

# Wiley Rein Files Supreme Court *Amicus* Brief in *Lee v. Tam* on Behalf of Rutherford Institute and Consumers' Research

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December 16, 2016

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Washington, DC—Wiley Rein partner Megan L. Brown and a team of appellate and trademark specialists filed an *amicus* brief in the Supreme Court of the United States in *Lee v. Tam*, No. 15-1293, on behalf of the Rutherford Institute and Consumers' Research. The case concerns the constitutionality of Section 2(a) of the Lanham Act—its ban on “disparaging” trademarks. The government says this justifies denying or cancelling trademarks that might cause offense, such as for an Asian rock band called “the Slants” and the name “Redskins.” The *en banc* Federal Circuit invalidated the Lanham Act’s “disparagement bar,” but the United States sought Supreme Court review, which was granted.

In defending the denial of registration for the Slants, the federal government claims broad discretion to withhold benefits of government activity based on concern that some may be offended by speech arguably helped by the government.

The Wiley Rein *amicus* brief argues that the government cannot turn “the federal trademark registration into a Heckler’s Veto” to protect some groups from potential offense. The brief points out the arbitrary and differential treatment afforded to controversial trademarks as varied as GANJA UNIVERSITY, DYKEDOLLS, HONKEY KONG, and MAKE AMERICA GREAT AGAIN. It identifies the consequences of the

## Related Professionals

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## Practice Areas

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government's theory for other marks like CATHOLICS FOR CHOICE and BLACK LIVES MATTER, and points out "the absurdity of the government's casual reclassification of speech as the government's, simply because the government performs administrative or ministerial tasks that assist the speech in some way."

Argument is scheduled for early 2017.

The Wiley Rein Team includes Joshua S. Turner, Christopher Kelly, Dwayne D. Sam and John T. Lin.

Ms. Brown and Mr. Sam also co-authored an article related to the *Lee v. Tam* brief that was published in SCOTUSblog.