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

Proceeding	92046185
Party	Defendant Pro Football, Inc.
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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 Pappan, and Courtney Tsotigh, Petitioners, v. Pro-Football, Inc., Registrant.	Cancellation No. 92/046,185 **REGISTRANT'S TRIAL BRIEF IN OPPOSITION TO THE PETITION TO CANCEL REGISTRANT'S TRADEMARKS** **[FILED UNDER SEAL]**

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INTRODUCTION

The team name "Redskins," used in connection with the NFL's Washington D.C. professional football team since the 1930s, is and has always been understood in this context to refer to the name of that storied football organization and nothing more. Notwithstanding Petitioners' attempts to transform a trademark cancellation proceeding for marks registered decades ago into a social referendum on whether some non-representative fraction of Native Americans ***today*** wish the team name to be changed, Petitioners have introduced no persuasive evidence at all—let alone a preponderance of the evidence—that a "substantial composite" of Native Americans were disparaged by Registrant's use of the term "Redskins" in connection with the NFL's Washington D.C. professional football team at the relevant time periods (*i.e.*, 1967, 1974, 1978 and 1990). Because Petitioners cannot satisfy this burden, the Board should deny the instant petition.

The Board, however, need not take sides in this political thicket, as the opinion of a federal district court, which addressed the same legal question on the same record, is ***effectively binding*** on the Board. *See Pro-Football, Inc. v. Harjo*, 68 USPQ2d 1225 (D.D.C. 2003) (the "District Court" or the "*Harjo* Court").[1] After reviewing the record in its entirety, the District Court found that the preponderance of the evidence does not support a finding that the marks are disparaging, and held that the Board's earlier, contrary decision "must be reversed." *Id.* at 136. The District Court did not remand the proceeding to the Board for further findings;[2] it reversed the Board's decision outright after reviewing "***the entire record submitted herein***." *Id.* at 99 (emphasis added). Because "the registrations are the same [and] the record is the same," Registrant agrees that "the result should be the same":[3] The Board, like the District Court, should reject the Petition.

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[1] *See* TBMP § 510.02(a) ("To the extent that a civil action in a federal district court ***involves issues in common*** with those in a proceeding before the Board, the decision of the federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court.") (emphasis added); *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011) ("[a] decision by the district court may be binding on the Board"); *see also Zachry Infrastructure, LLC v. Am. Infrastructure, Inc.*, 101 USPQ2d 1249, 1254 (TTAB 2011); *Goya Foods, Inc. v. Tropicana Prods., Inc.*, 846 F.2d 848, 854 (2d Cir. 1988); *Am. Bakeries Co. v. Pan-O-Gold Baking Co.*, 650 F. Supp. 2d 563, 566-67 (D. Minn. 1986).

[2] *Compare Jet, Inc. v. Sewage Aeration Sys.*, 223 F.3d 1360, 1365-66 (Fed. Cir. 2000) (remanding cancellation petition to Board for further proceedings).

[3] Petitioners' Trial Brief (Sept. 6, 2012) [Dkt. 177] ("Pets. Br.") at 1.

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The significance of the District Court's opinion cannot be overstated. Contrary to the limited weight to which Petitioners strain to afford it, the District Court not only reviewed the Board's minimal[4] factual findings in *Harjo v. Pro-Football, Inc.*, 50 USPQ2d 1705 (TTAB 1999), *see* Pets. Br. [Dkt. 177] at 5, but then went on to evaluate the Board's ultimate conclusion, based on "the entire record," *Harjo*, 68 USPQ2d at 1228 and "conclude[d] that the TTAB's finding that the marks at issue 'may disparage' Native Americans is unsupported by substantial evidence [and] is logically flawed," *id.* at 1248 (quoting 15 U.S.C. § 1052(a)).[5] Thus, the substantive issues in this case have been ruled on as a matter of law. *See* Order (May 31, 2011) [Dkt. 40] ("May 31 Order") at 2 & n.1 (disparagement "is a conclusion of law"); *id.* at 12 n.6 ("this cancellation proceeding is essentially a relitigation of what transpired in the *Harjo* case" and deferring to that proceeding's "precedent"); Order (May 5, 2011) [Dkt. 39] ("May 5 Order") at 1 ("[t]his proceeding mirrors prior litigation").

While Petitioners correctly note that the District Court (carefully avoiding an interpretation of its decision that would cross the judicial line into public policy and debate) did not express its views on the "Washington Redskins" name, *see* Pets. Br. [Dkt. 177] at 4, the District Court undisputedly reached a legal conclusion "***as to the sufficiency of the evidence before the TTAB***" bearing on the fundamental issue of disparagement. *Harjo*, 68 USPQ2d at 1228 (emphasis added); *see also id.* at 1238, 1241 (describing the "ultimate" question before it as whether the record contained substantial evidentiary support for a finding of disparagement). That the District Court found the record evidence—the exact same record on disparagement as here—to be insufficient underscores the unprecedented and extraordinary nature of the relief requested by

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[4] In *Harjo*, the Board made a mere eight findings of fact, three of which the District Court rejected in its appellate review. The five factual findings that remained were but banal, essentially un-refuted (and un-refutable) observations concerning the basic meanings of the word "redskin," its synonyms, and the frequency and contexts of its use. *See Harjo*, 68 USPQ2d at 1234.

[5] The District Court addressed the Board's findings of fact in Section IV.A.3, *Harjo*, 68 USPQ2d at 1234-37, and ***then*** proceeded to review the Board's ultimate conclusion on disparagement in Sections IV.A.4-5, *id.* at 121-36. The District Court did so based on the entire record before it, and its ultimate conclusions focused on the insufficiency of the evidence as a whole, ***not*** on the fact that, as per the rules governing TTAB proceedings, deposition testimony substituted for in-court witnesses. *Contra* Pets. Br. [Dkt. 177] at 4.

Petitioners. No cancellation of a registration as disparaging has ever been effectuated concerning an incontestable mark in use for almost eight decades and validly registered for four-and-a-half decades.

The evidentiary record supporting such a cancellation would need to be extraordinarily solid,[6] but this record does not come close. Relevant substantive evidence consisting of expert testimony and reliable source material demonstrates that the marks "Redskins" and "Washington Redskins" as denoting the football team were not in 1967, 1974, 1978, or 1990—and are not now—disparaging when considered, as they must be, ***in connection with Registrant's services***.[7] *See* May 31 Order [Dkt. 40] at 10. Petitioners ignore the mandate of this controlling law of the case, instead relying on distorted examples outside of the relevant time period of the word "redskin" to identify a Native American: a deeply flawed survey; newspaper editorials; literary uses; a subjective analysis of films by a graduate student; and a scant discussion of dictionary evidence.

Registrant, on the other hand, offers compelling evidence responsive to the District Court's directive. The swift reviews by twelve Trademark Examining Attorneys ("Trademark Examiners") at the United States Patent and Trademark Office ("PTO") in passing and subsequently renewing the subject registrations is the sole evidence on record of perceptions of the word "redskin" ***at the relevant times*** and demonstrates that both the name "Redskins" and the word "redskin" were deemed entirely neutral and ordinary terms of reference.[8]

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[6] *See* May 31 Order [Dkt. 40] at 6 (a grant of cancellation must be with "due caution" after "a most careful study of the facts") (citation omitted).

[7] Nor was, or is, the term "redskin" in the abstract disparaging.

[8] By 1967, the term "Redskins" had, through its long and widespread use for over three decades developed a meaning separate and distinct from the core, ethnic meaning of the word "redskin" as synonymous with "Indian," "American Indian" and "Native American." While certainly having its derivations in this core referent, the team name over time developed its own distinct meaning, as attested to by the separate dictionary listing for the word "Redskins" (identifying the NFL's professional football team), in the dictionary for which ***Petitioners'*** expert linguist served as Usage Editor and Usage Panel Chair. *See infra* n.26. This expert, Geoffrey Nunberg, has acknowledged that, when applied to professional football, the term "Redskins" "denotes the Washington Redskins football team," Deposition of Geoffrey Nunberg ("Nunberg Dep."), June 17, 1997 [Dkt. 109] at BLA-TTAB-07012, and that this sports usage is "distinctive of [the] usage of the word … when applied to individuals." *id.* at BLA-TTAB-07004; s*ee id.* at BLA-TTAB-06989-90, 07007. Even Petitioners readily admit that "redskin(s)" has acquired this secondary denotation. *See* Pets. Br. [Dkt. 177] at 29; *see also* Deposition of Phillip Gover ("Gover Dep."), June 16, 2011 [Dkt. 120] at 111-16 & Ex. 11 [Dkt. 118] (using "Redskins" to refer to the NFL's professional football team); Deposition of Jillian Pappan ("Pappan Dep."), Aug. 11, 2011 [Dkt. 112] at 171-72 (admitting that when "Washington Redskins" is used in a sentence about football, "I think it's a football team" and agreeing there is no doubt in that context that it

(*footnote continued*)

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Further, and directly responsive to the District Court's mandate, the specific manner of Registrant's use (found to be consistently respectful)[9] constitutes "stunning" evidence of non-disparagement. *Harjo*, 68 USPQ2d at 1252-1254 (quoted language at 1254). Indeed, Native Americans, including tribal chiefs and leaders speaking on behalf of their tribal membership, strongly ***support*** use of the word "Redskins" for the team name. For them, Registrant's marks, symbolizing strength, virility and courage, reflect positive attributes and thereby serve as a source of pride. Perhaps most indicative of the perceived neutrality of the term "redskin" is its use on Native American reservations as the name of streets, movie theaters and motels.[10] This is notably not the case with ethnic slurs such as "nigger," "chink" or "gook" (expressions that Petitioners attempt to classify together with "redskin").

Petitioners may have thoughtfully presented their own views in 2012—those of a small, non-representative group of Native Americans who concededly do not speak on behalf of nor are supported by any tribe or Native American tribal chief. What they have ***not*** done, however, is demonstrate that a "substantial composite" of Native Americans shared those views in 1967, 1974, 1978, and 1990—the dispositive dates at issue, for the particular uses facing the Board. *See* May 31 Order [Dkt. 40] at 8-9.

STATEMENT OF FACTS

This proceeding arises from the Petition filed to cancel various registrations owned by Registrant Pro-Football, Inc.: Registration No. 836,122 for the mark THE REDSKINS, stylized, issued September 26, 1967; Registration No. 978,824 for the mark WASHINGTON REDSKINS issued February 12, 1974; Registration

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refers to the football team). The Board needs neither admissions nor surveys to show what is meant by the words "Redskins" and the "Washington Redskins." The football club is one of the most storied teams in any professional sport, with a rich history of on and off-field success for eight decades; every sports fan and every viewer of television—that is, virtually everyone in the United States—knows who the "Redskins" are.

[9] Petitioners' strained effort to conflate theme-oriented, spirited imagery and rallying chants with mockery and disparagement, *see* Pets. Br. [Dkt. 177] at 37-40, should be seen for what it is—a desperate attempt to manufacture relevant evidence because none exists.

[10] Petitioners disingenuously mischaracterize the *Harjo* Board's ruling as to this evidence, erroneously maintaining that the *Harjo* Board had ruled it inadmissible, *see* Pets. Br. [Dkt. 177], App. A. However, the Board's criticisms of this evidence went to its ***weight***, not its ***admissibility***. *See Harjo*, 50 USPQ2d at 1747 n.125. Because the Board did not deem this evidence inadmissible in *Harjo*, it is properly of record here.

No. 986,668 for the mark THE WASHINGTON REDSKINS & DESIGN issued June 18, 1974; Registration No. 987,127 for the mark THE REDSKINS & DESIGN issued June 25, 1974; Registration No. 1,085,092 for the mark REDSKINS issued February 7, 1978; and Registration No. 1,606,810 for the mark REDSKINETTES issued July 17, 1990.[11]

The team name "Redskins" was selected in 1933 by the team's then-owner George Preston Marshall.[12] It was adopted out of respect for Native American heritage and tradition and was never intended to belittle or insult.[13] Specifically, when renaming the team (formerly the Braves), Registrant chose the name to honor the team's then-coach, William "Lone Star" Dietz, himself a Sioux Indian.[14] Over the past eight decades, in the words of John Kent Cooke, Executive Vice President of the Washington Redskins, the team's name continues to "reflect[] positive attributes of the American Indian"[15] and Registrant's "respect [for] Indian culture and heritage."[16] Consequently, Native Americans, including tribal chiefs and recognized leaders, support Registrant's use of the name "Redskins." On January 16, 1992, the Inter-Tribal Council, Inc. (the "Inter-Tribal Council"), representing Native Americans in Northeast Oklahoma, issued a resolution, signed by the Chiefs of the Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the Modoc Tribe of Oklahoma and the Peoria Tribe of Oklahoma and by a representative of the Seneca-Cayuca Tribe of Oklahoma, supporting the team name.[17] Other Native American chieftains and tribal members have similarly vocalized their support.[18]

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[11] PFIB-TTAB-000073, 75-79 [Dkt. 128].

[12] *See* PFIB-TTAB-000260 [Dkt. 142].

[13] *See* PFIB-TTAB-000261-62 [Dkt. 142]; Deposition of John Kent Cooke ("Cooke Dep."), Mar. 27, 1996 [Dkt. 155] at 200.

[14] *See* PFIB-TTAB-000260 [Dkt. 142].

[15] PFIB-TTAB-000261 [Dkt. 142].

[16] PFIB-TTAB-000263 [Dkt. 142]; *see* Cooke Dep., Mar. 27, 1996 [Dkt. 155] at 91, 94.

[17] *See* PFIB-TTAB-000278 [Dkt. 142], PFIB-TTAB-000282 [Dkt. 142].

[18] *See* PFIB-TTAB-000280-309 [Dkt. 142].

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Registrant filed its trademark applications for the challenged registrations in 1966, 1972, 1976, and 1989; these applications were reviewed and approved for publication in 1967, 1973, 1978, and 1990 by various Trademark Examiners at the PTO, whose very work is to study and assess the registrability of trademarks.[19] Not only did the PTO in its *ex parte* review ***not*** refuse registration based on Section 2(a) of the governing statute, the Lanham Act, 15 U.S.C. § 1052(a), but it also ultimately issued registrations for all the subject marks without ***ever*** having received a single third-party opposition to the subject matter therein.[20] The registrations were renewed by the PTO in 1987, 1994, 1998, and 2000, making a total of ***twelve PTO reviews***.

Indeed, after decades of substantial and widespread use, advertising, and promotion since 1933, the word "Redskins" had, at the time of each registration, acquired a separate, neutral secondary meaning referencing the NFL's professional Washington, D.C. football team.[21] Geoffrey Nunberg explicitly acknowledges that "the use of the word 'redskins' as applied to the Washington football team is distinctive of [the] usage of the word 'redskins' when applied to individuals."[22] He likewise recognizes that as used with motorcycles, the word takes on a separate meaning.[23] Even Petitioners' survey expert admits that the word "Redskins" as used in the team name has a distinct secondary meaning,[24] and Petitioner Gover himself has used the word "Redskins" in this manner, agreeing that his use of "Redskins" was not offensive because of

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[19] As the District Court noted, *Harjo*, 68 USPQ2d at 1233 nn.9-11, PTO records do not show an exact date of approval of certain of the applications, but all were eventually registered, and Petitioners do not contend that in fact the PTO passed the marks for publication.

[20] Petitioners do not contend that the marks were ever opposed, and the District Court accepted Registrant's representation that no oppositions were received. *Harjo*, 68 USPQ2d at 1233 nn.9-11.

[21] *See* PFIB-TTAB-000331-550 [Dkts. 144-46, 148-50].

[22] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-07004; *see also* Nunberg Dep., Feb 19, 1997 [Dkt. 82] at BLA-TTAB-04131-33, 170; Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-07012.

[23] In connection with a popular brand of motorcycle nicknamed the "Redskin," as recently as 1994 and 1989, books featuring the word "Redskin(s)" in their titles were reprinted and offered for sale. *See, e.g.*, *The Iron Redskin*, PFIB-TTAB-00718-24 [Dkt. 152]; *The Illustrated Indian Motorcycle Buyer's Guide: All the Iron Redskins from 1901*; PFIB-TTAB-000725-29 [Dkt. 152].

[24] *See* Deposition of Ivan Ross ("Ross Dep."), Feb. 20, 1997 [Dkt. 82] at BLA-TTAB-04313-5, 24-25, 30, 59-68.

the football context.[25] That the *American Heritage School Dictionary*, for which Petitioners' linguistics expert served as Usage Editor and Usage Panel Chair,[26] includes a separate entry for "Redskins" ("The National Football League team from Washington"), in addition to its entry for "redskin" ("a North American Indian"),[27] constitutes additional, concrete proof of the distinctive and non-disparaging meaning of "Redskins" as the NFL team name.

In 1967, the year of issuance of the first of Registrant's registrations,[28] dictionaries did not typically use editorial usage labels with the listing "redskin."[29] This treatment of "redskin," in its non-football sense,[30] as a neutral ethnic identifier continued throughout the 1970s and into the 1980s, as is demonstrated by the persistent absence of negative editorial designations.[31] Although in and around 1967 the *Random House Dictionary* (1966, 1968) and the *Thorndike-Barnhart Intermediate Dictionary* (1974) employed the usage label "often offensive" or "often considered [offensive],"[32]—not the label "disparaging"—the fact that both dictionaries qualified "offensive" with a context requirement ("often") merely highlights the need to evaluate each usage of the word independently—as here, "Redskins" ***in the context of professional football***—as accords with case law and the law of this case.

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[25] Gover Dep. [Dkt. 120] at 111-16, Ex. 11 [Dkt. 118] (posting the message "Don't seal up that Redskins O-line" on Facebook and agreeing that context "probably" mattered) *see also* Deposition of Courtney Tsotigh ("Tsotigh Dep."), Oct. 25, 2011 [Dkt. 115] at 129-30 (Mr. Gover's message "doesn't really" bother her because "he's obviously talking about a football game" and "how he's using it's not offensive").

[26] Nunberg Dep., Dec. 17, 1996, Ex. 2 [Dkt. 83] BLA-TTAB-04739-61.

[27] PFIB-TTAB-000329-30 [Dkt. 143].

[28] *See* PFIB-TTAB-000079 [Dkt. 128].

[29] *See* PFIB-TTAB-000088-91 [Dkt. 128]; Nunberg Dep., Dec. 17, 1996 [Dkt. 99] at BLA-TTAB-03002 (no negative usage labels attached to the word).

[30] Significantly, Native Americans regularly employ the term "redskin" within their communities. The Navajo Indian Reservation uses the word as both the nickname for the Red Mesa High School (PFIB-TTAB-000313-15 [Dkt. 143]) and a street name (PFIB-TTAB-000316-17 [Dkt. 143]). The Cherokee Indian Reservation features a "Redskin Motel" (PFIB-TTAB-000318-19 [Dkt. 143]), while Native Americans in Andarko, Oklahoma chose "redskin" for their movie theater (PFIB-TTAB-000320-21 [Dkt. 143]).

[31] *See* PFIB-TTAB-000092-107 [Dkt. 128].

[32] *See* BLA-TTAB-00163-68 [Dkt. 62], BLA-TTAB-00172-73 [Dkt. 63]; PFIB-TTAB-000118 [Dkt. 129] [Barnhart Report].

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The record evidence in this proceeding consists of witness deposition testimony and deposition exhibits, the exhibits in Petitioners' Notice of Reliance, and the exhibits in Registrant's Notice of Reliance.[33] As requested by the Board, the specific evidence on which Registrant relies is set forth in Appendix C and Appendix D, submitted herewith.[34]

ARGUMENT

I. PETITIONERS' EVIDENCE IS FLAWED AND INSUFFICIENT AS A MATTER OF LAW

As the District Court held in *Harjo*, where the record evidence was effectively the same as here, Petitioners have failed to sustain their burden of proof. The voluminous "evidence" they proffer is smoke and mirrors, insufficient to establish the critical elements required to cancel Registrant's long-held registrations. At base, "there is no ***direct*** evidence … that answers the legal question …." *Harjo*, 68 USPQ2d at 1249 (emphasis in original).

Petitioners' array of evidence fails to demonstrate Native Americans' perceptions of the team name "Redskins" during the time periods relevant to this action. Further, the opinions of the *Harjo* experts, relied

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[33] By joint stipulation dated March 11, 2011, the parties agreed that unless stated otherwise, the *Harjo* TTAB record is admissible here, except where the *Harjo* Board specifically ruled evidence inadmissible, and subject to objections on relevancy grounds. *See* Joint Stipulation Regarding Admissibility of Certain Evidence and Regarding Certain Discovery Issues ("First Stipulation") [Dkt. 31] at 1 ¶¶ 1-2. Because Petitioners rely on certain expert testimony and opinions introduced by the *Harjo* petitioners, these experts are referenced herein as "Petitioners' expert(s)." The parties further agreed that all testimony in discovery depositions shall be admissible as trial testimony, subject to all objections and motions to strike testimony made during such depositions. *See* First Stipulation [Dkt. 31] at 2 ¶ 6. Registrants' objections to Petitioners' evidence are set forth in Appendix A and Appendix B, submitted herewith.

[34] Registrant notes that Petitioners were not instructed to preserve relevant documents until 2010 (***four years*** after they filed the petition) and they did not take steps to preserve such documents until that time, prejudicing Registrant's investigation of Petitioners' standing and laches. *See, e.g.*, Deposition of Amanda Blackhorse ("Blackhorse Dep."), June 22, 2011 [Dkt. 122] at 168-76; Deposition of Marcus Briggs-Cloud ("Briggs-Cloud Dep."), June 23, 2011 [Dkt. 110] at 117-20, 128; Gover Dep. [Dkt. 120] at 47-48; Pappan Dep. [Dkt. 112] at 94-95, 134-37; Tsotigh Dep. [Dkt. 115] at 57-58. These documents include communications with Ms. Harjo relating to their participation in this proceeding, which would be relevant to investigating the good-faith bases of Petitioners' claims. *See, e.g.*, Pappan Dep. [Dkt. 112] at 131-34 (confirming she did not produce e-mail from Ms. Harjo, received after Petition was filed); Briggs-Cloud Dep. [Dkt. 110] at 125-26 (estimating that he failed to preserve more than 100 emails). While Petitioners' failure to preserve may not have been intentional, that every Petitioner failed to take steps to preserve such documents should not be taken lightly by the Board. It is within the Board's authority to dismiss the instant action so that a new set of petitioners, who have complied with proper discovery rules, may file a petition and properly preserve all relevant documents without visiting any prejudice upon Registrant.

on by Petitioners, are unsupported by scientific knowledge and sound scientific method, as required by *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). As already determined by the District Court, Petitioners' reliance on the flawed survey (the "Ross Survey," "Ross Study," "survey," or "study") of impressions of "redskin" as a referent for a Native American, conducted in 1996—not 1967 or any other relevant period and not as denoting a professional football team—is "entirely irrelevant." *Harjo*, 68 USPQ2d at 1253. Immaterial to the issues at bar, the 1996 Ross Survey does nothing to advance Petitioners' arguments and should be excluded. The District Court similarly found the Petitioners' linguistic expert Geoffrey Nunberg's reliance on usage labels and other dictionary evidence to contribute nothing to the petitioners' position. *See Harjo*, 68 USPQ2d at 1251-52 (finding this evidence to be, "at best, equivocal"). Moreover, Mr. Nunberg's evaluation of literature and newspaper "evidence" that falls outside or fails to include much of the relevant time period, his crippling admissions, and undue reliance on the nonprofessional and cursory videotape made by Susan Courtney render his opinions irrelevant and utterly without scientific basis—as such, inadmissible. Petitioners' other purported expert evidence is likewise inadmissible as not bearing on the legal issues, outside the relevant time periods, outside the scope of any claimed expertise, or without scientific basis. Further, the irrelevant or unauthenticated documentary and testimonial evidence presented through Petitioners' fact witnesses should be excluded from the record as well.

Petitioners' flawed documentary and testimonial evidence is not sufficient to support the drastic cancellation of long-held registrations, some for four-and-a-half decades. As requested by the Board, Registrant has culled its primary objections to witness testimony (timely made and preserved during the *Harjo* proceedings) and exhibits, introduced through Petitioners' Notice of Reliance. These objections are detailed in Appendix A, submitted herewith. Registrant also objects to certain testimony of Petitioners, as set forth in Appendix B, submitted herewith. Articulated more fully below are the grounds and supporting arguments for Registrant's objections to the more serious of Petitioners' evidentiary issues. Registrant moves to strike from the record in this proceeding the challenged testimony and exhibits set forth below and in Appendix A and Appendix B. What remains is, as found by the District Court, insufficient as a matter of law to sustain cancellation.

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A. Inadmissible Expert Testimony[35]

1. *Irrelevant and Unreliable 1996 Ross Survey*

The District Court squarely held in *Harjo* that the record, essentially the same as that before the Board here, was devoid of any survey evidence reflective of Native Americans' opinions of the use of "Redskins" for the NFL football team—the central issue before the Board. *See Harjo*, 68 USPQ2d at 1234-37, 1253. Petitioners nonetheless have sought to introduce into evidence the deeply flawed 1996 Ross Survey,[36] which allegedly supports the assertion that in 1996—not the dispositive 1967, 1974, 1978,

[35] While Petitioners do not rely on the testimony of "experts" Teresa LaFromboise and Arlene Hirschfelder, to the extent that their irrelevant opinions form part of the record in this case, Registrant notes its objections to their testimony. Teresa LaFromboise testified based on anecdotal evidence not involving the word "redskin." Personal narrative plainly does not satisfy the requisite standard for relevant expert testimony, and thus both her "opinion" and her so-called "report" should be excluded from evidence. *See Sam's Wines & Liquors Inc.* v. *Wal-Mart Stores Inc.*, 32 USPQ2d 1906, 1914 (N.D. Ill. 1994). By no stretch of the imagination is Ms. LaFromboise's testimony grounded in scientific method or relevant to the fundamental issue at bar. Likewise, Arlene Hirschfelder's lack of relevant qualifications to testify as an expert in this matter, *see* Deposition of Arlene Hirschfelder ("Hirschfelder Dep."), Apr. 10, 1997, Ex. 1, BLA-TTAB-05866-70 [Dkt. 106], and lack of relevant scientific basis for her conclusions render her testimony and opinion irrelevant and inadmissible. Ms. Hirschfelder is a teacher and not, as she readily admits, a psychologist, a member of any professional organization of psychologists, or a linguist. Hirschfelder Dep., Apr. 10, 1997 [Dkt. 80] at BLA-TTAB-03654-55. Nonetheless, she persisted in giving "opinion" testimony in the form of psychological evaluations and linguistic analysis regarding Native American imagery, all of which had nothing to do with the word "redskin." Further, Ms. Hirschfelder's own informal conversations with acquaintances do not meet the requirements for "appropriate validation" as specified in *Daubert*, 509 U.S. at 590. Because both "experts" have no scientific basis for the opinions they provided, their reports and testimony should be stricken from the record in their entirety as irrelevant. In fact, the Board has already explicitly stated that it considered Ms. LaFromboise's and Ms. Hirschfelder's testimony "simply as adding to the record two additional individual opinions as to the nature of the word 'redskin(s).'" *Harjo*, 50 USPQ2d at 1726.

