtney Tsotigh;
- Deposition testimony of expert linguist, Geoffrey Nunberg, Ph.D;
- Deposition testimony of film studies expert, Susan Courtney;
- Deposition testimony of expert historian, Frederick Hoxie, Ph.D.;

- Deposition testimony of survey expert, Ivan Ross, Ph.D.;
- Deposition testimony of JoAnn Chase, Executive Director of National Congress of American Indians (at time of deposition);
- Deposition testimony of Harold M. Gross, Former Director of Indian Legal Information Development Service;
- Deposition testimony of John Kent Cooke, Sr., PFI's Executive Vice President (at time of deposition);
- Exhibits used at above-referenced depositions;
- Articles, columns and editorials from newspapers and magazines;
- Excerpts from dictionaries, scholarly articles and other reference sources; and
- Videotapes (copied and provided as DVDs), programs, yearbooks, press guides and other materials produced by PFI.

IV. STATEMENT OF THE ISSUES

1. Whether Petitioners have statutory standing to bring the petition.

2. Whether Registrant's marks consist of or contain matter which may disparage Native Americans, or bring them into contempt or disrepute.

3. Whether each of the five Petitioners is barred from bringing this petition under the doctrine of laches.

V. RECITATION OF THE FACTS

A. The Petitioners

The petitioners are five Native Americans who are members of different tribes. Amanda Blackhorse is a Native American who is an enrolled member of the federally recognized Navajo Nation.[8] Phil Gover is a Native American who is an enrolled member of the federally

[8] *See* Blackhorse Depo. [Dkt. 122] at 196-97.

recognized Paiute Tribe.[9] Courtney Tsotigh is a Native American who is an enrolled member of the federally recognized Kiowa Tribe.[10] Marcus Briggs-Cloud is a Native American who is an enrolled member of the Muscogee Nation of Florida, and also holds a Certificate of Degree of Indian Blood from a federally recognized tribe.[11] Jillian Pappan is a Native American who is an enrolled member of the federally recognized Omaha Tribe of Macy, Nebraska.[12]

Each Petitioner views "redskin" as a derogatory term referring to Native Americans that offends him or her, as well as other Native Americans.[13] Indeed, they have jointly filed the instant Petition which states that "redskin" as a derogatory term referring to Native Americans that offends the Petitioners and other Native Americans, and that the term as used in the registered marks disparages Native Americans and brings them into contempt and disrepute.[14]

B. The Registrations

The six challenged registrations purport to cover entertainment services relating to the presentation of professional football games and exhibitions, and/or the performance of dance routines by cheerleaders at games, exhibitions and other personal appearances.[15] Two of the registrations (PTO '668 and PTO '127) contain the profile of a Native American man with an Indian headdress containing feathers, with one of the registrations also containing a spear

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[9] *See* Gover Depo. [Dkt. 120] at 10, 187 & Gover Depo. Ex. 2 [Dkt. 118].

[10] *See* Tsotigh Depo. [Dkt. 115] at 146 & Tsotigh Depo. Ex. 1 [Dkt. 116].

[11] *See* Briggs-Cloud Depo. [Dkt. 110] at 136-141 & Briggs-Cloud Depo. Exs. 10-11 [Dkt. 121].

[12] *See* Pappan Depo. [Dkt. 112] at 183.

[13] *See* Blackhorse Depo. [Dkt. 122] at 197; Gover Depo. [Dkt. 120] at 93-94; Tsotigh Depo. [Dkt. 115] at 146-147; Briggs-Cloud Depo. [Dkt. 110] at 135; Pappan Depo. [Dkt. 112] at 184.

[14] *See* Petition For Cancellation ¶¶ 1-2; Blackhorse Depo. [Dkt. 122] at 8-9 (reaffirming content of Petition); Gover Depo. [Dkt. 120] at 9-10 (same); Briggs-Cloud Dep. [Dkt. 110] at 9 (same); Pappan Dep. [Dkt. 112] at 9 (same).

[15] BLA-TTAB-00561, 563-66, 568.

decorated with eagle feathers.[16] The challenged registrations were issued between September 26, 1967 and July 17, 1990.[17] Registrant PFI owns the marks at issue.[18]

C. Dictionaries, Reference Works, And Other Written Sources State That "Redskin" Is Disparaging

The record contains many dictionaries and other references that state that "redskin" is a disparaging term used to refer to Native Americans. For instance, many dictionary definitions contain usage labels acknowledging that "redskin" is an offensive, contemptuous or disparaging way to refer to Native Americans:

- "*Often offensive*. A North American Indian." *The Random House Dictionary of the English Language* (1966). BLA-TTAB-00165. Subsequent editions of this dictionary, including the "school edition" and the college edition, have included the same or a substantially similar definition. BLA-TTAB-00168, 171, 173, 176, 178, 180, 213.

- "a North American Indian (a term often considered offensive). *Thorndike-Barnhart Intermediate Dictionary* (1974). Submitted by Registrant; Docket 162 at 27.

- "(*contemptuous*) a North American Indian." *Oxford American Dictionary* (1980). BLA-TTAB-00183.

- "American Indian – usu. taken to be offensive." *Webster's Ninth New Collegiate Dictionary* (1986). BLA-TTAB-00210. *See also* BLA-TTAB-00216, 225, 231 (later editions).

- "(derog.) a Red Indian." *Chambers English Dictionary* (1989). BLA-TTAB-00219.

- **"***Offensive slang.* Used as a disparaging term for a Native American." *The American Heritage Dictionary of the English Language* (3d ed. 1992). BLA-TTAB-00228. *See also* BLA-TTAB-00234 (later edition).

[16] BLA-TTAB-00564-65, 2566-67.

[17] BLA-TTAB-00561, 563-66, 568.

[18] BLA-TTAB-02610.

Similarly, a 1972 article in *The Washington Star* newspaper on the use of Indian-themed sports names and symbols observed that "redskin" is a derogatory way to refer to Native Americans. The article contrasted the slur, "redskin," with the neutral term, "Indian": "Of course, the names and symbols differ. They range from the name Indians all the way to Redmen and Redskins, and the symbols go from strong and gallant caricatures, to silly war-whooping idiots."[19]

Many scholarly articles and books have also noted that "redskin" is an epithet:

- Alden Vaughan, "From White Man to Redskin: Changing Anglo-American Perceptions of the American Indian," *American Historical Review* (October 1982). BLA-TTAB-01856 ("… 'redskins' eventually emerged as the epithet for enemies who usually used red paint on the warpath") & 1863 ("redskin" is an "epithet").

- Haig Bosmajian, "Defining the 'American Indian': A Case Study in the Language of Suppression," in Gary Goshgarian, *Exploring Language* (1983) ("Our language includes various phrases and words which relegate the Indian to an inferior status," including "Redskins.") BLA-TTAB-01886.

- Robert Keller, "Hostile Language: Bias in Historical Writing About American Indian Resistance," *Journal of American Culture* (1986) (giving "redskin" as an example of "deprecatory language.") BLA-TTAB-01897.

- Irving Lewis Allen, *Unkind Words: Ethnic Labeling from Redskin to WASP* (1990) (referring to "redskin" as a "slur-name" and a "racial epithet"). BLA-TTAB-01914, 1922.

- Irving Allen Lewis, *The Language of Ethnic Conflict* (1983) ("redskin" is an epithet). BLA-TTAB-02103.

- Jay Coakley, *Sport in Society: Issues and Controversies* (1990) ("The use of the name Redskins cannot be justified under any conditions. To many native Americans, redskin is as derogatory as 'nigger' is for black Americans.") BLA-TTAB-02555.

- Robin Powell, "Recycling the Redskins," *Turtle Quarterly* (1993) (redskin as "racial slur"). BLA-TTAB-02012.

[19]*See* Paul Kaplan, "Do We Defame Native Americans?" *The Washington Star.* BLA-TTAB-00086, 826.

- Robert Jensen, "Banning 'Redskins' From the Sports Page: The Ethics and Politics of Native American Nicknames," *Journal of Mass Media Ethics* (1994) ("redskin" is "derogatory name," a "racist term that has been used against an oppressed group"). BLA-TTAB-02043, 44.

- John Coward, "What 'Indians' Mean in the Media: Race, Language, and the Popular Imagination" (1995) ("redskin" is term that designates Native Americans as inferior). BLA-TTAB-02054.

- Michigan Civil Rights Commission Report, "Use of Nicknames, Logos and Mascots Depicting Native American People in Michigan Education Institutions" (1988) (term "Redskins" assigns an "inferior status," is a "reference[] to racial color" and a "blatantly stereotypic name"). BLA-TTAB-02258, 2304.

- Rayna Green, "The Indian in Popular American Culture" (identifying "redskin" as epithet). BLA-TTAB-00013-14, 1699, 1712.

- Richard Hill, "Savage Splendor: Sex, Lies and Stereotypes," *Turtle Quarterly* ("redskin" as term evoking savage warrior). BLA-TTAB-00014, 1717.

- Michael Dorris, "Why I'm Not Thankful for Thanksgiving" ("redskin" as term evoking savagery and bloodthirstiness). BLA-TTAB-00014, 1727.

- Richard MacPhie, "We Are Not Extras A Native American Perspective on the Morality of Indian Mascots" ("redskin" is "racist" term). BLA-TTAB-02003.

- *Encyclopedia Britanica* (1911) ("Other popular terms for the American Indians which have more or less currency are 'red race,' 'Red man,' 'Redskin,' *the last not in such good repute* as the corresponding German *Routhaüte*, or French *Peaux-rouges*, which have scientific standing.'" BLA-TTAB-00130.[20]

In addition, during the relevant time period, authors of other editorials, columns and news articles published in newspapers and magazines have also understood "redskin" to be a disparaging reference to Native Americans. *See, e.g.,* Tom Quinn, "Redskins, Rednecks," *The Washington Daily News* (Nov. 5, 1971). BLA-TTAB-00086, 825.[21]

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[20] Another source that viewed "redskin" as disparaging is a 1993 decision of a PTO Examining Attorney. The Examining Attorney concluded that "redskin" is a disparaging term for Native Americans and refused a trademark registration application for "Redskins Review" on that basis, among other reasons. BLA-TTAB-00014,1653.

[21]Other editorials, columns and articles published in, among other places, *The Washington Post*, *The Baltimore Evening Sun*, *The Philadelphia Inquirer*, *The Chicago Tribune*, *The Minneapolis Star-Tribune*,

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D. In 1972, A "Delegation of American Indian Leaders . . . Vigorously Objecting To the Continued Use Of The Name Redskins" Met With The PFI President To Demand That PFI Change The Team Name.

In March 1972, a delegation of Native American leaders met with the President of PFI to object to the team name and demand a change. Harold Gross, who in 1972 was the Director of a Native American group called the Indian Legal Information Development Service ("ILIDS"), testified about the meeting and related events.[22]

The effort originated after a number of ILIDS staff members met with Mr. Gross to see what they could do "about changing the name of the local professional football team on the grounds that it was disparaging, insulting and degrading to American Indians."[23] Thereafter, in January 1972, using ILIDS letterhead, Mr. Gross wrote to Edward Bennett Williams (a renowned attorney who was then the President of PFI[24]) to object strenuously to the team's name and to request a meeting:

> On behalf of my immediate colleagues, all of whom are American Indians, I ask you to consider the effect that the use of the derogatory racial epithet 'Redskins' as a team nickname for the Washington Professional Football team has upon them, and other American Indians, as well as upon non-Indians.
>
> To make the matter clearer, I ask you to imagine a hypothetical National Football League, in which the other teams are known as the New York Kikes, the Chicago Polocks, the San Francisco Dagoes, the Detroit Niggers, the Los Angeles Spics, etc.

(Continued)

The Albuquerque Journal, *The Seattle Times*, *Newsweek*, and *Sports Illustrated*, are included in the record at BLA-TTAB-00828, 832, 853, 880, 896, 902, 903, 910, 917, 918, 921, 922, 923, 926, 931, 937, 941, 942, 944, 945, 948, 954, 971, 981, 986, 994, 1001, 1003, 1005, 1006, 1007.

[22]BLA-TTAB-03536-38 (Gross Depo. at 7-9). ILIDS trained young Native Americans in careers in journalism, law or legislative affairs, and also provided legislative information and monitoring services to Indian tribes around the country. *See id*.

[23]BLA-TTAB-03545 (Gross Depo. at 16).

[24] BLA-TTAB-02621.

> Such a league would shortly be out of business, since the number of people properly outraged by such ethnic slurs would be sizeable enough to force its closing. Yet, the term 'Redskin' is no less stereo-type provoking and no less insulting to American Indians than the others which I have used solely to make a point….
>
> Born at a time in our history when the national policy was to seize Indian land and resources, and hunt down Indian people who stood in the way, the term 'Redskin' has been perpetuated through such media as western movies and television. Most often, the term is coupled with other derogatory adjectives, as 'dirty Redskin' or 'pesky Redskin' which is used interchangeably with the word 'savage' to portray a misleading and denigrating image of the Native American….
>
> Even the fact that 'Redskins' has been the nickname of the Washington franchise for many years is a poor argument for its retention. Professional team owners have been notoriously slow in recognizing the social consequences of their practices. Not until 1947 was the first black man allowed to play major league baseball, and considerably later, the owner of the Washington Senators was still notorious for keeping his team lily-white.[25]

The letter led to a March 29, 1972 meeting between Native American leaders and Mr. Williams and other PFI representatives. Leon Cook, the President of the National Congress of American Indians, and six other Native American leaders, came with Mr. Gross to the meeting.[26] As Mr. Gross testified, the group met with Mr. Williams "to discuss our reasons for objecting to the name of the team, and some of the trappings that went with it. And to present the reasons why we thought it should be changed," *i.e.*, the reasons set out in his January 1972 letter.[27] The group asked Mr. Williams to change the team name.[28]

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[25] BLA-TTAB-03538-39 (Gross Depo. at 9-10) & BLA-TTAB-05850-52 (letter)

[26] The other six Native American leaders were LaDonna Harris (President of Americans For Indian Opportunity, and wife of then-U.S. Senator Fred Harris), Richard LaCourse (Washington bureau chief for the American Indian Press Association), Ron Aguila (District Representative of the National Indian Youth Council), Dennis Banks (District Representative of the American Indian Movement), Hanay Geigomah (Director of Youth Programs, Bureau of Indian Affairs), and Laura Wittstock (Editor of the ILIDS Legislative Review). BLA-TTAB-03547-49, 3582-83, 5846, 5848.

[27] BLA-TTAB-03548-49 (Gross Depo. at 19-20).

[28] BLA-TTAB-03549-52 (Gross Depo. at 20-23) & 5846, 5860.

The next day, in a letter to Peter Rozelle (the Commissioner of the NFL), a copy of which was sent to Mr. Gross, Mr. Williams reported that a "delegation of American Indian leaders … are vigorously objecting to the continued use of the name Redskins" and described Mr. Gross's letter as "cogently" expressing their position:

> Yesterday I met with a *delegation of American Indian leaders who are vigorously objecting to the continued use of the name Redskins*. Instead of detailing the various bases for their objection, I am enclosing a rather full letter which was mailed to me as a prelude to the meeting. *It sets out their position quite cogently*.[29]

PFI, of course, refused to change the team name. Mr. Williams did, however, change language in the team's fight song, "Hail to the Redskins," that mocked Native Americans, and also decided that the team's cheerleaders would no longer wear Indian-style wigs that stereotyped Native American women.[30] (The fight song and cheerleader outfits are discussed further below, at pages 37-38.)

E. The National Congress of American Indians Has Denounced The Term "Redskin" As Disparaging And Has Pressed For Years For A Change In The Team's Name.

The National Congress of American Indians ("NCAI") has long pressed for a change in PFI's team name. As noted, Leon Cook, the NCAI President was among the "delegation of American Indian leaders" who vigorously objected to PFI's team name during the 1972 meeting with Edward Bennett Williams. A January 1972 article in *The Washington Daily News* reported that the NCAI (and other Native American groups) were involved in a "battle" to get PFI to change the team name.[31] Likewise, articles in the *Washington Star* and the *Washington Post* in

[29] BLA-TTAB-03553 (Gross Depo. at 23) & 5860 (emphasis added).

[30] BLA-TTAB-00826, 837.

[31] BLA-TTAB-00828.

March 1972 also reported that the NCAI was among a number of Native American groups pressing for a change in the team name.[32]

NCAI's opposition to the PFI team name continued after the unsuccessful 1972 effort to persuade Edward Bennett Williams. As reported in a September 1992 article in *The Lakota Times* newspaper, "[t]he National Congress of American Indians has been battling against the racist use of Indians as mascots for decades."[33] A 1988 report by the Michigan Civil Rights Commission similarly reported that the NCAI supports efforts to change the team name.[34] A former NCAI President known by his Native American name "gaiashkibos" spoke at a protest over the "Redskins" team name at the 1992 Super Bowl, the last time the team played in the Super Bowl.[35]

In January 1992, NCAI spoke up to oppose a proposed transfer of land from the U.S. Department of Interior to PFI, unless PFI changed the team name. In its statement, the PFI Executive Committee declared, in part, "The National Congress of American Indians … finds the use of the name 'Redskins' offensive and go on record opposing demeaning and degrading the integrity of the first Americans – the Indian people."[36]

In 1993, the NCAI adopted two formal resolutions declaring their opposition to the "Redskins" football team name on grounds that "redskin" disparages Native Americans. In January 1993, the NCAI, acting through its Executive Council, adopted a resolution expressing support for the *Harjo* cancellation petition and declaring that:

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[32] BLA-TTAB-00835, 836.

[33] BLA-TTAB-00988.

[34] BLA-TAB-02220.

[35] BLA-TTAB-00960, 02817-18 (Chase Depo. at 47-48).

[36] BLA-TTTAB-00947.

