

From: Shiner, Mark

Sent: 7/7/2011 5:35:19 PM

To: TTAB EFiling

CC:

Subject: U.S. TRADEMARK APPLICATION NO. 77952263 - THE SLANTS - N/A -
Request for Reconsideration Denied - Return to TTAB - Message 1 of 29

Attachment Information:

Count: 4

Files: bigwowo-02.jpg, bigwowo-01.jpg, bigwowo-03.jpg, 77952263.doc

**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

APPLICATION SERIAL NO. 77952263

MARK: THE SLANTS



CORRESPONDENT ADDRESS:

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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Tam, Simon Shiao

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

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REQUEST FOR RECONSIDERATION DENIED

ISSUE/MAILING DATE: 7/7/2011

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. *See* 37 C.F.R. §2.64(b); TMEP §§715.03(a), 715.04(a). The refusal made final in the Office action dated December 23, 2010, is maintained and continues to be final. *See* TMEP §§715.03(a), 715.04(a).

In the present case, applicant's request has not resolved the outstanding issue, nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

The filing of a request for reconsideration does not extend the time for filing a proper response to a final Office action or an appeal with the Trademark Trial and Appeal Board (Board), which runs from the date the final Office action was issued/mailed. *See* 37 C.F.R. §2.64(b); TMEP §§715.03, 715.03(a), (c).

If time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to comply with and/or overcome any outstanding final requirement(s) and/or refusal(s) and/or to file an appeal with the Board. TMEP §715.03(a), (c). However, if applicant has already filed a timely notice of appeal with the

Board, the Board will be notified to resume the appeal when the time for responding to the final Office action has expired. *See* TMEP §715.04(a).

SECTION 2(A) – MARK IS DISPARAGING

The Section 2(a) refusal because the mark is disparaging to persons of Asian descent is MAINTAINED and the Request for Reconsideration is DENIED. Registration is refused because the applied-for mark consists of or includes matter which may disparage or bring into contempt or disrepute persons, institutions, beliefs or national symbols. Trademark Act Section 2(a), 15 U.S.C. §1052(a); *see In re Squaw Valley Dev. Co.*, 80 USPQ2d 1264, 1267-79 (TTAB 2006); *Harjo v. Pro-Football, Inc.*, 50 USPQ2d 1705, 1740-48 (TTAB 1999), *rev'd*, 284 F. Supp. 2d 96, 125, 68 USPQ2d 1225, 1248 (D.D.C. 2003) (finding “no error in the TTAB’s articulation of [the Section 2(a)] test for disparagement”), *remanded on other grounds*, 415 F.3d 44, 75 USPQ2d 1525 (D.C. Cir. 2005), *and aff’d*, 565 F.3d 880, 90 USPQ2d 1593 (D.C. Cir. 2009), *cert. denied*, 130 S. Ct. 631 (2009); TMEP §§1203.03, 1203.03(c).

Applicant’s response included a new declaration by the applicant, the opinion of one linguistic expert, a report on an internet survey, two other declarations, a list of sponsors from a youth conference in which the applicant had a role, and a number of articles discussing the band and its music.¹ The thrust of applicant’s argument is that the word “slants” may never have been disparaging on the level of some other terms, but even if it had, it has lost its disparaging impact and is now viewed as a source of pride by Asian-Americans with respect to applicant.

The research performed by the Office, however, indicates that the term “slants” and its fully articulated version “slant-eyes” remain offensive and derogatory to a substantial composite of Asian-Americans. Attached to this action are several blog entries and comments to articles specifically addressing the name “The Slants” in relation to the applicant and finding the term offensive, even after extensive dialogue with the applicant. *See* attached blogs and article comments. Moreover, also attached are examples of the term being used in other situations and in other forms (i.e. as a gesture) and being found offensive. *See* attached forum discussions, Mother Chronicles blog, news articles and statements from the Organization of Chinese Americans on the dehumanizing and vilifying nature of the wording slant (or slant-eye) and its associated gestures.

Additionally, numerous online compendiums² of slang and offensive terms list the wording as offensive. *See* additionally attached and previously attached website listing of offensive and derogatory slurs.