[36] *See* Ross Dep., Dec. 12, 1996, Ex. 3, BLA-TTAB-04859-5113 [Dkts. 97, 84]. The deficiencies in the 1996 Ross Survey are confirmed in detail by Registrant's survey expert Dr. Jacob Jacoby. Dr. Jacoby received his B.A. in 1961 and M.A. in Psychology in 1963 from Brooklyn College, and his Ph.D. in Social Psychology from Michigan State University in 1966. *See* PFIB-TTAB-000640-83 [Dkt. 151]. He served on active duty in the Air Force from 1965 to 1968 as Chief of the Behavioral Science Branch of the National Security Agency at Fort Meade, Maryland. *Id.* From 1968 to 1981 Dr. Jacoby taught at Purdue University, where he became a full Professor and the head of the Consumer Psychology Program within the Department of Psychological Sciences. *Id.* While at Purdue University, Dr. Jacoby developed and taught what, at that time, was the only full semester 3-credit course of its kind on how to draft survey questionnaires to ensure the validity of a survey. *Id.* Since 1981, he has been a full professor and held an endowed chair as Merchants Council Professor of Consumer Behavior and Retail Management of the Stern School of Business at New York University, where he continues to conduct research and teach on the subjects of consumer behavior and behavioral-science-research methodology. *Id.* Dr. Jacoby has served as a consultant to several governmental agencies, including the U.S. Senate, Department of Justice, Food and Drug Administration and Federal Trade

(*footnote continued*)

or 1990 dates—Native Americans and the general U.S. population consider "redskin" to be a disparaging term when referring to a Native American person.

(a) 1996 Data Does Not Inform About 1967, 1974, 1978, and 1990

The District Court has already held that the 1996 Ross Survey is irrelevant to the issues in this case, in large part because it tells nothing about perceptions during the relevant 1967, 1974, 1978, or 1990 time periods. *See Harjo*, 68 USPQ2d at 1234-37, 1253. This ruling effectively binds the Board. *See supra* n.1; *New Orleans Louisiana Saints*, 99 USPQ2d at 1552. Ivan Ross himself concedes that survey respondents' answers do "not necessarily" "reflect attitudes that [respondents] may have had 30 years earlier,"[37] or indeed at any time other than in 1996, because "there's no empirical data" in this study indicative of what these respondents' views were before 1996.[38] Therefore, Ross has no scientific basis whatsoever to claim that any views expressed in 1996 would be the same as those held in 1967.[39]

Specifically, the District Court made the following findings as to the Ross Survey:

- "[T]he survey was nothing more 'than a survey of current attitudes as of the time the survey was conducted.'" *Harjo*, 68 USPQ2d at 1243 (quoting *Harjo*, 50 USPQ2d at 1174).
- "[T]he survey methodology used … supported a survey that did nothing more 'than survey … current attitudes.'" *Id.* (quoting *Harjo*, 50 USPQ2d at 1174).
- "The survey measures attitudes of Native Americans about their perceptions of the term 'redskin' as used as a reference to Native Americans in ***1996***." *Id.* at 1253 (emphasis in original).

Commission. *Id.* Dr. Jacoby is a Fellow and Past President of both the Association for Consumer Research and the American Psychological Association's Division of Consumer Psychology. *Id.* He has written seven books and monographs and approximately 175 articles and research papers and has played a significant role in conducting more than 1,500 consumer marketing, communication and advertising studies. *Id.* He has served on the editorial boards of the *Journal of Marketing Research*, the *Journal of Consumer Research* and the *Trademark Reporter*. *Id.* Sage Publications recently identified Professor Jacoby as a Legend in Consumer Behavior and will be publishing many of his articles as an eight-volume compilation.

[37] Ross Dep., Feb. 20, 1997 [Dkt. 82] at BLA-TTAB-04332.

[38] Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03188-89.

[39] *See* Deposition of Jacob Jacoby ("Jacoby Dep."), Apr. 8, 1997 [Dkt. 166] at 47-50.

- "The TTAB has no evidence, therefore, to draw a conclusion that during the relevant time periods, *i.e.* 1967, 1974, 1978, and 1990, the term ["Redskins"] was a pejorative term for Native Americans." *Id.*

- "[T]he survey tells us nothing about the relevant time frame." *Id.*

- "The survey, therefore, is ***entirely irrelevant*** to the question before the Board." *Id.* (emphasis added).

(b) Intentional Failure to Obtain Perceptions of the Use of "Redskins" in the Team Name

The survey failed to address the fundamental issue before the Board, and, as a result, is entirely skewed: Ivan Ross intentionally did not ask, though he admits that he could have asked,[40] survey respondents whether they found "Redskins" as the team name to be disparaging. In knowingly not having asked the question central to this proceeding (what Native Americans thought of the name "Redskins" for a professional football team), Ivan Ross himself acknowledges that he ***"would have no scientific basis for an opinion" as to whether a "particular person would think that the use of the word Redskins as a name of a football team is offensive."***[41] *See Daubert*, 509 U.S. at 589-90.

Ivan Ross thus explicitly concedes that respondents were asked only whether they would be "offended" if the term "redskin" were used to refer to "an American Indian person," not in reference to a team.[42] The survey questions that were asked are entirely unconnected to the issues in this proceeding,

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[40] Ross Dep., Feb. 20, 1997 [Dkt. 82] at BLA-TTAB-04351.

[41] Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03184 (emphasis added); *see also id.* (easily could have asked "what [respondents] thought of" the word "Redskins," when used in the context of professional football, but instead purposely chose not to do so.).

[42] Ross Dep., Feb. 20, 1997 [Dkt. 82] at BLA-TTAB-04330. Specifically, two survey questions read as follows:

> Q: I'm going to say some terms which you might hear someone say when referring to an American Indian person. One or more of these terms may be OFFENSIVE to you when you hear it used, or NONE of them may be offensive to you....
>
> Q: Would you, yourself, be OFFENDED by the term REDSKIN if you heard that term being used to describe an American Indian person, or would you NOT be offended, or don't you have an opinion ONE WAY OR THE OTHER about that?

Ross Dep., Dec. 12, 1996, Ex. 3 [Dkt. 97] at BLA-TTAB-04892, 96. These were not appropriate survey questions.

thereby yielding wholly irrelevant responses.[43] Indeed, Ivan Ross admits that survey respondents would likely make a "connection" between the two meanings of "redskin," but that "there's no way to know empirically what percentage or what number of people would have the same reaction to the name as applied to the team."[44] Ivan Ross thus lacks any scientific basis to render an opinion deriving from his skewed and irrelevant survey. No amount of rhetoric can obscure the survey's fatal flaws.

Dr. Jacoby confirms the admissions made by Ivan Ross. "[T]here is nothing in this survey that would enable a researcher [to] express an opinion that the use of the word Redskins as applied to a football team was offensive to Native American persons."[45] Dr. Jacoby further indicates that the critical survey question has "no probative value apart from a designation for a Native American Indian person."[46] Consequently, Ivan Ross has no basis from the flawed, irrelevant data to express an opinion on the views of Native Americans regarding the word "Redskins" as the name of the NFL's professional football team. His testimony and opinion should be discarded under the mandate of *Daubert*.

(c) Flawed Questions in Survey Questionnaire

In addition, the survey questionnaire itself contains other fundamental defects. ***First***, respondents were asked if they would be "offended" by the use of "redskin," instead of whether they found that the use of the word by the football team was "disparaging," *i.e.*, intended to be offensive.[47] The District Court criticized

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[43] PFIB-TTAB-000598, 606, [Dkt. 153] [Jacoby Report]. Moreover, Ivan Ross utterly disregarded the context of the survey responses, classifying respondents as "offended" regardless of their explanations as to ***why*** they were offended. *See* Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03227, 234, 245-46. Ignoring such data constitutes improper survey technique, which leads to "arbitrarily exclud[ing] things which shed light on the truth." Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 64-65. Ivan Ross clearly violated standard survey practice. *Id.* at 97.

[44] Ross Dep., Feb. 20, 1997 [Dkt. 82] at BLA-TTAB-04324.

[45] Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 52.

[46] Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 61.

[47] Dr. Ronald Butters, one of Registrant's linguistics experts, focuses on this significant error in the Ross Survey:

> [I]f one wants to find out whether or not a term is disparaging, one needs to ask that question and not some other question. Disparaging and offensive are two different words and mean two different things.

(*footnote continued*)

this word choice, noting that "as Defendants' own expert observed, '[d]isparaging and offensive are two different words and mean two different things." *Harjo*, 68 USPQ2d at 1251. "Disparag[ing]," not "offensive," is the operative term under the Lanham Act, 15 U.S.C. § 1052(a). Whether a term is or is not "offensive" is not the relevant question.

Second, the survey question was not neutral, but instead entirely suggestive: it "plant[ed] in the mind of the respondent that the key dimension … was 'offensive.'"[48] Dr. Jacoby indicates that "it is clear from the manner in which the question [wa]s phrased that the researcher assumed respondents could only react negatively to the term 'Redskins.'"[49] The biased nature of the survey question had two effects: (1) it "excluded any possibility of somebody giving a positive connotation to the term Redskins"; and (2) "it unduly emphasized the negative."[50] Ivan Ross admits both that the "only operative … state of mind word is … 'offensive,'"[51] and that the question does not neutrally ascertain the respondents' thoughts.[52] As such, it results in irrelevant data.

(d) Critically Flawed Sampling Plan and Improper Implementation

Beyond the fatal flaws of the survey question, further fundamental errors appear in the flawed sampling plan of the survey (*i.e.*, the selection of participants to represent the whole) that render it completely

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Deposition of Ronald Butters ("Butters Dep."), Apr. 10, 1997 [Dkt. 163] at 236. Ivan Ross himself admits that respondents might not draw a distinction between the two words, thus likely providing inaccurate answers. Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03355. Significantly, Ivan Ross testified that he ***couldn't "know … for a fact" whether a respondent would have found the term "redskin"—as applied to an Native American person—offensive but not disparaging.*** *Id.* (emphasis added). Geoffrey Nunberg, the *Harjo* expert linguist, points out the distinction that "disparaging," unlike "offensive," requires harmful intent, Nunberg Dep., Dec. 17, 1996 [Dkt. 99] at BLA-TTAB-02955, which was not present here.

[48] Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 56; *see also* Ross Dep., Dec. 12, 1996, Ex. 3 [Dkts. 97] at BLA-TTAB-04896. Specifically, Dr. Jacoby testified: "In fact, if you take a look at the question, it mentions offensive several times. So in that sense it's not a balanced question, it's not a neutral question…. [I]t simply highlights the negative and thereby is leading and provides a leading mind-set to the respondent." Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 57.

[49] PFIB-TTAB-000598 [Dkt. 153] [Jacoby Report].

[50] Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 57.

[51] Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03205.

[52] *See* Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03204.

unscientific, and any opinion based thereon inadmissible as violating *Daubert*: Ivan Ross devised a sample that excluded the majority of potential respondents and that is, at best, a ***non-probability*** study and ***thus not a relevant measure*** of the views of Native Americans.[53] The very essence of a probability study is that all those within the universe have an equal chance of participating in the study, so that conclusions may be drawn about the universe as a whole.[54]

The fifty counties included in the Ross Survey were ***not*** those with the largest actual number of Native Americans or even the fifty counties nationwide with the highest density of Native Americans.[55] The Ross Survey included only those counties, ***within the limitation of twenty states***, having the highest population of Native Americans; it ultimately included counties in ***only thirteen states***.[56] Moreover, the plan ignored counties having the largest number of Native Americans even within these thirteen states.[57] Therefore, all Native Americans living outside those fifty counties in thirteen states had "a zero chance of being selected" for the study, rendering the Ross Survey an irrelevant non-probability study. Ivan Ross concedes that, if a respondent did not "live[] in any of the [selected] states, counties, census tracts, by definition, ***they couldn't have had an opportunity to be in this sample."***[58] Consistent with this admission,

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[53] *See* PFIB-TTAB-000601 [Dkt. 153] [Jacoby Report]; Ross Dep., June 11, 1997, Ex. 202[Dkt. 94] BLA-TTB-06731-808.

[54] Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 20; *see also* PFIB-TTAB-000616-23 [Dkt. 153] (William G. Zikmund, *Exploring Marketing Research*); PFIB-TTAB-000624-38 [Dkt. 153] (Advertising & Research Foundation, *Guidelines for the Public Use of Market and Opinion Research*).

[55] Ross. Dep., June 11, 1997 Exs. 202, 203 [Dkt. 94] BLA-TTAB-06731-810.

[56] Ross Dep., Dec. 12, 1996, Ex. 6 [Dkt. 47] BLA-TTAB-05141-64. For example, Ross included in the study Alpine County, CA, which has a Native American population of 309, and excluded Los Angeles County, CA, which has a Native American population of 57,359. *See* Ross Dep., June 11, 1997, Exs. 202, 203 [Dkt. 94] BLA-TTAB-06731-810. Moreover, the initial limitation to 20 states also automatically excluded counties in the other 30 states with ***greater numbers*** of Native Americans than the 50 counties chosen by Ivan Ross. *See id.*, Ex. 202. The faulty and inconsistent methodology employed results in the majority of the counties with the highest number of Native Americans being excluded from the survey. Indeed, only 2% of all U.S. counties were included. *See* PFIB-TTAB-000598 [Dkt. 153] [Jacoby Report]. Thus, this error distorts the entire survey and negates Ivan Ross's credibility, thereby rendering the study and related testimony irrelevant and justifying their exclusion.

[57] *See* Ross Dep., June 11, 1997, Exs. 202, 203 [Dkt. 94] BLA-TTAB-06731-810.

[58] Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03210 (emphasis added).

Dr. Jacoby indicates that, "[t]o the extent it is claimed to represent the 'U.S. Native American population as a whole,' the sampling plan is seriously deficient."[59] Consequently, as the District Court likewise concluded, any generalization about the Native American population as a whole based on this unrepresentative and consequently irrelevant study is invalid. *See Harjo*, 68 USPQ2d at 1243-45.[60]

(e) Incorrect Tabulation of Survey Results

Ivan Ross also incorrectly tabulated the survey responses, thereby skewing all of his conclusions. Ivan Ross improperly included as "offended" those respondents who indicated that they were offended ***only in a certain context***. In addition, Ivan Ross included those who said that they themselves would not be offended, but who guessed that "others" would be offended.[61] "[O]thers" is such a vague and ambiguous term that it could "easily [mean] different things to different people."[62] Indeed, Ivan Ross testified that "others" could refer to anyone; the respondent was given no direction in the question.[63] Therefore, the inclusion of those respondents who indicated that they thought "others" would be offended is improper; counting them gives rise to irrelevant data and consequently seriously distorts the survey results.[64] In *Harjo*, the Board gave no weight to these survey answers as to views of "others." *Harjo*, 50 USPQ2d at 1734.

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[59] PFIB-TTAB-000601 [Dkt. 153] [Jacoby Report].

[60] *See also* Jacoby Dep., Apr. 8, 1997 [Dkt. 166] at 22; PFIB-TTAB-000639 [Dkt. 151] [Jacoby Notes].

[61] The question to which these responses pertain reads as follows:

> Whether or not YOU would be offended, do you think that the term, REDSKIN, being used to describe an American Indian person, would be offensive to OTHERS, or do you think that it would NOT be offensive to others, or don't you have an opinion ONE WAY OR THE OTHER about that?

Ross Dep., Dec. 12, 1996, Ex. 3 [Dkt. 97] at BLA-TTAB-04897. "Answers to such questions are generally taken to possess little-to-no scientific worth." PFIB-TTAB-000607 [Dkt. 153] [Jacoby Report]. Furthermore, a respondent's "guess" as to the opinion of a third party is inherently unreliable. *Id.* at 606-07.

[62] PFIB-TTAB-000607 [Dkt. 153] [Jacoby Report].

[63] Ross Dep., Dec. 12, 1996 [Dkt. 96] at BLA-TTAB-03329-30.

[64] *See* PFIB-TTAB-000607 [Dkt. 153] [Jacoby Report].

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All the above defects in the 1996 survey, among others,[65] render the 1996 Ross Survey irrelevant and inadmissible under Rules 401 and 402 of the Federal Rules of Evidence ("Fed. R. Evid."). Ivan Ross has no scientific basis whatsoever under *Daubert* to express any opinion as to the perceptions of the general public or Native Americans, at any time, including the time periods relevant to this action, regarding the use of "Redskins" by Registrant. The District Court made this very finding, which effectively binds the Board.[66]

2. *Lack of Scientific Basis for Opinions of Geoffrey Nunberg and Susan Courtney*

(a) Geoffrey Nunberg's Lack of Scientific Basis

Petitioner's linguistic expert Geoffrey Nunberg's own admissions establish that the opinions he has given concerning the word "redskin" as a disparaging term are without scientific basis and, as such, irrelevant. The illogical disparity in his sworn testimony severely undermines his credibility as an expert, rendering his opinions irrelevant. At his deposition Geoffrey Nunberg testified that "Redskins," used in the sports context, "denotes the Washington Redskins football team," as distinct from the "usage of the word when applied to individuals."[67] Geoffrey Nunberg further admits that when "Redskin" is used in connection with the brand of motorcycle, "the word is not here applied to Indians," and that what is significant is "the context of the word

[65] There are additional defects in the survey. One such flaw is the methodology of respondent self-identification in the Native American portion of the survey. *See* Ross Dep., Dec. 12, 1996, Ex. 3 [Dkt. 97] at BLA-TTAB-04891-92. A related error, which taints the results of the study, is the incomplete instructions given to the interviewers conducting the study. By not monitoring the interviewers, Ivan Ross effectively allowed the interviewer to "assume the role and responsibilities of the researcher—[Ross' method] represents exceptionally poor survey practice." PFIB-TTAB-000609 [Dkt. 153] [Jacoby Report]. These key flaws generate unreliable and consequently irrelevant data.

[66] While Petitioners, overly optimistically and erroneously, describe the Ross Study as based on "an accepted methodology in the field of opinion surveys," Pets. Br. [Dkt. 177] at 46, a plain reading of the District Court's opinion shows that the court ripped the Ross Survey to shreds. The *Harjo* Board's acceptance of the Ross Study loses force in light of its reviewing court's strenuous position against the study's validity and relevance. Indeed, the equally strenuous criticisms levied by Registrant's expert Dr. Jacob Jacoby, renowned in his field, *see*, *e.g.*, PFIB-TTAB-000598 [Dkt. 153] [Jacoby Report], PFIB-TTAB-000640-83 [Dkt. 151], directly call into serious question just how "accepted" the methodology can claim to be. Petitioners' description of Ivan Ross' work as "well supported," Pets. Br. [Dkt. 177] at 47, is nothing short of comical. Even were the Ross Study to be credited to any minimal degree—which it should not be—the District Court squarely concluded that the flawed survey results do not demonstrate that even in 1996 a substantial composite of Native Americans viewed "redskin" as disparaging. *Harjo*, 68 USPQ2d at 1253 nn. 31 & 32.

[67] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-07004, 12.

as applied to motorcycles."[68] Tellingly, Geoffrey Nunberg is unable to express any rational basis for claiming that "Redskins" as a team name is disparaging, but that "Redskin" as a name for a motorcycle is not.[69]

His reliance on dictionary usage labels to conclude that the word "redskin" for a Native American is disparaging is also unsupported and consequently immaterial. The District Court characterized this evidence as methodologically uncertain, finding it to be, "at best, equivocal." *Harjo*, 68 USPQ2d at 1251-52. His reliance on literary and media uses that date from outside the pertinent time periods and are not reflective of Native Americans' viewpoints is facially irrelevant. For all these reasons, the Board should reject Geoffrey Nunberg's testimony.

(b) Susan Courtney Videotape

Further, to the extent that Geoffrey Nunberg based his opinions on the wholly immaterial, biased, and unsystematic research conducted by Susan Courtney, his conclusions are entirely without scientific basis and should be disregarded by the Board. Ms. Courtney's videotape,[70] has ***no bearing whatsoever*** on the word "Redskins" as used by Registrant as its football-team name. Ms. Courtney's creative montage includes selective ***excerpts*** from selected films, wherein the word "redskin" was used exclusively as a referent for a Native American. Her videotape compilation of irrelevant film snippets, taken out of context, was neither based upon scientific knowledge nor created within the framework of scientific method. *See Daubert*, 509 U.S. at 590-91.

Ms. Courtney's method of choosing films was based mainly on their availability from local video stores,[71] and was compounded by her biased analysis and incomplete selection of data,[72] making her work so skewed as to be irrelevant and inadmissible.[73] For example, Ms. Courtney failed to conduct a comprehensive

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[68] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-02953, 94.

[69] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-06922, 92-94, 97.

[70] BLA-TTAB-05815 [DVD delivered to board].

[71] Deposition of Susan Courtney ("Courtney Dep."), Feb. 18, 1997 [Dkt. 79] at BLA-TTAB-03440, 42-43.

[72] Courtney Dep., Feb. 18, 1997 [Dkt. 79] at BLA-TTAB-03432, 42, 95.

[73] Why Petitioners consider Ms. Courtney's status as a "pre-paid" graduate student dispositive or even probative of a lack of bias is unclear. Pets. Br. [Dkt. 177] at 21.

search for films, neglecting such resources as university and Library of Congress archives.[74] With the approval of Geoffrey Nunberg, she even purposefully excluded from her final montage excerpts of films that she had previously selected.[75] She further ignored many potentially relevant films of the Western genre—her stated point of reference.[76] In addition, in virtually all of the examples that Ms. Courtney included in her videotape, the word "Indian" could have been substituted for "redskin" without any change in context.

Ms. Courtney's arbitrary and cursory review of films and manipulated film montage lacks any "valid scientific connection to the pertinent inquiry," *Daubert*, 509 U.S. at 592, and gives rise to faulty and irrelevant conclusions. As Geoffrey Nunberg predicated his opinion on Ms. Courtney's work, his opinion, by consequence, amounts to "unsupported speculation." *Id.* at 590. Accordingly, the videotape, related documents and testimony of Ms. Courtney and Geoffrey Nunberg should be stricken as irrelevant, and Geoffrey Nunberg's related opinions disregarded under *Daubert*.

3. ***Lack of Scientific Basis for the Opinions of Frederick Hoxie***

The District Court specifically found the testimony of Mr. Hoxie, a history professor specializing in Native Americans in North America, "irrelevant to the legal question before the TTAB." *Harjo*, 68 USPQ2d at 1252 n.29. The early historical writings reflect a negative ***overall*** viewpoint of Native Americans and have no bearing specifically on the word "redskin" (vs. another referent). *Id.* at 1252. The District Court further found the *Harjo* record to be devoid of proof as to why usage of the word "redskin" has ceased over time. *Id.* at 1252. Certainly Mr. Hoxie possesses no relevant experience or training whatsoever regarding the "scientific," "highly specialized" linguistic topics about which he attempted to testify.[77] He conceded his lack of specialized education, professional training or experience as a linguist, lexicographer or psychologist,[78] and this admission eliminates any scientific basis upon which to offer an opinion on the matters addressed in this

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[74] Courtney Dep., Feb. 18, 1997 [Dkt. 79] at BLA-TTAB-03442-43.

[75] Courtney Dep., Feb. 18, 1997 [Dkt. 79] at BLA-TTAB-03505, Ex. 2 [Dkt. 105] BLA-TTAB-05814-15.

[76] Courtney Dep., Feb. 18, 1997 [Dkt. 79] at BLA-TTAB-3434.

[77] Deposition of Frederick Hoxie ("Hoxie Dep."), Feb. 12, 1997, Ex. 1 [Dkt. 107] BLA-TTAB-06030-34.

[78] *See* Hoxie Dep., Feb. 12, 1997, Ex. 1 [Dkt. 107] BLA-TTAB-06030-34.

proceeding. Lacking the requisite scientific basis, Mr. Hoxie's report and all testimony and opinions related thereto are inadmissible under *Daubert* and should be excluded as irrelevant.[79]

B. Proffer of Immaterial Evidence by Petitioners' Fact Witnesses

1. *Purported NCAI Resolution*

Despite the District Court's finding it "irrelevant to the calculus," *Harjo*, 68 USPQ2d at 1255, Petitioners seek to introduce a purported resolution of the NCAI, allegedly adopted in 1993,[80] outside the relevant time periods in this proceeding, *see id*. This "resolution" and all related testimony should be excluded from evidence as irrelevant, pursuant to Fed. R. Evid. 401 and 402.[81]

2. *Letter Written By Harold Gross*

Registrant also objects to the relevance and admissibility of the January, 1972 letter written by Harold Gross to Edward Bennett Williams, then-President of the Washington Redskins football team and related testimony and documents.[82] The District Court held that this letter in no way represents the opinion of a substantial composite of Native Americans, as is required here. *Harjo*, 68 USPQ2d at 1255; *see* May 31

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[79] Even if they are credited to any extent—which they should not be—the District Court has already ruled that the historical evidence failed to show that the word "redskin" dropped out of use because it was disparaging. *Harjo*, 68 USPQ2d at 1252 ("[t]here is no evidence in the record to support this finding").

[80] BLA-TTAB-00235-42 [Dkt. 63].

[81] For similar reasons, Registrant also opposes the introduction into the record of resolutions allegedly adopted in 1992 by the Central Conference of American Rabbis ("CCAR"), in 1992 by the Portland Chapter of the American Jewish Committee (the "AJC/Portland Chapter"), and in 1994 by Unity '94. *See* BLA-TTAB-00244-46 [Dkt. 63]. The District Court specifically found the Unity '94 document to be "irrelevant" as outside the timeframe at issue. *Harjo*, 68 USPQ2d at 1255. As with the NCAI "irrelevant" document, *id.*, the same conclusion applies to the CCAR and AJC/Portland Chapter evidence. Further, these organizations in no way reflect the views of anything even approaching a substantial composite of Native Americans. *See In re Hines*, 31 USPQ2d 1685, 1688 (TTAB 1994), *vacated on other grounds*, 32 USPQ2d 1376 (TTAB 1994). As such, they are inadmissible as irrelevant to the central issue in this proceeding. The CCAR resolution was allegedly passed by a group that ***does not have a single*** Native American member. *See* Deposition of Elliot Stevens, January 30, 1997 [Dkt. 101] at BLA-TTAB-04566. The AJC/Portland Chapter document also was allegedly adopted by a non-representative group that has ***no*** Native American members. *See* Deposition of Judith Kahn, Jan. 31, 1997 [Dkt. 80] at BLA-TTAB-03826 . Likewise, ***only two*** Native Americans actually voted for the alleged Unity '94 resolution, and there is no proof in the record of their authorization from any tribe to do so. *See* Deposition of Walterene Swanston, Jan. 31, 1997 [Dkt. 101] at BLA-TTAB-04614, 629. The District Court found this farcically miniscule number to strip the resolution of any and all materiality. *See Harjo*, 68 USPQ2d at 1255.

[82] *See* BLA-TTAB-05860 [Dkt. 51].

Order [Dkt. 40] at 8-9; *Harjo*, 68 USPQ2d at 1253 n.32 (suggesting that a substantial composite is at least a majority). The Board must likewise so find, mandated by both precedent and logic.

Mr. Gross wrote the letter on behalf of the Indian Legal Information Development Services, an organization that at the time had only "at a maximum, seven" Native American members.[83] The organization is no longer in existence.[84] Contrary to Petitioners' manipulations, the sentiments expressed in the letter and the meeting that followed—which was attended by a "delegation" of all of ***seven*** Native Americans[85]—cannot be said to represent the views of any tribal chief or tribal leader, and plainly not the Native American population or a "substantial composite" thereof.[86] *Harjo*, 68 USPQ2d at 1255; *see id.* at 1253 n.32; *In re Hines*, 32 USPQ2d 1376, 1377 (TTAB 1994); May 31 Order [Dkt. 40] at 8-9. The document is thus irrelevant and, together with all related testimony, should be excluded from evidence.