> [T]he term REDSKINS is not and has never been one of honor or respect, but instead it has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native American[s].[37]

The NCAI further declared that the registered marks at issue in this petition are "offensive, disparaging . . . and damaging" to Native Americans.[38] The Executive Council, the body that adopted the resolution, consists of an official delegate of each tribe that is a member of the NCAI, as JoAnn Chase (the NCAI Executive Director and a Native American herself) testified in a 1996 deposition in *Harjo*.[39] The Executive Council is the "decision-making" organization within the NCAI.[40] Hundreds of tribes are members of the NCAI (206 tribes as of 1996).[41]

Eleven months later, in December 1993, the General Assembly of the NCAI adopted a resolution opposing the use of Indian sports mascots generally, and specifically objecting to the "Washington Redskins" team name. The resolution expressed support for a bill introduced by Senator Ben Nighthorse Campbell to impose conditions on federal funding for a stadium to replace RFK Stadium; the resolution characterizes Senator Campbell's bill as stating "(no building) until the team changes the name."[42] As Ms. Chase testified, the General Assembly consists of the individual delegates who represent the tribal members of NCAI, as well as individual members of the NCAI.[43]

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[37] BLA-TTAB-00236, 02820-21 (Chase Depo. at 50-51).

[38] *Id.*

[39] BLA-TTAB-02774-75, 2777-79, 2799-2800 (Chase Depo. at 4-5, 7-9, 29-30).

[40] BLA-TTAB-02800.

[41] BLA-TTAB-02824. The NCAI is the oldest and largest national Indian group in the country. BLA-TTAB-02220.

[42] BLA-TTAB-02809-10, 2816-18 (Chase Depo. at 39-40, 46-48) & 4727.

[43] BLA-TTAB-02808 (Chase Depo. at 38).

Ms. Chase further testified that "resolutions are the policy of the organization [NCAI], our mandate…."[44] In addition, Ms. Chase explained that the issue of the "Washington Redskins" team name is an issue of "national significance, and which would be of concern to at least every Indian person I have ever had contact with…."[45]

The historic opposition of the NCAI to the "Redskins" team name is also demonstrated by the fact that three of the *Harjo* petitioners had previously served in leadership roles in the NCAI. Suzan Shown Harjo and Vine Deloria, Jr. were Executive Directors of the NCAI, and Raymond D. Apodaca was the Albuquerque area vice president for the NCAI and the chair of its Religious and Human Affairs Committee.[46]

F. Other Native American Groups And Individuals Have Objected To PFI's Team Name And To Indian Mascots, Generally.

In addition to the NCAI, other Native American groups and individuals have objected to the PFI's team name and to Indian mascots, generally.

As a result of protests from Native Americans, in 1969 and early 1970's, Dartmouth College abandoned the use of Native American imagery and mascots for its teams, and adopted a non-Indian team name.[47] Similarly, in 1970, Native Americans pressed Stanford University to change its team mascot from "Indian," leading Stanford to adopt "Cardinal" as its team name.[48]

The record contains a number of articles reporting on efforts by numerous Native American groups and individuals to protest the "Washington Redskins" and other Indian sports

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[44] BLA-TTAB-02817 (Chase Depo. at 47).

[45] BLA-TTAB-02838 (Chase Depo. at 68).

[46] BLA-TTAB-00988, 2220, 2834 (Chase Depo. at 64); *see also* Petition For Cancellation, *Harjo v. Pro-Football, Inc*., No. 21,069 (TTAB) (PFIB-TTAB-0083-87).

[47] BLA-TTAB-00885, 889, 973, 2161-71, 2192-94, 2216.

[48] BLA-TTAB-00894, 973, 2207-08, 2217-18, 2639.

mascots, from the late 1960s and through the 1970s.[49] For example, a January 27, 1972 article in *The Washington Star* reported on "mounting protests from Indian groups that decry the use of Indian names and symbols as nicknames for sports teams."[50] The article further stated that the "Washington Redskins" was particularly objectionable to the Indian groups:

> Particularly annoying to 750,000 American Indians is the word 'redskin.' To them the word is a racist slur, no more acceptable than the word 'nigger' is to a black man and no more acceptable than the term 'white trash' is among the poor in the south. [51]

Significantly, an NFL publication, *The Redskin Edition of Pro! Magazine*, dated November 20, 1972, also reported on Native American opposition to Indian team names generally, and the "Redskins" team name in particular.[52] It asserted that "[u]ntil recently," the "Redskins" name has been a "proud tradition." The article further reported that Russell Means, director of the Cleveland American Indian Center, "went on the warpath against the Cleveland Indians' mascot, Chief Wahoo," and "before he was through, the Atlanta Braves' Chief Noc-a-Homa…, the Kansas City Chiefs and the Redskins felt the slings and arrows of his outrage." *Pro! Magazine* insisted that there was no intent to harm anyone in the team name "Redskins," but noted that objections by Native Americans caused the University of Nebraska at Omaha to change its name (from "Indians") and also caused Stanford University to change its Indian symbol.[53] The fact that, in 1972, the NFL saw a need to report on, and respond to, Native

[49] BLA-TTAB-00825-39, 1127, 1643, 1712.

[50] BLA-TTAB-00830.

[51] BLA-TTAB-00830.

[52] BLA-TTAB-01378.

[53] *Id*.

American objections to the "Redskins" name, indicates that there was significant Native American opposition at the time.

Native American opposition to "Redskins" as a team name continued. In 1991-93, following objections from Native Americans, at least three high schools or universities dropped "Redskins" as the name of the sports team – Miami University in Ohio, the Grand Forks, North Dakota school system, and the Naperville, Illinois high school.[54]

A 1992 article in *The Lakota Times* (a newspaper with primarily Native American readership) reported that multiple "Indian tribes and organizations" had made "vociferous calls" to change PFI's team name, and that most Indian groups consider the "Redskins" team name "racist and demeaning":

> Mr. Cooke [the PFI owner] has consistently refused to consider changing the name of his team despite vociferous calls from Indian tribes and organizations for him to do so. Most Indian groups consider the team moniker racist and demeaning.[55]

Other news articles over the years have also reported that Native American groups and individuals object to the team name.[56] For example, the record contains many newspaper articles reporting on objections to the name "Redskins" by Native American groups and individuals during the 1992 Super Bowl in Minnesota (the last time the team played in the Super Bowl). Many of the articles reported on an organized protest by Native American groups at the stadium where the game was played.[57]

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[54] BLA-TTAB-00932, 936, 982, 995, 2340-53.

[55] BLA-TTAB-00946-47.

[56] BLA-TTAB-00844-1008, 1128-30, 1667-77, 2219.

[57] BLA-TTAB-00850-851, 943, 948-51, 955-63, 1133.

One of the country's most prominent Native Americans, (former) Senator Ben Nighthorse Campbell introduced legislation to try to force the team to change its name. As noted above, in 1993, Senator Campbell introduced a bill that would have regulated the use of a stadium to be built to replace RFK Stadium on U.S. Department of Interior land. The legislation would have prevented PFI's team from playing at the stadium then under contemplation (but eventually never built) unless the team name were changed.[58]

In addition, the record contains many editorials published in *The Lakota Times* and elsewhere by Native Americans denouncing the "Washington Redskins."[59] For instance in a 1988 editorial, the editor of *The Lakota Times*, Tim Giago, wrote that "Redskins is, and was intended to be a very strong epithet against American Indians," and stated that it would be no more racist to call the team the "Blackskins" and have fans "paint their faces Black, put on Afros, don colorful dashikis, and cavort around the football field like a bunch of wild savages."[60]

G. Dr. Geoffrey Nunberg Demonstrated That "Redskin" Was Not Used In Late 20th Century Newspapers To Refer To Native Americans, Indicating That It Is A Disparaging Term. Dr. Hoxie's Testimony Supports This Finding.

Dr. Geoffrey Nunberg, the expert linguist,[61] conducted a search of a Dialog database (a tool on which he relied in the ordinary course of his work as a linguist, and which contains a

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[58] BLA-TTAB-00863-65, 996, 997-98.

[59] BLA-TTAB-01003-1007.

[60] BLA-TTAB-00252, 253, 262, 275, 843, 1133

[61] As of 1996, Dr. Nunberg was a Consulting Professor of Linguistics at Stanford University and a principal scientist at the Xerox Palo Alto Research Center, had previously been a usage editor for the *American Heritage Dictionary*, and was the current Chair of the usage panel of that dictionary. His areas of specialization included Lexical Semantics (the study of the use of words) and Lexicography (the study of dictionaries and the procedures involved in producing dictionaries). He had also done work in Computational Linguistics and, in particular, in the use of techniques of information retrieval with regard to large-scale text databases, and has published numerous articles in the field of linguistics. *See* BLA-TTAB-03974-80 (Nunberg Depo. at 229-235) & 4756-60 (Nunberg *curriculum vitae*).

billion words of text) containing the text of 60 newspapers going as far back as 1982.[62] Dr. Nunberg's database research demonstrates that newspaper writers avoid the word redskin(s) because it is not a neutral term, but is a pejorative term.

Dr. Nunberg's search turned up approximately 135,000 tokens of "redskin(s)," the vast majority of which referred to PFI's football team.[63] In order to locate just the references to American Indians, Dr. Nunberg devised a filter (for example, asking the computer to report only those tokens not appearing within a few words of "football," "quarterback," or "game"), which reduced the number to only 310.[64] Dr. Nunberg then hand-searched these, removing more articles about the football team and articles about redskin potatoes, leaving a mere 71 stories in which "redskin(s)" was used in reference to American Indians.[65]

This numerical result is significant in and of itself. The finding of only 71 articles using "redskin(s)" to refer to American Indians, compared with 74,000 instances of "American Indian(s)" and 73,000 instances of "Native American(s),"[66] means that "redskin(s)" is very rarely used to refer to Native American individuals or groups. There were also over 1 million instances in the database of "Indian" (although that figure also includes references to individuals from the Asian subcontinent).[67] Thus, the data show that writers in newspapers intentionally avoid using the term "redskin," opting instead for "Indian," "American Indian" or "Native American."[68]

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[62] BLA-TTAB-04050, 4059-60 (Nunberg Depo. at 305, 314-15).

[63] BLA-TTAB-04051 (Nunberg Depo. at 306).

[64] *Id*.

[65] BLA-TTAB-04051-52 (Nunberg Depo. at 306-07).

[66] BLA-TTAB-04052 (Nunberg Depo. at 307).

[67] BLA-TTAB-04053 (Nunberg Depo. at 308).

[68] BLA-TTAB-04052-53 (Nunberg Depo. at 307-08).

Furthermore, none of the 71 articles involved the use of "redskin(s)" as a straightforward denotative or neutral reference to American Indians. For instance, as Dr. Nunberg put it, "there were no sentences in the form 'there are five redskins on the panel' or 'redskins have moved into the region in increasing numbers' or 'redskin actor Jay Silverheels was honored last night' in the sense you might expect which [sic: if it] was an ordinary neutral term that was not disparaging."[69] Most of the 71 stories involved "mentions" of the term "redskin" as opposed to "uses" of the term "redskin," i.e., the term was not used to refer to anyone but was discussed only as a term and often included in quotation marks.[70]

The most reasonable inference to be drawn from the avoidance of the term "redskin(s)" to refer to Native American groups or individuals is that the term is widely considered unacceptable because it is disparaging. Dr. Nunberg, however, also tested and disproved an alternative hypothesis: that press writers might avoid using the term "redskin(s)" merely because it is too informal. He selected three ethnic terms that might be considered informal substitutes for more formal terms, "Brit(s)," "Limey(s)," and "Yank(s)," and then searched them in the same Dialog database. For "Brit(s)," he found 21,250 tokens, and a hand-search of 100 random selections from these 21,250 showed that they were all uses of "Brit(s)" as an ethnic term, reflecting a full

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[69] BLA-TTAB-04053 (Nunberg Depo. at 308).

[70] BLA-TTAB-04053-54 (Nunberg Depo. at 308-09). Dr. Nunberg gave some examples of "mentions" of "redskin as opposed to "use" of the term: From *The Washington Post*: "If Mr. Liles went back in history to when the 13 colonies were being organized, he would have seen that 'redskins' was not used to convey respect, adulation or honor." Also from *The Washington Post*, "Hollywood regularly produced cowboys and Indian films back in the 1930s and '40s in which the U.S. Cavalry invariably arrived in the nick of time to save the brave frontiersmen and women and children from certain scalping by 'the savage redskins.'" And from *The San Francisco Chronicle*, "In almost every movie the bad guy bit the dust and that was the end of their story. Another cartoon figure had been erased from the script. As we rejoiced in their agony and cheered their demise, it never occurred to us that the 'redskins,' 'krauts,' and 'japs' represented real people." BLA-TTAB-04054 (Nunberg Depo. at 309).

range of opinions (positive, neutral, and negative) about Britons.[71] Similarly for "Limey(s)" and "Yank(s)," Dr. Nunberg found a large number of uses in the same Dialog database.[72] Thus, if "redskin(s)" were similarly just an informal substitute for "American Indian(s)," then one would expect to find more than a meager 71 articles using the term "redskin(s)" with reference to Native Americans.

Dr.Nunberg's empirical study is consistent with the testimony of another expert witness, historian Frederick Hoxie, Ph.D. Dr. Hoxie is a historian who specializes in Native American history and who has published and taught in that field.[73] Dr. Hoxie testified that he has come upon the term "redskin" in his research in newspaper stories from the 19th century and documents from settler communities in the West, with "redskin" used disparagingly. However, Dr. Hoxie has never encountered an occasion in which a historian has used "redskin" to refer to Native Americans; the terms used by historians are "Indian," "American Indian" or "Native American."[74] Again, the most plausible explanation for why professional historians do not use "redskin" to refer to Native Americans is that it is a disparaging term.

H. Examples of "Redskin" Used In Written Sources In A Derogatory Manner.

The record contains numerous examples of "redskin" being used to refer to Native Americans in a disparaging manner.

The earliest recorded use of "redskin" appeared in 1699, when an author wrote that "ye firste Meetinge House was solid mayde to withstande ye wicked onsaults of ye Red Skins."[75] In

[71]BLA-TTAB-04064-67 (Nunberg Depo. at 319-22).

[72]BLA-TTAB-06941-45 (Nunberg Depo. at 81-85).

[73]BLA-TTAB-03729-34, 3773-74 (Hoxie Depo. at 4-9, 48-49).

[74]BLA-TTAB-03771-76 (Hoxie Depo. at 46-51).

[75]BLA-TTAB-03996 (Nunberg Depo. at 251); BLA-TTAB-00222.

this usage, "redskin" is used to refer to evil ("wicked") Native Americans who perpetrate violent attacks ("onsalts"). Another early usage, in 1823, stated that "the whites will not harm the red-skins when they have them thus in their power," again using the term to describe Native Americans in violent struggle.[76] A subsequent usage, in 1851, continued in this vein of using "redskin" to refer to Native Americans as "savages," this time expressly: "a strong believer in the native virtues of the Redskins, when these savages were treated well."[77]

During the 19th century, while the United States was at war with certain Indian Nations, American newspapers and magazines provide vivid examples of the how "redskin" was used in an offensive and disparaging way. Articles reporting on conflicts between the United States Army or settlers and American Indians use the term "redskin" to associate Native Americans with violence, savagery, and racial inferiority, and as enemies of the American people:

- "Merrit Meets the Enemy. Victory over our Frontier Foes. *Thirty-Seven Redskins Sent to the Happy Hunting Grounds*. The Indian Problem Reaching a Conclusion." *The Daily News* headline (Oct. 8, 1879) (BLA-TTAB-01009) (emphasis added).

- "… An Account of the Bloody Fight by Col. William M. Chivington, the Leader of the White Forces—*About Eight Hundred Redskins Killed in the Engagement*—Savage Atrocities Which Provoked the Fearful Retribution." *Chicago Tribune* headline (Aug. 8, 1887) (BLA-TTAB-01014) (emphasis added). The article repeatedly calls the man who led the infamous Sand Creek massacre of the "Redskins" a "hero." *Id*.

- "Their [the military authorities'] fears are, that, should the Indians arise, the settlers will arm themselves, and wipe the Red Skins out of existence before the 'noble red' man can be protected by Uncle Sam's bluecoats." *Rocky Mountain News* (Nov. 16, 1890) (BLA-TTAB-01021) (article reporting on anticipated outbreak of military conflict with Native Americans).

- "Sitting Bull, they made their leader/And excited by firewater/They dug up their rusty hatchets/And prepared for blood and thunder./'*Ugh,' said every greasy redskin*,/'We will paint the West vermilion!/We will simply mop the earth up/With the miserable

[76]BLA-TTAB-04002 (Nunberg Depo. at 257); BLA-TTAB-00222.

[77]*Id*.

palefaces." *Rocky Mountain News* (Nov. 19, 1890) (BLA-TTAB-01025) (emphasis added) (disparaging poem).

- "… fifteen lodges of the Wounded Knee fanatics, *including some of the most treacherous redskins in this part of the country*, had removed to White River ... and have again begun the ghost dance in a wilder manner than has been known thus far." *The Daily News* (Denver) (Nov. 23, 1890) (BLA-TTAB-01030) (emphasis added) (article anticipating war between "the Wounded Knee fanatics" and U.S. Army). This article was also published in *The New York Times* (Nov. 23, 1890) (BLA-TTAB-01032).

- Using "redskins" to describe Native Americans who, in possession of "bloodthirsty villainy" were plotting an ambush, referred to as a "devilish … deed" pursued with "murderous design." *The New York Times* (Nov. 24, 1890) (BLA-TTAB-01033).

- "[T]he redskins are dancing in circles, making medicines, and preparing to take to the warpath." *The New York Times* (Nov. 29, 1890 (BLA-TTAB-01047).

- "READY FOR BATTLE—The Troops Expecting to Take the Field Immediately Against THE REBELLIOUS REDSKINS." *Aspen Daily Times* headline (Nov. 30, 1890) (BLA-TTAB-01018). "The more excitable red-skins are cutting themselves with spears and knives and the sight of blood has had the effect of greatly arousing the warrior spirit." *Id*. (body of article).

- "On the Warpath … Redskins Attack…." *Rocky Mountain News* headline (Dec. 18, 1890) (BLA-TTAB-01056).

- "Marauding Bands of Redskins Make Travel Absolutely Dangerous in the Bad Lands." *Rocky Mountain News* headline (Jan. 6, 1891) (BLA-TTAB-01064).

- "THE REDSKIN TROUBLE—The Indians Declare Their Intention of Capturing the Agency and Massacring the People." *Aspen Daily Times* (Jan. 7, 1891) (BLA-TTAB-01068).

- "Appeal to the Governor of Idaho for Troops to Put Down the Redskins." *Rocky Mountain News* headline (Jan. 8, 1891) (BLA-TTAB-01069).

