

SCOTUS: Disparaging Trademarks Have First Amendment Protection

22 Jun 2017

[James N. Markels](#)

The Lanham Act has a provision prohibiting the registration of trademarks that “disparage . . . or bring . . . into contemp[t] or disrepute” and “persons, living or dead.” Simon Tam, lead singer of the Japanese rock band The Slants, sued when the band’s name was denied registration. The Federal Circuit held that the disparagement clause was facially unconstitutional under the First Amendment’s Free Speech Clause, and the Court, in an opinion by Justice Alito, affirmed. While disagreeing with Tam’s argument that “persons” could be read narrowly to only mean natural or juristic persons, the Court unanimously agreed that the clause was an unconstitutional abridgement of speech. The Court also rejected the argument that trademarked speech was somehow converted to government speech. Justice Alito, joined by Chief Justice Roberts and Justices Thomas and Breyer, went on to reject the government’s arguments to uphold the clause under a number of alternative theories. Justice Kennedy, in a concurrence joined by Justices Ginsburg, Sotomayor, and Kagan, argued that the First Amendment considerations rendered the government’s other arguments unnecessary. Justice Thomas filed a separate concurrence to argue that strict scrutiny should have applied to the disparagement clause. [A link to the decision in *Matal v. Tam* is here.](#)

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