3. ***Evidence Reflecting Actions of the Media and Registrant's Fans***

The District Court ruled evidence of media and fan behavior to be "simply not relevant to the legal question in this case." *Harjo*, 68 USPQ2d at 1254. Both the District Court and Board ruled that the actions of the media and fans cannot be attributed to Registrant, nor can Registrant be held accountable for them. *See id.* at 1254-55; *Harjo*, 50 USPQ2d at 1747. Like the District Court, Registrant takes issue with the materiality of such evidence and objects to its inclusion in the record here. "Clearly, the evidence relating to the media and fans has no bearing on whether a substantial composite of Native Americans finds the term 'redskin(s)' to be disparaging when used in connection with Pro-Football's marks. In this regard, the evidence the TTAB put forward comes nowhere close to meeting the substantial evidence test." *Harjo*, 68 USPQ2d at 1254-55.

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[83] Deposition of Harold Gross ("Gross Dep."), June 11, 1997 [Dkt. 79] at BLA-TTAB-03545.

[84] *See* Gross Dep., June 11, 1997 [Dkt. 79] at BLA-TTAB-03557.

[85] *See* Pets. Br. [Dkt. 177] at 12-14 (quoting Mr. Williams), 44.

[86] That Mr. Williams characterized these sentiments as having been "cogently" presented—a word beaten to death by Petitioners (*see, e.g.*, Pets. Br. [Dkt. 177] at 32, 33, 47)—cannot seriously be considered an "admission" by Registrant as to the fundamental issue at bar. Mr. Williams was simply commenting on the articulation of the views, not endorsing them.

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II. REGISTRANT'S MARKS DO NOT DISPARAGE NATIVE AMERICANS OR BRING NATIVE AMERICANS INTO CONTEMPT OR DISREPUTE

As the District Court has already held in a decision that effectively binds the Board here, "the TTAB d[oes] not have what would be considered 'direct' or circumstantial evidence before it, or evidence from which it could draw reasonable inference for … a conclusion" that "the marks at issue 'may disparage' Native Americans, during the relevant time frame, especially when use in the context of Pro-Football's entertainment services." *Harjo*, 68 USPQ2d at 1249.[87]

A. The "Redskins" Name, as Used By Registrant, Is Not Disparaging

The proper focus for an analysis of Registrant's registrations is whether the marks are disparaging, and the same statutory standard for "disparage" will be applied to the terms "contempt" or "disrepute" under Section 2(a). May 31 Order [Dkt. 40] at 4. Specifically, the Petition identifies as disparaging the term "redskin," which appears in each of Registrant's registrations, and "additional matter" appearing in U.S. Registration Nos. 987,127 and 986,668[88]—namely, the stylized depiction of the profile of a Native American.[89] Any evaluation must first focus on the term's meaning, before proceeding to assess the question of disparagement. *Harjo*, 68 USPQ2d at 1247-48; *Harjo*, 50 USPQ2d at 1741. The word "Redskins" in

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[87] Though unclear, Petitioners appear also to seek cancellation of Registrant's registrations in part because the marks include "scandalous" matter. *See* Petition For Cancellation [Dkt. 1] at 4 ¶ 1. Petitioners, however, make no argument in their Trial Brief that the marks are scandalous—thus, any argument for cancellation on those grounds have been waived. *See Gen. Mills, Inc. v. Fage Dairy Processing Indus. S.A.*, 100 USPQ2d 1584, 1588 n.1 (TTAB 2011) ("Claims, counterclaims, or defenses which are not argued in a party's brief are considered waived.") (citing cases). In any event, in *Harjo*, the Board squarely (and properly) held that the record did not support a finding that the use of "Redskins" was scandalous. *See Harjo*, 50 USPQ2d at 1748.

[88] PFIB-TTAB-000076-77 [Dkt. 128].

[89] *See* PFIB-TTAB-000081-82 [Dkt. 128] (depictions of Washington Redskins' team logo); PFIB-TTAB-000083-87 [Dkt. 128] ¶ 1. Petitioners have waived their claim that these depictions are disparaging by not having made the argument in their final brief. *See supra* n.87 (arguments not made in brief are waived). Moreover, the *Harjo* Board found the imagery not to be disparaging, as was proper given the utter "lack of [supporting] evidence," *Harjo*, 68 USPQ2d at 1248 n.26, and in the face of strong evidence to the contrary, including the tastefulness of the depictions at issue and the widespread use by third parties, including Native Americans, of similar imagery in connection with a plethora of goods, services, and writings. *See Harjo* 50 USPQ2d at 1743; *see Harjo*, 68 USPQ2d at 1248 n.26. *See* PFIB-TTAB-000249-50 [Dkt. 175]; PFIB-TTAB-000280-92 [Dkt. 142]; PFIB-TTAB-000282-83 [Dkt 142]; PFIB-TTAB-000322-25 [Dkt. 143]; PFIB-TTAB-000329-30 [Dkt. 143]; PFIB-TTAB-000585 [Dkt. 149] (U.S. nickel coin, 1937 mint virtually identical to Registrant's profile logo design); PFIB-TTAB-000699-702 [Dkt. 151]; PFIB-TTAB-000718-29 [Dkt. 152].

Registrant's marks, while deriving from and alluding to Native Americans, means "The National Football League team from Washington."[90]

Neither the Lanham Act nor its legislative history provide a statutory definition for the term "disparaging;" the term has been acknowledged explicitly as being "just a matter of personal opinion." *See* Hearings on 4744 Before the Subcomm. on Trademarks of the House Comm. on Patents, 76th Cong., 1st Sess. 18 (1939) (statement of Leslie Frazier, Ass't Comm'r of Patents). Given that the determination under Section 2(a) of whether or not a mark is "disparaging" is relatively standardless and highly subjective, *see Harjo*, 68 USPQ2d at 1241-42; *In re Hines*, 32 USPQ2d at 1377; *In re In Over Our Heads*, 16 USPQ2d 1653, 1654 (TTAB 1990), cancelling long-held registrations on such a basis would be a drastic step, requiring an targeted and uncontroverted proof—proof not present here. The Board has established that "[i]n deciding whether the matter may be disparaging, [it] look[s] not to the American public as a whole, but to the views of the referenced group. The perceptions of the general public are irrelevant." May 31 Order [Dkt. 40] at 8. Further, "[t]he question of disparagement must be considered in relation to the goods or services identified by the mark in the context of the marketplace." May 31 Order [Dkt. 40] at 10; *see also id.* ("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?").

The District Court ruled it necessary to "analy[ze] … ***how*** the use of the trademarks in connection with Pro-Football's services disparages Native Americans." *Harjo*, 68 USPQ2d at 1254; *see id.* at 1247. In accordance with established case law, the determination must take into account the services in connection with which the challenged mark is used, the marketplace for those services, and the manner of Registrant's

[90] PFIB-TTAB-000329-30 [Dkt. 143] (1977 ed.) (Geoffrey Nunberg, Usage Editor and Usage Panel Chair). Contrary to Petitioners' insinuations, *see* Pets. Br. [Dkt. 177] at 42, Registrant does not deny a connection to Native Americans. Registrant does not claim that its marks bear no association with Native Americans, nor that when the team name was ***first adopted*** in 1933 it connoted anything other than an ethnic group. After three decades of use, however, when the first of Registrant's registrations issued in 1967, "Redskins" had evolved into—and now is—a non-disparaging, denotative term of reference for the NFL's professional football team.

use. *See, e.g., In re Riverbank Canning, Co.*, 25 C.C.P.A. 1028, 1030 (CCPA 1938); *Greyhound Corp. v. Both Worlds, Inc.*, 6 USPQ2d 1635, 1638-39 (TTAB 1988).[91]

The District Court properly focused the inquiry into the nature of the "Redskins" marks on the ***manner*** in which Registrant used the name "Redskins" in connection with its football services. *Harjo*, 68 USPQ2d at 1247, 1254. Typically, marks that have been deemed unregistrable under Section 2(a), when considered in the context of overall use in commerce, are ones where it is the relationship between the marks and the goods on which the marks appear that renders the combination disparaging or scandalous. *See, e.g.*, *In re Sociedade Agricola E. Commercial Dos Vinhos Messias, S.A.R.L.*, 159 USPQ 275 (TTAB 1968) (MESSIAS scandalous for wine and brandy); *In re Reemtsma Cigarettenfabriken G.M.B.H.*, 122 USPQ 339 (TTAB 1959) (SENUSSI scandalous for cigarettes in light of Moslem group practices forbidding use of cigarettes); *cf. Greyhound Corp.*, 6 USPQ2d at 1638 (disparaging image of dog defecating on shirt significantly different from same excretory activity in dog's "normal environment"). The Board's inquiry should thus concentrate squarely on the team marks themselves, in the context used by Registrant. *See* May 31 Order [Dkt. 40] at 10. The relevant analysis must be undertaken in the light of contemporary attitudes of Native Americans at the time the registrations issued. May 31 Order [Dkt. 40] at 11. Accordingly, the proper sole focus for an examination of Registrant's marks, in context, is on the perceptions of Native Americans in 1967, 1974, 1978, and 1990.

As the District Court concluded on essentially identical proof, the record is devoid of direct evidence of Native Americans' viewpoint of the words "Redskins" or "redskin" as of the dates at issue. *See Harjo*, 68 USPQ2d at 1249 ("[T]here is no ***direct*** evidence in the findings that answers the legal question posed by the TTAB.") (emphasis in original). In the absence of direct evidence, the Board must balance what circumstantial evidence there is in the record. Its approach must engage competing inferences, "weigh[] conflicting evidence [and] address[] criticisms." *See Id*. Doing so reveals that, on balance, the preponderance of the evidence does not support a conclusion that the marks, when registered, disparaged Native Americans.

[91] *See* Deposition of David Barnhart ("Barnhart Dep."), Dec. 19, 1996 [Dkt. 159] at 127-28, 130.

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1. *Ethnic Names for Sports Teams Are Acceptable*

There is nothing about the context and nature of Registrant's use that is disparaging. *Harjo*, 68 USPQ2d at 1247, 1254. Professional football games are neither of questionable morality nor *per se* offensive to or prohibited by Native American religious or cultural practices. To the contrary, professional football games, symbolic of strength, sportsmanship and physical prowess, reflect only positive attributes and, as such, enjoy nationwide popularity, including among Native Americans—even Petitioners.[92] That the term "redskin," used in singular, lower case form, references an ethnic group does not automatically render it disparaging when employed as a proper noun in the context of sports. Indeed, the identical term has been employed by Native Americans themselves in a manner akin to Registrant's use.[93]

2. *The Word "Redskins" Has a Distinctive, Distinct, and Non-Disparaging Meaning as the Name of the NFL Team*

In addressing the significance of the context in which the name "Redskins" is used by Registrant, the District Court observed that the name has taken on its own, independent meaning. *See Harjo*, 68 USPQ2d at 1248-49, 1251-52; *Harjo* 50 USPQ2d at 1741-42. The Board has recognized that the availability of an alternate meaning of a mark is important to the determination of whether or not the mark, as used, is disparaging. *See In re Squaw Valley Dev. Co.*, 80 USPQ2d 1264, 1282 (TTAB 2006) (permitting registration of Class 28 application because context of use made plain that mark referred to applicant's ski resort); *In re Mavety Media Group Ltd.*, 31 USPQ2d 1923, 1926-28 (TTAB 1994); *In re In Over Our Heads*, 16 USPQ2d at 1654; *In re Hershey*, 6 USPQ2d 1470, 1471-72 (TTAB 1988); *In re Tinseltown, Inc.*, 212 USPQ 863, 865-

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[92] *See, e.g.*, Blackhorse Dep. [Dkt. 122] at 75 (watches NFL games and is a fan of the Cardinals); Gover Dep. [Dkt. 120] at 25-27 (discussing favorite NFL teams); *id.* at 111-16 & Ex. 11 [Dkt. 118].

[93] *See* PFIB-TTAB-000313-14 [Dkt. 143] ("Redskins," with Indian mascot, as nickname for Navajo Reservation school's teams); Briggs-Cloud Dep., Ex. 3 [Dkt. 121] at 1C (*Seminole Tribune* discusses basketball tournament in memory of Tribal citizens, with one team named the "Lady Redskins"); *see also* PFIB-TTAB-0003322-23 [Dkt. 143] (Navajo Reservation school's teams called "Fighting Braves" with Indian mascot); PFIB-TTAB-000324-25 [Dkt. 143] (Navajo Indian Reservation school's teams named "Warriors" with Indian mascot); Gover Dep., Exs. 18 & 19 [Dkt. 118] (Omaha Nation school's teams called "Chiefs" and "Lady Chiefs" with Indian mascot); Blackhorse Dep., Ex. 2 [Dkt. 123] (Haskell Indian Nations University's teams called "Indians" with Indian mascot); Pappan Dep., Ex. 7 [Dkt. 114] at 8 (Flandreau Indian School's teams named "Indians" with Indian mascot).

66 (TTAB 1981). Through long, substantial and widespread use, advertising, promotion, and media coverage nationwide over almost-eight-and-a-half decades, Registrant's marks have acquired a strong and distinctive, separate meaning identifying Registrant's entertainment services.[94] Even Petitioners acknowledge that the word has acquired a "secondary denotation" in the context of professional football.[95]

As a result of this strong secondary meaning, "Redskins" was perceived in 1967, 1974, 1978, 1990, and today, to be a distinct word, entirely separate from "redskin" and the core, ethnic meaning embodied by that term. By the date of the first of Registrant's registrations, even though deriving from the original, ethnic meaning of "redskin," "Redskins" was a separate, entirely neutral term used solely to designate the NFL's professional Washington, D.C. football team. Today, another four-and-a-half decades later, such association is even more deeply ingrained in popular culture, and the distinctive meaning of "Redskins" even more firmly established in the English language. Even Petitioners' expert linguist concedes that, when applied to

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[94] As both the District Court and the Board have recognized, Registrant is not raising a traditional secondary meaning defense addressing the issue of the protectability of Registrant's marks. *See Harjo*, 68 USPQ2d at 1248-49; *Harjo*, 50 USPQ2d at 1742. Rather, Registrant argues that the strong secondary meaning in "Redskins," as denotative of the NFL's professional football team, has resulted in the creation of a separate, non-disparaging word. The incidence of such a secondary or alternate meaning is certainly not limited to "Redskins" as denoting the football team. "Redskin" is also the nickname for a popular brand of motorcycle (whose logo design reads "Indian"). *See* PFIB-TTAB-000718-29 [Dkt. 152]; Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-0922, 92-84, 97. This moniker has been used in the titles of books reprinted as recently as 1994 and 1989. *See* PFIB-TTAB-000718-24 [Dkt. 152] (*The Iron Redskin*); PFIB-TTAB-000725-29 [Dkt. 152] (*Illustrated Indian Motorcycle Buyer's Guide: All the Iron Redskins from 1901*). As the *Harjo* expert linguist acknowledges, "***the word is not here applied to Indians but to motorcycles.***" Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-06922; *see also id*. at BLA-TTAB-06994 (noting significance of "***the context of the word as applied to motorcycles***"). When used to denote a motorcycle, "Redskin" constitutes an entirely separate and distinct word from "redskin" as an ethnic identifier. *See id*. at BLA-TTAB-06922, 94. Likewise, in yet another context, the word "redskin" has also been used, non-disparagingly, to identify a type of potato. *See* BLA-TTAB-00220-22 [Dkt. 63]. Similarly, the word "Redskins" in the context of professional football—where it has been popularly used since 1933—identifies the NFL's Washington D.C. professional football team.

[95] Pets. Br. [Dkt. 177] at 29; *see also* Gover Dep. [Dkt. 120] at 111-16 & Ex. 11 [Dkt. 118]; Tsotigh Dep. [Dkt. 115] at 130 (regarding Mr. Gover's use of the word "Redskins" to refer to the Washington Redskins football team "how he's using it's not offensive, he's talking about an offensive line in a game"); Pappan Dep. [Dkt. 112] at 171-72 (admitting that when "Washington Redskins" is used in a sentence about football, "I think it's a football team" and agreeing there is no doubt in that context that it refers to the football team).

professional football, the word "Redskins" "denotes the Washington Redskins football team" and that this sports usage is "distinctive of [the] usage of the word … when applied to individuals."[96]

Indeed, the *American Heritage School Dictionary*, with which Petitioners' linguistics expert is affiliated, includes a separate entry for "Redskins": "The National Football League team from Washington."[97] That Geoffrey Nunberg's own dictionary so plainly indicates the distinct and non-disparaging use of "Redskins" during the relevant timeframe is strong evidence of the word's independent meaning.[98] Corroborating the views of Petitioners' expert, Mr. Barnhart also has found a well-established, distinct meaning for the team name. He indicates in his expert report that "redskin" has both a "core meaning" denoting Native American(s),[99] and an entirely separate, unoffensive meaning signifying the NFL football team.[100] Likewise, Dr. Butters has rejected the assertion that "Redskins," as the team name, is a disparaging term.[101] Indeed, Petitioner Gover has himself used the name "Redskins" to refer to the football team.[102]

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[96] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-07004, 12; *see also id.* at BLA-TTAB-06989-90, 07007.

[97] PFIB-TTAB-000329-30 [Dkt. 143] (1977 ed.) (Geoffrey Nunberg, Usage Editor and Usage Panel Chair). Its definition of "Redskins" does not bear a usage label, and it defines the word "redskin" as "a North American Indian," with the usage label "Informal." *Id.*

[98] *See* Nunberg Dep., Feb. 19, 1997 [Dkt. 82] at BLA-TTAB 04131-33, 70 (admitting that the two entries focus on different denotations of the term).

[99] PFIB-TTAB-000110 [Dkt. 129] [Barnhart Report].

[100] Barnhart Dep., Apr. 9, 1997 [Dkt. 161] at 170-71; PFIB-TTAB-000119 [Dkt. 129] [Barnhart Report]; *see also* Barnhart Dep., Dec. 19, 1996 [Dkt. 159] at 132; Barnhart Dep., Apr. 9, 1997 [Dkt. 161] at 175. The parties do not dispute that more recent newspaper mentions of "Redskins" are to denote Registrant. Pets. Br. [Dkt. 177] at 21-22, 45. Out of a sampling of 143,920 articles in the LEXIS/NEXIS data banks, more than ninety-eight percent (98%) of the occurrences of the word "redskin" referred to the NFL's professional football team; fewer than two percent (2%) denoted Native Americans. PFIB-TTAB-000120 [Dkt. 129] [Barnhart Report]; *see also* PFIB-TTAB-000686-87 [Dkt. 151] [Butters Rebuttal Report] (noting that Nunberg's research, revealing 135,000 occurrences of "redskin," likewise found only 71 references to Native Americans; the vast majority referred to team). The record, however, is utterly devoid of proof that the reason for this disproportionality has anything to do with negative perceptions of the word. *See* Pets. Br. [Dkt. 177] at 21-22.

[101] PFIB-TTAB-000142 [Dkt. 129] [Butters Report]; *see also* Deposition of Dr. Ronald Butters ("Butters Dep."), Dec. 20, 1996 [Dkt. 163] at 23-24, 39; Butters Dep., Apr. 10, 1997 [Dkt. 163] at 206-210, 212-18.

[102] Gover Dep. [Dkt. 120] at 111-16 & Ex. 11 [Dkt. 118] (referring to the "Redskins O-line" in a Facebook message); *see also* Tsotigh Dep. [Dkt. 115] at 129-30 ("How [Gover's] using it's not offensive.").

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For three decades prior to 1967, newspapers unabashedly featured the team name "Redskins" in boldface headlines and throughout sports articles,[103] and have continued to do so solely as a term of reference for the NFL's professional football team, not for persons of Native American descent.[104] Indeed, the very fact that newspapers have extensively used, and continue to employ, the word "Redskins" itself constitutes persuasive evidence that the term was not—and is not—disparaging.[105] *See In re In Over Our Heads*, 16 USPQ2d at 1654 n.4 ("doubt[ing] that any such major newspaper or magazines would have repeatedly used a term derogatory of a particular religious group"); *see also Japanese Am. Citizens League v. Takada et al.*, 171 USPQ 109, 109 (N.Y. Sup. Ct. 1971), *followed in In re Condas S.A.*, 188 USPQ 544 (TTAB 1975) (advertisements in major newspapers and magazines of "JAP" mark for clothing have "enhanced and popularized" the word). As at least one linguistics expert has recognized, "the fact that newspaper sports pages have no qualms about publishing headlines containing the word *redskin* indicates that they find no pejorative connotations what[so]ever to the word."[106] Petitioners' undue reliance on Geoffrey Nunberg's

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[103] *See* PFIB-TTAB-000331-515 [Dkts. 144, 148, 150, 145, 146].

[104] *See* PFIB-TTAB-000516-50 [Dkt. 149].

[105] Similarly, in the context of motorcycles, that books reprinted as recently as 1994 and 1989—*The Iron Redskin* and the *Illustrated Indian Motorcycle Buyer's Guide: All the Iron Redskin from* 1901—feature "Redskin(s)" in their titles, PFIB-TTAB-000718-29 [Dkt. 152], further indicates the acceptability of the word. Another instance of its acceptability, unlike a term such as "nigger," is an article entitled ''Paleface and Redskin," which appeared in *The New Republic* as recently as March 24, 1997. *See* PFIB-TTAB-000171-79 [Dkt. 175]. That a prominent political magazine would publish a piece featuring the word "redskin" in its title provides additional evidence of the non-disparaging nature of the word as used today to reference North Native Americans. *See* Butters Dep., Apr. 10, 1997 [Dkt. 163] at 196-201.

[106] PFIB-TTAB-000690-91 [Dkt. 151] [Butters Rebuttal Report]. Petitioners ignore the positive associations that accompany the characteristics inherent in the word "Redskins": bravery, prowess, team spirit, tenacity, stoicism and hard work are just examples. That no team exists under the name of Niggers, Kykes, Wops, Spics, or Chinks, all of which are unquestionably disparaging and derogatory terms, *see* Butters Dep., Dec. 20, 1996 [Dkt. 163] at 51-53, 68-69; Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-06980-81, 94, supports this proposition. *See* PFIB-TTAB-000690-91 [Dkt. 151] [Butters Rebuttal Report]. Indeed, the 1972 letter from Mr. Gross to Edward Bennett Williams, Registrant's then-President (touted by Petitioners as somehow representing the views of a substantial composite of Native Americans, Pets. Br. [Dkt. 177] at 12-14, when in fact ***only seven*** Native Americans attended the subsequent meeting) itself contrasts the name "Redskins" with ethnic slurs. *See* Pets. Br. [Dkt. 177] at 12-13. Why would Registrant initially select, and today elect strenuously to defend its right to maintain, a derogatory team name? The answer lies in the simple fact that "Redskins," unlike the above terms, is not disparaging.

(*footnote continued*)

review of newspaper articles from 1982-1996, which notably ***excludes fourteen relevant years*** that comprise the registration dates of all but one of the challenged registrations, is misplaced. His work shows only that the term "redskin" to denote a Native American fell into disuse, but does not ever explain why this is so; the statement that newspapers "intentionally avoid" using the term is entirely unsubstantiated and does not lead to the forced corollary that the reduced usage is due to a disparaging meaning. *See* Pets. Br. [Dkt. 177] at 21-23, 45; *cf. Harjo*, 68 USPQ2d at 1252 (with regard to historical writings, finding no evidence to support the conclusion that the term dropped out of use because it was disparaging).

3. *The Manner of Registrant's Use Has Been Wholly Respectful*

As the *Harjo* Board found in what the District Court noted was "stunning[ly]" ***inconsistent*** with a finding of disparagement, *Harjo*, 68 USPQ2d at 1254, Registrant's use has been consistently respectful. As illustrated from the outset, Registrant's intent in adopting the team name was entirely positive. *See* May 31 Order [Dkt. 40] at 9-10 n.3 (Registrant may enter evidence "regarding its intent as part of its position that the referenced group does not perceive use of the term in the context of the relevant goods or services as disparaging"); *Harjo*, 50 USPQ2d at 1721, 1738 (intent goes to ultimate question of whether marks, as used, "may disparage"). Far from selecting the name to offend or insult,[107] Mr. Marshall, who renamed the team

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This truism is reflected in other, contexts as well, most notably through U.S. Presidents' and Vice-Presidents' open and public association with the Washington Redskins. *See* PFIB-TTAB-000551-54 [Dkt. 149]. President Truman proudly accepted his annual game pass from, *inter alia*, the team's then-owner George Preston Marshall. *See* PFIB-TTAB-000551-52 [Dkt. 149]. As Vice President, Richard Nixon used the pass Mr. Marshall had presented to him to visit the Washington Redskins' dressing room after a decisive victory in order to congratulate passer Eddie LeBaron and other team players. *See* PFIB-TTAB-00553 [Dkt. 149]. In 1969 President Nixon openly indicated his unprecedented intention to attend regular-season Redskins' games. *See* PFIB-TTAB-000554 [Dkt. 149]. The politically sensitive White House would not publicly associate itself with a team that used a derogatory or disparaging name.

Furthermore, the prominent display, in the popular motion picture *Courage Under Fire*, of a cap bearing the Washington Redskins logo, *see* PFIB-TTAB-000584 [Dkt. 149], also illustrates the extent to which the word "Redskins" has developed into a distinct, purely denotative identifier for the popular football team. That the film, released in 1995, would include a lengthy scene, set with the Capitol prominently in the background, in which the lead character was noticeably wearing a cap featuring "The Washington Redskins" (with close-up shots of both the front and back of the cap enabling the viewer easily to recognize the team name and logo), reflects the term's accepted place in American culture and in the English language. *See* Butters Dep., Apr. 10, 1997 [Dkt. 163] at 245 (use of cap in film not disparaging or derogatory).

[107] *See* PFIB-TTAB-000261-62 [Dkt. 142]; Cooke Dep., Mar. 27, 1996 [Dkt. 155] at 200.

(the former Braves) in 1933, chose "Redskins" to honor the team's then-coach, William "Lone Star" Dietz, a Sioux Indian.[108] As publicly stated in a press release issued by Registrant: "Over the long history of the Washington Redskins, the name has reflected positive attributes of the American Indian such as dedication, courage and pride."[109] These sentiments were echoed in a letter written by John Kent Cooke to Robert J. Salgado of the Soboba Band of Mission Indians, in which Mr. Cooke expressed the team's "respect [for] Indian culture and heritage."[110]

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[108] *See* PFIB-TTAB-000260 [Dkt. 142]. How Jonathan Yardley's "erudite" commentary about Registrant's intent has any relevance at all is not clear, *see* Pets. Br. [Dkt. 177] at 36, especially when the ***relevant*** reviewing authority—the District Court—found Registrant's position regarding its intent to be credible. *Harjo*, 68 USPQ2d at 1232 n.6.

[109] PFIB-TTAB-000261 [Dkt. 142].