- "Custer's Men Lured Into Trap By Wily Redskins." *Denver Post* headline (June 19, 1932, reprinting 19th century article) (BLA-TTAB-01114).

- "'Fort Wicked' Too Tough for Redskins—Pleasant-Faced Rancher and Garrison of Three Men, Four Women, Beat Off Savages." *Rocky Mountain News* headline (Oct. 31, 1932, reprinting 19th century article) (BLA-TTAB-01115).

The record also contains an article published in 1948 in a widely read magazine that also used the term "redskin" when describing a conflict between the U.S. Army and Native

Americans regarding World War I draft registration. *See* J.H. Peck, "How I Put Down the Redskins," *Saturday Evening Post* (Oct. 23, 1948) (BLA-TTAB-01769). In addition, the record contains a disturbing 1939 *Newsweek* article that uses "redskin" to refer to the "problem" that Native American birth rates were increasing. *See* "Redskin Revival: High Birthrate Gives Congress A New Overproduction Problem," *Newsweek* (Feb. 20, 1939) (BLA-TTAB-01765).

Other written sources also use the term as a slur. For instance, the 1919 book, *Making the Movies* by Ernest Dench includes a chapter entitled "The Dangers of Employing Redskins as Movie Actors." Using "redskin" in the chapter title as a slur, the book asserts that "[t]he Red Indians … are paid a salary that keeps them well provided with tobacco and their worshipped 'firewater,'" and "[i]t might be thought that this would civilize them completely, but it has had quite a reverse effect, for the work affords them an opportunity to live their savage days over again."[78]

I. Use of "Redskin" in Movies

The record also contains evidence from movies and popular songs that "redskin" is a disparaging term. Movie evidence was introduced through the 1996 deposition testimony of Susan Courtney. At the time, Ms. Courtney was a graduate student at University of California-Berkeley studying American cinema, and had just been offered a position as a Professor of Film at the University of Southern California.[79] Working under assignment from Geoffrey Nunberg, Ms. Courtney undertook to research usage of the word "redskin" in American film.[80]

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[78] BLA-TTAB-01754-55; *see Harjo*, 50 USPQ 2d at 1745 (quoting *Making the Movies*).

[79] BLA-TTAB-03379-81(Courtney Depo. at 7-9). The USC website indicates that Susan Courtney is currently an Associate Professor in the USC Film and Media Studies Department. *See* http://www.sc.edu/bulletin/ugrad/LibFilm.html (last visited Sept. 5, 2012).

[80] BLA-TTAB-03381-82 (Courtney Depo. at 9-10).

Based on her knowledge and experience in American film, a review of reference books and other literature in the field of film studies, and informal queries of colleagues, Ms. Courtney compiled a list of 51 movies that she thought might contain the word "redskin."[81] Based on movie availability (some of the 51 were out of print or not available on video at the time), limited time, and to a lesser degree based on whether she thought Native Americans might have a large role in the film, she selected 20 of the 51 movies to watch.[82] Ten of the 20 movies contained at least one usage of the term "redskin," with a total of 14 usages.[83]

Ms. Courtney prepared a video containing 11 of the 14 usages.[84] Petitioners hand-delivered a copy of the video, copied in DVD format, to the Board on March 15, 2012. The movie clips on the DVD sharply demonstrate that "redskin" is as a slur. The clips are:

- *Whoopee!* (1930, starring Eddie Cantor). In a movie that also contains a "comic" scene in which Native Americans are stereotyped as stiff and primitive and are the butt of crude jokes about indigestion and violent behavior, in one scene, an angry white man angrily yells at an Native American, "You lying redskin. I don't believe you."

- *Northwest Passage* (1940, starring Spencer Tracy and Robert Young). One colonial explorer uses "redskin" when encouraging another explorer to kill a Native American: "Get a redskin for me, won't you?" The other assures him that he will "do better than that" and has a rifle filled with buckshot.

- *The Paleface* (1948, starring Bob Hope). Talking to a large pile of dead Native Americans, Hope disrespectfully jokes, "Let's keep it neat." As a cheering crowd forms, Hope's gun goes off accidentally and he kills a Native American hiding in a tree. As Hope is about to give a speech, a man interrupts with: "Let's get outta here before those redskins come back!" and everyone runs off. Here, "redskin" refers to violent attackers who need to be killed or fled.

- *Broken Arrow* (1950, starring Jimmy Stewart). A white boy, whose father was identified by the Jimmy Stewart character as "one of the worst haters of the Apaches," claims that

[81] BLA-TTAB-03384-85, 3427-28, 3436-37 (Courtney Depo. at 12-13, 55-56, 64-65), 5812-13.

[82] BLA-TTAB-03388-90, 3435-36, 3441-42 (Courtney Depo. at 16-18, 63-64, 69-70), 5814

[83] BLA-TTAB-03390 (Courtney Depo. at 18), 5814.

[84] BLA-TTAB-03394-97 (Courtney Depo. at 22-25), 5815 (DVD delivered to Board).

"that redskin jumped me." This movie portrays the Apaches as peaceful, and the "redskin" slur is used by a hater.

- *Peter Pan* (1953, Walt Disney, animated). The villainous Captain Hook looks at a map wondering where to find Peter Pan. Seeing "Indian Cove" on the map, Captain Hook says "Those redskins know this island better than I do!" Here, the film's villain uses "redskins" to describe people he thinks are even more fiendishly cunning than him. The move clip also contains a song entitled "What makes the redman red" that mocks Native Americans, stereotyping them as saying "Ugh" and "How," and stating that the "redman" became "red" from when the "very first Injun prince" kissed a maid and blushed.

- *Mohawk* (1956). Following an attack, one white man asks "What got into those redskins tonight, Captain?" Another man states, "Mean, just plain mean. Kill for the love of killing." And another man adds: "Should be skinned alive every one of them, the dirty, mean, ignorant, slinking redskin skunks."

- *The Comancheros* (1961, starring John Wayne and Lee Marvin). The Lee Marvin character recites a verse to the John Wayne character: "And by that crimson settin' sun, peace come to forest glade, and of the redskins they was none, but history had been made." Here, in a movie full of violent conflicts with Comanches who repeatedly ambush white settlers and are slaughtered by the droves, this verse states that there can only be peace when there are no "redskins."

- *The Scalphunters* (1968, starring Burt Lancaster). After Native Americans ride off with the Burt Lancaster's property, booze and women, stranding him in the desert, he yells "You dirty redskin!"

- *Tell Them Willie Boy Is Here* (1969, starring Robert Blake and Robert Redford). In two different scenes, racist white men use "redskin" as a slur.[85]

J. Expert Opinion of Dr. Geoffrey Nunberg

Dr. Nunberg repeatedly testified to holding an expert opinion that "redskin(s)" is, and has been since 1967, a disparaging epithet for Native Americans which evokes negative associations or stereotypes with American Indians, including by being used with connotations of violence, savagery, and oppression.[86] He testified at length regarding the support and bases for this

[85] Ms. Courtney prepared an analysis of each the film clips. *See* BLA-TTAB-03399-3418 (Courtney Depo. at 27-46), 5816-20.

[86] BLA-TTAB-02967-68, 3006-08 (Nunberg Depo. at 76-77, 115-17), 3994-95, 4116-21 (Nunberg Depo. at 249-50, 371-76), 6958-59 (Nunberg Depo. at 98-99).

opinion, including the following: dictionary entries;[87] the contextual use of the term by non-Indians in movies, songs, and literature;[88] the systematic avoidance of its use by the press and in the public context;[89] and its contextual use in old press, old books and encyclopedias.[90]

Dr. Nunberg also explained that the use by PFI of "redskin(s)" in its marks is disparaging because of the connotations associated with the word. Words may carry two types of meaning. "Denotation" refers to what a word represents, such as a person, a thing, or a category of things, whereas "connotation" refers to the mental image, the nuance, or the associations that a word evokes.[91] In this case, the denotation of "redskin(s)" is North American Indians, and it can also denote the NFL football club that plays in the Washington, D.C. area. This additional denotation, however, does not affect the negative connotations of "redskin(s)." Dr. Nunberg concluded that it is from these connotations that the offensive and disparaging qualities of the marks arise. Whether the denotation is of Native American individuals or the football team, the connotation of "redskin(s)" is pejorative of Native Americans.[92]

As regards usage labels in dictionaries, Dr. Nunberg explained that while the *absence* of a usage label in a dictionary entry does *not* mean a great deal by itself and does *not* show that the word is not offensive, particularly to the group or person that the word denotes or connotes, the

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[87] BLA-TTAB-03085, 3993, 4000-06, 4067-80, 4156-61(Nunberg Depo. at 248, 255-61, 322-335, 410-15), 4779-802, 4808-13 (Nunberg Depo. Exs. 8-15 & 18-19) & 6161-63, 6260-83 (Nunberg Depo. Exs. 35 & 40).

[88] BLA-TTAB-03085, 3096-98 (Nunberg Depo. at 194, 205-07), 3996, 4039-50 (Nunberg Depo. at 251, 294-305).

[89] BLA-TTAB-03084-85 (Nunberg Depo. at 193-94), 4051-67 (Nunberg Depo. at 306-22).

[90] BLA-TTAB-03084-85 (Nunberg Depo. at 193-94), 3992-93, 3996, 4006-39, 4109-112 (Nunberg Depo. at 247-48, 251, 261-94, 364-67) & 6165-96, 6589-601 (Nunberg Depo. Exs. 36 & 43).

[91] BLA-TTAB-02978-80 (Nunberg Depo. at 87-89), 3981-89 (Nunberg Depo. at 236-44).

[92] BLA-TTAB-4109-21, 4226-27, 4236, 4241-42 (Nunberg Depo. at 364-76, 480-81, 490, 495-96); *see also* BLA-TTAB-4744-51.

inclusion of a usage label in a dictionary entry *is* evidence that the lexicographers consider the words as the label designates.[93] The absence of a usage label may simply mean that the dictionary editors did not put much thought or research into the particular word or that nobody brought the connotation of the word to their attention. In contrast, the presence of a label indicates that the editors did consciously think about the word and made a judgment about its connotation.[94]

K. Survey and Expert Opinion of Ivan Ross

The *Harjo* record also contains the expert opinion of Ivan Ross, Ph.D., and the results of a survey on Native American views of the term "redskin." Dr. Ross formulated the survey based on his 30 years of training and experience in designing and conducting attitude surveys.[95]

In 1996, Dr. Ross conducted a survey of attitudes regarding various different words associated with Native Americans, including "redskin."[96] The survey tabulated responses from the general American public and from American Indians.[97] For the Native American portion of the survey, the 20 states with the highest Native American populations were identified (excluding Alaska and Hawaii); counties and census tracks within those states were examined to

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[93] BLA-TTAB-02959-63 (Nunberg Depo. at 68-72), 4071-80, 4087-89, 4156-61 (Nunberg Depo. at 326-35, 342-46, 410-15).

[94] *See id.*

[95] BLA-TTAB-03136-37 (Ross Depo. at 19-20). As of 1996, when he performed his work, Dr. Ross was President of Ross Research, a former Professor of Marketing and Adjunct Professor of Psychology with the Carlson School of Management of the University of Minnesota for 27 years, and a Fellow with the Society for Consumer Psychology, the American Psychological Association, and the American Psychological Society. He has designed and conducted numerous studies for academic research, corporate clients, and litigated disputes; consulted for multiple U.S. government agencies; and been qualified as an expert in survey design on numerous occasions in federal court. *See* BLA-TTAB-04250-55 (Ross Depo. at 4-9).

[96] The survey results are summarized at BLA-TTAB-04860-69, 4885. Survey details, including the specific individual responses to the survey, are found at BLA-TTAB-04888-5113.

[97] *See id*.

arrive at a set of areas which would fairly represent both rural and urban areas for the actual telephone draw; telephone number sets defined by area code that are census track and county-based were purchased to generate a stratified probability sample; and a random digit dial draw was made from the final strata level.[98]

According to the results of the survey, 36.6 percent of American Indians responded that they would be personally offended by the use of the word "redskin," and 52.5 percent perceived that the word "redskin" would "offend others." In total, 60.3 percent of Native Americans perceived the term "redskin" to be either offensive to themselves or to others.[99] Dr. Ross testified to his expert opinion that the methodology used for the survey of Native Americans resulted in responses that "fairly represented" the views of the Native American population of the United States, and that this opinion is backed up by the textbooks from which he had taught in the past 30 years.[100] He explained that, while using a stratification process (as had the survey) almost always results in respondents living in 5–10 counties (less than 2% of total counties of the United States), it will nonetheless involve a "probability sample" that reflects an accurate projection of the views of the broader population.[101]

Dr. Ross' expert opinion was also that "it is appropriate to combine the responses to Question 9 (offensive to self) and Question 10 (offensive to others) from the survey in order to arrive at an accurate measurement of offensiveness from the perspective of the statute," as they

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[98] BLA-TTAB-03279-80 (Ross Depo. at 162-63), 4261-63 (Ross Depo. at 15-17).

[99] BLA-TTAB-03178, 3210-12, 3301-02 (Ross Depo. at 61, 93-95, 185-86), 4306, 4311-12 (Ross Depo. at 60, 65-66), 4867, 4885.

[100] BLA-TTAB-03259, 3277-80 (Ross Depo. at 142, 160-63), 4296-97 (Ross. Depo. at 50-51).

[101] BLA-TTAB-04340-41 (Ross Depo. at 94-95).

are "essentially the same question."[102] As Dr. Ross explained while citing two supporting research texts, the "third-person technique methodology" on which Question 10 was based is "a common method of getting what a person's true feeling about something is" regarding a sensitive topic, and will "more accurately reflect their state of mind" by providing an "indirect measure of whether the respondent thinks that the term is offensive."[103] Since some people may be loath to admit that they are themselves offended, a respondent's statement that others may be offended by the term "redskin" should be considered as evidence of the disparaging nature of the word. It reflects those same respondents' views about the meaning and significance of "redskin."[104] Thus, according to the survey results, 60.3 percent of Native Americans consider the term "redskin" offensive.

L. PFI And The NFL Have Admitted That "Redskin" Is A Disparaging Term

The record also contains admissions by PFI that "redskins" is a disparaging term.

As discussed above, in 1972, PFI's President, Edward Bennett Williams admitted in a letter to NFL Commissioner Peter Rozelle that, through Harold Gross's letter, the delegation of Native American "leaders" "quite cogently" explained that the team name was disparaging (*see*

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[102] BLA-TTAB-03154-55 (Ross Depo. at 37-38), 4302-04 (Ross Depo. at 56-57), 4867.

[103] BLA-TTAB-04418-20, 4498-4501 (Ross Depo. at 30-32, 110-113).

[104] Dr. Ross explained that positive responses to Question 10 (whether the surveyed person perceived "redskin" as offensive to others) tend to indicate that those responders viewed the term "redskin" as offensive. He noted that "in any case where one is measuring a concept having to do with offensive or embarrassing or any concept of something which might evoke the concept of social desirability, it's very common that one would use a question format that would solicit the person's perception from the perspective of another in addition to or instead of just the perception that they would have about that thing themselves." BLA-TTAB-03196. The purposes of posing Question 10 as phrased were to "defeat the shield or guard that someone might bring to bear," "to cover all bases," and "to measure the same thing," namely the respondents' own state of mind regarding the word "redskin." BLA-TTAB-03197, 3199, 3201.

supra at 14). The Williams letter to Rozelle was an admission by PFI that the objections to the "redskins" name were "cogent," *i.e.*, logical and convincing.

The 1996 deposition testimony of John Kent Cooke in *Harjo* constitutes a further admission by PFI that "redskin" is disparaging. At the time of the deposition, Mr. Cooke was PFI's Executive Vice President, and he had been responsible since 1981 for the daily operations of the organization.[105] Mr. Cooke repeatedly gave evasive answers to the straightforward question of whether a reasonable person could find "redskin" disparaging, and PFI's attorney went to the extraordinary lengths of instructing him not to answer such questions. After pages of avoiding the question "are there any circumstances in which you would use the word Redskin face-to-face with an American-Indian,"[106] the following exchange occurred:

> Q: Sir, if you did have occasion or opportunity to speak with an American-Indian, do you believe it would be appropriate to use the word Redskin in addressing the American-Indian?
>
> [Objection omitted]
>
> A: I can't answer the question
>
> Q: Why are you not able to answer the question?
>
> A: Because I think the question is preposterous.
>
> Q: Why is it preposterous?
>
> [Counsel for PFI]: Don't answer any more questions. Go on. You've gotten your answer, Counselor, if you don't like it, you can get a ruling.
>
> Q: So our record is clear, sir—
>
> [Counsel for PFI]: I'm instructing him not to answer the question. You've gotten your answer. You may not like it, but you've gotten it, so let's go on.[107]

[105] BLA-TTAB-02646 (Cooke Depo. at 9-10, 12).

[106] BLA-TTAB-02647 (Cooke Depo. at 21).

[107] BLA-TTAB-02648 (Cooke Depo. at 25-26).

Later, Mr. Cooke and counsel for PFI spent four transcript pages evading the following important question:

> [D]o you believe that reasonable minds could come to the conclusion that the use of the word Redskin or Redskins in the Washington football team's name is disparaging?[108]

Counsel for PFI improperly instructed Mr. Cooke not to answer that question on grounds that it calls for a legal conclusion, and Mr. Cooke did not answer.[109]

The Board should conclude from Mr. Cooke's refusal to answer these questions, and from the instructions by PFI's counsel not to answer questions even though no privilege was implicated, that PFI has made the following two admissions: (1) it is not appropriate to refer to a Native American as a "redskin" because "redskin" is not a neutral term; and (2) it is reasonable to believe that "redskins" is a disparaging reference to Native Americans.[110] *See Levi Strauss & Co. v. R. Josephs Sportswear Inc*., 36 U.S.P.Q.2d 1328, 1332-35 (T.T.A.B. 1994) (Board may make adverse inference from party's refusal to answer and from counsel's unfounded instructions not to answer questions).

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[108] BLA-TTAB-02672-73 (Cooke Depo. at 21, 22-24).

[109] BLA-TTAB-02672 (Cooke Depo. at 21-22).

