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

**APPLICATION SERIAL NO.** 85472044

**MARK:** THE SLANTS

**\*85472044\***

**CORRESPONDENT ADDRESS:**

RONALD COLEMAN  
GOETZ FITZPATRICK LLP  
1 PENN PLZ STE 4401  
NEW YORK, NY 10119-0196

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**APPLICANT:** Tam, Simon Shiao

**CORRESPONDENT'S REFERENCE/DOCKET**

**NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

rcoleman@goetzfitz.com

**OFFICE ACTION**

**STRICT DEADLINE TO RESPOND TO THIS LETTER**

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

**ISSUE/MAILING DATE: 1/6/2012**

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SEARCH OF OFFICE'S DATABASE OF MARKS**

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

**SECTION 2(A) – MARK IS DISPARAGING**

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

The following two factors must be considered when determining whether matter may be disparaging under Trademark Act Section 2(a):

- (1) What is the likely meaning of the matter in question, taking into account not only dictionary definitions, but also the relationship of the matter to the other elements in the mark, the nature of the goods and/or services, and the manner in which the mark is used in the marketplace in connection with the goods and/or services; and
- (2) If that meaning is found to refer to identifiable persons, institutions, beliefs or national symbols, whether that meaning may be disparaging to a substantial composite of the referenced group.

*In re Squaw Valley Dev.*, 80 USPQ2d at 1267 (citing *Harjo*, 50 USPQ2d at 1740-41); TMEP §1203.03(c).

To “disparage” means “to speak slighting[ly] of: run down: depreciate.” *In re Squaw Valley Dev. Co.*, 80 USPQ2d 1264, 1276 (TTAB 2006) (internal punctuation omitted) (quoting *Webster’s Third New International Dictionary* (unabridged ed. 1993)). The determination of whether a mark is disparaging depends upon the perspective of the object of disparagement. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1217 (TTAB 2010); see also TMEP §1203.03(c). A mark may be disparaging in two ways:

- (1) Matter that is not, in and of itself, disgusting or otherwise unpleasant, may be applied or combined in such a way that it is offensive to the disparaged party. See, e.g., *In re Anti-Communist World Freedom Cong., Inc.*, 161 USPQ 304, 305 (TTAB 1969) (holding design of an “X” superimposed over a hammer and sickle to disparage, and to bring into contempt and disrepute, a national symbol of the U.S.S.R.); or
- (2) Matter may be inherently offensive, and, when directed at a specific individual or entity, may become even more offensive. See, e.g., *Greyhound Corp. v. Both Worlds Inc.*, 6 USPQ2d 1635, 1640 (TTAB 1988) (noting “the offensiveness of [applicant’s mark, depicting a defecating dog,] becomes even more objectionable because it makes a statement about opposer itself”).

The attached evidence shows the likely meaning of “THE SLANTS” to be a negative term regarding the shape of the eyes of certain persons of Asian descent. See attached definitions of “Slant”. This refers to “persons of Asian descent” in a disparaging manner because it is an inherently offensive term that has a long history of being used to deride and mock a physical feature of those individuals. See Online Etymology Dictionary, Mother Chronicles, “Slant Eyes, Almond Eyes, What’s in those Chinese Eyes?”.

The term “slants” and the full equivalent “slant-eyes” has long been a derogatory term directed towards those of Asian descent. The etymology of the term suggests that its use became prevalent during the

various wars of the 20<sup>th</sup> century, starting with World War II and increasing in use in the Vietnam war as a term to deride and mock the citizens of the countries at war with the United States and those of Asian descent in general. *See* *The Color of Words: An Encyclopaedic Dictionary of Ethnic Bias in the United States*.

Since that time, the research of the Office indicates that the term “slants” retains its offensive and derogatory meaning. Importantly, the oldest and largest Asian American civil rights organization in the United States, the Japanese American Citizens League (JACL), has issued a publication on hate speech that specially states that the term “slant” is derogatory and should not be used. *See* attached webpage excerpt and literature on hate speech from JACL. Moreover, numerous dictionaries define “slants” or “slant-eyes” as a derogatory or offensive term. *See* attached definitions from, among others, Oxford Dictionary of Modern Slang, American Heritage Dictionary, Online Etymology Dictionary, New Partridge Dictionary of Slang and Unconventional English, *The Color of Words: An Encyclopedic Dictionary of Ethnic Bias in the United States*, American English Compendium, and UrbanDictionary.com. Further, many listings of slang and offensive terms include the word “slants” and its derivatives such as slant-eyes, slanted-eyes, and the pictorial representation as a slur or derogatory. *See* listing of racial slurs from Wikipedia.org, <http://gyral.blackshell.com/names.html>, [http://www.asianjoke.com/others/ethnic\\_slurs.htm](http://www.asianjoke.com/others/ethnic_slurs.htm), and [www.fact-index.com/list\\_of\\_ethnic\\_slurs.html](http://www.fact-index.com/list_of_ethnic_slurs.html).

More specifically, the band’s name has been found offensive numerous times. First, a band performance and a speaking engagement for the lead singer were cancelled because there had been concerns raised over the name of his band. *See* *The Daily Swam*, “Oregon Governor Cancels Asian Band the Slants’ Performance at Asian Youth Conference.” Second, articles on the band have noted that the name has been controversial and that the band chose the name, in part due to the history of the term. *See* *Northwest Asian Weekly*, “Rock band to trademark Office: Our Name is Not Disparaging to Asians”, “Shuffled! The Slants”. Further, several bloggers and commenters to articles on the band have indicated that they find the term and the applied-for mark offensive, even after extensive dialogue with the applicant. *See* attached blogs and article comments, including BigWOWO and Ben Efsaneyim.

Applicant may have chosen the applied-for mark to be self-deprecating and to attempt to reappropriate the disparaging term. The lack of a disparaging intent is not dispositive on the issue of Section 2(a) disparagement in the Federal registration analysis. The intent of an applicant to disparage the referenced group is not necessary to find that the mark does, in fact, disparage that group. *In re Lebanese Arak Corp.*, 94 USPQ2d 1215, 1220 (TTAB 2010); *see also In re Anti-Communist World Freedom Cong., Inc.*, 161 USPQ 304, 305 (TTAB 1969) (finding applicant’s intent to disparage the referenced group immaterial to the disparagement determination). Further, while applicant may not find the term offensive, applicant does not speak for the entire community of persons of Asian descent and the evidence indicates that there is still a substantial composite of persons who find the term in the applied-for mark offensive.

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

The Office research indicates that the applied-for mark remains disparaging to a substantial composite of Asian-Americans. Accordingly, registration is refused under Section 2(a) as disparaging.

## GENERAL INFORMATION

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant e-mail communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. *See* 37 C.F.R. §2.191; TMEP §§304.01-.02, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. *See* TMEP §§705.02, 709.06.

/Mark Shiner/  
Trademark Examining Attorney  
Law Office 102  
Phone: 571-272-1489  
E-mail: mark.shiner@uspto.gov

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**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using Trademark Applications and Registrations Retrieval (TARR) at <http://tarr.uspto.gov/>. Please keep a copy of the complete TARR screen. If TARR shows no change for more than six months, call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

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