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TESLAW

THE STATE BAR OF TEXAS ENTERTAINMENT & SPORTS LAW SECTION

July 20, 2017

TESLAW Tidbits:
A Little Taste of TESLAW
July 2017
Issue No. 23

Dear TESLAW Members,

Welcome to the latest edition of our newsletter. It will be my privilege to serve as chair of the section over the upcoming year, and I look forward to meeting as many of you as possible. I also want to remind you to be sure and mark your calendars for the Entertainment Law Institute, to be held in Austin this year on November 16 and 17.

Sincerely,
Mike Farris, Chair
[Entertainment & Sports Law Section](#)

Events Calendar

[Entertainment Law Institute](#), Hyatt Regency, Austin, TX

November 16 – 17, 2017

Spotlight on Janine Waranowicz



Janine is an entertainment attorney with an interest in international law. She is the Director of Legal Affairs for Night Heron, a Houston-based animation studio, and is currently working on year two of [Rush Process](#), an international animation festival, which will take place in Houston on November 17-19, 2017.

Janine's interest in international law has grown out of her passion for the arts and film. She believes that art provides a lens for us to examine the legal, political and social situations in other countries. She has spent considerable time studying art, culture, the law, and foreign investment in Latin American countries. Her trips to Chile and Brazil culminated in public presentations on human rights and property law. In 2013, Janine traveled to Cuba to learn about emerging legal issues and looks forward to returning in November via the State Bar of Texas trip to deepen her understanding of the current legal, political and economic situations there.

Janine received her J.D. from Tulane University Law School with a certificate in International & Comparative Law after graduating from Denison University with a B.A. in Environmental Studies and Spanish. In her spare time, she brushes up on her Spanish and Portuguese, and dabbles in voiceover for animated film.

To strike up a conversation, become involved with [Rush Process](#), or be considered for the Attorney Spotlight, email her at jwaranowicz@gmail.com.

SCOTUS Rules Trademark Registration is Not Government Speech and Government Regulation Deserves Strong First Amendment Protection

By Brian Landa

In June, the U.S. Supreme Court cracked wide open the future ability to trademark names or phrases some may perceive as derogatory, unanimously holding that a trademark registration did not equate to government-sponsored speech, and, therefore, applications to trademark certain words or phrases should receive strong First Amendment protections. The 8-0 decision, which was argued before Neil Gorsuch was appointed and confirmed, involved the trademark application of a rock band called "The Slants," and it essentially places a high burden on the United States Patent and Trademark Office ("USPTO") to justify the denial of a trademark application because it may include language the agency finds offensive.

The Slants, formed in Portland, Oregon and composed of Asian-American musicians, chose the name specifically because it was a racial slur referring to people of Eastern-Asian origin. The intent was to take back the word, akin to certain words being reclaimed by women and LGBTQ and African-American communities, among others. But, when it applied to register its name with the USPTO, the agency denied its application, as well as the band's appeal. The agency based its rejection on the Lanham Act, which is a federal law prohibiting any "disparaging or disreputable" trademarks.

The lower federal court found in favor of the band, leading the USPTO to file its own suit to block the registration. The case eventually found its way to the United States Supreme Court. In one of four separate, yet concurring, opinions, Justice Samuel Alito opined that the disparagement language of the Lanham Act violates the First Amendment Free Speech Clause and that trademarks are private, rather than government speech. This decision could have a long-term impact on future and currently pending applications, and will certainly influence the current political debates surrounding the limits and protections of speech in the United States.

Licensed in Texas and Oklahoma, and based in the Dallas area, Brian's primary focuses of practice are entertainment and employment law, with a particular emphasis on representing Texas-based filmmakers and musicians. He can be contacted at BrianLandaLawyer@gmail.com.

Practice Document

The hyperlinked practice document is a [Literary Publishing Assignment](#) which can be used when a publishing entity acquires all rights to a previously self-published book. This form agreement is provided by Francés Jones, a Principal at the Law Office of Francés Jones in Austin. Francés focuses on trademark, entertainment, literary publishing, music, marketing, licensing and business affairs and can be reached at www.francesjoneslaw.com.

Send questions, comments, and submissions for TESLAW Tidbits by email to [Victoria Helling](#), Editor in Chief.

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