¹ The raw data from the survey was not submitted with the request for reconsideration, rather, an expert report on the survey. Without the ability to examine the raw data from the survey, it is impossible to determine whether multiple responses were permitted from one computer (i.e. ballot stuffing) skewing results one way or the other, or draw further conclusions from the survey absent the limited analysis listed in the expert report. The survey appears to be the one located at <http://www.surveymonkey.com/s/6WCSMKB>.

² Material obtained from the Internet is generally accepted as competent evidence. *See In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-03 (TTAB 2009) (accepting Internet evidence to show relatedness of

More still, a significant quantity of standard and other hard copy dictionaries define the term as offensive or derogatory. *See* attached excerpts from Online Etymology dictionary; American Heritage Dictionary, New Partridge Dictionary of Slang and Unconventional English, Oxford Dictionary of Modern Slang, The Color of Words: An Encyclopedic Dictionary of Ethnic Bias in the United States, 21ST Century American English Compendium 3rd Ed., The Big Book of Being Rude, The Cassel Dictionary of Slang, Dictionary of Contemporary Slang, Dictionary of American Slang, Forbidden American English, Slang and Euphemism dictionary, Unkind Words - Ethnic Labeling from Redskin to WASP.

Finally, it is worth noting that the oldest and largest Asian American civil rights organization in the United States, Japanese American Citizens League (JACL), has issued a publication on hate speech that specifically address the term “slant.” In that publication, the JACL states that the term “slant” is a derogatory term and should not be used. *See* attached webpage excerpt and hate brochure from JACL.

Please note that the denial of the trademark application does not mean that the applicant must use a different name with its music performances or is otherwise prohibited from using the wording “The Slants” in association with its music.³ Rather, it is a denial of a federally registered trademark, not the right to use the words. *See In re Heeb Media LLC*, 89 USPQ2d 1071 (TTAB 2008) (quoting *In re McGinley*, 211 USPQ 668, 672 (CCPA 1981) (“[I]t is clear that the PTO’s refusal to register [applicant’s] mark does not affect [its] right to use it. No conduct is proscribed....”).

“Not everything that a party adopts and uses with the intent that it function as a trademark achieves this goal or is legally capable of doing so, and not everything that is recognized or associated with a party is necessarily a registrable trademark.” *See* TMEP 1202.

goods in a likelihood of confusion determination); *In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006) (accepting Internet evidence to show genericness); *In re White*, 80 USPQ2d 1654, 1662 (TTAB 2006) (accepting Internet evidence to show false suggestion of a connection); *In re Joint-Stock Co. “Baik”*, 80 USPQ2d 1305, 1308-09 (TTAB 2006) (accepting Internet evidence to show geographic significance); *In re Consol. Specialty Rests. Inc.*, 71 USPQ2d 1921, 1927-29 (TTAB 2004) (accepting Internet evidence to show geographic location is well-known for particular goods); *In re Gregory*, 70 USPQ2d 1792, 1793, 1795 (TTAB 2004) (accepting Internet evidence to show surname significance); *In re Fitch IBCA Inc.*, 64 USPQ2d 1058, 1060-61 (TTAB 2002) (accepting Internet evidence to show descriptiveness); TBMP §1208.03; TMEP §710.01(b).

This includes articles from the online Wikipedia® encyclopedia and similar sources which may be used to support a refusal or requirement, provided the applicant has an opportunity to rebut such evidence. *See In re IP Carrier Consulting Grp.*, 84 USPQ2d 1028, 1032 (TTAB 2007); TBMP §1208.03; TMEP §710.01(b).

³ As applicant notes, the term “slants,” and its variants, are being used by others in contemporary society, i.e., Slant Eye for the Round Eye, Slant Film Festival, The Slanted Screen, and The Slant. Notable, however, is that none of those uses have received a Federal trademark either. Thus, the use of the term by others does not equate to a removal of the derogatory meaning such that the applied-for mark is suitable for Federal registration.