[110] PFIB-TTAB-000263 [Dkt. 142]; *see also* Cooke Dep., Mar. 27, 1996 [Dkt. 155] at 91, 94. Mr. Cooke has been instrumental in shaping the positive image enjoyed by the team, both off and on the playing field. Under Mr. Cooke's direction, the Washington Redskins project a "professional, wholesome, cleancut image," Cooke Dep., Mar. 26, 1996 [Dkt. 154] at 93; he expects "players and [] coaches to act in a professional manner," *id.* at 94; *see also id.* at 93-96; and players are instructed to be "well-spoken," in particular "to avoid using racial epithets" such as "nigger[]," "wet-back," "gook," "slant eye" or "slanty eye," "buck," "squaw," "Injun," "Uncle Tommie-Hawk" "or any other obscene words." *Id.* at 96 (incorporating language from 41-57). While Petitioners strain to interpret these conduct directives as admissions of disparagement, Pets. Br. [Dkt. 177] at 35, to the contrary, they reflect care and attention on Registrant's part to show respect. Petitioners' endeavor to portray Mr. Cooke as bigoted; there is no evidentiary support, however, for this accusation and, indeed, only evidence showing the opposite.

Further, no adverse inference can be drawn from Mr. Cooke's declining, on advice of counsel, to answer certain questions at his deposition that called for a speculative legal conclusion on the ultimate question in the case, *see* May 31 Order [Dkt. 40] at 2; *contra* Pets. Br. [Dkt. 177] at 34. ***First***, Petitioners ignore their own stipulation that the only objections preserved from *Harjo* are (1) those for which the Board deemed such evidence not admissible in *Harjo*; and (2) those based on relevance. *See* First Stipulation [Dkt. 31] at ¶¶ 1-2. ***Second***, Petitioners offer no explanation for how Registrant's objections to Petitioners' vague, speculative questions which indisputably called for legal conclusions were not legitimate. Petitioners' reliance on *Levi Strauss & Co. v. R. Josephs Sportswear Inc.* therefore supports Registrant—there, the Board allowed an adverse inference because counsel's instructions to multiple witnesses "not to answer most of applicant's questions" were "not well taken." 28 USPQ2d 1464, 1466-67 (TTAB 1993). Here, Registrant's objections were well taken, and Petitioners' failure to offer any argument as to why the objections were not well taken waives this argument. *See SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006) ("arguments not raised in the opening brief are waived"). ***Third***, in any event, any response would not be an admission of Mr. Cooke's own views, nor those of a substantial composite of Native Americans, but rather his "belie[f]" as to what unidentified "reasonable minds could … conclu[de]." Pets. Br. [Dkt. 177] at 34.

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Indicative of such respect is Registrant's representation of Native Americans in a "reserved and tasteful" manner.[111] For instance, Mr. Cooke considers cartoons and caricatures of Native Americans to be "inappropriate" representations of the team and its image that "do[] not portray the club as we would like to have it portrayed."[112] Registrant's respectful intent in both the adoption and usage of the team name is illustrated by traditional portraits of distinguished Native American tribal chiefs on game program covers in the 1950s and 1960s: these portraits are tasteful and dignified.[113] Likewise, the Native American profile featured in the team logo is a respectful and serious cultural portrayal. Registrant is thus no different from other sports teams that traditionally adopt positive, powerful namesakes and images.[114] "[T]he nature of a trade mark for the purpose of Section 2(a) may properly be determined from the associations conveyed by the word used as the mark in connection with the goods with which it is used." *Doughboy Indus., Inc. v. The Reese Chem. Co.*, 88 USPQ 227, 228 (Chief Examiner 1951). When used in connection with professional football games, the word "Redskins" bears only positive associations.[115] As articulated by a fan of Ottawa Indian descent, "After all, does one name a team because one wants that team to be losers, or cowards, or idiots? NOT!"[116] Indeed, it defies common sense to think that an organization in the business of providing entertainment services would select an insulting trade name. *See Hershey*, 6 USPQ2d at 1472 (Cissel, J.,

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[111] Cooke Dep., Mar. 27, 1996 [Dkt. 155] at 141; *see id.* at 139-141, 144-62.

[112] Cooke Dep., Mar. 27, 1996 [Dkt. 155] at 141; *see id.* at 139-141, 144-62.

[113] *See* PFIB-TTAB-000264-75 [Dkt. 142]; *see also* PFIB-TTAB-000262 [Dkt. 142] (tribal leader "ha[s] been impressed in the manner in which the Washington Redskins have portrayed the American Indian"); Dep. of Richard Vaughan, Mar. 28, 1996 at 93 (referencing positive letter from Indian leader).

[114] Indeed, Registrant's positive use of the name "Redskins" serves further to build upon the already positive associations with the word "redskin." *See* PFIB-TTAB-000154 [Dkt. 129] [Butters Report]. "The use of a nickname as the label for a sports team in the U.S. effectively elevates the connotations on a nickname because of the veneration and passionate devotion which Americans have for 'their' sports teams." *Id.*; *see also Takada*, 171 USPQ at 109 *followed in In re Condas*, 188 USPQ at 544 ("the use of the word 'JAP' [for clothing] has been enhanced and popularized by its association with the respondent").

[115] *See* Nunberg Dep., Feb. 19, 1997 [Dkt. 82] at BLA-TTAB-04240 (noting positive images of team).

[116] PFIB-TTAB-000302 [Dkt. 142]; *see also* PFIB-TTAB-000285-6 [Dkt. 142] at 2 (Chief of Choctaw Nation of Oklahoma "admire[s]" team because of positive attributes that "Indian people can be proud to be identified with"); PFIB-TTAB-000278-9 [Dkt. 142]; PFIB-TTAB-000282 [Dkt. 142] (Inter-Tribal Council resolution states that the team name embodies "positive image").

concurring) ("If [the mark] were actually so offensive, people simply would not purchase products bearing it."). This truism has been recognized as well by Registrant's expert linguist, Dr. Butters.[117]

Furthermore, neither Registrant nor any team member has ever engaged in behavior perceived as denigrating Native Americans. In Geoffrey Nunberg's in-depth review of years of newspaper articles, he found no article where a team spokesperson attempted to disparage Native Americans.[118] What Petitioners persist in describing as mockery by the team, *see* Pets. Br. [Dkt. 177] at 37-40, 47, are thematic acts and symbols that draw upon and reflect Native American culture and traditions. The evolving steps that Registrant has taken properly to present these traditions are indicative of Registrant's respect. Indeed, that Registrant never took a similar initiative with the team name reflects the ***absence*** of a groundswell of Native American opposition to the word "Redskins."

The sole evidence in the record of specific analysis of the word "Redskins," as used on the critical dates and in connection with Registrant's services, is the ***very fact*** that the trademarks at issue were registered, without any issue-laden review by Examining Attorneys and without any third-party opposition. *See Harjo*, 68 USPQ2d at 133 n.30, 1255 n.34. The approval for publication by the Examining Attorneys, who separately evaluated and approved each of the challenged registrations at the time the applications were filed, constitutes compelling evidence that the "Redskins" mark was not disparaging as of the filing dates. *See id.* at 1253 n.30; *see also id.* at 1255 n.34 (also probative of no disparagement is that no oppositions were filed against the marks and that the registrations were renewed). This evidence is the most direct proof in the record of then-current perceptions of the name "Redskins." *See id.* As the sole evidence of record of specific,

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[117] *See* PFIB-TTAB-000690-91 [Dkt. 151] [Butters Rebuttal Report]; PFIB-TTAB-000154 [Dkt. 129] [Butters Report].

[118] *See* Nunberg Dep., Feb. 19, 1997 [Dkt. 82] at 468. The actions of fans are irrelevant, because they cannot be attributed to Registrant. *See Harjo*, 68 USPQ2d at 1254-55; *Harjo*, 50 USPQ2d at 1747; *see also* PFIB-TTAB-000276 [Dkt. 142] (stressing that Zemma Williams, "Chief Z," is ***not*** team's official mascot); PFIB-TTAB-000277 [Dkt. 142] (same); Cooke Dep., Mar. 26, 1996 [Dkt. 154] at 119 (same). As acknowledged by Jesse Witten, Petitioners' counsel, "We know the vast majority of team's fans aren't racist...." Catherine Ho, *Legal battle over Redskins' name continues* (September 6, 2012), http://www.washingtonpost.com/blogs/capital-business/post/legal-battle-over-redskins-name-continues/2012/09/06/9b80a502-f7ac-11e1-8398-0327ab83ab91_blog.html.

contemporaneous analysis of the word as used by Registrant, the unproblematic acceptance of Registrant's applications is due great weight.

4. *Native Americans Support the Team Name*

The record here is replete with factual evidence that Native Americans, including tribal chiefs and recognized leaders, react positively to "Redskins" as used to denote the NFL's professional football team from Washington, D.C. The Board has recognized the value, to the ultimate determination of whether or not the challenged mark violates Section 2(a), of factual evidence comprising reactions of persons in the allegedly disparaged group. *In re Hines*, 32 USPQ2d at 1376 (views of Buddhists dispositive); *see also In re Waughtel*, 138 USPQ 594, 595 (TTAB 1963) (stressing significance of affidavits of two Amish men stating that religious tenets of Amish sect do not forbid cigars or tobacco). Significantly, in *In re Hines*, the Board vacated its initial refusal of applicant's "BUDDHA BEACHWEAR" mark in light of later-submitted "evidence showing that persons in the Buddhist community do not consider applicant's mark to be disparaging." 32 USPQ2d at 1376.

Native Americans recognize the goodwill and positive attributes that accompany the team name "Redskins."[119] The Chief of the Choctaw Nation of Oklahoma has observed that he "admire[s]" the Washington Redskins ''because they are winners, leaders, and producers, attributes the Indian people can be proud to be identified with."[120] As expressed by a fan of Ottawa Indian descent, "When I cheer for my team its [*sic*] because I want them to be brave, strong, good, honest and true, and above all—WINNERS."[121] That many Native Americans not only advocate retention of the "Redskins" name,[122] but also avidly support the team,[123] further demonstrates that the word, when used in the context of professional football, *see supra*, is not

[119] *See* PFIB-TTAB-000280-309 [Dkt. 142].

[120] PFIB-TTAB-000285-86 [Dkt. 142] at 2; *see also* PFIB-TTAB-000287 [Dkt. 142] (Principal Chief of the Seminole Nation of Oklahoma proud of team's use of "Redskins").

[121] PFIB-TTAB-000302 [Dkt. 142].

[122] *See* PFIB-TTAB-000280-309 [Dkt. 142].

[123] *See* PFIB-TTAB-000293 [Dkt. 142] ("the great majority of American Indians consider the Redskins their team"); PFIB-TTAB-000297 [Dkt. 142] (many Native Americans in New Mexico support team).

disparaging. *See In re Hershey*, 6 USPQ2d at 1472 (Cissel, J. concurring) ("If [the mark] were actually so offensive, people simply would not purchase products bearing it.").

On January 16, 1992, Inter-Tribal Council, Inc. (the "Inter-Tribal Council"), representing Native Americans in Northeast Oklahoma, issued a resolution supporting the team's use of the name "Redskins."[124] Signed by the Chiefs of the Miami Tribe of Oklahoma, the Ottawa Tribe of Oklahoma, the Modoc Tribe of Oklahoma and the Peoria Tribe of Oklahoma and by a representative of the Seneca-Cayuca Tribe of Oklahoma, the resolution "congratulate[d] the Washington Redskins on their accomplishments thus far this year, and support[ed] their use of the team name 'Redskins'—as a positive image depicting Native American culture and heritage."[125] The Board of Directors of the Inter-Tribal Council expressed its belief "that such positive depictions of people of Native American heritage can only further and better the overall perceptions held by the general public toward Native Americans."[126] Other Native American chieftains and tribal members echo these sentiments. In the words of the Chairman of the Tulalip Tribes in Western Washington: "Many of us are proud that sport teams use us and our symbols to represent them. We feel that teams represented by Indians will have a power and spirit not shared by other teams. Also we tend to root for teams represented by Native American symbols."[127] The elected Tribal Leader of the Soboba Band of Mission Indians "ha[s] been impressed in the manner in which the Washington Redskins have portrayed the American Indian."[128]

Numerous other tribal chiefs and leaders, speaking on behalf of their respective Native American Nations, as well as many individual Native Americans, share the "feel[ing] that [the] use of the 'Redskins' as

[124] *See* PFIB-TTAB-000278-79 [Dkt. 142]; PFIB-TTAB-000282-83 [Dkt. 142].

[125] PFIB-TTAB-000278-79 [Dkt. 142]; PFIB-TTAB-000282-83 [Dkt. 142].

[126] PFIB-TTAB-000278-79 [Dkt. 142]; PFIB-TTAB-000282-83 [Dkt. 142].

[127] PFIB-TTAB-000280-81 [Dkt. 142].

[128] PFIB-TTAB-000284 [Dkt. 142].

mascot should be viewed as a source of pride."[129] Native American support for the team name is also tangibly evidenced by the Sioux Indians' officially welcoming Charlie Malone, a player on the Washington Redskins, into the tribe in 1940 through a traditional, formal ceremony.[130] The unity between Native Americans and the team is reflected also by Eagle Day, a Cherokee Indian, joining the team in 1959.[131] That Native Americans consider "Redskins" an acceptable, purely denotative term is perhaps best illustrated by a display in the Plains Indian Museum, located in Cody, Wyoming and run by Native American elders and scholars.[132] In its "Indians Today" section, the museum includes a Washington Redskins pennant.[133]

Petitioners have not proven by any standard that their position represents the views, in 1967 and the other relevant dates, of a majority of Native Americans or even a significant number, let alone a substantial composite. *Harjo*, 68 USPQ2d at 1253 n.32. The Board has rejected a similar challenge under Section 2(a) explicitly for want of such proof. *See In re Mavety*, 31 USPQ2d at 1926. Even the "irrelevant" NCAI resolution, *Harjo*, 68 USPQ2d at 1255, adopted in 1993—the same time period as the letters written by tribal leaders in support of the team name—was not authorized or approved by tribal chiefs. Significantly, in 1967, the NCAI (an organization with only two employees) had not adopted any policy nor taken any position opposing Registrant's initial, or later, registration(s). *See id.* at 1255 n.34. The 1972 meeting with Mr. Gross and seven Native Americans hardly amounts to a convincing showing that a substantial composite opposed the team name;[134] at most, it reflects that the controversy has existed over time.[135] *See Harjo*, 68 USPQ2d at

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[129] PFIB-TTAB-000287 [Dkt. 142] (Jerry B. Haney, Principal Chief, Seminole Nation of Oklahoma); *see also* PFIB-TTAB-000288-92 [Dkt. 142]; PFIB-TTAB-000293-309 [Dkt. 142].

[130] *See* PFIB-TTAB-000310 [Dkt. 142].

[131] *See* PFIB-TTAB-000311-12 [Dkt. 143].

[132] *See* PFIB-TTAB-000583 [Dkt. 149].

[133] *See* PFIB-TTAB-000583 [Dkt. 149].

[134] 7 (Gross group) + 2 (NCAI) = a sum total of ***9*** individual Native Americans whose feelings against the team name date from the relevant time periods.

[135] Similarly, that the November 20, 1972 NFL publication *The Redskin Edition of Pro! Magazine* noted the existence of Native Americans' opposition to the name shows simply that there was a difference of opinion on this issue, but not, as Petitioners would have it, *see* Pets. Br. [Dkt. 177] at 18, that a substantial composite shared those sentiments at that time. Nor does the mere reporting of this ***one individual***'s views and ***his***

(*footnote continued*)

1255 (noting same with regard to newspaper accounts). By contrast, the lack of formal opposition between 1967 and 1990 to registration of the marks, s*ee id.* at 1255 n.34, as well as to the popularly nicknamed "Redskin" motorcycle,[136] constitutes powerful evidence of the word's innocuous and non-disparaging meaning. It also likely explains why Petitioners' trial brief is woefully short on proof concerning Native Americans' negative feelings concerning the "Washington Redskins" name during this relevant time period.

> The tribal leader of the Soboba Band of Mission Indians has expressed his
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> > discourage[ment] [in] watch[ing] the national press listen to people who have attacked the Washington Redskins in the name of the Indian people without first talking to the elected tribal leadership. This unfortunately has been the history of Indian people: outsiders talking and deciding for the Indian people without being elected to do so.[137]

Indeed, Petitioners concede that they speak only for themselves and not on behalf of or with the support of any tribe.[138] Nor are Petitioners aware of anything approximating a substantial composite of Native Americans who oppose the team name "Redskins."[139]

The true nature of the Petition is that it is but the voice for the personal sentiments of a mere five individuals—a far cry from the views of a substantial composite, or even a majority,[140] of Native Americans in this country.[141] The 1995 Federal Register of recognized Native American tribal entities reveals there to be

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powers of persuasion indicate an admission by Registrant as to the merits of ***his*** opinion. *Id.* at 35 (misleadingly attributing the arguments recited in the article to "Native Americans"—plural—when the actual article singularly discussed Mr. Russell Means, stating simply that ***he*** "may have ***his*** day") (emphasis added).

[136] *See* PFIB-TTAB-000718-29 [Dkt. 152].

[137] PFIB-TTAB-000262 [Dkt. 142].

[138] *See, e.g.*, Pappan Dep. [Dkt. 112] at 120 ("Today, I'm representing myself."); Tsotigh Dep. [Dkt. 115] at 9 (does not know if Kiowa Tribe supports her claims and never sought to obtain its approval).

[139] *See* Pappan Dep. [Dkt. 112] at 120 (identifying only the original six Petitioners and the seven *Harjo* petitioners who oppose the name); Tsotigh Dep. [Dkt. 115] at 134-36 (only two Native Americans have expressed to her a belief that the "Redskins" team name is disparaging); Gover Dep. [Dkt. 120] at 181-84 (identifying only his father and three other Native Americans who oppose the team name).

[140] The District Court suggested that, at the very least, a substantial composite means a majority. *See Harjo*, 68 USPQ2d at 1253 n.32.

[141] Petitioners have been unable to furnish proof to the contrary. As discussed in depth *supra*, Ivan Ross admits that his survey affords absolutely no indication of how the term "Redskins" is perceived when used to denote the NFL's professional football team and that he has no scientific basis to express an opinion on this
(*footnote continued*)

over five hundred official tribes throughout the U.S.[142] As Petitioner Pappan concedes, Native Americans living outside of reservations (plainly a substantial number) have been more assimilated into "modern" (non-Native-American) culture and thus are (and were at the times in question) less likely to view the team name "Redskins" as disparaging.[143] Indeed, the results of the Ross Survey show that a substantial composite of Native Americans do ***not*** consider the word "redskin" offensive as a referent for a Native American person. *Harjo*, 68 USPQ2d at 1253 n.32 (finding 36.6% ***not*** to be a substantial composite).[144] Petitioners have not provided the Board with any other evidence of any polls or studies of any Native American tribes and no survey evidence ***at all*** of Native American perceptions of the team name.[145] Petitioners have therefore failed to satisfy their burden of proof, and, accordingly, the Petition should be dismissed.

B. The Word "Redskin" Is Not Disparaging *Per Se*

Even divorced from the context of Registrant's entertainment services, the word "redskin" did not, and does not, disparage Native Americans.[146] The Trademark Examiners who contemporaneously reviewed and analyzed each of the subject marks most likely consulted dictionaries, and probably other sources

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fundamental issue. *See* Ross Dep., Dec. 12, 1996 [Dkt. 96] BLA-TTAB-03184 at 67; Ross Dep., Feb. 20, 1997 [Dkt. 82] BLA-TTAB-04313-14 at 324-5, 330, 359-66.

[142] *See* PFIB-TTAB-000692-98 [Dkt. 151].

[143] *See* Pappan Dep. [Dkt. 112] at 123-26.

[144] The District Court also held that 36.2% was the appropriate figure, because "extrapolat[ing] the [general-population] survey results to the Native American population" was methodologically improper. *Harjo*, 68 USPQ2d at 1245; *see also id.* at 1250-51.

[145] Notably, there are surveys that suggest ***the opposite***—albeit reflecting the best evidence of ***contemporary*** attitudes and thus not relevant to a determination of the views of Native Americans at the relevant time periods. For example, a survey conducted in 2003 and 2004 by the National Annenberg Election Survey found that in response to the question "The professional football team in Washington calls itself the Washington Redskins. As a Native American, do you find that name offensive or doesn't it bother you?", 90% of Native Americans surveyed (which consisted of 768 Native Americans across 48 states) responded "no." Pappan Dep., Ex. 10 [Dkt. 114]; *see also* Pappan Dep., Ex. 11 [Dkt. 114] at 4 (*Sports Illustrated* survey of Native Americans found that 75% of respondents reported not being "offended" by the name "Redskins" for the team name); PFIB-TTAB-00055-80 [Dkt. 149] (WTOP radio station's 1993 telephone survey of Native American tribal leaders in North America show that 72% of them do not find team name "offensive").

[146] Registrant notes that "the TTAB rejected [the *Harjo* petitioners'] argument that the use of Native American references or imagery by non-Native Americans is *per se* disparaging to Native Americans," *Harjo*, 68 USPQ2d at 1248 n.26 (citing *Harjo*, 50 USPQ2d at 1743). Petitioners did not appeal this finding. *Id.*

containing and concerning the word "redskin," to inform their ultimate determination that the matter in Registrant's applications was appropriate for registration. *Harjo*, 68 USPQ2d at 1253 n.30. That they approved all the applied-for marks, at all the relevant dates, indicates that "redskin" as denoting a Native American was an acceptable referent. *Id.* Additional evidence of the word's acceptability is that public perceptions at the time did not result in any opposition being filed against any of the subject registrations, until the *Harjo* petitioners in 1992.[147] *See id.* at 1255 n.34.

1. *Dictionary Evidence*

Dictionaries from the relevant time period evidence such contemporary attitudes. The absence of negative editorial labels used with the term "redskin" indicates that the word was considered not disparaging and was used simply as a synonym for Native American. While not reflecting the considerations of Native Americans exclusively, *id.* at 130, editorial designations in the form of dictionary usage labels can be valuable indicators of contemporary perceptions of a particular word at a particular point in time, if the editors were thorough in their analysis of the term. *See In re In Over Our Heads*, 16 USPQ2d at 1654 n.4 (citing absence of negative labels for "MOONIES").

Dictionaries extant in 1967 and 1974, when Registrant's earlier registrations issued, typically do not contain any usage label for the word "redskin," indicating the term in general to be unremarkable and not disparaging.[148] Even Petitioners' linguistics expert acknowledges that prior to 1974, dictionaries did not attach any negative usage label to the word "redskin" as a reference for Native Americans.[149] Both *Webster's New American Dictionary* (1965 ed.) and the *World Book Dictionary* (1967 ed.) define "redskin" simply as "North American Indian." This treatment of "redskin" in the abstract as a neutral ethnic identifier continued throughout the 1970s and into the 1980s, as is demonstrated by the persistent absence of negative editorial

[147] Similarly, Petitioner Tsotigh was aware of the use of "Redskins" as the team name by the high school of which her father was a principal, yet neither father nor daughter took any steps to protest the name, nor is she aware of any meeting having been held to review or change the name. *See* Tsotigh Dep. [Dkt. 115] at 74-76.

[148] *See* PFB-TTAB-000088-91 [Dkt. 128].

[149] *See* Nunberg Dep., Dec. 17, 1996 [Dkt. 83] at BLA-TTAB-03002.

designations.[150] One usage label employed during that period, "informal,"[151] is itself a neutral descriptive.[152] The dictionary evidence dating back to 1965 demonstrates that, at the critical dates of Registrant's early registrations (the team name having first been introduced to the public as a trademark for professional football over three decades earlier), the word "redskin" was simply a neutral synonym for "Native American."[153]

Although the *Random House Dictionary* (1966, 1968) and the *Thorndike-Barnhart Intermediate Dictionary* (1974) employed the usage label "often offensive" or "often considered" offensive,[154] Section 2(a) of the Lanham Act does not include "offensive" as grounds for prohibiting registration.[155] *See Harjo*, 68 USPQ2d at 1251. Moreover, the District Court, echoing the position of Registrant's lexicography expert David Barnhart, the associate editor for the above-referenced *Thorndike-Barnhart Dictionary*, found that the explicit inclusion in usage labels of the qualifier "often" indicates that the word is not ***always*** offensive.[156] The "often" qualifier points to the need independently to evaluate each use of the defined term in light of ***its context***.[157] *See* May 31 Order [Dkt. 40] at 10. As the District Court went on to stress, one such context is professional football, which could account for instances wherein the term is ***not*** offensive. *Harjo*, 68

[150] *See* PFIB-TTAB-000092-107 [Dkt. 128].

[151] PFIB-TTAB-000094-107 [Dkt. 128].

[152] *See* Barnhart Dep., Dec. 19, 1996 [Dkt. 159] at 135 (testifying that the ***only*** difference in meaning between "redskins" and "Native Americans" or "American Indians" is that "redskins" is "more informal"—with "absolutely [no] additional shade of difference in the meaning" (responsive testimony and question, respectively)); *The American Heritage Dictionary* (1969 ed.) (defining "informal" as "belonging to the usage of natural spoken language but considered inappropriate in certain cultural contexts, as in the standard written prose of ceremonial and official communications").

[153] *See* PFIB-TTAB-000117-19 [Dkt. 129] [Barnhart Report]; Barnhart Dep., Dec. 19, 1996 [Dkt. 159] at 46-50; Butters Dep., Dec. 20, 1996 [Dkt. 163] at 37-39.

[154] *See* BLA-TTAB-00163-68 [Dkt. 62]; BLAT-TTAB-00172-73 [Dkt. 63]; PFIB-TTAB-000118 [Dkt. 129] [Barnhart Report].

[155] As explicitly recognized by the District Court, "offensive" and "disparaging" have very different meanings. *See Harjo*, 68 USPQ2d at 1251-52. The *Harjo* expert linguist Geoffrey Nunberg has admitted this distinction. Nunberg Dep., Dec. 17, 1996 [Dkt. 83] at BLA-TTAB-02955. Addressing this key difference, Registrant's linguistics expert notes that the "recent, sporadic" use of the dictionary label "offensive" is "of dubious value" and in no way supports the assertion that the word is "disparaging." PFIB-TTAB-000144 [Dkt. 129] [Butters Report].

[156] *See* PFIB-TTAB-000138-40 [Dkt. 129].

[157] *See* PFIB-TTAB-000138-40 [Dkt. 129]; PFIB-TTAB-000119 [Dkt. 129] [Barnhart Report].

USPQ2d at 1251-52. Indeed, Petitioner Gover concedes this point, acknowledging the importance of context as an explanation for his own use of the word "Redskins" in connection with the team.[158] The District Court conclusively ruled that the dictionary evidence was insufficient to support Petitioners' position, and so should the Board here. *Id.* at 1251-52.

2. *Literary and Scholarly Uses*

Literary and cinematographic uses of "redskin" as an ethnic denotator similarly reflect usage of the term as a neutral term synonymous with "Native American."[159] The record is replete with illustrative examples of both this natural, neutral meaning of "redskin" and the acceptability to Native Americans of related ethnic "red" terms. In Pickett's *Redskin*, the author writes, "And now you shall wander forever alone, tribeless, neither good Indian nor white man—***just Redskin***!"[160] Here, "***Redskin*** contrasts with ***Indian*** in a way that makes it clear that ***Redskin*** is understood absolutely literally, as the color of the skin of the Native American, emblematic of biological race stripped entirely of culture and social identity…. A ***Redskin*** is thus just a person whose skin is 'red' and nothing more."[161] Likewise, in *Ulysses*, the pointed contrast between "white-livered Saxons" and "redskins"[162] emphasizes the literal denotation of the word. Similarly, in *The Last of the Mohicans*, Cooper's use of "redskins" with terms such as "white" and "palefaces"[163] makes clear the neutrality of the term. Thus, including from the viewpoint of Native Americans, the use of "red" as an ethnic

[158] Gover Dep. [Dkt. 120] at 115 (regarding his posting of a Facebook message referring to the "Redskins O-line," stating "I would say [context] probably did [matter]."); *see also* Tsotigh Dep., [Dkt. 115] at 129-30 ("how [Mr. Gover's] using it's not offensive").