[110] Mr. Cooke's testimony is replete with refusals to answer questions, and evasive and seemingly insincere testimony. For instance, he refused to answer the question whether the term "braves on the warpath" as used in the team fight song suggests an association with Native Americans. His answer was "I am able to [answer the question], but I choose not to." BLA-TTAB-02680 (Cooke Depo. at 79). Elsewhere, he denied that the feathers in the Washington Redskins logo are Indian feathers, even though he had previously referred to them in his testimony as "Indian feathers." BLA-TTAB-02676, 2680 (Cooke Depo. at 51, 81). He also at first denied having ever said that the "Redskins" name "represents the finest things in the Indian culture." After being confronted with a newspaper article quoting him saying exactly that, Mr. Cooke stated that "I think I have said on occasion that it represents *fine things* of the Indian culture. Whether it is the *finest things* of the Indian culture I have no idea…." BLA-TTAB-02682 (Cooke Depo. at 91, 94) (emphasis added).

An additional admission in the record relates to a 1993 letter from PFI to an advertising company regarding a McDonald's advertising campaign centered around the team. The letter was written by John Kent Cooke, Jr., PFI's Director of Marketing. Bemoaning "this day and age of political correctness," Mr. Cooke set out certain criteria regarding how the "Redskins" name, logo, and image must be portrayed in advertising. The criteria include "[n]o caricatures," "[n]o Indian Costumes or Headresses," "No War Chants, Yelling, Derogatory Indian language (ie: 'Scalp the Cowboys,' etc…)," "Use of 'Hail to the Redskins' must be Presented Tastefully," "No Smart-Elect [sic: Alec] Language or Humor," and "No Insulting Language or Humor."[111] While this letter did not expressly state that "redskin" is disparaging, PFI was plainly admitting that the "Redskins' name, logo and image" lend themselves to mocking Native Americans due to the disparaging nature of the marks. Otherwise, the letter would be unnecessary.

Finally, the November 20, 1972 *The Redskins Edition of Pro! Magazine*, an NFL publication, also contains an admission by the NFL and PFI that "redskin" is a disparaging term. Reporting on Native American opposition to the "Redskins" team name, *Pro! Magazine* states that "one suspects that there is some confusion between result and intent." Thus, the NFL has admitted that the "result" of the name "Redskins" is hurtful, but tries to justify the use of the team name on grounds that there was no "intent" to harm.[112] The NFL further admitted to the reasonableness of the Native American view, stating that the objecting Native Americans may "have [their] day," and pointing out that some universities had recently abandoned Indian sports mascots.[113]

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[111] BLA-TTAB-02673-74 (Cooke Depo. at 25-30) & 2708 (Cooke Depo. Ex. 7).

[112] BLA-TTAB-01378.

[113] *Id*.

M. PFI Has Used The "Redskins" Team Name And The Marks In Ways That Mock Native Americans.

The "Redskins" team name and the trademarks at issue have been used in connection with Native American themes and imagery. In an interrogatory response, PFI stated that "on many occasions," Jack Kent Cooke (as of 1996, PFI's owner, President and Chairman) has claimed that "Redskins," as used by PFI, is intended to honor Native Americans.[114] In response to another interrogatory asking PFI to identify persons with knowledge of PFI's use of Native American symbols, rituals and other aspects of Native American heritage, PFI responded, "through long, extensive and widespread use of its services, as well as in advertising and promotional contexts, and through extensive broadcast and print coverage, the Redskins name and logo are well-known to many millions of people throughout the United States and elsewhere."[115]

Utterly contradicting the self-serving claim that PFI uses "Redskins" to honor Native Americans, the record is full of examples in which PFI made fun of Native Americans and their culture. The examples in the record come from half-time entertainment, the team's fight song, cheerleader uniforms, and marching band uniforms. Writing in *The Washington Post*, the erudite Pulitzer-Prize-winning writer Jonathan Yardley had this to say about the claim that the team name honors Native Americans: "There's an eight-letter word for that, first letter 'b.'"[116] Yardley was right.

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[114] BLA-TTAB-02576.

[115] BLA-TTAB-02579.

[116] BLA-TTAB-00923.

The most extreme example in the record of PFI's making fun of Native Americans may be a video clip (produced by PFI in *Harjo* discovery) of half-time "entertainment." The clip features an almost-naked "Indian" on a giant drum at midfield dancing violently in a mocking mimicry of Native Americans.[117] A written account of half-time "entertainment" states that "[b]etween the 'halves,' Indian bands march on the field and present all forms of pageantry, which may not make much sense but is highly diverting to the crowd. Mr. Marshall [the former owner][118] also has a swing band in a giant wigwam up over the stands, all in their customary war feathers, smoke emanating from this elevated tepee as [certain star players] and all the other 'braves' of the local professional entry go through their act on the field."[119]

The team's original fight song lyrics are also repulsive, as they stereotyped and mocked the speech of Native Americans. Until 1972, the team fight song included these lyrics:

> HAIL TO THE REDSKINS, Hail Vic-to-ry,
> *Braves on the warpath*, Fight for old Dixie
> *Scalp 'em, swamp 'em*
> *We will take 'em big score.*
> *Read 'em, weep 'um*
> *Touchdown we want heap more*…..[120]

PFI admitted that the lyrics made fun of Native Americans, and changed them after the 1972 meeting with the delegation of Indian leaders described above (at pages 14-15).[121] Even after the "most offending" passages were removed, the fight song has continued to refer to the team as

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[117] BLA-TTAB-02376 (DVD, at 2:48 to 2:55).

[118] BLA-TTAB-02619.

[119] BLA-TTAB-00601.

[120] BLA-TTAB-01191, 1228, 1231, 1344; *see also* BLA-TTAB-01187-91; BLA-TTAB-02678 (Cooke Depo. at 63) & 02710.

[121] BLA-TTAB-00837 (quoting Edward Bennett Williams: "[T]he swamp 'ems, scalp 'ems and heap 'ems is a mocking of dialect. We won't use these lyrics anymore."); *see also* BLA-TTAB-00837.

"braves on the warpath," however.[122] And, 24 years after Mr. Williams changed the original lyrics, PFI Executive Vice President John Kent Cooke denied that the original lyrics were mocking.[123]

The outfits of the team's cheerleaders have also mocked Native Americans. The record contains video clips and photographs of cheerleaders wearing stereotyped black braided-hair wigs and Indian-themed costumes, as they entertain the crowds wearing faux-Indian outfits; one video clip shows a cheerleader wildly dancing while playing drums, again in mocking mimicry of Native Americans.[124] PFI has admitted that the cheerleader outfits from 1962 until as late as 1979 included an Indian dress and Indian beaded headband.[125] In 1972, at the same time the fight song lyrics were changed and due to the 1972 meeting with the American Indian leaders, it was announced that the cheerleaders would no longer wear the black-braided hair wigs.[126]

The "Redskins marching band" also makes light of Native American culture; the band members march around wearing Indian headdresses full of feathers and plays Indian-themed music (evoking stereotypes of tribal drumbeat war music). The record contains numerous video

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[122] BLA-TTAB-00849, 2576.

[123] BLA-TTAB-02679 (Cooke Depo. at 68).

[124] BLA-TTAB-00699, 1166, 1251 (describing cheerleaders as "girls" "[m]arching at the head of the Band in their spanking new Indian costumes"), 1263 ("Here are the Redskinettes all decked out in their Indian garb…."), 1486 (wearing "braided clone-like Indian wigs…") & 1277, 1280, 1288, 1359. *See also* BLA-TTAB0-2380 (DVD, at 20:20); BLA-TTAB-02388 (DVD, at 1:14-1:26) (cheerleader wildly dancing while playing drums).

[125] BLA-TTAB-02640.

[126] BLA-TTAB-00837.

clips and photographs of them wearing the headdresses and playing Indian-themed music, and PFI has admitted that the band uniform includes the Indian headdress.[127]

The record also contains photographs of players and administrative personnel dressed up like Indians.[128] Covers of game programs featuring caricatures of buffoonish-looking Native Americans are also in the record.[129] And, in the PFI corporate offices, there is even a mocking "cigar store" Indian.[130]

The mockery of Native Americans is consistent with the history of racism towards African Americans while under the ownership of its first owner, George Preston Marshall.[131]

The *Harjo* record contains numerous news articles and published advertisements in the context of PFI's team that mock Native American culture, such as by reporting that the "Washington Redskins" had "scalped" or "ambushed" another team (or vice-versa), were "on the warpath," were "brewing special Kickapoo Juice" for their opponents, or that they had been "massacred" by another team (sometimes to avenge the defeat of General Custer).[132] Some articles use pidgin English or otherwise mock or stereotype Native American manner of speech.[133] Newspapers also published mocking caricatures of Native Americans in connection

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[127] BLA-TTAB-01139-66, 1167, 1270, 1292, 1350, 1356, 1412, 1474, 1479, 02639. *See also* BLA-TTAB-02376 (DVD, at 0:53 to 1:31; 2:43 to 2:48); BLA-TTAB-02378 (DVD, at 6:48 to 7:00); BLA-TTAB-02388 (DVD, at 1:09 to 1:14); BLA-TTAB-02390 (DVD, 4:14 to 4:25, and 11:24 to 11:26).

[128] BLA-TTAB-000676-81, 684, 695-98, 903, 1229.

[129] BLA-TTAB-00757-77.

[130] BLA-TTAB-02687 (Cooke Depo. at 126-27).

[131] The "Washington Redskins" was the last NFL team to integrate and permit African-American players. George Preston Marshall agreed to integrate the team only after the Kennedy Administration's Secretary of the Interior threatened not to permit the team to play in D.C. Stadium (now RFK Stadium), which was then owned by the federal government, unless PFI allowed African Americans to play. *See* BLA-TTAB-00806-24, 1390, 1872. Marshall was the owner from 1932 to 1969. *See* BLA-TTAB-02619.

[132] *See, e.g.*, BLA-TTAB-00598-723, 779-804.

[133] *See, e.g.,* BLA-TTAB-00601, 621, 627, 631, 632, 677, 783, 786, 789, 795, 801.

with the team, and referred to the former team owner as the "Big Chief" or "Great White Father."[134] Furthermore, the fans of the team frequently dress up like stereotyped Native Americans, with Indian headdresses and face paint, and shout war whoops.[135] Although these activities were not undertaken by PFI, it is obvious that the broader public was responding to how PFI has used the team name and trademarks in ways that mock Native Americans.

VI. ARGUMENT

Section VI.A, below, demonstrates that each of the Petitioners has "standing" to request cancelation of the registrations. Section VI.B explains that, based on the evidence in the record outlined, the registrations may disparage Native Americans or bring them into contempt or disrepute. Section IV.C demonstrates that PFI's laches defense lacks merit.

A. The Petitioners Have Standing.

To establish statutory standing under 15 U.S.C. § 1064, Petitioners must show that they have "a personal interest in the outcome of the case beyond that of the general public." *See* Order Summarizing Pre-Trial Conference (May 5, 2011) [Dkt. 39] at 15; *Harjo v. Pro Football, Inc.*, 30 U.S.P.Q.2d 1828, 1830 (T.T.A.B. 1994). In *Harjo*, the Board ruled that a petitioner seeking to cancel the "redskins" registrations can meet this standard by demonstrating that he or she is a Native Americans enrolled in a federally recognized tribe, and that he or she views "redskin" as a derogatory term referring to Native Americans that offends Native Americans. *See id*; *see also Harjo v. Pro Football, Inc.*, 50 U.S.P.Q.2d at 1735 n.89.

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[134] *See, e.g.*, BLA-TTAB-00627, 692, 786-804, 819, 828.

[135] BLA-TTAB-00704-723, 844, 850, 851, 856, 861, 961, 1133, 1432, 1440. *See also* BLA-TTAB-02380 (DVD, at 22:36 to 22:43); BLA-TTAB-02382 (DVD, at 33:05 to 33:07); BLA-TTAB-02392 (DVD, at 5:15 to 5:21, 9:17 to 9:21, and 18:55 to 18:58).

Here, there can be no dispute that each Petitioner satisfies the *Harjo* standard for standing. Each Petitioner is indisputably a Native American and views "redskin" as a derogatory term referring to Native Americans that offends Native Americans.

B. The Challenged Trademark Registrations Contain Matter That May Disparage Native Americans or Bring Them Into Contempt Or Disrepute.

The Board's May 31, 2011 Order set forth a two-part inquiry into whether a trademark registration should be canceled because it may disparage persons, using the same legal test it applied in *Harjo*. *See* May 31, 2011 Order [Dkt. 40] 10-11. The two questions are:

- 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 goods and services identified in the registrations?
- Is the meaning of the marks one that may disparage Native Americans?

See id.; *Harjo*, 50 U.S.P.Q.2d at 1741-42. These questions are to be answered as of the various dates of registration of the marks in question. *See* May 31, 2011 Order [Dkt. 40] at 11. Furthermore, for purposes of this proceeding, the Board has held that the guidelines for determining whether a registration should be canceled as disparaging are the same as the guidelines for determining whether it should be canceled for bringing persons into contempt or disrepute. *See id*. at 3-4.

As demonstrated below, and as the Board found in *Harjo*, the marks in question refer to Native Americans, and the meaning of the marks is one that may disparage Native Americans.

1. The Term "Redskins" in the Registrations "Clearly Carries the Allusion to Native Americans."

In *Harjo*, the Board ruled that "the word 'Redskins,' as it appears in the marks herein, clearly carries the allusion to Native Americans." *Harjo*, 50 U.S.P.Q2d at 1742. Indeed, two of the registrations (PTO '668 and PTO '127) contain the profile of a Native American man with an

Indian headdress containing feathers, with one of the registrations also containing an Indian spear decorated with feathers.[136] Furthermore, on "many occasions," Jack Kent Cooke, the former PFI President, Chairman and majority owner from 1974 until after 1996, stated that the name "Redskins" "is intended to honor Native Americans."[137] While Petitioners deny that the team name confers any honor, this statement is an obvious admission that the marks allude to Native Americans. Moreover, in response to an interrogatory, PFI has admitted that the Redskins name and logo constitute a use by PFI of "Native American symbols, rituals or other aspects of Native American heritage."[138]

Aside from PFI's admissions, there can be no dispute that the word "redskin" has been used for centuries to refer a North American Native American, and that George Preston Marshall selected the team name for its "Indian motif."[139] And, of course, the marching band uniforms, the cheerleader outfits, the fight song, game programs, yearbooks and press guides routinely use Native American themes and imagery. Furthermore, the team's fans and the press have used Native American themes and imagery in their activities relating to the team, demonstrating that the allusion of the marks to Native Americans is well understood.

As noted, PFI asserted as an affirmative defense that the term "Redskin" as used in the marks has a acquired a secondary meaning such that it refers only to PFI's football team and "cannot reasonably be understood" to refer to Native Americans. *See* Answer [Dkt. 4] at 3. In *Harjo*, the Board rejected that argument as meritless:

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[136] BLA-TTAB-00564-65.

[137] BLA-TTAB-02576, 02579, 2588.

[138] BLA-TTAB-02579.

[139] BLA-TTAB-01378.

> [I]n 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, in connection with respondent's football team and its entertainment services.

Harjo, 50 U.S.P.Q.2d at 1742.

PFI's secondary meaning argument is no less "factually incomplete" and "disingenuous" today. Petitioners have satisfied the first test to demonstrate disparagement.

2. The Term "Redskin" Disparages Native Americans, As Perceived By A Substantial Composite of Native Americans.

The second question, whether the meaning of the marks may disparage Native Americans, depends on "whether, as of the relevant times, a substantial composite of Native Americans in the United States so perceive the subject matter in question." *Harjo*, 50 U.S.P.Q.2d at 1743. "A 'substantial composite' of the referenced group is not necessarily a majority of the referenced group." May 31, 2011 Order [Dkt. 40] at 8-9 (citing *In re Heeb Media LLC*, 89 U.S.P.Q.2d 1071, 1074 (T.T.A.B. 2008)).

In *Harjo*, the Board found that the petitioners had "clearly established" that a substantial composite of Native Americans perceived the marks as disparaging as of the dates they were registered. The Board explained that "[n]o single item of evidence or testimony alone brings us to this conclusion; rather, we reach our conclusion based on the cumulative effect of the entire record." *Harjo*, 50 USPQ 2d at 1743.

Indeed, there is abundant evidence in the record demonstrating that, as of the relevant dates, the marks contain matter that a substantial composite of Native Americans would find disparaging. As set out in detail above, the evidence includes the following categories:

1. Dictionaries, reference works, newspaper articles and editorials, and other published sources stating that "redskin" is a disparaging term (*see supra* at 9-11). The sources in

the record date back to 1911 (*Encyclopedia Britannica*), 1966 (*Random House Dictionary*) and 1971 & 1972 (*Washington Star* and *Washington Daily News* articles). In *Harjo*, the Board found that the dictionary evidence in the record alone demonstrates that "a not insignificant number of Americans have understood 'redskin(s) to be an offensive reference to Native Americans since at least 1966." *Harjo*, 50 U.S.P.Q.2d at 1744. Likewise, the Board found that "excerpts from various articles and publications about language … include, often, in larger discussion about bias in language, the assumption or conclusion that the word 'redskin(s)' as a term of reference for Native Americans is, and always has been, a pejorative term." *Id*. It is "reasonable to infer" from these written sources that state that "redskin" is disparaging that "a substantial composite of Native Americans would similarly perceive the word." *Id*.

2. The 1972 meeting between "American Indian leaders" and PFI (*see supra* at 12-14) is important evidence that throughout the relevant time period, a substantial composite of Native Americans found the content of the marks to be disparaging. In *Harjo*, the Board "in particular" noted the testimony of Harold Gross regarding the 1972 events. *See Harjo*, 50 U.S.P.Q.2d at 1747.

3. The National Congress of American Indians has taken stands against the marks and PFI's team name, including adopting a resolution that "the term REDSKINS . . . has always been and continues to be a pejorative, derogatory, denigrating, offensive, scandalous, contemptuous, disreputable, disparaging and racist designation for Native American[s]." (*see supra* at 14-17). *See id*. at 1747 (noting NCAI opposition to team name).

4. Evidence that numerous Native American groups and individuals, in addition to NCAI, oppose PFI's team name and also oppose other Indian-themed sports mascots (*see supra* 17-20). The evidence in the record shows opposition to the Dartmouth College and Stanford

University Indian-themed mascots and team names, dating back to the late 1960s. *See Harjo*, 50 U.SP.Q. 2d. at 1747 (record contains "substantial number of news articles, from various time periods, including from 1969-70, 1979, 1988-89, and 1991-92, reporting about Native American objections, and activities in relation thereto, to the word "Redskins" in respondent's team's name.")