The Office maintains that the applied-for mark is disparaging to a substantial composite of Asian-Americans. Accordingly, the request for reconsideration is denied and the Section 2(a) refusal is maintained.

GENERAL INFORMATION

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

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against a group whose name is offensive, tacky, and demeaning. Both groups were open to giving their support to the group if they changed the name. But they didn't change the name, and so again, the Slants went on the war path and tried to depict the Oregon Commission on Asian Affairs as an evil government entity that was out of touch with Asian Americans. Never mind that virtually all the Asian organizations involved were united on this. Never mind that the government organization was 100% run by Asian American leaders in our community.

I myself had a few exchanges with Mr. Simon Young/Simon Tam over e-mail. He seems like a nice enough guy, but he's way out in left field when it comes to AA empowerment. I asked him why he thought "Slants" was empowering, and he didn't have anything of substance to say other than repeating the refrain that he wanted to reclaim the term. (I had the same reaction as the [U.S. Trademark examiner](#): "**Applicant's arguments have been considered but are found unpersuasive.**") I offered to speak to Mr. Tam/Young over the phone, but he declined. In all honesty, I don't blame him—I once had a White guy try to convince me that it would be empowering for me if I let him call me a **chink**, and it didn't work (and he had to stop using the term). I honestly don't know if I'd be any more receptive to Mr. Tam's entreaties to urge people to use racial slurs against me. I admittedly tend to be close-minded about that sort of thing.

But that's just me. I've got nothing against the Slants other than their name, which is racially offensive; their music, which I'm not crazy about (but this is of course a matter of taste); and their tactics, which have discredited good government organizations that exist to protect the interests of Asian Americans. I do think Mr. Young/Tam's heart is *maybe* in the right place—to his credit, he took the time to write out long responses to how he wanted to reclaim the term, even if he couldn't say why—but there's more to good activism than simply throwing around racial slurs until they get old, especially since we've seen how that approach has not worked for [other groups](#). In any case, it's interesting when people stand up and make their voice heard, and I support their right to speak their mind. In the meantime, if you want to do something good, feel free to comment below. Or comment/send a letter to [the Oregonian](#) to express your support behind the U.S. Patent and Trademark office.

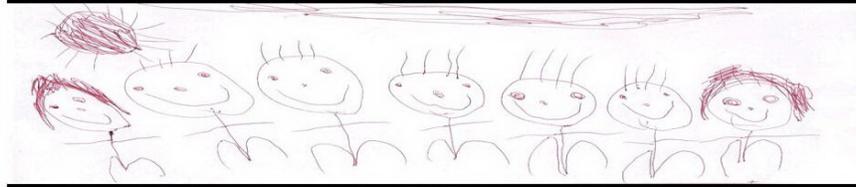


Related posts:

1. [Evangelicals most likely to support torture](#)

and Building Asian American Arts (17)

- **bigWOWO**: Haha! Mojo, I think Westerberg DID call Mellencamp fans dumb! But that's all good. I think it's...
- **Mojo Rider**: RCR, good examples and it backs up what you said about AA's needing to tell their own stories...
- **RiceCakeRabbit**: Two videos I find pertinent to the discussion 🙄 <http://www.youtube.com/watch...>
- **What Parents And Other People Say, Pt. 1 (2)**
- **bigWOWO**: Oh noes! I was hoping it would be enlightening, something that would draw people in. After all, there...
- **Linda**: interesting article – I started the book "Kissing outside the lines" after I read the...
- **Lessons of the Creative Class from Ultimate Fighting (9)**
- **bigWOWO**: I totally agree. Check out the Johnson-Torres fight. One of the commenters, I think it was Joe, even said...
- **Danny Lee**: I still have not caught the Johnson – Torres fight. Johnson seems like a nice dude even though I was...
- **bigWOWO**: Definitely! Man, Greg Jackson just ruins the sport, doesn't he? I agree with you on the rule changes...
- **How To Prevent Emotional Infidelity (3)**
- **bigWOWO**: This was linked from AMR's FB: You can see the whole comment thread here: <https://www.facebook.com/a...>



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The Slants and bigWOWO's Support of the U.S. Patent and Trademark Office

Posted on [April 12, 2011](#) by [bigWOWO](#)

People have been asking me about my opinion on the Slants, a local Portland rock band, so I figured I'd set the record straight. As some of you know, the U.S. Patent and Trademark Office refused to register their name "The Slants," stating the **correct** fact that it's a racial slur. The Slants have been on the war path, [blogging here](#), [interviewing here](#), and going all slanty on the U.S. government.