[159] *See* PFIB-TTAB-000138-40 [Dkt. 129]; PFIB-TTAB-000171-240 [Dkt. 175]; *see also* PFIB-TTAB-000114-16 [Dkt. 129] [Barnhart Report]; PFIB-TTAB-000146-51 [Dkt. 129] [Butters Report]; Butters Dep., Dec. 20, 1996 [Dkt. 163] at 170-75.

[160] PFIB-TTAB-000201 [Dkt. 175] (emphasis in original).

[161] PFIB-TTAB-000167 [Dkt. 129] [Butters Notes] (emphasis in original).

[162] *See* PFIB-TTAB-000138-40 [Dkt. 129].

[163] PFIB-TTAB-000114-15 [Dkt. 129] [Barnhart Report] (quoting *The Last of the Mohicans* 28, 90, 102).

classification is entirely acceptable and non-disparaging, and the word "redskin" is but a natural, literal extension of this core prefix.[164]

Petitioners' argument that the violent framework within which the word "redskin" appears, often with negative modifiers,[165] evidences the term's disparaging nature, connotative of savagery, *see* Pets. Br. [Dkt. 177] at 23-28, is inherently flawed.[166] That "redskin" may be employed in connection with warfare is but a reflection of the troubled history of Native Americans,[167] not of any negative connotation inherent in the term itself.[168] Indeed, the District Court reached this very conclusion. *Harjo*, 68 USPQ2d at 1252 n.29. Further, in all the examples cited by Petitioners, *see* Pets. Br. [Dkt. 177] at 24-26, the word "Indian" could be substituted for "redskin"—in fact, in ***all but one*** of the quoted examples, ***both words are present together***—and would in no way alter the contextual meaning.[169] *Id.*[170] Although Petitioners profess to be able to read the minds of the authors who have employed the word and thereby conclude that the literary decision to use "redskin" instead of "Indian" turned on linguistic connotation, Petitioners are unable to substantiate this baseless supposition with any evidentiary proof.[171] *Id.*

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[164] PFIB-TTAB-000146 [Dkt. 129] [Butters Report].

[165] The very need for an unflattering adjective to modify "redskin" demonstrates the word's neutral, unoffensive meaning; the operative pejorative term is the adjective, not the noun. *See* PFIB-TTAB-000166-67 [Dkt. 129] [Butters Notes].

[166] PFIB-TTAB-000685-87 [Dkt. 151] [Butters Rebuttal Report]; Butters Dep., Dec. 20, 1996 [Dkt. 163] at 157-58; Butters Dep., Apr. 10, 1997 [Dkt. 163] at 230-31.

[167] The word "redskin" is not always employed in connection with violence. Contrary to Petitioners' contentions, "there ***are*** clearly nonpejorative uses of *Redskin* which [Petitioners' expert] simply ignores." PFIB-TTAB-000689 [Dkt. 151] [Butters Rebuttal Report].

[168] *See* Butters Dep., Apr. 10, 1997 [Dkt. 163] at 230-31; PFIB-TTAB-000251-54. [Dkts. 175, 142].

[169] Likewise, Petitioners' anecdotal evidence of personal instances of discrimination involving the word "redskin" arguably could be illustrative of certain individuals' negative treatment of Native Americans, ***but not*** of any derisive connotation intrinsic to the word "redskin." *See, e.g.*, Pappan Dep. [Dkt. 112] at 176-77. Had another neutral word such as "Indian" or even "Native American" been used in the same situations, with the same intonation, the negative message perceived by Petitioners would have been no different.

[170] *See also* Butters Dep., Apr, 10, 1997 [Dkt. 163] at 230-31; Butters Dep., Dec. 20, 1996 [Dkt. 163] at 157-58; PFIB-TTAB-000251-54 [Dkts. 175, 142] (illustrating interchangeability of "redskins" and "Indians").

[171] Likewise, they are unable to substantiate their argument that newspapers after 1982—outside the majority of relevant years—ceased using "redskins" to denote Native Americans because it was disparaging. Pets. Br. [Dkt. 177] at 21-23, 45. Petitioners force a nexus between a word's falling into disuse and assumptions about

(*footnote continued*)

The interchangeability of "redskin' with words such as "Native American" or "Indian" is reflected throughout literature. Far from disparaging or denigrating Native Americans, the frequent use of "redskin" in American literature indicates that the word was an entirely acceptable synonym for "Native American."[172] In *Ulysses*, James Joyce creates dialogue in which "the white livered Saxons" were told "there would soon be as few Irish in Ireland as redskins in America."[173] Philip Rahv's famous literary classification of American authors into two polar groupings—palefaces and redskins, which includes such distinguished authors as Walt Whitman and Mark Twain—further exemplifies the ordinariness of "redskins" as denotative of Native Americans and, by figurative extension, representative of such attributes as virility, strength and independence.[174]

The use of "redskin" as the title of both a novel by Elizabeth Pickett, *Redskin*, and the film version of that novel, produced by Paramount Pictures, "indicates strongly that the term is not intended to be derogatory or disparaging."[175] The novel presents a sympathetic view of Native Americans and tribal culture and, significantly, uses the term "redskin" throughout the text as an "informal synonym for the generic Indian."[176] Indeed, the author's application of "Redskin" consistently reflects sentiments of pride and affection.[177]

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its negative connotations. *See Harjo*, 68 USPQ2d at 1252 (criticizing similar missing link between historical writings and assumptions of disparagement).

[172] *See* PFIB-TTAB-000114-16 [Dkt. 129] [Barnhart Report]; PFIB-TTAB-000141-56 [Dkt. 129] [Butters Report] at ¶ 18; PFIB-TTAB-000166 [Dkt. 129] [Butters Notes].

[173] PFIB-TTB-000138-40 [Dkt. 129].

[174] *See* PFIB-TTAB-000210-40 [Dkt. 175]; PFIB-TTAB-000149-50 [Dkt. 129] [Butters Report].

[175] PFIB-TTAB-000180-209 [Dkt. 175] [novel]; PFIB-TTAB-000166 [Dkt. 129] [Butters Notes].

[176] PFIB-TTAB-000166 [Dkt. 129] [Butters Notes]; *see also* PFIB-TTAB-000190-91, 91, 95, 205 [Dkt. 175].

[177] *See* PFIB-TTAB-000190-91, 92, 95 [Dkt. 175]; PFIB-TTAB-000166 [Dkt. 129] [Butters Notes]. The title song of the book's motion picture version, of which the lyrics appear in the prefatory material preceding the first chapter of the novel, *see* PFIB-TTAB-000183 [Dkt. 175], plainly uses ''Redskin" in a positive manner, *see* PFIB-TTAB-000166 [Dkt. 129] [Butters Notes]. The hero, who throughout the novel is closely associated with the word, "is, indeed, the 'Redskin' of the title song, a love song … [in which] the speaker speaks tenderly and longingly for her beloved Redskin." PFIB-TTAB-000166 [Dkt. 129] [Butters Notes].

Similarly, the positive use of "redskin" is illustrated as well in such renowned works as James Fenmore Cooper's *The Last of the Mohicans*,[178] and in Cooper's novel entitled *The Redskins*.[179]

3. ***Expert Conclusions on Neutrality of the Term***

Even Petitioners' linguistics expert does not provide support for their position. Geoffrey Nunberg admits that there are instances where "the use of the word 'redskin' is positive, negative or neutral."[180] Furthermore, Geoffrey Nunberg also concludes, from dictionary evidence, that prior to 1974 "redskin" was not considered by dictionary editors to be a negative term.[181]

Dr. Butters and Mr. Barnhart, linguistics experts who provided comprehensive reports[182] and testimony in this proceeding, conclude that the word "redskin" is not now, nor has ever been, disparaging. Both experts base their findings on considerable professional experience[183] and extensive scientific research,

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[178] *See* PFIB-TTAB-000114-15 [Dkt. 129] [Barnhart Report] (citing *The Last of the Mohicans* 28, 76, 90, 102, 123, 145-46 (Dodd and Mead ed., 1979)).

[179] *See* PFIB-TTAB-000115-16 [Dkt. 129] [Barnhart Report] (citing *The Redskins* (1846)); PFIB-TTAB-000146-47 [Dkt. 129] [Butters Report].

[180] Nunberg Dep., June 17, 1997 [Dkt. 109] at BLA-TTAB-06988.

[181] *See* Nunberg Dep., Dec. 17, 1996 [Dkt. 83] at BLA-TTAB-03002.

[182] *See* PFIB-TTAB-000108-34 [Dkt. 129] [Barnhart Report]; PFIB-TTAB-000141-56 [Dkt. 129][Butters Report]; PFIB-TTAB-000684-91 [Dkt. 151] [Butters Rebuttal Report].

[183] *See* PFIB-TTAB-000135-37 [Dkt. 129]; PFIB-TTAB-000157-65 [Dkt. 129]. Dr. Butters, an emeritus professor and former chair of the Department of English at Duke University ("Duke"), holds a Ph.D. in English with a concentration in linguistics. PFIB-TTAB-000157-65 [Dkt. 129]. He has been a member of Duke's prestigious English Department for forty-five years and was a recipient of a 1986 Fulbright award for teaching at the University of Bamberg in Germany. He has also taught as a visiting professor at Aston University in England, Pompeu Fabra University in Spain, and Cadi Ayyad University in Morocco. *Id.* Dr. Butters is the former General Editor of the American Dialect Society publications and member of the Editorial Board of the *International Journal of Speech, Language, and Law*. *Id.* He was the editor of *American Speech* from 1981–1995. Dr. Butters is widely published in the field of linguistics. *Id.* His publications alone number in excess of one hundred, not inclusive of his numerous papers read at scholarly conferences and universities worldwide. *Id.* Dr. Butters participates in many professional activities: he has served as an Advanced Placement Examination reader in English Literature for the Educational Testing Service and is a member of the Advisory Board of the Linguistic Atlas of the Middle and South Atlantic States. *Id.* Dr. Butters has served, as chairman and consultant, on numerous linguistics committees and is a member of many prominent organizations, including the American Dialect Society (serving a term as president), the American Name Society, the Linguistics Society of America, and the International Association of Forensic Linguists, of which he is the immediate past president. *Id.*

Mr. Barnhart is a linguist with a specialty in lexicography; he is the editor and publisher for Lexik House publishers. PFIB-TTAB-000135-37 [Dkt. 129]. Mr. Barnhart has served as a general editor of *The Barnhart*

(*footnote continued*)

detailed *supra*. Dr. Butters notes that, by contrast, Petitioners' linguistics expert does not in any way link his claim that the word "redskin" is disparaging to research findings, thereby failing to substantiate his assertion.[184]

Both Dr. Butters and Mr. Barnhart conclude, based on their substantial expertise and on the clear evidence uncovered by their research, that the term "redskin" has, throughout history, been a purely denotative term, used interchangeably with "Indian."[185] Dr. Butters "take[s] vigorous issue with [the] allegation" that "redskins" is "a 'disparaging' term of reference for American Indian": the "casual prominence" of the term in twentieth century American writing indicates that "the word has always been, and continues to be, for the vast majority of speakers of American English a neutral synonym for *American Indian*."[186] Likewise, Mr. Barnhart, with his specific expertise in lexicography,[187] considers the absence of dictionary usage labels for the word to be highly significant.[188] "Of the twenty-eight dictionaries consulted

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Dictionary of New English since 1963, as well as the *Second* and *Third Barnhart Dictionaries of New English*. *Id.* He has also been a general editor for *The World Book Dictionary* and an associate editor for the Thorndike-Barnhart school dictionaries. *Id.* Mr. Barnhart has given numerous speeches at professional and scholarly meetings, including the National Council of Teachers of English, the Dictionary Society of North America, the National Council of Teachers of English, the Lexicography Society (Columbia University), and the Modern Language Association. *Id.* He has also addressed other organizations—universities, journalist groups and the United States Trademark Association—on the subjects of lexicography and, more broadly, linguistics. *Id.* He is the editor/publisher of *The Barnhart Dictionary Companion*—a quarterly journal in dictionary form treating new words and phrase. Mr. Barnhart has published many books, articles, and book reviews and has appeared as a guest speaker in numerous radio and television interviews. *Id.* His honors and appointments include service on the Board of Directors of the Dictionary Society of North America; Executive Council for the American Dialect Society; Vice President, President and Recording Secretary for the International Linguistic Association; and Chairman of the Modern Language Association's Lexicography Discussion Group. *Id.* He has been a board member of the Southeastern New York Library Resources Council. He has also served on the prestigious Commission on the English Language. *Id.*

[184] *See* PFIB-TTAB-000686-87 [Dkt. 151] [Butters Rebuttal Report].

[185] *See* Barnhart Dep., Apr. 9, 1997 [Dkt. 161] at 168, 181-83, 233-40, 244; Butters Dep., Dec. 20, 1996 [Dkt. 163] at 48, 143; Butters Dep., Apr. 10, 1997 [Dkt. 163] at 248.

[186] PFIB-TTAB-000142, 50-51 [Dkt. 129] [Butters Report]; *see also* Butters Dep., Apr. 10, 1997 [Dkt. 163] at 210-11.

[187] *See* PFIB-TTAB-000135-37 [Dkt. 129].

[188] *See* PFIB-TTAB-000121 [Dkt. 129] [Barnhart Report].

which appeared between 1966 and 1992, ten editors reported the term as 'Standard English.'"[189] As such, "redskin" is "acceptable in both formal and informal speech or writing of educated people," and "is universally acknowledged by lexicographers as referring to the North American Indian."[190]

4. ***Native Americans Use the Word "redskin"***

In addition to the direct proof that Native Americans approve of Registrant's marks, evidence from Native American reservations also shows that the word "redskin" is not disparaging. The term "redskin" is used on the Navajo Indian Reservation as both the nickname for the Red Mesa High School[191] and as a street name.[192] The Cherokee Indian Reservation features a "Redskin Motel,"[193] while Native Americans in Andarko, Oklahoma chose "Redskin" for their movie theater.[194] The word appears in the title of a 1991 article authored by one of the *Harjo* petitioners: "Commentary: Research, Redskins, and Reality."[195] Similarly, the word "skins" is used conversationally by Native Americans.[196]

III. PETITIONERS' CLAIMS ARE BARRED BY LACHES

Independent of Petitioners' failure to establish by a preponderance of the evidence that a substantial composite of Native Americans found the marks at issue, in the context of the services in which they are used, to be disparaging at the relevant time periods, the Petition should nonetheless be rejected because Petitioners'

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[189] PFIB-TTAB-000121 [Dkt. 129] [Barnhart Report].

[190] PFIB-TTAB-000121-22 [Dkt. 129] [Barnhart Report].

[191] PFIB-TTAB-000313-15 [Dkt. 143]; Blackhorse Dep., Exs. 6 & 7 [Dkt. 123] (wall of Red Mesa school gym states "Redskins Pride"); *see also* Briggs-Cloud Dep., Ex. 3 [Dkt. 121] at 1C (*Seminole Tribune* discusses basketball tournament in memory of Tribal citizens, with one team named the "Lady Redskins");

[192] PFIB-TTAB-000315-17 [Dkt. 143].

[193] PFIB-TTAB-000318-19 [Dkt. 143].

[194] PFIB-TTAB-000320-21 [Dkt. 143].

[195] PFIB-TTAB-000241-48 [Dkt. 175].

[196] *See* Blackhorse Dep., Ex. 8 [Dkt. 123] (email from initial petitioner Shquanebin Lone-Bentley to Ms. Blackhorse referring to a group of Native Americans as "the Southeastern Skins"); Tsotigh Dep. [Dkt. 115] at 131-32 ("the term 'skins' and 'Redskins' … is used amongst Native American").

claims are barred by laches.[197] To assert a defense of laches, Registrant must establish: (1) undue delay by Petitioners in asserting their rights, and (2) material prejudice to Registrant resulting from the delay. May 31 Order [Dkt. 40] at 12-13. The inquiry is one of degree—laches may arise even where only a "short period of time [has] elapse[d] between accrual of the claim and suit" if "the magnitude of prejudice … is great." *Id.* at 13. In short, the Board is to consider and balance the length of the delay, the seriousness of the prejudice, the reasonableness of the excuses, and Registrant's conduct. *Id.* at 18. Here, Petitioners unreasonably delayed, resulting in severe economic prejudice to Registrant.

A. Petitioners Unreasonably Delayed in Filing Suit

Petitioners unreasonably delayed in filing their Petition. "The length of time which may be deemed unreasonable has no fixed boundaries but rather depends on the circumstances." *Id.* at 15. Further, while the laches period for this proceeding began to run at the time each Petitioner reached 18 years of age, *id.* at 14-15, the Board may consider Petitioners' exposure to the marks at issue before they reached the age of majority as relevant to the reasonableness of any excuse for their delay. *See id.* at 15. And, of course, a Petitioner's ignorance or unawareness of the law is irrelevant to determining whether a delay was reasonable. *Harjo*, 68 USPQ2d at 1259 ("ignorance of one's legal rights is not a reasonable excuse in a laches case").

Because each Petitioners' delay must be evaluated separately, May 31 Order [Dkt. 40] at 14, Registrant addresses each in turn.

- ***Petitioner Blackhorse*** delayed 6 years, 5 months, and 22 days before filing the Petition. She has been aware of the marks at issue since grammar school,[198] but did not file more promptly because of a lack of knowledge about her legal right to do so.[199]

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[197] In their Trial Brief, as well as in a simultaneously filed motion for reconsideration, Petitioners re-argue that: (1) a laches defense is not available to Registrant; and (2) the Board should provide an advisory opinion on laches under the rejected *Harjo* standard. Pets. Br. [Dkt. 177] at 6, 48; Motion to Reconsider [Dkt. 178]. The May 31 Order is the law of the case for this proceeding, and Petitioners' re-argument of these issues should be rejected and sanctioned. *See* May 5 Order [Dkt. 39] at 4; Registration's Response to Petitioners' Motion to Reconsider the Legal Standard of Laches [Dkt. 180].

[198] Blackhorse Dep. [Dkt. 122] at 30-31 (saw the Washington Redskins on TV while in grammar school and knew there was a NFL team called the Washington Redskins). *See Harjo*, 68 USPQ2d at 1260 n.35 (knowledge of use of the team name sufficient to supply actual knowledge of marks at issue).

[199] Blackhorse Dep. [Dkt. 122] at 85-87 (no impediment to filing other than lack of knowledge).

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- ***Petitioner Gover*** delayed 5 years, 10 months and 10 days before filing. He has been aware of the marks at issue "[f]or as long as I can remember,"[200] but did not file more promptly because of a lack of knowledge about his legal rights.[201]

- ***Petitioner Briggs-Cloud*** delayed 4 years, 8 months and 11 days before filing. He has been aware of the marks at issue since childhood, but did not file sooner because he "didn't know the process."[202]

- ***Petitioner Pappan*** delayed 1 year, 3 months and 2 days before filing. She was aware of the marks at issue at least since she was 15 or 16, but did not file sooner because of a lack of knowledge about her legal rights.[203]

- ***Petitioner Tsotigh*** delayed almost a full year—11 months and 20 days—although she was aware of the marks at issue since she was 11 years old, had met and talked with Suzan Shown Harjo about the *Harjo* case before she turned 18, and nothing prevented her from filing sooner.[204]

As demonstrated, ***each*** Petitioner was aware of the marks well before turning 18, but Petitioner fail to offer offered a single excuse at all (let alone a reasonable excuse) for the delay in filing the instant Petition. Nor do Petitioners offer any reasonable excuse in their Trial Brief.[205] While Registrant does not posit that a Petitioner must file on the date of his or her eighteenth birthday to be timely, there certainly is no excuse for a Petitioner to have waited a full year—***a full football season's-worth of economic activity***—before filing. Indeed, the D.C. Circuit in *Harjo* affirmed a delay of only two years as being barred by laches, and the

[200] Gover Dep. [Dkt. 120] at 36. In addition, Mr. Gover had conversations with his father, a lawyer, about the *Harjo* proceeding and its consequences in 1999 or 2000. *Id.* at 42-43.

[201] Gover Dep. [Dkt. 120] at 38-39.

[202] Briggs-Cloud Dep. [Dkt. 110] at 45, 48-49 (aware "as a child," since 1992); *id.* at 62 ("I didn't know the process of [filing]").

[203] Pappan Dep., Ex. 1 [Dkt. 113] (Interrogatories) at 9 (first learned of use at 15 or 16); *id.* [Dkt. 112] at 82-83 ("I wasn't aware that I could [file].").

[204] Tsotigh Dep. [Dkt. 115] at 28-29 (aware since age 11); *id.* at 140-41 (at the time she turned 18, she had already met Ms. Harjo and discussed the case, and nothing prevented her from filing on that day).

[205] Petitioners provide only one purported excuse for delay in their brief—that because *Harjo* was pending, it would be "nonsensical" for them to have filed before *Harjo* had concluded, as that would have resulted in excessive petitions. Pets. Brief [Dkt. 177] at 49. It is Petitioners' argument that is nonsensical. ***First***, none of the Petitioners testified that this caused their delay. ***Second***, nothing prevents a petitioner from filing his or her own petition while another is pending—a failure to do so merely reflects a lack of legal awareness or a strategic choice. ***Third***, the District Court's laches decision was issued in September 2003, yet Petitioners waited three full years before filing the Petition—thus, even under Petitioners' own flawed logic, they still delayed three years, without excuse, before filing the Petition. ***Fourth***, Petitioners' position contravenes the law of the case. As the Board stated, "[l]aches runs from the time the petitioners reached the age of majority," May 31 Order [Dkt. 40] at 14, not from the completion of another proceeding involving separate petitioners.

District Court stressed that the petitioner "could have filed the cancellation petition immediately." *Pro-Football, Inc., v. Harjo*, 87 USPQ2d 1891, 1897 n.5 (D.D.C. 2008), *aff'd*, 90 USPQ2d 1593 (D.C. Cir. 2009). Finally, Suzan Shown Harjo enlisted Petitioners in a recruiting campaign to search for new petitioners who are "17 [or] soon to turn 18" to file a new petition,[206] demonstrating that it is possible for a group of petitioners to timely file. Because Petitioners provide no reasonable excuse for their delay, despite their longstanding actual knowledge of the registered marks before reaching the age of majority, the circumstances of this case establish a clear lack of diligence on Petitioners' part in pursuing their cancellation petition.

B. Petitioners' Unreasonable Delay Materially Prejudiced Registrant

As a result of Petitioners' unreasonable delay, Registrant has suffered material economic prejudice. As the Board has set forth, "[p]rejudice may be as simple as the development of goodwill built around a mark during petitioner's delay." May 31 Order [Dkt. 40] at 16. Registrant need not "prove with specific evidence" that it relied on Petitioners' delay; rather, "[e]conomic prejudice arises from investment in and development of the trademark." *Id* at 17.[207] The instant case constitutes the precise circumstances where even a relatively short delay is far outweighed by Registrant's enormous economic investment in and development of its marks, establishing Registrant's laches defense. *See* May 31 Order [Dkt. 40] at 13 (a short delay may satisfy laches when balanced against a "high magnitude" of prejudice). For example:[208]

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[206] *See, e.g.*, Pappan Dep. [Dkt. 114], Ex. 14 (Ms. Harjo sent e-mail to all Petitioners asking: "Do you know and can you recommend any Native person(s) who would like to be a plaintiff in the lawsuit who is now 17 and soon to turn 18?"); *id.*, Ex. 15 ("I'm making another request for your referrals for Native people who are 17 or who have just turned 18 … who would be interested in being a part of a lawsuit like ours."); *id.*, Ex. 17 ("We're stepping up the effort to find young Native people who soon will turn 18 or have just turned 18.").

[207] Petitioners claim that Registrant "cannot demonstrate that it would have acted differently" during the delay period and thus cannot show prejudice "resulting from" the delay. Pets. Brief [Dkt. 177] at 50 (citing May 31 Order at 12, 14, 15). Petitioners brazenly ignore the Board's clear-cut statement of law, which provides that Registrant "is ***not*** required to prove with specific evidence that it" would have acted differently. May 31 Order [Dkt. 40] at 17 (emphasis added); *see also Bridgestone/Firestone Research, Inc. v. Automobile Club De L'Ouest De La France*, 245 F.3d 1359, 1363 (Fed. Cir. 2001). This is but one more example of Petitioners' attempts to re-argue the law of the case in contravention of the May 5 Order [Dkt. 39].

[208] The parties stipulated to all economic facts relating to Registrant's laches defense. Yearly breakdowns of the economic figures herein may be found in that joint stipulation. *See* Second Joint Stipulation Regarding Admissibility of Certain Evidence and Regarding Certain Discovery Issues ("Laches Stipulation") [Dkt. 45].

- Registrant has developed enormous goodwill in the marks at issue. For example, between 2000 and 2006, the amount of revenue received by NFLP attributable to the sale of NFL Properties-licensed merchandise bearing the marks at issue exceeded $[redacted]. For the financial year of 2006 alone, such revenue was almost $[redacted].[209] According to *Forbes* magazine, the valuation of Registrant increased from about $741 million in 2000 to about $1.423 billion in 2006. Each year, the valuation increased by at least $49 million, with an increase in $159 million in 2006. *Forbes* valued Registrant's brand management for the years 2005 and 2006 at approximately $112 million and $140 million, respectively.[210]

- Registrant has also assumed costs in connection with developing its mark. Between April 1999 and March 2007, for example, Registrant contributed over $[redacted] to NFL Properties' marketing and promotional expenses. For the financial year of 2006 alone, such contributions exceeded $[redacted].[211]

- Registrant and NFL Properties have expended money and other resources on protecting the marks at issue by prosecuting the registrations and enforcing them against third-parties, including the filing and renewing of the marks, responding to office actions from the PTO, drafting cease and desist letters, conducting litigation, and seizing counterfeit goods.[212]

- If the registrations are cancelled, the value of Registrant's marks may be affected because Registrant would have unregistered trademarks rather than registered trademarks.[213]

Nor can it be ignored that Registrant's services, with which the marks are inextricably linked, are of enormous value as a result of Registrant's continued investment. Between June 1999 and March 2007, Registrant received at least $[redacted] in total revenue. For the financial year of 2006 alone, it was more than $[redacted]—a $[redacted] increase over the previous year.[214] The immense investment in and reliance upon the marks, coupled with the risk of Petitioners' cancellation proceeding poses to the security of those marks, establishes material economic prejudice resulting from the delay period.[215]

Finally, it must be noted that even the shortest delay period nonetheless subsumes an ***entire football season*** (August 22, 2005 through August 10, 2006)—it is not difficult to appreciate the enormous economic

[209] Laches Stipulation [Dkt. 45] at ¶ 10.

[210] Laches Stipulation [Dkt. 45] at ¶¶ 13-14.