5. The empirical work of expert linguist Geoffrey Nunberg, and the testimony of expert historian Frederick Hoxie, demonstrate that "redskin" is not used in newspapers or by historians as a term to refer to Native Americans (*see supra* at 20-23). In *Harjo*, the Board stated that evidence that "redskin" fell into disuse in the latter part of the 20th century is evidence that the term "has been since at least from the 1960's, perceived by the general population, which includes Native Americans, as pejorative term for Native Americans." *Id*. at 1745.

6. Examples in written sources (*see supra* at 23-26) and movies (*see supra* at 26-28) in which "redskin" is used in a disparaging manner to refer to Native Americans. In *Harjo*, the Board noted that the record contained many writings from the 19th century through the middle of the 20th century in which "redskin" was used in a disparaging manner, but that from the 1950's forward, "there are minimal examples of uses of the word 'redskin' as a reference to Native Americans." *Id*. That the term went into disuse is evidence of its disparaging nature, as the Board has already reasoned. *See id*.

7. The expert opinion of Geoffrey Nunberg that "redskin" is and always has been a disparaging term, based on his evaluation of reference sources, evidence of usage, and his empirical work regarding the non-use of "redskin" in newspapers (*see supra* at 28-30).

8. The expert opinion of Ivan Ross and survey data (*see supra* 30-32). In *Harjo*, "[a]fter careful consideration of Dr. Ross' testimony, the survey report and the substantial survey

data in the record," the Board found "ample support for the viability of the survey methodology used, including the sampling plan, the principal questions asked, and the manner in which the survey was conducted." 50 U.S.P.Q. 2d at 1734. The Board further found "that the survey adequately represents the views of the two populations sampled," was "a survey of current attitudes towards the word 'redskin(s)'" as a reference to Native Americans, and, "[w]hile certainly far from dispositive of the question before us in this case, … is relevant and … [to be] accorded some probative value...." *Id*. at 1746. Ultimately, despite what the Board described as some "flaws in the survey that limit its probative value" and its "limited applicability to the issues in this case as it sought to measure the participants' views only as of 1996," the Board concluded that "the percentage of participants in each sample who ... stated they were offended by the word 'redskin(s)' for Native Americans ... to be significant" and to constitute "substantial composites of both the general population and the Native American population," and that the survey evidence was "supportive" of other evidence that indicating the derogatory nature of the word "redskin(s)." *See id. at* 1745-46.

In reaching these conclusions, the Board gave no weight to the survey results for Question 10 of the survey, which asked about whether survey participants believed that "redskin" would be offensive to others. *See id.* at 1746. The Board's decision, however, did not address Dr. Ross' testimony regarding the basis for including the results of responses to Question 10. As noted, Dr. Ross offered expert testimony that the offensive-to-others question is fully supported by the "third-person technique methodology," an accepted method in the field of opinion surveys (*see supra* at 31-32). Accordingly, Petitioners respectfully request that the Board reconsider whether to give evidentiary weight to answers to the offensive-to-others

question in light of Dr. Ross's well-supported expert testimony regarding the relevance and methodological support for the question.

9. PFI and the NFL have admitted that the PFI team name is offensive to Native Americans (*see supra* 32-35). The earliest admission occurred in 1972, in a letter from the PFI President Edward Bennett Williams to NFL Commissioner Peter Rozelle. In *Harjo*, the Board did not discuss these admissions.

10. PFI has used the "Redskins" team name and the marks in ways that mock Native Americans and their culture (*see supra* 36-40). The record contains evidence from half-time shows, the fight song, the cheerleader costumes, the marching band uniform, programs and yearbooks, and so on. And, the public (fans, the media, and advertisers) joined in with belittling headlines, ads and behavior. In *Harjo*, the Board found that all of this evidence "reinforces [the] 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." *Id*. at 1747.

Thus, there can be no dispute that the evidence in the record demonstrates, by at least a preponderance of the evidence, that the marks contain matter (the term "redskin(s") that was perceived by a substantial composite of Native Americans as disparaging during the relevant time periods.

C. PFI's Laches Defense Lacks Merit.

On May 31, 2011, the Board set forth the legal test it intended to apply for laches, which the Board based on the D.C. Circuit laches rulings in *Harjo* even though the Board's own legal analysis on laches differs. *See* May 31, 2011 Order [Dkt. 40] at 12 n.6. The laches standard in the May 31, 2011 Order requires "a showing of (1) undue delay in asserting one's rights against another, and (2) material prejudice to the latter resulting from the delay." *Id*. at 12 (citations omitted). PFI bears the burden of proof. *Id.* at 13-14.

Below, Petitioners demonstrate that PFI's laches defense lacks merit under the standard set forth in the May 31, 2011 Order. Separately, however, Petitioners have filed a motion to reconsider the laches standard due to the America Invents Act, which was enacted in September 2011, after the Board's Order. In their motion, Petitioners argue that the reason for following the D.C. Circuit standard no longer applies because, under the America Invents Act, no subsequent federal court proceedings in this matter will take place in the District of Columbia.

1. None Of The Petitioners Unduly Delayed In Bringing This Petition.

None of the Petitioners unduly delayed in filing this petition. They filed while the *Harjo* matter was still active in the federal courts – and while the Board's decision to cancel the registrations in *Harjo* was still in effect, although in suspense.

On April 2, 1999, in *Harjo*, the Board determined that each of the registrations at issue in this petition should be canceled. At the time of that ruling, Petitioners Jillian Pappan and Courtney Tsotigh were only 11 years old. Petitioner Marcus Briggs-Cloud was only 15. Petitioner Phil Gover was 16 and Petitioner Amanda Blackhorse was 17. The *Harjo* federal court proceedings did not end until the Supreme Court denied the *Harjo* petitioners' writ of certiorari on November 16, 2009. *See Harjo v. Pro-Football, Inc.*, 565 F.3d 880, 90 U.S.P.Q.2d 1593 (D.C. Cir.), *cert denied*, 130 S.Ct. 631 (2009).

Any delay occurring between the April 2, 1999 Board decision in *Harjo* (when the petitioners were all under age 18) and November 16, 2009 (when the federal court *Harjo* proceedings concluded) cannot be considered a period of undue delay. During that time period, the Board's most recent pronouncement was that the registrations were to be canceled, a decision that remained in effect until the federal court proceedings in *Harjo* came to conclusion. It would be nonsensical to insist that the Blackhorse Petitioners needed to file their petition before the *Harjo* proceedings had concluded. To the contrary, it was reasonable and justifiable – and

presumably welcomed by the Board – for potential petitioners to await the completion of the federal proceedings in *Harjo*. Any other rule would invite the filing of excessive and unnecessary petitions.

Here, Petitioners actually filed their petition on August 11, 2006, more than three years before the federal court proceedings in *Harjo* were completed. If anything, therefore, the instant petition was premature and not unduly delayed. Indeed, in multiple orders, the Board stayed this petition pending completion of the *Harjo* federal court proceedings.[140] The Board did not remove this petition from suspense and order that proceedings commence until after it received notice that the Supreme Court denied *cert* in *Harjo*.[141] Furthermore, the Board continued to treat the *Harjo* petition as an open, but suspended, matter, and did not terminate the *Harjo* proceedings before the Board until May 2010.[142]

Alternatively, even if the period of time between April 2, 1999 and November 16, 2009 could be counted towards undue delay (which it should not) none of the Petitioners unduly delayed after reaching his or her 18th birthday to file the petition. Ms. Tsotigh was 18 years old; Ms. Pappan was 19 years old; Mr. Briggs-Cloud was 22; Mr. Gover was 23; and Ms. Blackhorse was 24.

Accordingly, none of the Petitioners unduly delayed in filing the petition.

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[140] *See* Order Suspending Petition Pending Disposition of Civil Action (Sept. 28, 2006) [Dkt. 6]; Order (Mar. 31, 2008) [Dkt. 12]; Order (March 31, 2009) [Dkt. 13]; Order (June 9, 2009) [Dkt. 16]; Order (Nov. 16, 2009) [Dkt. 20].

[141] *See* Order (Mar. 18, 2010) [Dkt. 23] (resuming proceedings in this petition in light of Supreme Court's denial of *Harjo* petitioners' petition for a *writ of certiorari*).

[142] *See* Order, *Harjo v. Pro-Football, Inc*., Cancellation No. 21,069 (Sept. 30, 2009) [Dkt. 109] (Board proceeding in *Harjo* "remains suspending pending final determination of the civil action").

2. PFI Suffered No Prejudice By Any Delay In The Filing Of This Petition

PFI's laches defense also fails for the separate reason that PFI did not suffer "material prejudice … resulting from the delay."[143] Here, no prejudice can be attributed to any delay on the Petitioners' part, let alone "material prejudice."

PFI has known since well before each of the Petitioners turned 18 that its trademark registrations were vulnerable to cancelation. PFI has obviously known that in 1999, the Board ruled in *Harjo* that the trademarks should never have been registered because they may disparage Native Americans. Any money spent to promote the "Washington Redskins" after 1999 was done with full knowledge that this agency believes that its registrations should be cancelled, and was done at PFI's peril. "'[O]ne who uses debatable marks does so at the peril that his mark may not be entitled to registration.'" *In re McGinley*, 660 F.2d 481, 485, 211 U.S.P.Q. 668, 672 n.7 (C.C.P.A. 1981) (quoting *In re Riverbank Canning Co*., 95 F.2d 327, 329, 37 U.S.P.Q. 268, 270 (C.C.P.A. 1938)).

Furthermore, PFI cannot demonstrate that it would have acted any differently during the period of time between each Petitioner's eighteenth birthday and August 16, 2009 filing date of the petition. Accordingly, PFI can show no prejudice "resulting from" the delay."[144] If PFI would have promoted its trademarked items in substantially the same way even if it had known that the Petitioners would be filing this petition, then it cannot claim prejudice "resulting from" any delay.

Accordingly, PFI cannot demonstrate the prejudice required for laches.

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[143] Order (May 31, 2011) [Dkt. 40] at 12.

[144] The prejudice must "result from" the delay. *See id.* at 12, 14, 15.

VII. CONCLUSION

For the foregoing reasons, the Board should order cancellation of the six challenged trademark registrations.

Respectfully Submitted,

Dated: September 6, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 6, 2012, he caused a copy of the foregoing Petitioners' Trial Brief, and Appendix A and Appendix B thereto, to be served via Federal Express upon the following:

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,

Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,

Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,

Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,

Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,

and Registration No. 836,122 (THE REDSKINS—STYLIZED LETTERS)
Registered September 26, 1967

Amanda Blackhorse, Marcus Briggs, Phillip Gover Jillian Papan and Courtney Tsotigh Petitioners, v. Pro-Football, Inc., Registrant.	)	Cancellation No. 92/046,185

APPENDIX A TO PETITIONERS' TRIAL BRIEF:
PETITIONERS' OBJECTIONS TO REGISTRANT'S EVIDENCE

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INTRODUCTION

Pursuant to the Board's May 5, 2011 Order and TBMP § 801.03 (2d. ed. rev. 2004), Petitioners object to certain documents submitted by Respondent Pro-Football, Inc. In accordance with the Board's May 5, 2011 Order directing the parties to avoid raising unnecessary objections, Petitioners have limited their objections to documents that the Board already found inadmissible in *Harjo v. Pro-Football, Inc.*, No. 92/021,069 (TTAB).[1]

The Parties filed a Joint Stipulation on March 14, 2011 which memorialized their agreement on "the admissibility of certain evidence that may be submitted into the record in this matter."[2] Evidence filed by either party in *Harjo* under a Notice of Reliance was admissible, unless the Board found that evidence inadmissible in *Harjo*:

> all evidence submitted with a Notice of Reliance, as well as all deposition transcripts and exhibits thereto submitted by any party[] in *Harjo* . . . shall be admissible in this proceeding *unless the Trademark Trial and Appeal Board ruled in* Harjo *that the evidence was not admissible*, in which case all arguments as to admissibility are preserved.

Id. (emphasis added). The Parties also agreed not to submit additional evidence except as to the laches defense. *See id*. at 7. That agreement was reaffirmed in the Parties' Second Joint Stipulation.[3]

In *Harjo*, the Board held a number of the documents submitted by Pro-Football, Inc. to be inadmissible. Those documents included:

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[1] Order at 9-10, *Blackhorse v. Pro-Football, Inc.*, No. 92/046,185 (TTAB May 5, 2011) [Docket No. 39]

[2] Joint Stipulation Regarding Admissibility of Certain Evidence and Regarding Certain Discovery Issues at ¶ 1, *Blackhorse v. Pro-Football, Inc.*, No. 92/046,185 (TTAB Mar. 14, 2011) [Docket No. 31].

[3] Second Joint Stipulation Regarding Admissibility of Certain Evidence and Regarding Certain Discovery Issues at ¶ 16, *Blackhorse v. Pro-Football, Inc.*, No. 92/046,185 (TTAB Dec. 23, 2011) [Docket No. 45].

- Letters purported to be from Native American tribal leaders supporting the use of the team name, *see Harjo v. Pro-Football, Inc.*, 50 U.S.P.Q.2d 1705, 1747 n.126 (TTAB 1999);
- Unidentified photographs purported to be taken on Native American reservations, *see id.* at 1747 n.127;
- Letters purported to be from fans, *see id.* at 1747 n.125; and
- Unsubstantiated radio and newspaper polls, *see id.* at 1728 n.73.

The Board should find the documents described below inadmissible for the same reasons it found them inadmissible in *Harjo*.

OBJECTIONS

I. Letters Purported to be From Native American Tribal Chiefs Should be Excluded.

In *Harjo*, Pro-Football, Inc. attempted to introduce "several letters and resolutions purported to be from Native American tribal chiefs expressing their support for Pro-Football, Inc.'s team name 'Washington Redskins.'"[4] 50 U.S.P.Q.2d at 1747. The Board found that no foundation had been laid for the letters and did not consider them for the truth of the statements contained therein:

> Pro-Football, Inc.'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.

[4] In *Harjo*, the Petitioners objected to these letters' lack of foundation, lack of authentication, irrelevance, and the possible bias of the writers. Petitioners' Reply Memorandum at 16-18, *Harjo v. Pro-Football, Inc.*, No. 92/021,069 (TTAB September 16, 1997) [Docket No. 77] (hereinafter "*Harjo* Petitioners' Reply").

Id. at 1747 n.126. *See also* TBMP §§ 707.01, 707.02(c) (2d. ed. rev. 2004), Fed. R. Evid. 901(a); *Miskin v. Baxter Healthcare Corp.*, 107 F. Supp. 2d 669, 674 (D. Md. 1999) (finding unauthenticated medical treatises and a list of sixteen documents with only brief accompanying explanations to be without foundation and therefore inadmissible). Not only were the letters not considered for the truth of their contents, the Board stated that "this small number of letters would not change our determination herein even if we were to so consider this evidence." *Id.*

Pro-Football, Inc. is trying to introduce the same documents even though the Board already found in *Harjo* that they were inadmissible. These letters are interspersed throughout the record, including in the following exhibits:

Description	**Bates Range**	**ESTTA**
Letters and resolutions purported to be from tribal chiefs	PFIB-TTAB-000278-92	142
Letter purporting to be from tribal council member Robert J. Salgado	PFIB-TTAB-000296	142

II. Unauthenticated Photographs and Website Printouts Should be Excluded.

The Board also found that Pro-Football, Inc. had not provided a foundation for several "unidentified photographs purported to have been taken on Indian reservations."[5] *Id.* at 1747-48. The Board explained that:

> [t]here is no testimony in the record establishing a foundation for consideration of these photographs. Pro-Football, Inc.'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 Pro-Football, Inc.'s counsel. Pro-Football, Inc.'s witness, Mr. Cooke, indicated during his testimony a general awareness of other teams with the word

[5] The *Harjo* Petitioners objected that no foundation was in evidence for the photographs. *Harjo* Petitioners' Reply at 18.

> '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.

Id. at 1747 n. 127. As the Board explained, the only "testimony" specifically regarding these photographs was offered by Pro-Football, Inc.'s attorney. The photographs lacked foundation, and the Board found they had "no probative value." *Id.*

Pro-Football, Inc. is trying to introduce the same documents even though the Board already found in *Harjo* that they were inadmissible. These photographs and letters are interspersed throughout the record, including in the following exhibits:

Description	**Bates Range**	**ESTTA**
Photographs purported to be of Arizona public high school.	PFIB-TTAB-000313-14	143
Photograph purported to be of street sign.	PFIB-TTAB-000316-17	143
Photograph and cover letter to The Washington Post purporting to be from Priscilla J. Fritz, September 2, 1992.	PFIB-TTAB-000318-19	143
Letter to Jack Kent Cooke from Michael John Nisos and attached photograph, April 28, 1992.	PFIB-TTAB-000320-21	143

III. Letters Purporting to be From Fans Supporting the Team Name Should be Excluded.

The Board also found that Pro-Football, Inc.'s exhibits of "letters from fans in support of the team name" were hearsay and without foundation. *Id.* at 1747 & n.125. The Board held that the evidence was inadmissible:

> Pro-Football, Inc.'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.

Id. at 1747 n.125.

Pro-Football, Inc. is trying to introduce the same documents even though the Board already found in *Harjo* that they were inadmissible. These letters are interspersed throughout the record, including in the following exhibits:

Description	**Bates Range**	**ESTTA**
Letters purporting to be from American Indians and others.	PFIB-TTAB-000293-95 PFIB-TTAB-000297-309	142
Letter purporting to be to John Kent Cooke from Robert D. Kahn, November 4, 1991.	PFIB-TTAB-000315	143
Letter To Jack Kent Cooke from Susan Giller, May 10, 1993.	PFIB-TTAB-000583	149

IV. Unsubstantiated Radio Survey and Newspaper Poll Should be Excluded

The Board gave no weight to the results of a radio survey and newspaper poll testified to by two of Pro-Football, Inc.'s witnesses (John Kent Cooke and Richard Vaughn), and included in Pro-Football, Inc.'s notices of reliance. *Id.* at 1728 n.73. As the Board explained in *Harjo*, no foundation was provided to evaluate the reliability of the survey or poll's methodology or results:

> Mr. Cooke and Mr. Vaughn testified that they knew of a radio survey and a newspaper poll, both pertaining to the 'Redskins' team name, and taken independently of Pro-Football, Inc. However, we have given no weight to the results of the survey and poll as reported by Mr. Vaughn, and as referred to in communications made of record by notice of reliance, because there is no foundation established in the record for evidence regarding the survey or poll and, thus, no basis for the Board to consider the reliability of the methodology used, or the results reached, in the survey or poll.