Let me put this in clear terms: **I agree with the U.S. Patent and Trademark Office.** Just as they wouldn't register "n**ger" or "ch^nk," they shouldn't register "Slants." It's offensive.

Contrary to what the leader of the group says about "broad support that we've had from APAs," many APA groups do NOT approve of their name. A few years back, the **Oregon Commission on Asian Affairs** AND the **Asian American Youth Leadership Conference**, both LOCAL Oregon organizations, pulled support from the Slants, citing their offensive name. The government organization did what was best by speaking out

The Conversation

- [Satoshi Kanazawa Says Black Women Less Physically Attractive Than Other Women \(76\)](#)
- [Christine](#): My observation in this is that in Satoshi's article: Men do everything in order to get laid:...
- [Raguel](#): Obvious troll is obvious.
- [Siegfried](#): He's what some would call a "W". And I don't mean Bush. Now I like it when...
- [The Two Percent Solution](#)

1. [Asians as First Uncle to Support Culture](#)
2. [Asian American Female Suicide](#)
3. [Support the Center for the Pacific Asian Family](#)
4. [The World Outside and the Post-Election Portland Fervor](#)
5. [Congratulations, Miss Asian Oregon 2009!](#)

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19 Responses to *The Slants and bigWOWO's Support of the U.S. Patent and Trademark Office*



Oriental Left says:

April 12, 2011 at 3:19 pm

In the UK, there was a TV series called 'missing chink' – google it – on youtube. The UK Chinese hated it. Derogatory use of words like 'chink' are copying angry black self-mockery/self hate. its a 90's thing.

'the right to selfmocking slang'

Not sure if blacks still enjoy using nigga but look what happened there with white kids using it.. it gets way out of hand.

Their music and image is like the asian version of The Strokes – an early 2000's band. and the band name sounds pretty similar.

Racial Selfmockery doesnt work with ethnics. Only seems to work with white people, and even then it just seems to refine their already privileged status.

If being called slants shows asian pride of having slanted eyes , then maybe the name should reflect that more. but for a group of asian musicians – not just 'the slants'. 'slanted pride' maybe but thats too long. and no doubt he was going for controversial.

Also, not sure about copywrites for names, but its the artists self expression and his right to register his band name as whatever he wants. Whether his fans make him popular enough for him to be controversial thats up to the fans – not the asian

- **Raguel:** LOLWUT? "EMOTIONAL" infidelity? That truly takes the cake.
- **Siegfried:** Good advice! If you throw a hot Asian in the mixed, there no hope for a relationship on either side to...
- **Teaching Apple to Really "Think Different" (00)**
- **Zeth:** I am a white male. I would just like to say to the people that make these commercials, 'do you take...
- **Ghostwriters and Celebrity Novelists (6)**
- **Raguel:** If the book gets made into a movie, make sure Alan Rickman voices the cat.
- **bigWOWO:** That would be a great book. You could call it "Nine Existential Lives."
- **Danny Lee:** I think you have a hit in your hands! Be sure to have a picture of a brooding cat on the cover, and you...
- **Salman Khan's Khan Academy (3)**
- **bigWOWO:** Stephen Colbert interviewed him last night (Thanks, ES):
- **bigWOWO:** Day 2, and my son STILL loves this! It gives him a chance not only to practice his drawing (items to add),...
- **Linda:** good stuff! With this, even more reason to home school my future kids! (especially in one lives in NJ) It...
- **Asian Eyelid Surgery (13)**
- **King:** I don't really like blondes that much. Obviously, there are attractive blondes in the world (just like...
- **Siegfried:** It turns me off when I see Asian women wearing color contacts. It's a