[211] Laches Stipulation [Dkt. 45] at ¶ 8.

[212] Laches Stipulation [Dkt. 45] at ¶ 9.

[213] Laches Stipulation [Dkt. 45] at ¶ 15.

[214] Laches Stipulation [Dkt. 45] at ¶ 11.

[215] The information above is essentially identical to that accepted by the District Court as relevant and sufficient to establish laches, including for a two-year delay. *See Harjo*, 87 USPQ2d at 1895.

investment Registrant committed to one of the league's most valuable teams in a full year of promotion and play. Petitioners do not even mention these investments in and developments of the marks.[216]

CONCLUSION

Not only are Petitioners' claims barred by laches, but they are also unsubstantiated by record evidence. The record is devoid of proof supporting a conclusion that, as used in connection with Registrant's football services in 1967, 1974, 1978, or 1990, the team marks disparaged Native Americans. Quite to the contrary, Registrant's usage has honored Native Americans, their culture, and traditions. Petitioners have not satisfied their burden of proving, by a preponderance of the evidence, that at all the dates of registration, the words "Redskins" and "Washington Redskins," or "redskin," were disparaging to a substantial composite of Native Americans. Accordingly, the Petition should be denied.

DATED: October 9, 2012

Respectfully submitted,

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[216] Petitioners' only response to Registrant's economic investment is that Registrant supposedly knew that its marks "were vulnerable to cancellation" because of the Board's ruling in *Harjo*; thus, any money spent to promote the Washington Redskins after 1999 was at Registrant's own risk. Pets. Brief [Dkt. 177] at 50. This is wrong for two reasons. ***First***, Petitioners ignore that the District Court reversed the Board's findings (including on disparagement)—if anything, Registrant was entitled to greater confidence in its registrations. Indeed, the instant petition was filed three years after the District Court's ruling. ***Second***, Petitioners cite only *In re McGinley* for support, quoting that "one who uses debatable marks does so at the peril that his mark may not be entitled to registration." 660 F.2d 481, 485 n.7 (CCPA 1981). *McGinley*, however, was not a cancellation proceeding—it involved an unregistered mark. Here, Registrant has held and relied upon registered marks over 40 years—it would be nonsensical to find that Registrant's reliance on its valid, decades-old registrations was at the peril that they may not be entitled to registration in the first place.

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 Pappan, and Courtney Tsotigh, Petitioners, v. Pro-Football, Inc., Registrant.	)	Cancellation No. 92/046,185 **APPENDIX A TO REGISTRANT'S TRIAL BRIEF: REGISTRANT'S OBJECTIONS TO ATTACHMENT FILINGS TO PETITIONERS' NOTICE OF RELIANCE**

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APPENDIX A

REGISTRANT'S OBJECTIONS TO ATTACHMENT FILINGS TO PETITIONERS' NOTICE OF RELIANCE

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-00126-00168	62	Dictionary and encyclopedia definitions of "redskin"	Registrant objects to these dictionary and encyclopedia entries as irrelevant, to the extent that the dictionaries and encyclopedias were not published in or around time periods relevant to issues in this proceeding.
BLA-TTAB-00169-00234	63	Dictionary and encyclopedia definitions of "redskin"	Registrant objects to these dictionary and encyclopedia entries as irrelevant, to the extent that the dictionaries and encyclopedias were not published in or around time periods relevant to issues in this proceeding.
BLA-TTAB-00235-00242	63	1993 Resolution of the National Congress of Native Americans	Registrant objects to this resolution as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.
BLA-TTAB-00243-00244	63	1992 Resolution of the Central Conference of American Rabbis	Registrant objects to this resolution as irrelevant, because the Central Conference of American Rabbis had no Native American members when it passed the resolution nor did it represent any Native American tribe or organization.
		1992 Resolution of the Central Conference of American Rabbis	Notwithstanding and without waiving the preceding objection, Registrant objects to this resolution as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.
		1992 Resolution of the Central Conference of American Rabbis	Notwithstanding and without waiving the preceding objections, Registrant objects to this resolution as irrelevant, to the extent that the resolution discusses sports teams other than the Washington Redskins.
BLA-TTAB-00245	63	1992 Resolution of the American Jewish Committee, Portland Chapter	Registrant objects to this resolution as irrelevant, because the Portland Chapter had no Native American members when it passed the resolution nor did it represent any Native American tribe or organization.
		1992 Resolution of the American Jewish Committee, Portland Chapter	Notwithstanding and without waiving the preceding objection, Registrant objects to this resolution as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
		1992 Resolution of the American Jewish Committee, Portland Chapter	Notwithstanding and without waiving the preceding objections, Registrant objects to this resolution as irrelevant, to the extent that the resolution discusses sports teams other than the Washington Redskins.
BLA-TTAB-00246	63	1994 Resolution of Unity ’94	Registrant objects to this resolution as irrelevant, because only two Native Americans voted on the resolution, and Unity ’94 did not represent any Native American tribe or organization.
		1994 Resolution of Unity ’94	Notwithstanding and without waiving the preceding objection, Registrant objects to this resolution as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.
		1994 Resolution of Unity ’94	Notwithstanding and without waiving the preceding objections, Registrant objects to this resolution as irrelevant, to the extent that the resolution discusses sports teams other than the Washington Redskins.
BLA-TTAB-00247-00351; 00352-00442; 00481-00510	63; 67	Letters protesting team name	Registrant objects to these letters as irrelevant, because there is no evidence that the authors are Native Americans or represent any Native American tribe or organization; or, if written on behalf of an organization, no evidence that the organization had any Native American members.
BLA-TTAB-00443-00480	67	1993 memo from Charlie Dayton and the attached 1993 Rainbow Coalition telephone-campaign letters	Registrant objects to this memo and the attached letters as irrelevant, to the extent that the majority of telephone-campaign letters were not written by Native Americans or representatives of any Native American tribe or organization.
BLA-TTAB-00247-00351; 00352-00510	63; 67	Letters protesting team name	Notwithstanding and without waiving the preceding objection, Registrant objects to these letters as irrelevant, to the extent that they date from a time period not relevant to issues in this proceeding.
BLA-TTAB-00778-00804	70	Newspaper articles containing cartoons and caricatures of Native Americans	Registrant objects to these media caricatures as irrelevant, because they were not published in or around time periods relevant to issues in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
		Newspaper articles containing caricatures of Native Americans	Notwithstanding and without waiving the preceding objection, Registrant objects to these articles as irrelevant, because depictions created by the media cannot be attributed to Registrant.
BLA-TTAB-00824-00902; 00903-00993; 00994-01007	48; 71; 49	Newspaper articles protesting Registrant's team name	Registrant objects to the letters to the editor as irrelevant, to the extent that there is no evidence that their authors are Native Americans or represent any Native American tribe or organization.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objection, Registrant objects to the letters to the editor as irrelevant, to the extent that there is no evidence that the individuals or organizations whose sentiments are purportedly being conveyed are Native Americans or have Native American members.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to these articles as irrelevant, to the extent that they were not published in or around time periods relevant to issues in this proceeding.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to these articles as irrelevant, to the extent that the events referenced therein did not occur in or around time periods relevant to issues in this proceeding.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to the articles as irrelevant, to the extent that they do not reference the Washington Redskins.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to the articles as irrelevant, to the extent that the articles discuss sports teams other than the Washington Redskins.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to these articles as irrelevant, to the extent that the conduct of fans cannot be attributed to Registrant.
		Newspaper articles protesting Registrant's team name	Notwithstanding and without waiving the preceding objections, Registrant objects to the articles as irrelevant, to the extent that descriptions employed by the media cannot be attributed to Registrant.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-00870	48	8/13/94 article by M. Fitzgerald	Registrant objects to this article as irrelevant, because only two Native Americans voted on the alleged Unity ’94 resolution.
BLA-TTAB-01008-01079; 01080-01124	49; 72	Newspaper articles from the late 1800s to early 1900s containing “redskin”	Registrant objects to these articles as irrelevant, because they were not published in or around any time period relevant to issues in this proceeding.
BLA-TTAB-01125-01133	72	Newspaper articles concerning stereotypes by sports media and fans	Registrant objects to the letters to the editor as irrelevant, to the extent that there is no evidence that the individuals or organizations whose sentiments are purportedly being conveyed are Native Americans or have Native American members.
		Newspaper articles concerning stereotypes by sports media and fans	Notwithstanding and without waiving the preceding objection, Registrant objects to these articles as irrelevant, to the extent they were not published in or around time periods relevant to issues in this proceeding.
		Newspaper articles concerning stereotypes by sports media and fans	Notwithstanding and without waiving the preceding objections, Registrant objects to these articles as irrelevant, to the extent that the events referenced therein did not occur in or around time periods relevant to issues in this proceeding.
		Newspaper articles concerning stereotypes by sports media and fans	Notwithstanding and without waiving the preceding objections, Registrant objects to the articles as irrelevant, to the extent that representations employed by the media cannot be attributed to Registrant.
		Newspaper articles concerning stereotypes by sports media and fans	Notwithstanding and without waiving the preceding objections, Registrant objects to these articles as irrelevant, to the extent that the conduct of fans cannot be attributed to Registrant.
		Newspaper articles concerning stereotypes by sports media and fans	Notwithstanding and without waiving the preceding objections, Registrant objects to the articles as irrelevant, to the extent that the articles discuss sports teams other than the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-01607-01632	61	Documents relating to "Nigger Head Brand" trademarks and service marks	Registrant objects to the copies of trademark registrations from the U.S. Patent and Trademark office for "Nigger Head Brand" and related marks and designs as irrelevant, because none of the above marks or designs references the word "redskin" or Native Americans.
BLA-TTAB-01637	77	1972 note from M. Glover concerning Registrant's team name	Registrant objects to this note as irrelevant, because there is no evidence that she is a Native American or represents any Native American tribe or organization.
		1972 note from M. Glover concerning Registrant's team name	Notwithstanding and without waiving the preceding objection, Registrant objects to this note as irrelevant, because the drawing does not comprise subject matter at issue in any of the challenged registrations.
BLA-TTAB-01640-01642	77	1/18/72 letter from H. Gross and Indian Legal Information Development Services concerning Registrant's team name	Registrant objects to this letter as irrelevant, because Indian Legal Information Development Services had at most seven Native American members.
BLA-TTAB-01643	77	Article in Washington, D.C.'s *The Evening Star* concerning Registrant's team name	Registrant objects to this article as irrelevant, to the extent that the article discusses sports teams other than the Washington Redskins.
BLA-TTAB-01645	77	2/16/72 letter from Hal Gross of Indian Legal Information Development Services concerning Registrant's team name	Registrant objects to this letter as irrelevant, because Indian Legal Information Development Services had at most seven Native American members.
BLA-TTAB-01649-01650	77	4/25/72 letter from W. Welles concerning Registrant's team name	Registrant objects to this letter as irrelevant, to the extent that the article discusses sports teams other than the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
		4/25/72 letter from W. Welles concerning Registrant's team name	Notwithstanding and without waiving the preceding objection, Registrant objects to this letter as irrelevant, to the extent that there is no evidence that the "many" individuals whose "opinion" the letter purportedly conveys, are Native Americans or represent any Native American tribe or organization.
BLA-TTAB-01652-01659	77	1/8/93 Office Action concerning Registrant's application to register "Redskin Review" trademark	Registrant objects to the Office Action as irrelevant, to the extent it was not issued in or around time periods relevant to issues in this proceeding.
		1/8/93 Office Action concerning Registrant's application to register "Redskin Review" trademark	Notwithstanding and without waiving the preceding objection, Registrant objects to the Office Action as irrelevant, because the examiner's decision is not a final and conclusive determination.
BLA-TTAB-01660-01662	77	1982 Random House College Dictionary exhibit to Office Action	Registrant objects to this dictionary entry as irrelevant, to the extent that it was not published in or around time periods relevant to issues in this proceeding.
BLA-TTAB-01663-01665	77	1984 Webster's Ninth New College Dictionary exhibit to Office Action	Registrant objects to this dictionary entry as irrelevant, to the extent that it was not published in or around time periods relevant to issues in this proceeding.
BLA-TTAB-01666-01676	77	Lexis-Nexis-articles exhibit to Office Action	Registrant objects to these articles as irrelevant, to the extent that the events referenced therein did not occur in or around time periods relevant to issues in this proceeding.
		Lexis-Nexis-articles exhibit to Office Action	Notwithstanding and without waiving the preceding objection, Registrant objects to these articles as irrelevant, to the extent that they discuss sports teams other than the Washington Redskins.
BLA-TTAB-01689-01690	77	Redskin Review design and logo exhibits to Office Action	Registrant objects to the Redskin Review design and logo as irrelevant, because they are not among the service marks at issue in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
		Redskin Review design and logo exhibits to Office Action	Notwithstanding and without waiving the preceding objection, Registrant objects to the Redskin Review design and logo as irrelevant, to the extent that they was not created in or around time periods relevant to issues in this proceeding.
BLA-TTAB-02083-02122; 02123-02204	90; 91	Books, statements, and educational reports concerning stereotyping of Native Americans	Registrant objects to these books, statements, and reports as irrelevant, to the extent that they were not published or issued in or around time periods relevant to issues in this proceeding.
		Books, statements, and educational reports concerning stereotyping of Native Americans	Notwithstanding and without waiving the preceding objection, Registrant objects to these books, statements, and reports as irrelevant, to the extent that the events referenced therein did not occur in or around time periods relevant to issues in this proceeding.
		Books, statements, and educational reports concerning stereotyping of Native Americans	Notwithstanding and without waiving the preceding objections, Registrant objects to these books, statements, and reports as irrelevant, to the extent that they discuss sports teams other than the Washington Redskins.
		Books, statements, and educational reports concerning stereotyping of Native Americans	Notwithstanding and without waiving the preceding objections, Registrant objects these books, statements, and reports as irrelevant, to the extent that they discuss terms other than the word "redskin."
		Books, statements, and educational reports concerning stereotyping of Native Americans	Notwithstanding and without waiving the preceding objections, Registrant objects to these books, statements, and reports as irrelevant, because they do not discuss the word "redskin."

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-02205-02320	91	Correspondence concerning Native American names and mascots for educational institutions	Registrant objects to the correspondence as irrelevant, to the extent that there is no evidence that the authors are Native Americans or represent any Native American tribe or organization.
		Correspondence concerning Native American names and mascots for educational institutions	Notwithstanding and without waiving the preceding objection, Registrant objects to the correspondence as irrelevant, to the extent that there is no evidence that the individuals or organizations whose sentiments are purportedly being conveyed are Native Americans or have Native American members.
		Correspondence concerning Native American names and mascots for educational institutions	Notwithstanding and without waiving the preceding objections, Registrant objects to the correspondence as irrelevant, to the extent that the events referenced in the report did not occur in or around time periods relevant to issues in this proceeding.
		Correspondence concerning Native American names and mascots for educational institutions	Notwithstanding and without waiving the preceding objections, Registrant objects to the correspondence as irrelevant, to the extent that the documents do not discuss the Washington Redskins.
		Correspondence concerning Native American names and mascots for educational institutions	Notwithstanding and without waiving the preceding objections, Registrant objects to the correspondence as irrelevant, to the extent that the documents discuss sports teams other than the Washington Redskins.
BLA-TTAB-02321-02325	91	HONOR, Inc. brochure concerning protesting	Registrant objects to this brochure as irrelevant, to the extent that the individuals whose sentiments the brochure purportedly conveys are not Native Americans nor shown to be representatives of any Native American tribe or organization.
		HONOR, Inc. brochure concerning protesting	Notwithstanding and without waiving the preceding objection, Registrant objects to this brochure as irrelevant, to the extent that the dictionaries cited in the brochure were not published in or around time periods relevant to issues in this proceeding

Bates Nos.	TTABVue Entry	Description	Objection
		HONOR, Inc. brochure concerning protesting	Notwithstanding and without waiving the preceding objections, Registrant objects to this brochure as irrelevant, to the extent that it discusses sports teams other than the Washington Redskins.
BLA-TTAB-02326-02335	95	Correspondence and documents concerning legal action by Native Americans against sports teams' names and logos	Registrant objects to the correspondence and documents as irrelevant, to the extent that their authors are not Native Americans nor shown to be representatives of any Native American tribe or organization.
		Correspondence and documents concerning legal action by Native Americans against sports teams' names and logos	Notwithstanding and without waiving the preceding objection, Registrant objects to the correspondence and documents as irrelevant, to the extent that there is no evidence that the individuals or organizations whose sentiments are purportedly being conveyed are Native Americans or have Native American members.
		Correspondence and documents concerning legal action by Native Americans against sports teams' names and logos	Notwithstanding and without waiving the preceding objections, Registrant objects to the correspondence and documents as irrelevant, to the extent that they do not discuss the Washington Redskins.
BLA-TTAB-02336-02338	95	1993 Report of Great Lakes Inter-Tribal Council on use of Native American names in Wisconsin schools	Registrant objects to this report as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.
		1993 Report of Great Lakes Inter-Tribal Council on use of Native American names in Wisconsin schools	Notwithstanding and without waiving the preceding objection, Registrant objects to this report as irrelevant, to the extent that it discusses sports teams other than the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-02339-02342	95	1993 Meeting minutes from Miami University Senate concerning school's use of "Redskins"	Registrant objects to these meeting minutes as irrelevant, to the extent that they date from a time period not relevant to issues in this proceeding.
		1993 Meeting minutes from Miami University Senate concerning school's use of "Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to these meeting minutes as irrelevant, because they do not discuss the Washington Redskins.
		1993 Meeting minutes from Miami University Senate concerning school's use of "Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to these meeting minutes as irrelevant, to the extent that they discuss terms other than the word "redskin."
BLA-TTAB-02343-02352	95	Articles in *The Voice* concerning Miami University sports teams' use of "Redskins"	Registrant objects to these articles as irrelevant, to the extent that they do not discuss the Washington Redskins.
BLA-TTAB-02353-02355	95	1993 Memo concerning Iroquois High School's mascot	Registrant objects to this memo as irrelevant, because the memo does not discuss the Washington Redskins.
BLA-TTAB-02356-02368	95	1993 Hearing summary and statements concerning Congressional legislation for a proposed stadium for the Washington Redskins	Registrant objects to this summary and these statements as irrelevant, to the extent that the legislative bill referenced therein was not formulated in or around a time period relevant to issues in this proceeding.
BLA-TTAB-02367-02368	95	11/5/93 statement by B. Richardson	Notwithstanding and without waiving the preceding objection, Registrant objects to this statement as irrelevant, to the extent that there is no evidence that he is a Native American or represent any Native American tribe or organization.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-02369-02370	95	Email from A. Soens re: historical uses of "redskin"	Registrant objects to this email as irrelevant, because there is no evidence that its author is a Native American or represents any Native American tribe or organization.
BLA-TTAB-02537-02551	64	Articles in Native American publications concerning the stereotyping of Native Americans	Registrant objects to these article as irrelevant, to the extent that they do not discuss the Washington Redskins.
		Articles in Native American publications concerning the stereotyping of Native Americans	Notwithstanding and without waiving the preceding objection, Registrant objects to these articles as irrelevant, to the extent that they neither discuss nor reflect usage of the word "redskin."
BLA-TTAB-02552-02556	64	1990 essay by Jay Coakley, "Team Logos and Mascots-When Are They Racist?"	Registrant objects to this essay as irrelevant, to the extent that it was not written in or around a time period relevant to issues in this proceeding.
		1990 essay by Jay Coakley, "Team Logos and Mascots-When Are They Racist?"	Notwithstanding and without waiving the preceding objection, Registrant objects to this essay and to the reprint of a poster of team pennants as irrelevant, to the extent that the essay discusses sports teams other than the Washington Redskins and because the poster does not reference the Washington Redskins.
BLA-TTAB-02768-02888	98	JoAnn Chase deposition (April 26, 1996)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1993 resolution of the National Congress of American Indians dates from a time period not relevant to issues in this proceeding.
BLA-TTAB-03117-03366	96	Ivan Ross deposition (December 12, 1996)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the study conducted by Ivan Ross (the "Ross survey") does not concern any time period relevant to any issue in this proceeding.
		Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey does not concern the use of "Redskins" by the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
		Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey involves concepts not at issue in this proceeding.
		Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because unreliable due to methodological flaws in the Ross survey, such as: (i) erroneous sampling and improper selection of Registrants; (ii) permitting self-identification by Registrants as to their American-Indian status; (iii) hearsay from questioning Registrants as to perceptions of third parties; (iv) inaccurate ("offensive" not "disparaging" as the operative word) and suggestive questions; (v) incomplete instructions to interviewers; and (vi) incorrect tabulation of responses.
BLA-TTAB-03529-03602	79	Harold Gross deposition (June 11, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the organization he formerly represented comprised at most seven Native American members and itself did not represent any Native American tribe or organization.
		11:14-16:19: testimony re: "Redskin"	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		25:2-26:23: testimony re: opinion re: "Redskin"	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		25:2-26:23: testimony re: opinion re: "Redskin"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, to the extent that it is unrelated to the use of "Redskins" by the Washington Redskins.
		25:2-26:23: testimony re: opinion re: "Redskin"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.
		25:2-26:23: testimony re: opinion re: "Redskin"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant to the extent that it contains legal conclusions.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-03603-03724	80	Arlene B. Hirschfelder deposition (April 10, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Arlene Hirschfelder's expertise in education is not relevant to any issue in this proceeding.
		Arlene B. Hirschfelder deposition (April 10, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because her opinions are not based on a time period relevant to issues in this proceeding.
		36:3-38:23; 41:16-25: testimony re: opinion as to "redskin"	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		36:3-38:23; 41:16-25: testimony re: opinion as to "redskin"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it contains a legal conclusion.
BLA-TTAB-03725-03814	80	Frederick E. Hoxie deposition (February 12, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Frederick Hoxie's expertise as a historian is not relevant to any issue in this proceeding.
		Frederick E. Hoxie deposition (February 12, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, to the extent that his opinions are not based on a time period relevant to issues in this proceeding.
		10:6-17:5: testimony re: opinions	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		10:6-17:5: testimony re: opinions	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because not related to any issue in this proceeding.
		10:6-17:5: testimony re: opinions	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent not based on a time period relevant to issues in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
		17: 12-17; 26:12-42:6: historical policies (through the 19th century) of the U.S. government toward Native Americans	Registrant objects to this testimony as irrelevant, because it is not related to any issue in this proceeding.
		17: 12-17; 26:12-42:6: historical policies (through the 19th century) of the U.S. government toward Native Americans	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, to the extent it is not based on a time period relevant to issues in this proceeding.
		49:7-54:18: testimony re: "redskin"	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		49:7-54:18: testimony re: "redskin"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it contains a legal conclusion.
BLA-TTAB-03815-03855	80	Judith Kahn deposition (January 31, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Portland Chapter of the American Jewish Committee, which she represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.
		Judith Kahn deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution the Portland Chapter of the American Jewish Committee, which she represents, dates from a time period not relevant to issues in this proceeding.
		Judith Kahn deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution the Portland Chapter of the American Jewish Committee, which she represents, discusses sports teams other than the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-03856-03967	81	Teresa D. LaFromboise deposition (February 17, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Teresa LaFromboise's expertise in psychology is not relevant to any issue in this proceeding.
		Teresa D. LaFromboise deposition (February 17, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because her opinions are not based on a time period relevant to issues in this proceeding.
		34:22-39:1: testimony re: Native American mascots in sports	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		39:7-43:16: testimony re: her daughter's personal experience at a sporting event	Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.
		39:7-43:16: testimony re: her daughter's personal experience at a sporting event	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		43:24-48:6: testimony re: opinion as to the effects of the use of stereotypes by professional sporting teams	Registrant objects to this testimony as irrelevant, because to the extent is unrelated to the use of "Redskins" by the Washington Redskins.
		43:24-48:6: testimony re: opinion as to the effects of the use of stereotypes by professional sporting teams	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		105:4: testimony re: dictionary definitions of "redskin"	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-03968-04123	81	Geoffrey D. Nunberg deposition (February 18, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant in lacking scientific basis.
		251:5-287:11; 289:4-9: testimony re: 19th century newspapers using "redskin"	Registrant objects to this testimony as irrelevant, Registrant objects to this testimony as irrelevant, because it is based on newspapers that were published in a time period not relevant to issues in this proceeding.
		269:22-270:2: testimony re: opinion of "redskin" expressed in Encyclopedia Britannica	Registrant objects to this testimony as irrelevant, because it is speculative.
		287:14-289:3; 291:22-293:25: testimony re: 19th century literature using "redskin"	Registrant objects to this testimony as irrelevant, because it is based on material that was published in a time period not relevant to issues in this proceeding.
		289:11-290:11: testimony re: opinion of "redskin" in 19th century	Registrant objects to this testimony as irrelevant, because it is based on material that was published in a time period not relevant to issues in this proceeding.
		289:11 - 290:11: testimony re: opinion of "redskin" in 19th century	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.
		290:16-291:15; 294:11-305:3: testimony re: 20th century materials using "redskin" and opinion of same	Registrant objects to this testimony as irrelevant, to the extent it is based on material from a time period not relevant to issues in this proceeding.
		290:16-291:15; 294:11-305:3: testimony re: 20th century materials using "redskin" and opinion of same	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
		305:6-315:4: testimony re: 1983-forward newspaper database search of "redskin"	Registrant objects to this testimony as irrelevant, to the extent it is based on material from a time period not relevant to issues in this proceeding.
		348:18-354:22: testimony re: letters to Registrant concerning the name "Redskins"	Registrant objects to this testimony as irrelevant, to the extent that there is no evidence that the authors of the letters are Native Americans or represent any Native American tribe or organization; or, if written on behalf of an organization, no evidence that the organization had any Native American members.
		348:18-354:22: testimony re: letters to Registrant concerning the name "Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, to the extent that the letters date from a time period not relevant to issues in this proceeding.
		370:11-374:12: testimony and opinion re: "redskin" in reference to Native Americans	Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.
		370:11-374:12: testimony and opinion re: "redskin" in reference to Native Americans	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.
		370:11-374:12: testimony and opinion re: "redskin" in reference to Native Americans	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because it contains a legal conclusion.
		375:10-376:4: testimony and opinion re: "Redskins"	Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.
		375:10-376:4: testimony and opinion re: "Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, to the extent that it contains legal conclusions.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-04124-04245	82	Geoffrey D. Nunberg deposition (February 19, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant in lacking scientific basis.
		479:23-481:14: testimony re: the concept of transferred or extended meaning	Registrant objects to this testimony as irrelevant, because unrelated to any issue in this proceeding.
BLA-TTAB-04246-04387	82	Ivan Ross deposition (February 20, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the study conducted by Ivan Ross (the "Ross survey") does not concern any time period relevant to any issue in this proceeding.
		Ivan Ross deposition (February 20, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey does not concern the use of "Redskins" by the Washington Redskins.
		Ivan Ross deposition (February 20, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey involves concepts not at issue in this proceeding.
		Ivan Ross deposition (February 20, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because unreliable due to methodological flaws in the Ross survey, such as: (i) erroneous sampling and improper selection of Registrants; (ii) permitting self-identification by Registrants as to their American-Indian status; (iii) hearsay from questioning Registrants as to perceptions of third parties; (iv) inaccurate ("offensive" not "disparaging" as the operative word) and suggestive questions; (v) incomplete instructions to interviewers; and (vi) incorrect tabulation of responses.
		66:7-68:22: testimony re: opinion as to whether "redskin" is disparaging	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.