Id.

Pro-Football, Inc. is trying to introduce the same documents even though the Board already found in *Harjo* that they were inadmissible. These documents are interspersed throughout the record, including in the following exhibits:

Description	**Bates Range**	**ESTTA**
Memo purported to be to Jack Kent Cooke from Jack Kent Cooke, Sr., and attached letter purported to be to Charlie Dayton from Tom McKinley, and attachment purported to be survey tabulations.	PFIB-TTAB-000555-80	149
Newspaper article.	PFIB-TTAB-000581-82	149

CONCLUSION

For the reasons stated above, the Board should exclude the above-described documents.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 1,606,810 (REDSKINETTES)
Registered July 17, 1990,

Registration No. 1,085,092 (REDSKINS)
Registered February 7, 1978,

Registration No. 987,127 (THE REDSKINS & DESIGN)
Registered June 25, 1974,

Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)
Registered June 18, 1974,

Registration No. 978,824 (WASHINGTON REDSKINS)
Registered February 12, 1974,

and Registration No. 836,122 (THE REDSKINS—STYLIZED LETTERS)
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APPENDIX B TO PETITIONERS' TRIAL BRIEF:
PETITIONERS' TABLE OF EVIDENCE

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September 6, 2012

TABLE OF EVIDENCE

Pursuant to the Board's May 5, 2011 Order, Petitioners submit the following

Table of Evidence identifying relevant information in the record submitted by Petitioners.

Source	**Probative Value**	**TTABVue Entry and Page**	**Bates No.**
The Encyclopedia Britannica (11th ed. 1910)	Disparaging nature of "redskin."	62 page 133	BLA-TTAB-00130
The Random House Dictionary of the English Language (1966)	Disparaging nature of "redskin."	62 page 168	BLA-TTAB-00165
The Random House Dictionary of the English Language (1967)	Disparaging nature of "redskin."	62 page 171	BLA-TTAB-00168
The Random House Dictionary of the English Language (College Edition) (1968)	Disparaging nature of "redskin."	63 page 6	BLA-TTAB-00171
The Random House Dictionary of the English Language (School Edition) (1970)	Disparaging nature of "redskin."	63 page 8	BLA-TTAB-00173
The Random House Dictionary of the English Language (1973)	Disparaging nature of "redskin."	63 page 11	BLA-TTAB-00176
The Random House College Dictionary (1975)	Disparaging nature of "redskin."	63 page 13	BLA-TTAB-00178
The Random House Dictionary of the English Language (1979)	Disparaging nature of "redskin."	63 page 15	BLA-TTAB-00180
Oxford American Dictionary (1980)	Disparaging nature of "redskin."	63 page 18	BLA-TTAB-00183
Webster's Ninth New Collegiate Dictionary (1986)	Disparaging nature of "redskin."	63 page 45	BLA-TTAB-00210
The Random House Dictionary of the English Language (2d, ed.	Disparaging nature of "redskin."	63 page 48	BLA-TTAB-00213

Source	Probative Value	TTABVue Entry and Page	Bates No.
Unabridged) (1987)			
Webster's Ninth New Collegiate Dictionary (1988)	Disparaging nature of "redskin."	63 page 51	BLA-TTAB-00216
Chambers English Dictionary (1989)	Disparaging nature of "redskin."	63 page 54	BLA-TTAB-00219
Oxford English Dictionary (1989)	Disparaging nature of "redskin."	63 pages 55-57	BLA-TTAB-00220-22
Webster's Ninth New Collegiate Dictionary (1990)	Disparaging nature of "redskin."	63 page 60	BLA-TTAB-00225
The American Heritage Dictionary of the English Language (1992)	Disparaging nature of "redskin."	63 page 63	BLA-TTAB-00228
Merriam Webster's Collegiate Dictionary (10th ed. 1995)	Disparaging nature of "redskin."	63 page 66	BLA-TTAB-00231
The American Heritage Dictionary of the English Language (1996)	Disparaging nature of "redskin."	63 page 69	BLA-TTAB-00234
National Congress of American Indians, Resolution No. EX DC-93-11 (Jan. 18-19, 1993)	How Native Americans perceive and object to the term "redskin."	63 page 71	BLA-TTAB-00236
Letter from D. Tobbin to J. Cooke, dated Feb. 1988	How Native Americans perceive and object to the term "redskin."	63 page 87	BLA-TTAB-00252
Note from R. Schmidt to J. Cooke, dated Feb. 16, 1988	How Native Americans perceive and object to the term "redskin."	63 page 88	BLA-TTAB-00253
Letter from L. Ottinger, et al. to J. Cooke, dated Feb. 21, 1988, with attached T. Giago article, "If the name Redskins doesn't bother team owner, how about	How Native Americans perceive and object to the term "redskin."	63 page 97	BLA-TTAB-00262

Source	Probative Value	TTABVue Entry and Page	Bates No.
Blackskins?" *Sioux Falls Argus Leader* (Feb. 21, 1988)			
Letter from R. Puchner to J. Cooke, dated Feb 22, 1988, with attached T.Giago article, "A Clever nickname cannot disguise a racial slur" *The Lakota Times* (1988)	How Native Americans perceive and object to the term "redskin."	63 page 110	BLA-TTAB-00275
PTO 836,122	Registration.	68 page 5	BLA-TTAB-00561
PTO 978,824	Registration.	68 page 7	BLA-TTAB-00563
PTO 986,668	Registration.	68 page 8	BLA-TTAB-00564
PTO 987,127	Registration.	68 page 9	BLA-TTAB-00565
PTO 1,085,092	Registration.	68 page 10	BLA-TTAB-00566
PTO 1,606,810	Registration.	68 page 12	BLA-TTAB-00568
Newspaper articles and published advertisement	Evidence that media and advertisers mock Native American culture in context of "Washington Redskins."	68 pages 43 – 107 69 pages 4-64 70 pages 51-76	BLA-TTAB-00598-723,
"Heap Big Injuns," Newspaper Article	PFI's disparaging half-time "entertainment."	68 page 46	BLA-TTAB-00601
Newspaper articles	Pictures of fans in war paint and wearing headdresses and Indian costumes; protests by Native Americans over the team name.	69 pages 13 – 64 48 pages 43,49-50, 55,60 71 page 62 72 page 57 56 pages 7,15	BLA-TTAB-00672-723, 844, 850, 851, 856, 861, 961, 1133,1432, 1440
Copies of the "Redskins"	Mocking caricatures	70 pages 29 -	BLA-TTAB-00757-77

Source	Probative Value	TTABVue Entry and Page	Bates No.
game programs	of Native Americans	49	
Newspaper, magazine articles, and book excerpt	Discusses George Preston Marshall's refusal to integrate the team; team's racist origins.	48 pages 5 – 25 73 page 21 89 page 46	BLA-TTAB-00806-24, 1390, 1872
T. Quinn, "Redskins, Rednecks," *The Washington Daily News* (Nov. 5, 1971)	Disparaging nature of "redskin."	48 page 24	BLA-TTAB-00825
Paul Kaplan, "Do we Defame Native Americans?," *The Washington Star* (1972)	Disparaging nature of "redskin."	48 pages 25-26	BLA-TTAB-00826-27
T. Quinn, "Indians are starting to fight back," *The Washington Daily News* (Jan. 28, 1972)	How Native Americans and others perceive and object to the term "redskin."	48 page 27	BLA-TTAB-00828
M. Siegel, "Siegel at Large," *Washington Star* (Jan. 26, 1972)	How Native Americans perceive and object to the term "redskin."	48 page 28	BLA-TTAB-00829
R. White, "No Reservations…Williams' Answer: What's In A Name?," *The Washington Evening Star* (Jan. 27, 1972)	How Native Americans perceive and object to the term "redskin."	48 page 29	BLA-TTAB-00830
T. Quinn, "Redskins Face Suit" and "The quest for dignity," *The Washington News* (Feb. 18, 1972)	How Native Americans perceive and object to the term "redskin."	48 page 30	BLA-TTAB-00831
T. Quinn, "What's in a nickname? In Washington, plenty of trouble, possibilities," *The Washington Daily News* (Feb. 29, 1972)	How Native Americans and others perceive and object to the term "redskin."	48 page 31	BLA-TTAB-00086, 832

Source	Probative Value	TTABVue Entry and Page	Bates No.
T. Quinn, "More on the Redskins," *The Washington Daily News* (March 3, 1972)	How Native Americans and others perceive and object to the term "redskin."	48 page 32	BLA-TTAB-00833
T. Quinn, "Williams, Indians in Showdown" *The Washington Daily News* (March 30, 1972)	How Native Americans and others perceive and object to the term "redskin."	48 page 33	BLA-TTAB-00834
S. Guback, "Indians Take On Williams," *The Washington Post* (March 30, 1972)	How Native Americans perceive and object to the term "redskin."	48 page 34	BLA-TTAB-00835
S. Coffey, "Indians Open War on Redskins," *The Washington Post* (March 30, 1972)	How Native Americans perceive and object to the term "redskin."	48 page 35	BLA-TTAB-00836
G. Solomon, "Redskins Keep Names, Will Change Lyrics," *The Washington Post* (July 18, 1972)	How Native Americans perceive and object to the term "redskin." PFI admission that the original fight song lyrics are offensive.	48 page 36	BLA-TTAB-00837
S. Guback, "Time will Tell- Allen on Redskins: 'Could be the Best,'" *The Washington Evening Star* (Nov. 14, 1972)	How Native Americans perceive the term "redskin."	48 page 37	BLA-TTAB-00838
S. Guback. "Dallas Favored by 6- Allen: No Letup Rest of the Way" *The Washington Evening Star* (Dec. 5, 1972)	How Native Americans perceive the term "redskin"; disparaging caricature.	48 page 38	BLA-TTAB-00839
T. Giago, "If the name Redskins doesn't bother team owner, how about Blackskins?," *Sioux Falls*	How Native Americans perceive and object to the term "redskin.";	48 page 42	BLA-TTAB-00843

Source	Probative Value	TTABVue Entry and Page	Bates No.
Argus Leader (Feb. 21, 1988)	disparaging caricature.		
Articles reporting that Native American groups and individuals object to the name "redskins"	How Native Americans perceive and object to the term "redskin"; disparaging caricature.	48 pages 43 71 pages 1-94 49 pages 1-18	BLA-TTAB-00844-1008
"Offensive Penalty Called on 'Redskins'" *The Washington Post* (Nov. 3, 1991)	Shows Registrant's knowledge that its name offends Native Americans.	48 page 48	BLA-TTAB-00849
C. Lewis, "The name 'Redskins' is a loser," *The Philadelphia Inquirer* (March 2. 1992)	How Native Americans and others perceive the term "redskin."	48 page 52	BLA-TTAB-00853
Wire Report, "Change Nickname, Redskins Told – Congressman's Bill Targets Stadium," (July 3, 1993)	How Native Americans and others perceive the term "redskin."	48 page 62	BLA-TTAB-00863
AP Denver, "Senate Bill Could Force Redskins Name Change," (July 3, 1993)	How Native Americans and others perceive the term "redskin."	48 page 63	BLA-TTAB-00864
"Mayor favors renaming Redskins," *The Washington Times* (Aug. 24, 1993)	How Native Americans and others perceive the term "redskin."	48 page 64	BLA-TTAB-00865
Editorial Board, "'Redskins' is racist'," *The Stanford Daily*	How Native Americans and others perceive the term "redskin."	48 page 79	BLA-TTAB-00880
"Dartmouth Loses Its Indian Mascot" *The New York Times* (Oct. 12, 1969)	Native American groups' opposition to Indian team names.	48 page 84	BLA-TTAB-00885
C. Trillin "U.S. Journal: Hanover, N.H.; The	How Native Americans perceive	48 page 88	BLA-TTAB-00889

Source	Probative Value	TTABVue Entry and Page	Bates No.
Symbol is a Symbol" *The New Yorker* May 7, 1979	the term "redskin."		
J. Slupski "Native Americans get unsportsmanlike rep" (1988)	How Native Americans and other perceive the term "redskin": Native American objections to Stanford University mascot.	48 page 93	BLA-TTAB-00894
G. Fallesen, "'Racist' name taints game with stupidity," *Democrat and Chronicle* (1988)	How Native Americans and others perceive the term "redskin."	48 page 95	BLA-TTAB-00896
C. Page, "It'll be the Broncos vs. a racial slur," *Chicago Tribune* (Jan. 24, 1988)	How Native Americans and others perceive the term "redskin."	48 page 101	BLA-TTAB-00902
P. Sand "Do not continue to smear American Indians in team names," *Saint Paul Pioneer Press Dispatch* (Jan. 28, 1988)	How Native Americans and others perceive the term "redskin."	71 page 4	BLA-TTAB-00903
R. Cohen "Redskin Reservations," *Washington Post* (April 17, 1988)	How Native Americans and others perceive the term "redskin."	71 page 11	BLA-TTAB-00910
C. McCarthy "Now it's time for the Braves to chop that offensive name," *The Washington Post* (1991)	How Native Americans and others perceive the term "redskin."	71 page 18	BLA-TTAB-00917
W. Hall, "Only a rude nation could ignore team insults to Indians," *The Baltimore Evening Sun* (1991)	How Native Americans and others perceive the term "redskin."	71 page 19	BLA-TTAB-00918
N. Butterfield, "Indians still a long way from racial equality," *The Seattle Times* (Jan. 21, 1991)	How Native Americans and others perceive the term "redskin."	71 page 22	BLA-TTAB-00921

Source	Probative Value	TTABVue Entry and Page	Bates No.
Sen. Paul Simon, "Plight of Native Americans needs new understanding," *The Champaign-Urbana News-Gazette* (March 24, 1991)	How Native Americans and others perceive the term "redskin."	71 page 23	BLA-TTAB-00922
J. Yardley, "Get with the program Jane Fonda!," (Oct. 1991)	How Native Americans and others perceive the term "redskin."	71 page 24	BLA-TTAB-00923
S. Christllaw, "Native Americans sensitive to slurs" *The Seattle Times* (Oct. 21, 1991)	How Native Americans and others perceive the term "redskin."	71 page 27	BLA-TTAB-00926
R. Reilly, "Let's Bust Those Chops," *Sports Illustrated* (Oct. 28, 1991)	How Native Americans and others perceive the term "redskin."	71 page 32	BLA-TTAB-00931
P. Doyle, "'Chop' is Spreading, but Indians Disagree on what is Offensive Most Decry 'Redskins" Nickname," *Start Tribune* (Nov. 1, 1991)	Grand Forks, ND school system abandoned "Redskins" in team names; how Native Americans perceive the term "redskin."	71 page 33 77 pages 38-40	BLA-TTAB-00932 BLA-TTAB-01667-69
Associated Press, "Journalist unprepared for reservation visit," *The Forum* (Nov. 20, 1991)	How Native Americans and others perceive the term "redskin."	71 page 37	BLA-TTAB-00936
Editorial Board, "Redskins, Braves: Listen to those you've offended," *USA Today* (Nov. 25, 1991)	How Native Americans and others perceive the term "redskin."	71 page 38	BLA-TTAB-00937
C. Page, "Party pooper? Redskins (and Indians) should think up new names," *The Plain Dealer* (1992)	How Native Americans and others perceive the term "redskin."	71 page 42	BLA-TTAB-00941
N. Hite Jr., "Understanding and Respect," *NSBE*	How Native Americans and	71 page 43	BLA-TTAB-00942

Source	Probative Value	TTABVue Entry and Page	Bates No.
(January, 1992)	others perceive the term "redskin."		
J.C. Weaver and M. Bauerlein, "Skin Deep," (Jan. 1992)	How Native Americans and others perceive the term "redskin."	71 page 44	BLA-TTAB-00943
E. Lazarus, "Redskins: What's in the Name," *The Washington Post* (Jan. 14, 1992	How Native Americans and others perceive the term "redskin."	71 page 45	BLA-TTAB-00944
N. Coleman, "Indian nicknames spark column war," *Saint Paul Pioneer Press* (Jan. 16, 1992)	How Native Americans and others perceive the term "redskin."	71 page 46	BLA-TTAB-00945
B. Anquoe, "'Redskins' new site on Interior land" *Lakota Times* (Jan. 21, 1992)	How Native Americans perceive and object to the term "redskin."	71 pages 47-48	BLA-TTAB-00946-47
E. Savilla, "Real Indians need to tackle mascot issue," *Lakota Times* (Jan. 21, 1992)	How Native Americans perceive and object to the term "redskin."	71 page 49	BLA-TTAB-00948
D. Furst, "Wellstone urges end to Washington 'Redskins'," *Star Tribune* (Jan. 23, 1992)	How Native Americans perceive and object to the term "redskin."	71 page 50	BLA-TTAB-00949
M. Cohen, "Indian Mascot Protest Starts," *Rapid City Journal* (Jan. 24, 1992)	How Native Americans perceive and object to the term "redskin."	71 page 51	BLA-TTAB-00950
P. Lewis, "Indian Principal No Redskin Fan-Team's Name is Racist, He Says," *The Seattle Times* (Jan. 26, 1992)	How Native Americans perceive and object to the term "redskin."	71 page 52	BLA-TTAB-00951
L. Inskip, "Redskins: good team, bad name," *Star Tribune* (Jan. 26, 1992)	How Native Americans and others perceive the	71 page 55	BLA-TTAB-00954

