

United States Court of Appeals for the Federal Circuit

IN RE: SIMON SHIAO TAM,
Appellant

2014-1203

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. 85472044.

SUA SPONTE HEARING EN BANC

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN, and
HUGHES, *Circuit Judges*.

PER CURIAM.

ORDER

This case was argued before a panel of three judges on January 9, 2015. A sua sponte request for a poll on whether to consider this case en banc in the first instance was made. A poll was conducted and the judges who are in regular active service voted for sua sponte en banc consideration.

Accordingly,

IT IS ORDERED THAT:

(1) The panel opinion of April 20, 2015 is vacated, and the appeal is reinstated.

(2) This case be heard en banc sua sponte under 28 U.S.C. § 46 and Federal Rule of Appellate Procedure 35(a). The court en banc shall consist of all circuit judges in regular active service who are not recused or disqualified.

(3) The parties are requested to file new briefs. The briefs should address the following issue:

Does the bar on registration of disparaging marks in 15 U.S.C. § 1052(a) violate the First Amendment?

(4) This appeal will be heard en banc on the basis of the additional briefing ordered herein, and oral argument. An original and thirty copies of the new en banc briefs shall be filed, and two copies of each en banc brief shall be served on opposing counsel. Appellant's en banc brief is due 45 days from the date of this order. Appellee's en banc response brief is due within 30 days of service of appellant's en banc brief, and the reply brief within 15 days of service of the response brief. Briefs shall adhere to the type-volume limitations set forth in Federal Rule of Appellate Procedure 32 and Federal Circuit Rule 32.

(5) Briefing should be strictly limited to the issue set forth above.

(6) Briefs of amici curiae will be entertained, and any such amicus briefs may be filed without consent and leave of court but otherwise must comply with Federal Rule of Appellate Procedure 29 and Federal Circuit Rule 29.

(7) Oral argument will be held at a time and date to be announced later

FOR THE COURT

April 27, 2015

Date

/s/ Daniel E. O'Toole

Daniel E. O'Toole
Clerk of Court