Bates Nos.	TTABVue Entry	Description	Objection
		66:7-68:22: testimony re: opinion as to whether "redskin" is disparaging	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it contains a legal conclusion.
		66:7-68:22: testimony re: opinion as to whether "redskin" is disparaging	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because it is speculative.
		66:7-68:22: testimony re: opinion as to whether "redskin" is disparaging	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.
BLA-TTAB-04388-04534; 04535-04539	100; 101	Ivan Ross deposition (June 11, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the study conducted by Ivan Ross (the "Ross survey") does not concern any time period relevant to any issue in this proceeding.
		Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey does not concern the use of "Redskins" by the Washington Redskins.
		Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey involves concepts not at issue in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
		Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because unreliable due to methodological flaws in the Ross survey, such as: (i) erroneous sampling and improper selection of Registrants; (ii) permitting self-identification by Registrants as to their American-Indian status; (iii) hearsay from questioning Registrants as to perceptions of third parties; (iv) inaccurate ("offensive" not "disparaging" as the operative word) and suggestive questions; (v) incomplete instructions to interviewers; and (vi) incorrect tabulation of responses.
BLA-TTAB-04540-04604	101	Rabbi Elliot L. Stevens deposition (January 30, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Central Conference of American Rabbis, which he represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.
		Rabbi Elliot L. Stevens deposition (January 30, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Central Conference of American Rabbis, which he represents, dates from a time period not relevant to issues in this proceeding.
		Rabbi Elliot L. Stevens deposition (January 30, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Central Conference of American Rabbis, which he represents, discusses sports teams other than the Washington Redskins.
BLA-TTAB-04605-04676	101	Walterene Swanston deposition (January 31, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Unity ’94, which she represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.

Bates Nos.	TTABVue Entry	Description	Objection
		Walterene Swanston deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the 1994 resolution of Unity '94, which she represents, dates from a time period not relevant to issues in this proceeding.
		Walterene Swanston deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects all testimony of and exhibits proffered through this witness as irrelevant, to the extent that the resolution of Unity '94, which she represents, discusses sports teams other than the Washington Redskins.
BLA-TTAB-04698-4728	83	Exhibits to Joanne Chase deposition (April 26, 1996)	Registrant's objections to specific deposition exhibits, as applicable, are set forth *supra* and/or *infra*.
BLA-TTAB-04727-04728	83	1993 Resolution of the National Congress of American Indians	Registrant objects to this resolution as irrelevant, to the extent that it dates from a time period not relevant to issues in this proceeding.
BLA-TTAB-04729-04844	83	Exhibits to Geoffrey D. Nunberg deposition (December 17, 1996)	Registrant's objections to specific deposition exhibits, as applicable, are set forth *supra* and/or *infra*.
BLA-TTAB-04845-04858; 04859-05057; 05058-05209; 05334-05457; 05210-05333; 05458-05662; 05663-05782; 05783-05805	83; 97; 84; 85; 102; 103; 104; 105	Exhibits to Ivan Ross deposition (December 12, 1996)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the study conducted by Ivan Ross (the "Ross survey") does not concern any time period relevant to any issue in this proceeding.
		Exhibits to Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey does not concern the use of "Redskins" by the Washington Redskins.

Bates Nos.	TTABVue Entry	Description	Objection
		Exhibits to Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey involves concepts not at issue in this proceeding.
		Exhibits to Ivan Ross deposition (December 12, 1996)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because unreliable due to methodological flaws in the Ross survey, such as: (i) erroneous sampling and improper selection of Registrants; (ii) permitting self-identification by Registrants as to their American-Indian status; (iii) hearsay from questioning Registrants as to perceptions of third parties; (iv) inaccurate ("offensive" not "disparaging" as the operative word) and suggestive questions; (v) incomplete instructions to interviewers; and (vi) incorrect tabulation of responses.
BLA-TTAB-05843-05862	105	Exhibits to Harold Gross deposition (June 11, 1997)	Registrant's objections to specific deposition exhibits, as applicable, are set forth *supra* and/or *infra*.
		1/18/72 letter from H. Gross and Indian Legal Information Development Services concerning Registrant's team name	Registrant objects to this letter as irrelevant, because Indian Legal Information Development Services had at most seven Native American members.
BLA-TTAB-05863-05916; 05917-06029	106; 107	Exhibits to Arlene B. Hirschfelder deposition (April 10, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Arlene Hirschfelder's expertise in education is not relevant to any issue in this proceeding.
		Exhibits to Arlene B. Hirschfelder deposition (April 10, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because her opinions are not based on a time period relevant to issues in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-06030-06056; 06057-06065	107; 108	Exhibits to Frederick E. Hoxie deposition (February 12, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Frederick Hoxie's expertise as a historian is not relevant to any issue in this proceeding.
		Exhibits to Frederick E. Hoxie deposition (February 12, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that his opinions are not based on a time period relevant to issues in this proceeding.
BLA-TTAB-06066-06072	108	Exhibits to Judith Kahn deposition (January 31, 1997)	Registrant objects to all exhibits proffered through this witness as irrelevant, because the Portland Chapter of the American Jewish Committee, which she represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.
		Exhibits to Judith Kahn deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Portland Chapter of the American Jewish Committee, which she represents, dates from a time period not relevant to issues in this proceeding.
		Exhibits to Judith Kahn deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Portland Chapter of the American Jewish Committee, which she represents, discusses sports teams other than the Washington Redskins.
BLA-TTAB-06073-06145	108	Exhibits to Teresa D. LaFromboise deposition (February 17, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because Teresa LaFromboise's expertise in psychology is not relevant to any issue in this proceeding.
		Exhibits to Teresa D. LaFromboise deposition (February 17, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because her opinions are not based on a time period relevant to issues in this proceeding.

Bates Nos.	TTABVue Entry	Description	Objection
BLA-TTAB-06146-06163; 06164-06258; 06259-06439; 06440-06607	108; 86; 88; 92	Exhibits to Geoffrey D. Nunberg deposition (February 18-19,1997; June 17,1997)	Registrant's objections to specific deposition exhibits, as applicable, are set forth *supra* and/or *infra*.
BLA-TTAB-06608-06626; 06627-06730; 06731-06812	92; 93; 94	Exhibits to Ivan Ross deposition (June 11, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the study conducted by Ivan Ross (the "Ross survey") does not concern any time period relevant to any issue in this proceeding.
		Exhibits to Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey does not concern the use of "Redskins" by the Washington Redskins.
		Exhibits to Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because the Ross survey involves concepts not at issue in this proceeding.
		Exhibits to Ivan Ross deposition (June 11, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant, because unreliable due to methodological flaws in the Ross survey, such as: (i) erroneous sampling and improper selection of Registrants; (ii) permitting self-identification by Registrants as to their American-Indian status; (iii) hearsay from questioning Registrants as to perceptions of third parties; (iv) inaccurate ("offensive" not "disparaging" as the operative word) and suggestive questions; (v) incomplete instructions to interviewers; and (vi) incorrect tabulation of responses.
BLA-TTAB-06813-06850	94	Exhibits to Rabbi Elliot L. Stevens deposition (January 30, 1997)	Registrant objects to all exhibits proffered through this witness as irrelevant, because the Central Conference of American Rabbis, which he represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.

Bates Nos.	TTABVue Entry	Description	Objection
		Exhibits to Rabbi Elliot L. Stevens deposition (January 30, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Central Conference of American Rabbis, which he represents, dates from a time period not relevant to issues in this proceeding.
		Exhibits to Rabbi Elliot L. Stevens deposition (January 30, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects all exhibits proffered through this witness as irrelevant, to the extent that the 1992 resolution of the Central Conference of American Rabbis, which he represents, discusses sports teams other than the Washington Redskins.
BLA-TTAB-06851-06854	94	Exhibits to Walterene Swanston deposition (January 31, 1997)	Registrant objects to all exhibits proffered through this witness as irrelevant, because Unity ’94, which she represents, had no Native American members when it passed its resolution nor did it represent any Native American tribe or organization.
		Exhibits to Walterene Swanston deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objection, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that the 1994 resolution of Unity ’94, which she represents, dates from a time period not relevant to issues in this proceeding.
		Exhibits to Walterene Swanston deposition (January 31, 1997)	Notwithstanding and without waiving the preceding objections, Registrant objects to all exhibits proffered through this witness as irrelevant, to the extent that the resolution of Unity ’94, which she represents, discusses sports teams other than the Washington Redskins.
BLA-TTAB-06859-07014	108	Geoffrey Nunberg deposition (June 17, 1997)	Registrant objects to all testimony of and exhibits proffered through this witness as irrelevant in lacking scientific basis.
		15:7-17:15: testimony re: skin-color references	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
		31:16-35:19: testimony re: intentions/states of mind of dictionary editors	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.

Bates Nos.	TTABVue Entry	Description	Objection
		31:16-35:19: testimony re: intentions/states of mind of dictionary editors	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it is speculative.
		45:16-48:24: testimony re: usage labels	Registrant objects to this testimony as irrelevant, because it is speculative.
		49:17-51:4: testimony re: Native American names and places	Registrant objects to this testimony as irrelevant, because it is speculative.
		51:12-52:22: testimony re: authors' choices of literary titles	Registrant objects to this testimony as irrelevant, because it is speculative.
		53:17-54:11: testimony re: attitudes of soldiers	Registrant objects to this testimony as irrelevant, because it is speculative.
		67:12-24: testimony re: attitudes toward Native Americans	Registrant objects to this testimony as irrelevant, because it is speculative.
		87:12-90:7: testimony re: "redskin"	Registrant objects to this testimony as irrelevant to the extent that it contains legal conclusions.
		91:15-92:19: testimony re: skin-color references	Registrant objects to this testimony as irrelevant in lacking foundation and scientific basis.
BLA-TTAB-07030	109	Article from *Copy Editor, The National Newsletter for Professional Copy Editors*	Registrant objects to this article as irrelevant in lacking foundation and scientific basis, as there has been no showing that the individuals whose purportedly expert opinions are summarized or quoted therein are qualified as experts in their fields.
		Article from *Copy Editor, The National Newsletter for Professional Copy Editors*	Notwithstanding and without waiving the preceding objection, Registrant objects to this article as irrelevant in lacking foundation and scientific basis, as there has been no showing that the individuals whose purportedly expert opinions are summarized or quoted therein have sufficiently, if at all, researched the issue so as to be able to reach reliable conclusions.

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 Pappan, and Courtney Tsotigh, Petitioners, v. Pro-Football, Inc., Registrant.	Cancellation No. 92/046,185 **APPENDIX B TO REGISTRANT'S TRIAL BRIEF: REGISTRANT'S OBJECTIONS TO PETITIONERS' TESTIMONY**

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APPENDIX B

REGISTRANT'S OBJECTIONS TO PETITIONERS' TESTIMONY

TTABVue Entry	Witness	Testimony	Objection
122	Amanda Blackhorse	130:6-131:3; 186:4-10; 197:4-9: personal opinion re: "redskin"/"Redskins"	Registrant objects to this testimony as irrelevant, to the extent that it does not involve "Redskins" as a referent for the Washington Redskins.
		130:6-131:3; 186: 4-10; 197:4-9: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because the opinion dates from a time period not relevant to issues in this proceeding.
		130:6-131:3; 186:4-10; 197:4-9: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.
		130:6-131:3; 186:4-10; 197:4-9: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because the witness is not a linguist.
110	Marcus Briggs-Cloud	107:14-20: personal opinion re: "Redskins"	Registrant objects to this testimony as irrelevant, to the extent that the witness's opinion dates from a time period not relevant to issues in this proceeding.
		107:14-20: personal opinion re: "Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because it involves concepts not at issue in this proceeding.
120	Phillip Gover	91:6-92:3; 93:11-94:18; 116:7-9; 178:4-180:7; 186:16-192:13: personal opinion re: "redskin"/"Redskins"	Registrant objects to this testimony as irrelevant, to the extent that it does not involve "Redskins" as a referent for the Washington Redskins.
		91:6-92:3; 93:11-94:18; 116:7-9; 178:4-180:7; 186:16-192:13: personal opinion re: "redskin"/"Redskins"	Registrant objects to this testimony as irrelevant, because the opinion dates from a time period not relevant to issues in this proceeding.
		91:6-92:3; 93:11-94:18; 116:7-9; 178:4-180:7; 186:16-192:13: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.

TTABVue Entry	Witness	Testimony	Objection
		91:6-92:3; 93:11-94:18; 116:7-9; 178:4-180:7; 186:16-192:13: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because the witness is not a linguist.
		102:16-104:9: testimony re: his father's personal experience	Registrant objects to this testimony as inadmissible hearsay.
112	Jillian Pappan	57:15-18; 118:15-16; 184:2-15: personal opinion re: "redskin"	Registrant objects to this testimony as irrelevant, to the extent that it does not involve "Redskins" as a referent for the Washington Redskins.
		57:15-18; 118:15-16; 184:2-15: personal opinion re: "redskin"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because the opinion dates from a time period not relevant to issues in this proceeding.
		57:15-18; 118:15-16; 184:2-15: personal opinion re: "redskin"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.
		57:15-18; 118:15-16; 184:2-15: personal opinion re: "redskin"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because the witness is not a linguist.
		170:25-172:15: testimony re: "Washington Redskins"	Registrant objects to this testimony as irrelevant, because it involves concepts not at issue in this proceeding.
		175:19-177:24: testimony re: personal experience with "redskin"	Registrant objects to this testimony as irrelevant, because it is unrelated to the use of "Redskins" by the Washington Redskins.
115	Courtney Tsotigh	36:16-18; 122:13-21; 130:12-19; 140:7-12; 146:22-147:7: personal opinion re: "redskin"/"Redskins"	Registrant objects to this testimony as irrelevant, to the extent that it does not involve "Redskins" as a referent for the Washington Redskins.
		36:16-18; 122:13-21; 130:12-19; 140:7-12; 146:22-147:7: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objection, Registrant objects to this testimony as irrelevant, because the opinion dates from a time period not relevant to issues in this proceeding.
		36:16-18; 122:13-21; 130:12-19; 140:7-12; 146:22-147:7: personal opinion re: "redskin"/"Redskins"	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, to the extent that it involves concepts not at issue in this proceeding.

TTABVue Entry	Witness	Testimony	Objection
		36:16-18; 122:13-21; 130:12-19; 140:7-12; 146:22-147:7: personal opinion re: “redskin”/”Redskins”	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because the witness is not a linguist.
		114:19-118:12: testimony re: Union public school’s teams	Registrant objects to this testimony as irrelevant, because the opinion dates from a time period not relevant to issues in this proceeding.
		114:19-118:12: testimony re: Union public school’s teams	Notwithstanding and without waiving the preceding objections, Registrant objects to this testimony as irrelevant, because the witness is not a linguist.

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)
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Registered September 26, 1967

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

APPENDIX C TO REGISTRANT'S TRIAL BRIEF: REGISTRANT'S TABLE OF EVIDENCE

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APPENDIX C

TABLE OF EVIDENCE

Pursuant to the Board's May 5, 2011 Order [Dkt. 39] at 6-8, Registrant submits the following Table of Evidence summarizing relevant information in the record submitted by Registrant and specifying (1) the probative value of particular facts or testimony and (2) the location in the record of such facts or testimony.

Source	Probative Value	TTABVue Entry	Bates Nos.
Jacoby Dep., Apr. 8, 1997, at 47-50.	1996 Ross Survey is irrelevant to the issues in this case.	166 at 16-17	Not applicable
Expert rebuttal report of Dr. Jacob Jacoby, critiquing the disclosure statement prepared by Petitioner's expert Dr. Ivan Ross.	1996 Ross Survey is irrelevant to the issues in this case.	153 at 16, 24	PFIB-TTAB-000598, 606
Jacoby Dep., Apr. 8, 1997 at 64-65.	1996 Ross Survey is irrelevant to the issues in this case.	166 at 20-21	Not applicable
Jacoby Dep., Apr. 8, 1997 at 52.	1996 Ross Survey is irrelevant to the issues in this case.	166 at 17	Not applicable
Jacoby Dep., Apr. 8, 1997 at 61.	1996 Ross Survey is irrelevant to the issues in this case.	166 at 20	Not applicable
American Heritage School Dictionary (1977).	Different definitions for the word "Redskins" and "redskin."	143 at 22-23	PFIB-TTAB-000329-30
Resume of Dr. Jacob Jacoby.	Dr. Jacob Jacoby's qualification as Registrant's expert.	151 at 5-48	PFIB-TTAB-000640-83
Gover Dep. at 25-27.	Ethnic names are acceptable for sports teams	120 at 31-33	Not applicable
Gover Dep. at 111-16 & Ex. 11.	Ethnic names are acceptable for sports teams.	120 at 117-22 118 at 18	Not applicable
Briggs-Cloud Dep. Ex. 3 at 1C.	Ethnic names are acceptable for sports teams.	121 at 24	Not applicable
Gover Dep. Exs. 18 & 19.	Ethnic names are acceptable for sports teams.	118 at 49-55	Not applicable
Blackhorse Dep. Ex. 2.	Ethnic names are acceptable for sports teams.	123 at 29	Not applicable
Pappan Dep. Ex. 7 at 8.	Ethnic names are acceptable for sports teams.	114 at 4-16	Not applicable

Source	Probative Value	TTABVue Entry	Bates Nos.
Blackhorse Dep. at 75.	Ethnic names are acceptable for sports teams.	122 at 83	Not applicable
Rebuttal report, "Some Comments on Nunberg's Testimony," by Dr. Ronald at ¶ 1.2.	Lack of scientific basis for expert opinion given by Geoffrey Nunberg and Susan Courtney.	151 at 51-52	PFIB-TTAB-000686-87
Copies of Registrant's registrations.	Native American imagery contained in Registrant's registrations.	128 at 79-80	PFIB-TTAB-000076-77
Letters expressing Native American Support for team name "Redskins".	Native American support for the team name "Redskins."	142 at 43-59	PFIB-TTAB-000293-309
1992 Resolution of Inter-Tribal Council, Inc.	Native American support for the team name "Redskins."	142 at 28-29	PFIB-TTAB-000278-79
Newspaper photograph and caption, "Redskins' Charley Malone Becomes Chief Flying Thunder," describing a Native American ceremony in which a player on the Washington Redskins was officially welcomed into the Sioux Tribe, 1940.	Native American support for the team name "Redskins."	142 at 60	PFIB-TTAB-000310
Newspaper reports of Eagle Day, a Cherokee Indian, joining the Washington Redskins.	Native American support for the team name "Redskins."	143 at 4-5	PFIB-TTAB-000311-12
Letter to Jack Kent Cooke from Susan Giller, May 10, 1993, noting that Plains Indians Museum, run by a Board of Native American elders and scholars, proudly displays a Washington Redskins pennant.	Native American support for the team name "Redskins."	149 at 71	PFIB-TTAB-000583
Federal Register, Part IV, Department of the Interior, Bureau of Indian Affairs, "Indian Entities Recognized and Eligible To Receive Services From The United States Bureau Of Indian Affairs," February 16, 1995.	Native American support for the team name "Redskins."	151 at 57-63	PFIB-TTAB-000692-98

Source	Probative Value	TTABVue Entry	Bates Nos.
Pappan Dep. at 123-26.	Native American support for the team name "Redskins."	112 at 127-130	Not applicable
Pappan Dep. Ex. 10 .	Native American support for the team name "Redskins."	114 at 20-21	Not applicable
Pappan Dep. Ex. 11 at 4.	Native American support for the team name "Redskins."	114 at 25	Not applicable
Memo to Jack Kent Cooke from Jack Kent Cooke, Sr., detailing results of survey conducted by WTOP radio, attached letter to Charlie Dayton from Tom McKinley, and attached survey tabulations, August 24, 1993.	Native American support for the team name "Redskins."	149 at 43-68	PFIB-TTAB-000555-580
Resolution of Inter-Tribal Council, Inc. (1992).	Native American support for the team name "Redskins."	142 at 28	PFIB-TTAB-000278
Letter to Washington Redskins Football Team from Bill G. Follis, *Chief of the Modoc Tribe of Oklahoma* (Jan. 16, 1992).	Native American support for the team name "Redskins."	142 at 32	PFIB-TTAB-000282
Letter to Senator John McCain from Stan Jones Sr., *Chairman fo the Board of Directors of the Tulalip Tribes* (Oct. 30, 1991).	Native American support for the team name "Redskins."	142 at 30	PFIB-TTAB-000280
Letter to Jack Kent Cooke from Robert J. Salgado, *Chairman of the Soboba Band of Mission Indians* (Jan. 17, 1992).	Native American support for the team name "Redskins."	142 at 34	PFIB-TTAB-000284
Letter to Charlie Dayton from Hollis E. Roberts, *Chief of the Choctaw Nation of Oklahoma* (Jan. 23, 1992).	Native American support for the team name "Redskins."	142 at 35-36	PFIB-TTAB-000285-86
Letter to Jack Kent Cooke from Harry G. Haney, *Principal Chief of the Seminole Nation of Oklahoma* (Jan. 23, 1992).	Native American support for the team name "Redskins."	142 at 37	PFIB-TTAB-000287

Source	Probative Value	TTABVue Entry	Bates Nos.
Letter to The Redskin Support Committee from Stanley G. Jones, Sr., *Chairman of the Board of Directors of the Tulalip Tribes* (Aug. 31, 1992).	Native American support for the team name "Redskins."	142 at 38	PFIB-TTAB-000288
Letter to C. A. Buser from Floyd E. Leonard, *Chief of the Miami Tribe of Oklahoma* (June 21, 1991).	Native American support for the team name "Redskins."	142 at 39-40	PFIB-TTAB-000289-90
Letter to Jo Walter from Merna L. Lewis, *Vice President of the Salt River Pima-Maricopa Indian Community* (July 14, 1992).	Native American support for the team name "Redskins."	142 at 41	PFIB-TTAB-000291
Letter to Jo Walter from Jonathon L. Taylor, *Principal Chief of the Eastern Band of Cherokee Indians* (July 16, 1992).	Native American support for the team name "Redskins."	142 at 42	PFIB-TTAB-000292
Letter to Charlie Dayton of the Washington Redskins from Dale Pullen (June 3, 1991).	Native American support for the team name "Redskins."	142 at 43	PFIB-TTAB-000293
Letter to the President of the Washington Redskins from Harry J. Gould and attached article (Oct. 28, 1991).	Native American support for the team name "Redskins."	142 at 44-45	PFIB-TTAB-000294-95
Letter to Rick Vaughn of the Washington Redskins from Ronald R. Julian (Sep. 8, 1994).	Native American support for the team name "Redskins."	142 at 46	PFIB-TTAB-000296
Letter to Director of Public Relations of the Washington Redskins from Philip A. May (Jan. 27, 1992).	Native American support for the team name "Redskins."	142 at 47	PFIB-TTAB-000297
Letter to Jack Kent Cooke of the Washington Redskins from Robert N. Huey and attached article (Mar. 29, 1989).	Native American support for the team name "Redskins."	142 at 48-49	PFIB-TTAB-000298-99

Source	Probative Value	TTABVue Entry	Bates Nos.
Letter to the Washington Redskins from Billie J. Hipsley and attached article (Jan. 13, 1992).	Native American support for the team name "Redskins."	142 at 50-51	PFIB-TTAB-000300-01
Letter to Washington Post from Louise M. Saylor (Mar. 17, 1992).	Native American support for the team name "Redskins."	142 at 52	PFIB-TTAB-000302
Letter to Washington Redskins from W. J. Bryant (Feb. 29, 1988).	Native American support for the team name "Redskins."	142 at 53-54	PFIB-TTAB-000303-04
Letter to Jack Kent Cooke of the Washington Redskins from Ricardo J. Martinez (Mar. 21, 1992).	Native American support for the team name "Redskins."	142 at 55-57	PFIB-TTAB-000305-07
Facsimile cover sheet to Charlie Dayton of the Washington Redskins from J. Lisanby (Jan. 17, 1992).	Native American support for the team name "Redskins."	142 at 58	PFIB-TTAB-000308
Letter to the Washington Redskins Public Relations Office from George B. Tsoodle (undated).	Native American support for the team name "Redskins."	142 at 59	PFIB-TTAB-000309
Letters from tribal chiefs and recognized leaders.	Native American support for the team name "Redskins."	142 at 30-42	PFIB-TTAB-000280-92
Article by Vine Deloria, Jr. entitled "Commentary: Research, Redskins, and Reality," *The Native American Quarterly*, Vol. XV, No. 4, Fall 1991.	Native Americans do not find the term "redskin" disparaging.	175 at 74-81	PFIB-TTAB-000241-48
Blackhorse Dep. Ex. 8.	Native Americans do not find the term "redskin" disparaging.	123 at 47-48	Not applicable
Tsotigh Dep. at 130-32.	Native Americans do not find the term "redskin" disparaging.	115 at 137-38	Not applicable
Newspaper clippings dated from 1940 to 1949, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	144 at 4-43	PFIB-TTAB-000331-70
Newspaper clippings dated from 1950 to 1959, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	148 at 4-52	PFIB-TTAB-000371-419

Source	Probative Value	TTABVue Entry	Bates Nos.
Newspaper clippings dated from 1960 to 1969, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	150 at 4-35 145 at 4-35 146 at 4-35	PFIB-TTAB-000420-515
Newspaper clippings dated from 1970 to 1979, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	149 at 4-14	PFIB-TTAB-000516-526
Newspaper clippings dated from 1980 to 1989, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	149 at 15-25	PFIB-TTAB-000527-537
Newspaper clippings dated from 1990 to 1995, referring to the Washington Redskins.	Neutral, secondary meaning of "Redskins" referencing the professional Washington, D.C. football team at the time of each registration.	149 at 26-38	PFIB-TTAB-000538-550
Article entitled "Abandoning the Craze," *The New York Times*, November 26, 1890.	Neutrality of the word "redskin" as an ethnic identifier	142 at 4	PFIB-TTAB-000254
Webster's New American Dictionary (1939, 1965).	Neutrality of the word "redskin" as an ethnic identifier at the time of the registrations.	128 at 91-92	PFIB-TTAB-000088-89
The World Book Dictionary (1967).	Neutrality of the word "redskin" as an ethnic identifier at the time of the registrations.	128 at 93-94	PFIB-TTAB-000090-91
Dictionary definitions of "redskin(s)".	Neutrality of the word "redskin" as an ethnic identifier at the time of the registrations	128 at 95-110	PFIB-TTAB-000092-107
Expert report of David Barnhart.	Neutrality of the word "redskin" as an ethnic identifier at the time of the registrations	129 at 4-30	PFIB-TTAB-000108-34
Selected page from *Ulysses* by James Joyce.	Neutrality of the word "redskin" as an ethnic identifier.	129 at 34-36	PFIB-TTAB-000138-40
Excerpts from the book *Redskin* by Elizabeth Pickett.	Neutrality of the word "redskin" as an ethnic identifier.	175 at 13-42	PFIB-TTAB-000180-209