Source	Probative Value	TTABVue Entry and Page	Bates No.
	term "redskin."		
"2,000 Demonstrate Against Indian Nicknames" (Jan. 27, 1992)	How Native Americans and others perceive and object to the term "redskin."	71 page 56	BLA-TTAB-00955
E. Haase, "3,000 rally against racist mascots" *Lakota Times* (Jan. 28, 1992)	How Native Americans and others perceive and object to the term "redskin."	71 pages 57-64	BLA-TTAB-00956-963
T. Kornheiser, "By Any Other Name…," *The Washington Post* (March 5, 1992)	How Native Americans and others perceive and object to the term "redskin."	71 page 72	BLA-TTAB-00971
T. Sandler "Unsportsmanlike Conduct" *In These Times* (March 11-17, 1992)	Native American opposition to Indian team names; Native American objection to Stanford University mascot.	71 page 74	BLA-TTAB-00973
E. Zorn, "In pros or preps, 'Redskins' a slur," *Chicago Tribune* (May 21, 1992)	How Native Americans and others perceive and object to the term "redskin."	71 page 82	BLA-TTAB-00981
A. Little Eagle, "Protesters meet Kansas 'Chiefs' at training camp"; "Mascots: a history of cultural insensitivity" and "A chronology of the mascot controversy" *Lakota Times* (July 29, 1992)	How Native Americans and others perceive the term "redskin."	71 page 83	BLA-TTAB-00982
Editorial, "A Slur Is a Slur," *Albuquerque*	How Native Americans and	71 page 87	BLA-TTAB-00986

Source	Probative Value	TTABVue Entry and Page	Bates No.
Journal (Sept. 12, 1992)	others perceive the term "redskin"		
A. Little Eagle, "Action taken to chop 'Redskins' trademark," *Lakota Times* (Sept. 16, 1992)	How Native Americans and others perceive and object to the term "redskin."; S. Harjo, V. Deloria, and R. Apodaca roles in the National Congress of American Indians.	71 pages 89	BLA-TTAB-00988
"National Coalition Challenges Federal Trademark Registrations," *The Circle* (Oct. 1992)	Native American groups object to the term "redskin."	71 page 90	BLA-TTAB-00989
B. Reynolds, "History demands end to 'Redskins'," *USA Today* (Feb. 5, 1993)	How Native Americans and others perceive the term "redskin."	49 page 4	BLA-TTAB-00994
J. Markiewicz, "'Redskins' Banned by University Senate…Proposal Forbids Use in Any Publication, Moves to Risser, Trustees For Approval," *The Miami Student* (April 13, 1993	University in Ohio abandons the term "Redskins"; how "redskins" is perceived.	49 page 5	BLA-TTAB-00995
A. Little Eagle, "Sen. Nighthorse Stalks Redskins," *Indian Country Today* (July 8, 1993)	How Native Americans and others perceive and object to the term "redskin."	49 page 6	BLA-TTAB-00996
B. Anquoe, "'Redskins' on the Run… Bill Seeking Name Change"	How Native Americans and others perceive the term "redskin";	49 page 7-8	BLA-TTAB-00997-98
T. Giago, "Using sham rituals to boost sports teams belittles Native Americans' culture," *Saint Paul Pioneer Press* (Oct.	How Native Americans perceive and object to the term "redskin."	49 page 13	BLA-TTAB-01003

Source	Probative Value	TTABVue Entry and Page	Bates No.
22, 1991)			
T. Giago, "Ignorance adds insult to injury," *Lakota Times* (Oct. 30, 1991)	How Native Americans perceive and object to the term "redskin."	49 page 14	BLA-TTAB-01004
T. Giago, "I Hope the Redskins Lose," *Newsweek* (Jan. 27, 1992	How Native Americans perceive and object to the term "redskin."	49 page 15	BLA-TTAB-01005
T. Giago, "Brave redskins? Gee, Mr. Cooke, very bigot of you," *The Lakota Times* (Feb. 4, 1992)	How Native Americans perceive and object to the term "redskin."	49 page 16	BLA-TTAB-01006
T. Giago, "Mascot issue won't go away and neither will Indian people," *The Lakota Times* (April 1, 1992)	How Native Americans perceive and object to the term "redskin."	49 page 17	BLA-TTAB-01007
"Merritt Meets the Enemy; Victory for the Federal Troops Over Our Frontier Foe.," *The Daily News* (Oct. 8, 1879)	Use of "redskin" in a derogatory manner.	49 page 19	BLA-TTAB-01009
"The Sand Creek Battle…Wholesale Slaughter of Indians on the Plains," *Chicago Tribune* (Aug. 8, 1887)	Use of "redskin" in a derogatory manner.	49 page 24	BLA-TTAB-01014
"Ready for Battle…the Rebellious Redskins" *Aspen Daily Times* (Nov. 29, 1890)	Use of "redskin" in a derogatory manner.	49 page 28	BLA-TTAB-01018
"A Bad Ute's Skull," *Rocky Mountain News* (Nov. 16, 1890)	Use of "redskin" in a derogatory manner.	49 page 31	BLA-TTAB-01021
"The Indian Messiah," *Rocky Mountain News* (Nov. 19, 1890)	Use of "redskin" in a derogatory manner.	49 page 35	BLA-TTAB-01025

Source	Probative Value	TTABVue Entry and Page	Bates No.
"The Latest Indian News," *The Daily News* (Nov. 23, 1890) (also published in *The New York Times* (Nov. 23, 1890))	Use of "redskin" in a derogatory manner.	49 pages 40, 42	BLA-TTAB-01030, 1032
"To Ambush the Soldiers," *The New York Times* (Nov. 24, 1890)	Use of "redskin" in a derogatory manner.	49 page 43	BLA-TTAB-01033
"To Disarm the Hostiles," *The New York Times* (Nov. 11, 1890)	Use of "redskin" in a derogatory manner.	49 page 57	BLA-TTAB-01047
"On the Warpath," *Rocky Mountain News* (Dec. 18, 1890)	Use of "redskin" in a derogatory manner.	49 page 66	BLA-TTAB-01056
"The Redskin Trouble," *Aspen Daily News* (Jan. 7, 1891)	Use of "redskin" in a derogatory manner.	49 page 78	BLA-TTAB-01068
"Looting Homes" *Rocky Mountain News* (Jan. 8, 1891)	Use of "redskin" in a derogatory manner.	49 page 79	BLA-TTAB-01069
"Custer's Men Lured into Trap By Wily Redskins" *The Denver Post* (June 19, 1932)	Use of "redskin" in a derogatory manner.	72 page 38	BLA-TTAB-01114
"Fort Wicked Too Tough for Redskins…Pleasant-Faced Rancher and Garrison of Three Men, Four Women, Beat Off Savages" *Rocky Mountain News* (Oct. 21, 1932)	Use of "redskin" in a derogatory manner.	72 page 39	BLA-TTAB-01115
M. Banks, "Indians Here on Warpath Against Tribe," *Cleveland Press* (March 17, 1970)	How Native Americans perceive and object to the term "redskin."	72 page 51	BLA-TTAB-01127

Source	Probative Value	TTABVue Entry and Page	Bates No.
L. Shapiro, "Offensive Penalty is Called on 'Redskins'- Native Americans Protest the Name" *The Washington Post* (Nov. 3, 1991)	How Native Americans perceive and object to the term "redskin."	72 pages 52-53	BLA-TTAB-01128-29
A. Little Eagle, "Protestors Challenge Racist Mascot Names," *Indian Country Today* (Nov. 19, 1992)	How Native Americans perceive and object to the term "redskin."	72 page 54	BLA-TTAB-01130
D. Matheny, "The Year of a Super Bowl, a Final 4 and a 'Hugedale'," *Star Tribune* (Dec. 31, 1992)	Native American caricature displayed by fans; connection between marks and Native Americans.	72 page 57	BLA-TTAB-01133
Photographs of the members of the "Redskins marching band"	Shows band members dressed as Indians with headdresses; connection between marks and Native Americans.	72 pages 63-80 50 pages 4-12, 14 52 page 24 53 page 11 55 pages 8, 14 74 page 15 57 pages 5, 10	BLA-TTAB- 01139-65, 1167, 1270, 1292, 1350, 1412, 01474, 1479
Photographs in the "Redskins" magazine	"Redskinettes" cheerleaders wearing stereotyped black braided-hair wigs and Indian costumes; connection between marks and Native Americans.	50 page 13 52 pages 5, 17, 31, 34 53 page 7 55 page 17 57 page 17	BLA-TTAB-01166, 1251, 1263, 1277, 1280, 1288, 1359, 1486
A. Stillman, A. Jacobs "Rosie, The Redskin" 2nd Chorus	Disparaging use of the term "redskin" in popular music.	50 page 27	BLA-TTAB-01180
Cooke Deposition Exhibit	Lyrics of fight song;	50 pages 34 -	BLA-TTAB-1187-91

Source	Probative Value	TTABVue Entry and Page	Bates No.
No. 8 – 1983 article entitled: "Washington's Unifying Force"	use of marks to mock Native Americans.	38	
"Washington Redskins" programs from 1940, 1960, 1962 and 1967	Lyrics of fight song; use of marks to mock Native Americans.	50 page 38, 51 pages 15, 18 54 page 29	BLA-TTAB-01191, 1228, 1231, 1344
Picture of members of "Redskins" Board of Directors	Shows Gene Archer, Board Member in Indian headdress with the caption "Chiefs Pow-wow"; connection between marks and Native Americans; PFI's mocking of Native American culture.	51 page 16	BLA-TTAB-01229
J. Marshall, "What's In a Nickname?," *Pro! Magazine* (Nov. 20, 1972)	How Native Americans perceive the term "redskin"; admission that Native Americans are hurt by and object to "Washington Redskins" team name.	73 page 9	BLA-TTAB-01378
"'Redskins' Target of Movement," *The Washington Evening Star* (Jan. 19, 1972)	How Native Americans perceive the term "redskin."	77 page 14	BLA-TTAB-01643
1993 PTO Examining Attorney rejection of application for "Redskins Review"	Disparaging nature of "redskin."	77 page 24	BLA-TTAB-01653
Rayna Green, *"The Indian in Popular American Culture"*	Disparaging nature of "redskin"; Native American groups object to team name.	77 pages 70,83	BLA-TTAB-1699, 1712

Source	Probative Value	TTABVue Entry and Page	Bates No.
Richard Hill, *"Savage Splendor: Sex, Lies and Stereotypes"* in *"Turtle Quarterly"*(Spring-Summer, 1991)	Disparaging nature of "redskin."	77 page 88	BLA-TTAB-01717
Michael Dorris, *"Why I'm not Thankful for Thanksgiving"*	Disparaging nature of "redskin."	77 page 98	BLA-TTAB-01727
E. Dench, "*Making the Movies"* 1919	Use of "redskin" in disparaging manner.	78 pages 6-7	BLA-TTAB-01754-55
"Redskin Revival: High Birthrate Gives Congress A New Overproduction Problem" *Newsweek* (Feb. 20, 1939)	Use of "redskin" in disparaging manner.	78 page 17	BLA-TTAB-01765
J.H. Peck, "How I Put Down the Redskins," *Saturday Evening Post* (Oct. 23, 1948)	Use of "redskin" in disparaging manner.	78 page 20	BLA-TTAB-01769
Alden Vaughan, *"From White Man to Redskin: Changing Anglo-American Perceptions of the American Indian", American Historical Review* (October 1982)	Disparaging nature of "redskin."	89 pages 30, 37	BLA-TTAB-01856,1863
Haig Bosmajian, *"Defining the 'American Indian': A Case Study in the Language of Suppression"* in *"Exploring Language"* (1983)	Disparaging nature of "redskin."	89 page 60	BLA-TTAB-01886
Robert Keller, "*Hostile Language: Bias in Historical Writing About American Indian Resistance" in "Journal of American Culture"* (1986)	Disparaging nature of "redskin."	89 page 71	BLA-TTAB-01897
Irving Lewis Allen,	Disparaging nature	87 pages 12,	BLA-TTAB-01914,1922

Source	Probative Value	TTABVue Entry and Page	Bates No.
"Unkind Words: Ethnic Labeling from Redskin to WASP" (1990)	of "redskin."	20	
Richard MacPhie, *"We Are Not Extras: A Native American Perspective on the Morality of Indian Mascots"*	Disparaging nature of "redskin."	87 page 101	BLA-TTAB-02003
Robin Powell, *"Recycling the Redskins"* in *"Turtle Quarterly"*(Winter, 1993)	Disparaging nature of "redskin."	87 page 110	BLA-TTAB-02012
Robert Jensen, *"Banning 'Redskins' from the Sports Page: The Ethics and Politics of Native American Nicknames" in "Journal of Mass Media Ethics"* (1994)	Disparaging nature of "redskin."	90 pages 31-32	BLA-TTAB-02043-44
John Coward, *"What 'Indians' Mean in the Media: Race, Language, and the Popular Imagination"* (1995)	Disparaging nature of "redskin."	90 page 42	BLA-TTAB-02054
Irving Lewis Allen, *"The Language of Ethnic Conflict"* (1983)	Disparaging nature of "redskin."	90 page 91	BLA-TTAB-02103
Report and Recommendations of the Dartmouth Alumni Council Indian Symbol Study Committee	How Native Americans perceive and object to the term "redskin."	91 page 42	BLA-TTAB-02161
Dartmouth Class of 1951 Newsletter (April 27, 1973)	Native American opposition to the Dartmouth mascot.	91 page 73	BLA-TTAB-02192
"The National Indian Education Association unanimously supports Stanford's elimination of their Indian mascot,"	How Native Americans perceive and object to the term "redskin."	91 page 88	BLA-TTAB-02207

Source	Probative Value	TTABVue Entry and Page	Bates No.
Stanford University News Service (Dec. 6, 1979)			
T. Kahn "'Indian' Mascot Belittled Native Americans" *Stanford Daily* (Nov. 1, 1985)	How Native Americans and others perceive and object to Indian mascots; objections to Indian mascot at Stanford.	91 page 89	BLA-TTAB-02208
Michigan Civil Rights Commission Report, *"Use of Nicknames, Logos and Mascots Depicting Native American People in Michigan Education Institutions"* (1988)	Native American opposition to the Dartmouth mascot.	91 page 97	BLA-TTAB-02216
Michigan Civil Rights Commission Report, *"Use of Nicknames, Logos and Mascots Depicting Native American People in Michigan Education Institutions"* (1988)	Native American opposition to the Stanford "Indian" symbol.	91 pages 98-99	BLA-TTAB-02217-18
Michigan Civil Rights Commission Report, *"Use of Nicknames, Logos and Mascots Depicting Native American People in Michigan Education Institutions"* (1988)	Native American objections to the term "redskin."	91 page 100	BLA-TTAB-02219
Michigan Civil Rights Commission Report, *"Use of Nicknames, Logos and Mascots Depicting Native American People in Michigan Education Institutions"* (1988)	Disparaging nature of "redskin"; how Native Americans perceive and object to the term "redskin."	91 page 101	BLA-TTAB-02220
Michigan Civil Rights Commission Report, *"Use of Nicknames, Logos and*	Disparaging nature of "redskin."	91 pages 139, 185	BLA-TTAB-02258, 2304

Source	Probative Value	TTABVue Entry and Page	Bates No.
Mascots Depicting Native American People in Michigan Education Institutions" (1988)			
S. Kay, "Minutes of the University Senate," *University Senate of the Miami University of Ohio* (April 5, 1993)	Disparaging nature of "redskin"; how Native Americans and others perceive and object to the term "redskin."	95 pages 18-20	BLA-TTAB-02340-42
M. Cabonargi, "Miami University and the 'Redskin' – An Analysis," *The Voice* (April 27, 2993)	Disparaging nature of "redskin"; how Native Americans and others perceive and object to the term "redskin."	95 pages 23-28	BLA-TTAB-02345-50
B. Harwood, "Harwood Addresses U. Senate on 'Redskin' Issue" *The Voice* (April 27, 2993)	Disparaging nature of "redskin"; how Native Americans and others perceive and object to the term "redskin."	95 pages 29-30	BLA-TTAB-02351-52
Disk Ex. No. 95, NFL Films: Hail to the Redskins; Disk Ex. No. 96, NFL Films The Redskin Years	Video clips of half-time show featuring nearly naked man portrayed as wildly dancing Indian, mocking Native American culture; use of marks to disparage Native Americans.	95 pages 54, 56 Ex. 95 Video Clip Start Time: 2:48 to End Time: 2:55 Ex. 96 Video Clip Start Time 7:10 to End Time 7:21	BLA-TTAB-02376, 2378
Disk Ex. No. 95, NFL Films: Hail to the Redskins; Disk Ex. No. 96, NFL Films The Redskin Years	Video clips showing a marching band wearing Indian headdress; use of marks to mock	95 page 54 Ex. 95 Video Clip Start Time: 0:53 to End Time:	BLA-TTAB-02376, 2378, 2380, 2388, 2390

Source	Probative Value	TTABVue Entry and Page	Bates No.
Disk Ex. No. 97, NFL Films 1967 Washington Redskins; Disk Ex. No. 101, NFL Films 1974 Highlights Disk Ex. No. 102, NFL Films 1978 Washington Redskins	Native Americans.	1:31 and Start Time 2:43 to End Time 2:48 Ex. 96 Video Clip Start Time: 6:48 to End Time: 7:00 Ex. 97 Video Clip Start Time: 22:36 to End Time: 22:43 Ex. 101 Video Clip Start Time: 1:09 to End Time: 1:14 Ex. 102 Video Clip Start Time: 4:14 to End Time 4:16 and Start Time: 4:25 to End Time: 4:30 and Start Time 11:24 to End Time 11:26	
Disk Ex. No. 97, NFL Films 1967 Washington Redskins; Disk Ex. No. 101, NFL Films 1974 Highlights	Video clips show cheerleaders wearing black braided-hair wigs and Indian-themed costumes; use of marks to mock Native Americans.	95 pages 58, 66 Ex. 97 Video Clip Start Time: 20:20 to End Time: 20:21 Ex. 101 Video Clip Start Time: 1:14 to	BLA-TTAB-02380, 2388

Source	Probative Value	TTABVue Entry and Page	Bates No.
		End Time: 1:26	
Disk Ex. No. 97, NFL Films 1967 Washington Redskins; Disk Ex. No. 98, NFL Films 1971 Redskins Highlights Disk Ex. No. 103, NFL Films Jan. 30, 1983 Super Bowl XVII Highlights Disk Ex. No. 105, NFL Films Jan. 26, 1992 Super Bowl XXVI Highlights	Video clips show fans dressed up with Indian headdresses and war paint; connection between use of marks and Native Americans.	95 pages 58, 60, 70, 74 Ex. 97 Video Clip Start Time: 0:36 to End Time: 0:47 and Start Time: 27:34 to End Time: 27:46 Ex. 98 Video Clip Start Time: 33:05 to End Time: 33:07 Ex. 103 Video Clip Start Time: 5:15 to End Time: 5:21 and Start Time: 9:19 to End Time: 9:21 and Start Time 18:55 to End Time 18:58 Ex. 105 Video Clip Start Time: 0:47 to End Time: 1:02 and Start Time: 19:13 to End Time 19:19	BLA-TTAB-02380, 2382, 2392, 2396
Jay Coakley, *"Sport in Society: Issues and Controversies"* (1990)	Disparaging nature of "redskin."	64 page 54	BLA-TTAB-02555