Source	Probative Value	TTABVue Entry	Bates Nos.
Essays by Philip Rahv entitled "Paleface and Redskin" and related commentary.	Neutrality of the word "redskin" as an ethnic identifier.	175 at 43-73	PFIB-TTAB-000210-240
Expert Report of David Barnhart at 6-8.	Neutrality of the word "redskin" as an ethnic identifier.	129 at 10-12	PFIB-TTAB-000114-16
Expert Report of Dr. Ronald Butters at ¶¶ 5, 14-18.	Neutrality of the word "redskin" as an ethnic identifier.	129 at 38, 42-47	PFIB-TTAB-000142, 46-51
Butters Dep., Dec. 20, 1996 at 170-75.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 47-48	Not applicable
Notes created by Dr. Ronald Butters in Rebuttal and entitled "REDSKIN data".	Neutrality of the word "redskin" as an ethnic identifier.	129 at 62-66	PFIB-TTAB-000166-70
Rebuttal report, "Some Comments on Nunberg's Testimony," by Dr. Ronald Butters at ¶¶ 1.1.c, 1.3.	Neutrality of the word "redskin" as an ethnic identifier.	151 at 50-52	PFIB-TTAB-000685-87
Butters Dep., Dec. 20, 1996, at 157-58.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 44	Not applicable
Butters Dep., Apr. 10, 1997, at 230-31.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 80	Not applicable
Butters Dep., Apr. 10, 1997, at 230-31.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 80	Not applicable
Article entitled "Cowed by the Soldiers," *The New York Times*, Nov. 26, 1890.	Neutrality of the word "redskin" as an ethnic identifier.	175 at 84-86	PFIB-TTAB-000251-53
Pappan Dep. at 176-77.	Neutrality of the word "redskin" as an ethnic identifier.	112 at 180-81	Not applicable
Butters Dep., Apr, 10, 1997, at 230-31.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 80	Not applicable
Butters Dep., Dec. 20, 1996, at 157-58.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 44	Not applicable
Barnhart Dep., Apr. 9, 1997, at 168, 181-83, 233-40, 244.	Neutrality of the word "redskin" as an ethnic identifier.	161 at 12, 15-16, 28-31	Not applicable

Source	Probative Value	TTABVue Entry	Bates Nos.
Butters Dep., Dec. 20, 1996, at 48, 143.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 16, 40	Not applicable
Butters Dep., Apr. 10, 1997, at 248.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 84	Not applicable
Butters Dep., Apr. 10, 1997, 210-11.	Neutrality of the word "redskin" as an ethnic identifier.	163 at 75	Not applicable
Expert Report of David Barnhart at 13-14.	Neutrality of the word "redskin" as an ethnic identifier.	129 at 17-18	PFIB-TTAB-000121- 22
Gover Dep. at 181-84.	Petitioners only represent themselves.	120 at 187-90	Not applicable
Pappan Dep. at 120.	Petitioners only represent themselves.	112 at 124	Not applicable
Tsotigh Dep. at 9, 134-36.	Petitioners only represent themselves.	115 at 15, 140-42	Not applicable
Blackhorse Dep. at 30-31.	Petitioners' delay in filing their petition to cancel.	122 at 38-39	Not applicable
Gover Dep. at 36, 38-39.	Petitioners' delay in filing their petition to cancel.	120 at 42, 44-45	Not applicable
Briggs-Cloud Dep. at 45, 48-49.	Petitioners' delay in filing their petition to cancel.	110 at 51, 54-55	Not applicable
Pappan Dep. Ex. 1 at 9.	Petitioners' delay in filing their petition to cancel.	113 at 17-19	Not applicable
Pappan Dep. Ex. 14.	Petitioners' delay in filing their petition to cancel.	114 at 30	Not applicable
Tsotigh Dep. at 28-29.	Petitioners' delay in filing their petition to cancel.	115 at 34-35	Not applicable
Blackhorse Dep. at 85-87.	Lack of excuse for Petitioners' delay in filing their petition to cancel.	122 at 93-95	Not applicable
Gover Dep. at 38-39.	Lack of excuse for Petitioners' delay in filing their petition to cancel.	120 at 44-45	Not applicable
Briggs-Cloud Dep. at 62.	Lack of excuse for Petitioners' delay in filing their petition to cancel.	110 at 68	Not applicable
Pappan Dep. at 82-83.	Lack of excuse for Petitioners' delay in filing their petition to cancel.	112 at 86-87	Not applicable
Tsotigh Dep. at 140-41.	Lack of excuse for Petitioners' delay in filing their petition to cancel.	115 at 146-47	Not applicable
Blackhorse Dep. at 168-76.	Petitioners' failure to preserve documents.	122 at 176-77	Not applicable

Source	Probative Value	TTABVue Entry	Bates Nos.
Briggs-Cloud Dep. at 117-20, 125-26, 128.	Petitioners' failure to preserve documents.	110 at 123-26, 131-32, 134	Not applicable
Gover Dep. at 47-48.	Petitioners' failure to preserve documents.	120 at 53-54	Not applicable
Pappan Dep. at 94-95, 131-37.	Petitioners' failure to preserve documents.	112 at 98-99, 135-41	Not applicable
Tsotigh Dep. at 57-58.	Petitioners' failure to preserve documents.	115 at 63	Not applicable
Expert Report of Dr. Jacob Jacoby.	Qualification of Registrant's expert, Dr. Jacoby.	153 at 16	PFIB-TTAB-000598
Resume of Dr. Jacob Jacoby.	Qualification of Registrant's expert, Dr. Jacoby.	151 at 5-48	PFIB-TTAB-000640-83
Butters Dep., Apr. 10, 1997, at 236.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	163 at 81	Not applicable
Jacoby Dep., Apr. 8, 1997, at 57.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	166 at 19	Not applicable
Expert Report of Dr. Jacob Jacoby.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	153 at 16	PFIB-TTAB-000598
Jacoby Dep., Apr. 8, 1997, at 57.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	166 at 19	Not applicable
Article discussing team name "Redskins" (undated).	Rationale for choosing the team name "Redskins."	142 at 10	PFIB-TTAB-000260
Registrant's Trademark Registrations	Registrant's ownership of the registrations at issue.	128 at 76, 78-82	PFIB-TTAB-000073, 75-79
Depictions of the Washington Redskins logo.	Registrant's use of Native American imagery is not disparaging.	128 at 84-85	PFIB-TTAB-000081-82
Copy of Petition for Cancellation in *Harjo*, at ¶ 1.	Registrant's use of Native American imagery is not disparaging.	128 at 86-90	PFIB-TTAB-000083-87
Cover of Book *Red Earth White Lies* by Vine Deloria, Jr. depicting Native American with headdress.	Registrant's use of Native American imagery is not disparaging.	175 at 82-83	PFIB-TTAB-000249-50
Photograph of "Round Rock Public School, Fighting Braves" sign on Navajo Indian Reservation and attached explanatory information.	Registrant's use of Native American imagery is not disparaging. Neutrality of the word "redskin" as an ethnic identifier.	143 at 15-16	PFIB-TTAB-000322-23

Source	Probative Value	TTABVue Entry	Bates Nos.
Photograph of "Tube City High Warriors" sign with cartoon depiction of Native American wearing feathers on Navajo Indian Reservation and attached explanatory information .	Registrant's use of Native American imagery is not disparaging. Neutrality of the word "redskin" as an ethnic identifier.	143 at 17-18	PFIB-TTAB-000324-25
Logo of the Bureau of Indian Affairs, with depiction of Native American in headdress.	Registrant's use of Native American imagery is not disparaging.	143 at 20-21	PFIB-TTAB-000327-28
Photocopy of Indian head nickel 1937.	Registrant's use of Native American imagery is not disparaging.	149 at 73	PFIB-TTAB-000585
Selected pages from "Media Stereotyping and Native Response: An Historical Overview," *The Indian Historian*, Vol. 11, No. 4, Dec. 1978, by Ward Churchill, Norbert Hill, and Mary Ann Hill.	Registrant's use of the team name "Redskins" is not disparaging.	151 at 64-67	PFIB-TTAB-000699-702
Barnhart Dep., Dec. 19, 1996, at 127-28, 130.	Registrant's use of the term "Redskins" refers to the National Football League teams from Washington.	159 at 130-131, 133	Not applicable
Resume of David Barnhart.	Reliability of the opinions of Registrant's experts.	129 at 31-33	PFIB-TTAB-000135-37
Resume of Dr. Ronald Butters.	Reliability of the opinions of Registrant's experts.	129 at 53-61	PFIB-TTAB-000157-65
Press Release, undated.	Respectful nature of Registrant's use of the term "Redskins."	142 at 11	PFIB-TTAB-000261
Article discussing selection of team name "Redskins' as honoring the Redskins' Sioux coach William "Lone Star" Dietz.	Respectful nature of Registrant's use of the term "Redskins."	142 at 10	PFIB-TTAB-000260
Cooke Dep., Mar. 27, 1996, at 91, 94.	Respectful nature of Registrant's use of the term "Redskins."	155 at 17	Not applicable
Cooke Dep., Mar. 26, 1996, at 93.	Respectful nature of Registrant's use of the term "Redskins."	154 at 18	Not applicable
Cooke Dep., Mar. 27, 1996, at 139-141, 144-62.	Respectful nature of Registrant's use of the term "Redskins."	155 at 23-26	Not applicable

Source	Probative Value	TTABVue Entry	Bates Nos.
Washington Redskins' program covers with portraits of Native Americans.	Respectful nature of Registrant's use of the term "Redskins."	142 at 14-25	PFIB-TTAB-000264-75
Letter to Joseph F.K. Mayhew from Jack Kent Cooke, March 26, 1992.	Respectful nature of Registrant's use of the term "Redskins."	142 at 13	PFIB-TTAB-000262
Vaughan Dep., Mar. 28, 1996, at 93.	Respectful nature of Registrant's use of the term "Redskins."	158 at 96	Not applicable
Expert Report of Dr. Ronald Butters at ¶ 25.	Respectful nature of Registrant's use of the term "Redskins."	129 at 50	PFIB-TTAB-000154
Rebuttal report, "Some Comments on Nunberg's Testimony," by Dr. Ronald Butters.	Respectful nature of Registrant's use of the term "Redskins."	151 at 49-56	PFIB-TTAB-000684-91
Letter to Susan Fletcher from John Kent Cooke, September 22, 1983.	Respectful nature of Registrant's use of the term "Redskins."	142 at 26	PFIB-TTAB-000276
Letter to Nate Pope from John Kent Cooke, August 10, 1987.	Respectful nature of Registrant's use of the term "Redskins."	142 at 27	PFIB-TTAB-000277
Cooke Dep., Mar. 26, 1996, at 119.	Respectful nature of Registrant's use of the term "Redskins."	154 at 22	Not applicable
Expert Report of Dr. Jacob Jacoby.	Results of 1996 Ross Survey were incorrectly tabulated.	153 at 25	PFIB-TTAB-000607
Expert Report of Dr. Jacob Jacoby.	Results of 1996 Ross Survey were incorrectly tabulated.	153 at 27	PFIB-TTAB-000609
Expert Report of Dr. Jacob Jacoby.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 19	PFIB-TTAB-000601
Jacoby Dep., Apr. 8, 1997, at 20.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	166 at 9	Not applicable
W. G. Zikmund, *Exploring Marketing Research*.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 34-41	PFIB-TTAB-000616-23
Advertising & Research Foundation, *Guidelines for the Public Use of Market and Opinion Research.*	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 42-56	PFIB-TTAB-000624-38

Source	Probative Value	TTABVue Entry	Bates Nos.
Expert Report of Dr. Jacob Jacoby.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 16	PFIB-TTAB-000598
Expert Report of Dr. Jacob Jacoby.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 19	PFIB-TTAB-000601
Jacoby Dep., Apr. 8, 1997, at 22.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	166 at 10	Not applicable
"Redskins" notes by Dr. Jacob Jacoby, from April 1, 1997 telephone conversation with Richard Maisel.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	151 at 4	PFIB-TTAB-000639
Separate definitions of "redskin" and "Redskins," from the *American Heritage School Dictionary* (1977 ed.).	Separate and distinct meaning of "Redskins," when used in the context of professional football.	143 at 22-23	PFIB-TTAB-000329-30
Expert Report of David Barnhart at 2.	Separate and distinct meaning of "Redskins," when used in the context of professional football.	129 at 6	PFIB-TTAB-000110
Expert Report of David Barnhart at 12.	Separate and distinct meaning of "Redskins," when used in the context of professional football.	129 at 16	PFIB-TTAB-000120
DVD of scene from *Courage Under Fire* (1996) in which actor Denzel Washington wears a Washington Redskins cap.	Separate and distinct meaning of "Redskins," when used in the context of professional football.	149 at 72	PFIB-TTAB-000584
Expert Report of Dr. Ronald Butters at ¶ 5.	Separate and distinct meaning of "Redskins," when used in the context of professional football.	129 at 38	PFIB-TTAB-000142
Pappan Dep. at 171-72.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	112 at 175-72	Not applicable
Gover Dep. at 111-16 & Ex. 11.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	120 at 117-22 118 at 18	Not applicable

Source	Probative Value	TTABVue Entry	Bates Nos.
Tsotigh Dep. at 129-30.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	115 at 135-36	Not applicable
Press Release (undated).	The intent of the Washington Redskins in the selection of the team name.	142 at 11	PFIB-TTAB-000261
Letter to Joseph F.K. Mayhew from Jack Kent Cooke (Mar. 26, 1992).	The intent of the Washington Redskins in the selection of the team name.	142 at 12	PFIB-TTAB-000262
Cooke Dep., Mar. 27, 1996, at 200.	The intent of the Washington Redskins in the selection of the team name.	155 at 201	Not applicable
Letter to Robert J. Salgado from Jack Kent Cooke (Mar. 5, 1992).	The intent of the Washington Redskins in the selection of the team name.	142 at 13	PFIB-TTAB-000263
Cooke Dep., Mar. 27, 1996, at 91, 94.	The positive implications of the Washington Redskins team name.	155 at 17	Not applicable
Photographs of "Red Mesa Unified School District 27, Home of the Redskins" sign of Navajo Indian Reservation and attached explanatory information.	The term "Redskins" is not disparaging.	143 at 6-8	PFIB-TTAB-000313-15
Blackhorse Dep. Exs. 6 & 7.	The term "Redskins" is not disparaging.	123 at 44-46	Not applicable
Photograph of street signs "Navajo Trail" and "Redskin Blvd." on Navajo Indian Reservation and attached explanatory information.	The term "Redskins" is not disparaging.	143 at 9-10	PFIB-TTAB-000316-17
Photograph of "Redskin Motel" on Cherokee Indian Reservation and cover letter to *The Washington Post* from Priscilla J. Fritz, September 2, 1992.	The term "Redskins" is not disparaging.	143 at 11-12	PFIB-TTAB-000318-19
Letter to Jack Kent Cooke from Michael John Nisos and attached photograph of "Redskin" movie theater named by Native Americans, April 28, 1992.	The term "Redskins" is not disparaging.	143 at 13-14	PFIB-TTAB-000320-21

Source	Probative Value	TTABVue Entry	Bates Nos.
Article entitled "Paleface and Redskin" and related commentary.	The term "Redskins" is not disparaging.	175 at 5-12	PFIB-TTAB-000171-79
Butters Dep., Apr. 10, 1997, at 196-201.	The term "Redskins" is not disparaging.	163 at 71-73	Not applicable
Rebuttal report, "Some Comments on Nunberg's Testimony," by Dr. Ronald Butters at ¶ 1.5.	The term "Redskins" is not disparaging.	151 at 55-56	PFIB-TTAB-000690-91
Newspaper reports of United States Presidents and Vice-Presidents with the Washington Redskins.	The term "Redskins" is not disparaging.	149 at 39-42	PFIB-TTAB-000551-54
Butters Dep., Apr. 10, 1997, at 245.	The term "Redskins" is not disparaging.	163 at 84	Not applicable
Butters Dep., Dec. 20, 1996, at 51-53, 68-69.	The term "Redskins" is not disparaging.	163 at 17-18, 21-22	Not applicable
Gover Dep. at 115.	The word "redskin" is not disparaging *per se*.	120 at 121	Not applicable
Tsotigh Dep. at 74-76.	The word "redskin" is not disparaging *per se*.	115 at 80-82	Not applicable
Dictionary definitions of "redskin(s)"	The word "redskin" is not disparaging *per se*.	128 at 91-110	PFB-TTAB-000088-107
Barnhart Dep., Dec. 19, 1996, at 135.	The word "redskin" is not disparaging *per se*.	159 at 138	Not applicable
Expert Report of David Barnhart at 9-11.	The word "redskin" is not disparaging *per se*.	129 at 13-15	PFIB-TTAB-000117-19
Barnhart Dep., Dec. 19, 1996, at 46-50.	The word "redskin" is not disparaging *per se*.	159 at 49-53	Not applicable
Butters Dep., Dec. 20, 1996, at 37-39.	The word "redskin" is not disparaging *per se*.	163 at 14	Not applicable
Expert Report of Dr. Ronald Butters at ¶ 9.	The word "redskin" is not disparaging *per se*.	129 at 37-52	PFIB-TTAB-000144
The cover and introductory pages from *The Iron Redskin* (1994).	The word "Redskin" has separate and distinct meanings depending on the context in which it is used.	152 at 8-14	PFIB-TTAB-000718-24
The cover and introductory pages from the *Illustrated Indian Motorcycle Buyer's Guide: All the Iron Redskins from 1901* (1989).	The word "Redskin" has separate and distinct meanings depending on the context in which it is used.	152 at 15-19	PFIB-TTAB-000725-29
H.V. Sucher, *The Iron Redskin* (1990).	The word "Redskin" has separate and distinct meanings.	152 at 8-14	PFIB-TTAB-000718-24

Source	Probative Value	TTABVue Entry	Bates Nos.
J. Hatfield, *Illustrated Indian Motorcycle Buyer's Guide: All the Iron Redskins from 1901* (1989).	The word "Redskin" has separate and distinct meanings.	152 at 15-19	PFIB-TTAB-000725-29
Second Joint Stipulation Regarding Admissibility of Certain Evidence and Regarding Certain Discovery Issues at ¶¶ 8-15.	Registrant's economic investment in and development of its marks.	45 at 5-7	Not applicable

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 Pappan, and Courtney Tsotigh, Petitioners, v. Pro-Football, Inc., Registrant.	Cancellation No. 92/046,185 **APPENDIX D TO REGISTRANT'S TRIAL BRIEF: REGISTRANT'S TABLE OF PETITIONERS' EVIDENCE**

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APPENDIX D

TABLE OF PETITIONERS' EVIDENCE

Pursuant to the Board's May 5, 2011 Order [Dkt. 39] at 6-8, Registrant submits the following Table of Evidence summarizing relevant information submitted by Petitioners and specifying (1) the probative value of particular facts or testimony and (2) the location in the record of such facts or testimony. Registrant has argued in its Trial Brief that much of Petitioners' evidence should be excluded from the record. *See also* Appendices A and B to Registrant's Trial Brief. However, to the extent the Board does admit evidence submitted by Petitioners, Registrant would additionally rely on the following:

Source	Probative Value	TTABVue Entry	Bates Nos.
Ross Dep., Feb. 20, 1997 at 86.	1996 Ross Survey is irrelevant to the issues in this case.	82 at 212	BLA-TTAB-04332
Ross Dep., Dec. 12, 1996 at 71-72.	1996 Ross Survey is irrelevant to the issues in this case.	96 at 75-76	BLA-TTAB-03188-89
Jacoby Dep., Apr. 8, 1997, at 47-50.	1996 Ross Survey is irrelevant to the issues in this case.	166 at 16-17	Not applicable
Ross Dep., Feb. 20, 1997 at 105.	1996 Ross Survey is irrelevant to the issues in this case.	82 at 231	BLA-TTAB-04351
Ross Dep., Dec. 12, 1996 at 67.	1996 Ross Survey is irrelevant to the issues in this case.	96 at 71	BLA-TTAB-03184
Ross Dep., Feb. 20, 1997 at 84.	1996 Ross Survey is irrelevant to the issues in this case.	82 at 210	BLA-TTAB-04330
Ross Dep., Dec. 12, 1996 at 110, 117, 128-29.	1996 Ross Survey is irrelevant to the issues in this case.	96 at 114, 121, 132-33	BLA-TTAB-03227, 234, 245-46
Ross Dep., Feb. 20, 1997 at 78.	1996 Ross Survey is irrelevant to the issues in this case.	82 at 204	BLA-TTAB-04324
Ross Dep., Dec. 12, 1996, Ex. 3 at 10	Results of 1996 Ross Survey were incorrectly tabulated.	97 at 42	BLA-TTAB-04897
Ross Dep., Dec. 12, 1996, at 212-213	Results of 1996 Ross Survey were incorrectly tabulated.	96 at 216-217	BLA-TTAB-03329-30
Ross Dep., Dec. 12, 1996, Ex. 3 at 4-5	Results of 1996 Ross Survey were incorrectly tabulated.	97 at 36-37	BLA-TTAB-04891-92

Source	Probative Value	TTABVue Entry	Bates Nos.
Ross Dep., Dec. 12, 1996, at 238.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	96 at 242	BLA-TTAB-03355
Nunberg Dep., Dec. 17, 1996, at 64.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	99 at 16	BLA-TTAB-02955
Ross Dep., Dec. 12, 1996, Ex. 3 at 5, 9.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	97 at 37, 41	BLA-TTAB-04892, 96
Ross Dep., Dec. 12, 1996, at 88.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	96 at 92	BLA-TTAB-03205
Ross Dep., Dec. 12, 1996, at 87.	Questionnaire used in 1996 Ross Survey was fundamentally flawed.	96 at 91	BLA-TTAB-03204
Stevens Dep., Jan. 30, 1997, at 26.	Irrelevance of the CCAR Resolution.	101 at 33	BLAT-TTAB-04566
Kahn Dep., Jan. 31, 1997, at 11.	Irrelevance of the CCAR Resolution.	80 at 227	BLA-TTAB-03826
Swanston Dep., Jan. 31, 1997, at 9, 24.	Irrelevance of the CCAR Resolution.	101 at 81, 96	BLA-TTAB-04614, 629
Gross Dep., June 11, 1997, at 16.	Irrelevance of the letter written by Harold Gross.	79 at 178	BLA-TTAB-03545
Gross Dep., June 11, 1997 at 28.	Irrelevance of the letter written by Harold Gross.	79 at 190	BLA-TTAB-03557
Nunberg Dep., Feb. 19, 1997 at 468.	Bias of Petitioners' expert.	82 at 94	BLA-TTAB-04214
Hirschfelder Dep., Apr. 10, 1997, Ex. 1.	Petitioners' experts' lack of qualification.	106 at 7-11	BLA-TTAB-05866-70
Hirschfelder Dep., Apr. 10, 1997, at 50-51.	Petitioners' experts' lack of qualification.	80 at 55-56	BLA-TTAB-03654-55
Ross Dep., Dec. 12, 1996, Ex. 3.	Petitioners' experts' lack of qualification.	97 at 4-202 84 at 4-59	BLA-TTAB-04859-5113
Excerpts from Hollywood Westerns.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	105 at 36	BLA-TTAB-05815
Courtney Dep., Feb. 18, 1997 at 68, 70-71.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	79 at 73, 75-76	BLA-TTAB-03440, 42-43
Courtney Dep., Feb. 18, 1997 at 60, 71, 123.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	79 at 65, 76, 128	BLA-TTAB-03432, 42, 95
Courtney Dep., Feb. 18, 1997 at 71, 72.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	79 at 76-77	BLA-TTAB-03442-43
Courtney Dep., Feb. 18, 1997 at 133.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	79 at 138	BLA-TTAB-03505

Source	Probative Value	TTABVue Entry	Bates Nos.
Courtney Dep., Feb. 18, 1997, Ex. 2 .	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	105 at 35-36	BLA-TTAB-05814-15
Courtney Dep., Feb. 18, 1997 at 62.	Lack of scientific basis for opinion given by Geoffrey Nunberg and Susan Courtney.	79 at 67	BLA-TTAB-03434
Hoxie Dep., Feb. 12, 1997, Ex. 1.	Lack of scientific basis for the opinions of Frederick Hoxie	107 at 117-121	BLA-TTAB-06030-34
Ross Dep., Dec. 12, 1996, at 67.	Native American support for the team name "Redskins."	96 at 71	BLAT-TTAB-03184
Ross Dep., Feb. 20, 1997, at 67-68, 78-79, 84, 113-14.	Native American support for the team name "Redskins."	82 at 193-94, 204-05, 210, 239-40	BLA-TTAB-04313-14, 324-25, 330, 359-66
Nunberg Dep., Dec. 17, 1996, at 111.	Neutrality of the word "redskin" as an ethnic identifier at the time of the registrations.	99 at 63	BLA-TTAB-03002
Nunberg Dep., June 17, 1997, at 128.	Neutrality of the word "redskin" as an ethnic identifier.	109 at 133	BLA-TTAB-06988
Nunberg Dep., Feb. 19, 1997, at 494.	Respectful nature of Registrant's use of the term "Redskins."	82 at 120	BLA-TTAB-04240
Expert Report of Dr. Jacob Jacoby	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	153 at 19	PFIB-TTAB-000601
Ross Dep., June 11, 1997, Ex. 202.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	94 at 4-81	BLA-TTB-06731-808.
Ross. Dep., June 11, 1997, Exs. 202, 203.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	94 at 4-83	BLA-TTAB-06731-810
Ross Dep., Dec. 12, 1996, Ex. 6.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	84 at 87-110	BLA-TTAB-05141- 64
Ross Dep., June 11, 1997, Exs. 202, 203.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	94 at 4-83	BLA-TTAB-06731-810
Ross Dep., Dec. 12, 1996, at 93.	Sampling plan and implementation of the 1996 Ross Survey was critically flawed.	96 at 97	BLA-TTAB-03210

Source	Probative Value	TTABVue Entry	Bates Nos.
Nunberg Dep., June 17, 1997, at 129-30, 144, 147, 152.	Separate and distinct meaning of "Redskins," when used in the context of professional football.	109 at 134-25, 149, 152, 157	BLA-TTAB-06989-90, BLA-TTAB-07004, BLA-TTAB-07007, BLA-TTAB-07012
Nunberg Dep., June 17, 1997, at 129-30, 144, 147, 152.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	109 at 134-35, 149, 152, 157	BLA-TTAB-06989-90, BLA-TTAB-07004, 07, 12
Nunberg Dep., Feb 19, 1997, at 385-87, 424.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	82 at 11-13, 50	BLA-TTAB-04131-33, 70
Ross Dep., Feb. 20, 1997, at 67-69, 78-79, 84, 113-22.	The distinct secondary meaning of the word "Redskins" in the context of professional football.	82 at 193-95, 204-05, 210, 239-48	BLA-TTAB-04313-15, 24-25, 30, 59-68.
Nunberg Dep., Dec. 17, 1996, at 64.	The meaning of "offensive" is different from the meaning of "disparaging."	99 at 16	BLA-TTAB-02955
Nunberg Dep., June 17, 1997, at 34, 120-21.	The term "Redskins" is not disparaging.	109 at 39, 125-26	BLA-TTAB-06894, BLA-TTAB-06980-81
Nunberg Dep., June 17, 1997, at 62, 132-34, 137.	The word "Redskin" has separate and distinct meanings depending on the context in which it is used.	109 at 67, 137-139, 142	BLA-TTAB-06922, BLA-TTAB-06992-94, BLA-TTAB-06997
Oxford English Dictionary (1989)	The word "Redskin" has separate and distinct meanings depending on the context in which it is used.	63 at 55-57	BLA-TTAB-00220-22