Source	Probative Value	TTABVue Entry and Page	Bates No.
Respondent's Response to *Harjo* Petitioners' First Set of Requests for Admissions	Use of marks in connection with Native American imagery.	65 pages 5-6	BLA-TTAB-02566-67
Respondent's Response to *Harjo* Petitioner's Interrogatory No. 9	Connection of team name to Native Americans.	65 page 15	BLA-TTAB-02576
Respondent's Response to Interrogatory No. 14 in *Harjo*	Connection of team name to Native Americans.	65 page 18	BLA-TTAB-02579
Respondent's Response to *Harjo* Petitioner's Second Set of Interrogatories No. 18	Connection of team name to Native Americans.	65 page 27	BLA-TTAB-02588
Respondent's Response to *Harjo* Petitioners' Third Set of Interrogatories	Ownership of Registrations.	65 page 49	BLA-TTAB-02610
Respondent's Second Supplemental Response to Interrogatory No. 17 in *Harjo*	Identifies former owner of team.	65 page 58	BLA-TTAB-02619
Respondent's Second Supplemental Response to *Harjo* Petitioners' First, Second and Third sets of Interrogatories	Edward Bennett Williams as former Director/ President of PFI.	65 page 60	BLA-TTAB-02621
Respondent's Second Supplemental Response to Petitioner's Interrogatory No. 18 in *Harjo*	Cheerleader uniform description; connection of marks to Native Americans.	65 pages 60-61	BLA-TTAB-02622-23
Respondent's Second Supplemental Response to Interrogatory No. 18 in *Harjo*	Marching band uniform description; connection of marks to Native Americans.	65 page 78	BLA-TTAB-02639
Respondent's Second Supplemental Response to Interrogatory No. 18 in	Cheerleader uniform description; connection of marks	65 page 79	BLA-TTAB-02640

Source	Probative Value	TTABVue Entry and Page	Bates No.
Harjo	to Native Americans.		
John Kent Cooke Deposition, March 26, 1996, pages 9-10, 12	Mr. Cooke as Executive Vice President of PFI, responsible for day-to-day operations.	65 page 85	BLA-TTAB-02646
John Kent Cooke Deposition, March 26, 1996, pages 25-26	Refusal to answer question on the use of the term "redskin"; gives rise to inference that the use of "redskin" to refer to a Native American is disparaging.	65 page 87	BLA-TTAB-02648
John Kent Cooke Deposition, March 27, 1996, pages 21-24	Refusal to answer question on whether the term "redskin" is disparaging"; gives rise to inference that the use of "redskin" to refer to a Native American is disparaging.	65 pages 111, 112	BLA-TTAB-02672-73
John Kent Cooke Deposition, March 27, 1996, pages 25 – 30; Cooke Dep. Ex. 7	Admission by PFI that the "Redskins' name, logo and image" lend themselves to mocking Native Americans	65 page 112, 147	BLA-TTAB-02673-74, 2708
John Kent Cooke Deposition, March 27, 1996, pages 52, 79, 81	Contradicts his own testimony as to the use of "Indian feathers" in the team's logo; undermines credibility of PFI's denial of connection between marks and	65 pages 115, 119	BLA-TTAB-02676, 2680

Source	Probative Value	TTABVue Entry and Page	Bates No.
	Native Americans.		
John Kent Cooke Deposition, March 27, 1996, page 63	Shows knowledge of fight song lyrics.	65 page 117	BLA-TTAB-02678
John Kent Cooke Deposition, March 27, 1996, page 68, and Cooke Deposition Exhibit No. 8	Denies that original lyrics were disparaging to Native Americans in contrast with other admissions by PFI; undermines PFI's credibility regarding the connection between marks and Native Americans and regarding disparagement.	65 pages 118, 149	BLA-TTAB-02679, 2710
John Kent Cooke Deposition, March 27, 1996, pages 91, 94	At first denies public statement to the press that the "Redskins" name represents the "finest things of Indian culture" and then changes his statement to represent the "fine things of the Indian culture"; undermines PFI's credibility regarding the connection between marks and Native Americans and regarding disparagement.	65 page 121	BLA-TTAB-02682
John Kent Cooke Deposition, March 27, 1996, pages 126-27	Admission that there is a Cigar Store Indian statue in PFI's administrative offices; connection	65 page 126	BLA-TTAB-02687

Source	Probative Value	TTABVue Entry and Page	Bates No.
	between marks and Native Americans; PFI's insensitivity to Native American culture.		
JoAnn Chase Deposition, April 26, 1996, pages 4-5, 7-9, 29-30	JoAnn Chase as the Executive Director of the NCAI; Executive Committee of the NCAI is the "decision making" body within the organization.	98 pages 10-11, 13-15, 35-36	BLA-TTAB-02774-75, 2777-79, 2799-2800
JoAnn Chase Deposition, April 26, 1996, page 38	Establish the make-up of the NCAI.	98 page 44	BLA-TTAB-02808
JoAnn Chase Deposition, April 26, 1996, pages 39-40, 46-48	Establish that the NCAI sponsored a resolution supporting a bill which would condition federal funds on a change of PFI's team name.	98 pages 45-46, 52-54	BLA-TTAB-02809-10, 2816-2818
JoAnn Chase Deposition, April 26, 1996, pages 47-48	gaiashkibos as president of the NCAI.	98 pages 53-54	BLA-TTAB-02817-18
JoAnn Chase Deposition, April 26, 1996, pages 50-51	How Native Americans perceive and object to the term "redskin."	98 pages 56-57	BLA-TTAB-2820-21
JoAnn Chase Deposition, April 26, 1996, page 54	Size of the NCAI membership.	98 page 60	BLA-TTAB-02824
JoAnn Chase Deposition, April 26, 1996, page 68	Establish that Mr. Apodaca was a board member of the NCAI at the time resolution DC-93-11 was adopted.	98 page 70	BLA-TTAB-02834

Source	Probative Value	TTABVue Entry and Page	Bates No.
JoAnn Chase Deposition, April 26, 1996, page 68	How Native Americans perceive and object to the term "redskin."	98 page 74	BLA-TTAB-02838
Geoffrey D. Nunberg Deposition, Dec. 17, 1996, pages 68-72	Disparaging nature of the term "redskin."	99 pages 20-24	BLA-TTAB-02959-63
Geoffrey D. Nunberg Deposition, Dec. 17, 1996, pages 76-77	How Native Americans perceive and object to the term "redskin."	99 pages 28-29	BLA-TTAB-2967-68
Geoffrey D. Nunberg Deposition, Dec. 17, 1996, pages 87-89	Explanation of denotation and connotation.	99 pages 39-41	BLA-TTAB-02978-80
Geoffrey D. Nunberg Deposition, Dec. 17, 1996, pages 115-117	Disparaging nature of the term "redskin."	99 pages 67-69	BLA-TTAB-03006-08
Geoffrey D. Nunberg Deposition, Dec. 17, 1996, pages 193-198, 204-207	Disparaging nature of the term "redskin."	99 pages 145-50, 156-159	BLA-TTAB-03084-89, 3095-98
Ivan Ross Deposition, Dec. 12, 1996, pages 19-20	Education, background and experience of Dr. Ross.	96 pages 23-24	BLA-TTAB-03136-37,
Ivan Ross Deposition, Dec. 12, 1996, pages 37-38, 61, 79-80, 82, 84, 93-95, 142, 160-163, 185-86	Methodology and results of survey; how Native Americans find the word "redskin" offensive.	96 pages 41-42, 65, 83-4, 86, 88, 97-99, 146, 164-167, 188-189	BLA-TTAB-03154-55, 3178, 3196-97,3199, 3201, 3210-12 3259, 03277-80, 3301-02
Susan Courtney Deposition, February 18. 1997, pages 5-56	Use of "redskin" in movies.	79 pages 10-61	BLA-TTAB-03377-3428
Susan Courtney Deposition, February 18, 1997, pages 7-10	Background of Ms. Courtney.	79 pages 12-15	BLA-TTAB-03379-82
Susan Courtney Deposition, February 18,	Methodology and results of Ms.	79 pages 17-18, 21-23, 27-	BLA-TTAB-03384-85,88-90, 3394-97,03399-3418,

Source	Probative Value	TTABVue Entry and Page	Bates No.
1997 pages 12-13, 16-18, 22-25, 27-46, 55-56, 63-65, 69-70	Courtney's study on the use of "redskin" in film.	30, 32-51, 60-61, 69-70, 74-75	3427-28, 3435-37, 3441-42
Harold Gross Deposition, June 11, 1997, pages 5-27, 66-71	How Native Americans perceive and object to the term "redskin"; 1972 meeting between Native American leaders and Edward Bennett Williams.	79 pages 167-189, 228-233	BLA-TTAB-03534-3556, 3595-3600
Harold Gross Deposition, June 11, 1997, pages 7-9	Background of Mr. Gross; the history of ILIDS.	79 pages 169-171	BLA-TTAB-03536-38
Harold Gross Deposition, June 11, 1997, pages 9-10	Native American groups object to the term "redskin."	79 pages 171-172	BLA-TTAB-03538-39
Harold Gross Deposition, June 11, 1997, page 24	Mr. Gross received a copy of Mr. Williams' March 30, 1972 letter to Mr. Rozelle in which PFI admits disparaging nature of "redskin."	79 page 186	BLA-TTAB-03553
Harold Gross Deposition, June 11, 1997, pages 53-54	How Native Americans perceive and object to the term "redskin."	79 pages 215-216	BLA-TTAB-03582-83
Frederick Hoxie Deposition, Feb. 12, 1997, pages 4-54, 87-88	History of Native Americans in colonial period and under United States; cultural perception of Native Americans as inferior.	80 pages 130-180, 213-214	BLA-TTAB-03729-3779, 3812-3813
Frederick E. Hoxie Deposition, Feb. 12, 1997, pages 4-9, 46-51	Background of Dr. Hoxie in the field of Native American history; historians do not use "redskins" as	80 pages 130-135 ,172-177	BLA-TTAB-03729-34, 3771-76

Source	Probative Value	TTABVue Entry and Page	Bates No.
	a neutral term when referring to Native Americans.		
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 229-376	Disparaging nature of "redskin."	81 pages 122-269	BLA-TTAB-03972-4121
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 229-244	Background of Dr. Nunberg; distinction between denotation and connotation.	81 pages 122-137	BLA-TTAB-03974-89
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 247-251, 255-61, 262-270, 272, 274-294	Historical use of the term "redskin"; confirms that the term is disparaging.	81 pages 140-144, 148-154, 155-163, 165, 167-187	BLA-TTAB-03992-96, 4000-4006, 4007-15, 4017, 4019-39
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 294-305	Use of "redskin" in popular films, songs, and literature.	81 pages 187-198	BLA-TTAB-04039-50
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 305-316	Dr. Nunberg's methodology and opinion that "redskin" is, and always has been, disparaging.	81 pages 198-209	BLA-TTAB-04050-61
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 306-322	Establish the methodology and results of Dr. Nunberg's search for the term "redskin" in databases; systematic avoidance of the term "redskin" in the press and in public context; indicates that the term is disparaging.	81 pages 199-215	BLA-TTAB-04051-67
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 324-335, 342-346, 350-354, 410-415, Ex. 8-	Dictionary references to "redskin."; disparaging nature of	81 pages 217-228 , 235-239, 243-247	BLA-TTAB-04069-80, 4087-91, 4095-99, 4156-61, 4779-802, 4808-13,

Source	Probative Value	TTABVue Entry and Page	Bates No.
15, Ex.18-19, Ex. 35, Ex. 40	the term "redskin."	82 pages 36-41 83 pages 99-122, 128-133 108 pages 108-110 88 pages 5-28	6161-63, 6260-83
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 364-376	Disparaging nature of the term "redskin."	81 pages 257-269	BLA-TTAB-04109-21
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 371-376	Historical and modern use of the term "redskin"; confirms that the term is disparaging.	81 pages 264-269	BLA-TTAB-04116-21
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, pages 480-481, 490, 495-496	Historical and modern use of the term "redskin"; confirms that the term is disparaging.	82 pages 106-107, 116, 121-122	BLA-TTAB-04226-27, 4236, 4241-42
Ivan Ross Deposition, Feb. 20, 1997, pages 4-9	Education background and experience of Dr. Ross.	82 pages 130-135	BLA-TTAB-4250-55
Ivan Ross Deposition, Feb. 20, 1997, pages 16-17, 50-51, 56-58, 60, 65-66, 94-95	Methodology of Dr. Ross' survey; how Native Americans perceive the term "redskins" as offensive.	82 pages 142-143, 176-177, 182-184, 186, 191-192, 220-221	BLA-TTAB-4262-63 , 4296-97,4302-04, 4306, 4311-12, 4340-41
Ivan Ross Deposition June 11, 1997, pages 30-32, 110-113	Methodology of Dr. Ross' survey.	100 pages 34-36, 114-117	BLA-TTAB-04418-20, 4498-4501
National Congress of American Indians, Resolution No. NV-93-143 (Nov. 28- Dec. 3, 1993)	Native American groups object to the term "redskin."	83 page 47	BLA-TTAB-04727

Source	Probative Value	TTABVue Entry and Page	Bates No.
Geoffrey Nunberg Deposition, Dec. 17 1996, Exhibit 2	Dr. Nunberg Expert Disclosure; summary of Dr. Nunberg's opinions.	83 pages 64-72	BLA-TTAB-04744-51
Geoffrey Nunberg, Curriculum Vitae	Education and training of Dr. Nunberg	83 pages 76-80	BLA-TTAB-04756-60
Geoffrey Nunberg Deposition, Dec. 17 1996 , Exhibit 8-15	Disparaging nature of the term "redskin."	83 pages 99-122	BLA-TTAB-04779-802
Geoffrey Nunberg Deposition, Dec. 17 1996 , Exhibit 18-19	Disparaging nature of the term "redskin."	83 pages 128-133	BLA-TTAB-04808-13
Ivan Ross Deposition, Feb. 20, 1997, Ex. 3	Survey results.	97 pages 5-14, 30	BLA-TTAB-04860-69, 4885
I. Ross, "Native American Population, Native American Study Questionnaire"	Survey methodology.	97 pages 33-202 84 pages 1-59	BLA-TTAB-04888-5113
S. Courtney, "Filmography for Potential 'Redskins' Citations", Depo. Ex. 1	Methodology of Ms. Courtney's study on the use of "redskin" in film.	105 pages 33-34	BLA-TTAB-05812-13
S. Courtney, "Films Screened and Usages of 'Redskin' found"	Methodology of Ms. Courtney's study on the use of "redskin" in film.	105 page 35	BLA-TTAB-05814
S. Courtney, "Excerpt from Hollywood Westerns"	Excerpts from cited films using the term "redskin" in a disparaging manner.	105 page 36 (DVD delivered to Board)	BLA-TTAB-05815
S. Courtney, "Index to 'Excerpts from Hollywood Westerns' Videotape (2/11/97)"	Methodology of Ms. Courtney's study on the use of "redskin" in film.	105 pages 37-41	BLA-TTAB-05816-20
Recommendations to the Washington, DC Professional Football Team	How Native Americans perceive and object to the	105 page 67	BLA-TTAB-05846

Source	Probative Value	TTABVue Entry and Page	Bates No.
from Native American groups	word "redskin."		
Attendee list of meeting between PFI and Native American groups	How Native Americans perceive and object to the word "redskin."	105 page 69	BLA-TTAB-05848
Harold Gross Jan. 18, 1972 letter to the President of PFI, Edward Bennett Williams	How Native Americans perceive and object to the word "redskin."	105 pages 71-73	BLA-TTAB-05850-52
Edward Williams March 30, 1972 letter to Commissioner Pete Rozelle	How Native Americans perceive and object to the word "redskin."	105 page 81	BLA-TTAB-05860
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, Ex. 35	Historical use of "redskin"; confirms that it is a disparaging term.	108 pages 108-110	BLA-TTAB-06161-63
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, Ex. 36, Ex. 43	Historical use of "redskin"; confirms that it is a disparaging term.	86 pages 5-36 92 pages 153-165	BLA-TTAB-06165-96 BLA-TTAB-6589-601
Geoffrey D. Nunberg Deposition, Feb. 18, 1997, Ex. 40	Disparaging nature of the term "redskin."	88 pages 5-28	BLA-TTAB-06260-83
Geoffrey D. Nunberg Deposition, June 17, 1997 pages 5-104, 152	Disparaging nature of the term "redskin."	109 pages 10-109, 157	BLA-TTAB-06865-964, 7012
Geoffrey D. Nunberg Deposition, June 17, 1997 pages 81-85	Disparaging nature of the term "redskin."	109 pages 86-90	BLA-TTAB-06941-45
Geoffrey D. Nunberg Deposition, June 17, 1997 pages 98-99	Disparaging nature of the term "redskin."	109 pages 103-104	BLA-TTAB-06958-59
Marcus Anthony Briggs-Cloud Deposition, June 23, 2011 pages 9, 135-141	Standing; inapplicability of laches; disparaging nature of the term	110 pages 15, 141-47	Not applicable

Source	Probative Value	TTABVue Entry and Page	Bates No.
	"redskin."		
Jillian Pappan Deposition, August 11, 2011, pages 9, 118, 183-184	Standing; inapplicability of laches; disparaging nature of the term "redskin."	112 pages 13, 122, 187-88	Not applicable
Courtney Tsotigh Deposition, October 25, 2011 pages 116, 146-47	Standing; inapplicability of laches; disparaging nature of the term "redskin."	115 pages 122, 152-53	Not applicable
Phillip Gover Deposition, June 16, 2011 pages 9-10, 93-94, 187, 191-192	Standing; inapplicability of laches; disparaging nature of the term "redskin."	120 pages 15-16, 99-100, 193, 198-199	Not applicable
Amanda Blackhorse Deposition, June 22, 2011 pages 8-9, 196-97	Standing; inapplicability of laches; disparaging nature of the term "redskin."	122 pages 16-17, 204-05	Not applicable