
QUEER TRADEMARKS

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*LGBTQ+ slurs can now be registered as federal trademarks. The U.S. Supreme Court's decisions in *Matal v. Tam* and *Iancu v. Brunetti* permitted federal registration of disparaging, immoral, or scandalous trademarks. Appellee Simon Tam cheered, hoping that these decisions would usher in a new era of minority communities reappropriating offensive terms steeped in hate and prejudice. Others were less optimistic. Advocacy organizations, scholars, and minority groups worried that these decisions opened the floodgates to the United States Patent and Trademark Office registering the vilest and most prejudicial terms in the U.S. lexicon, ossifying hatred. Only time would tell who was right.*

Now, several years after Tam, this Article seeks to answer this question for LGBTQ+ slurs. A prior study found that, following Tam, affirming uses of racially-oriented marks by in-group members predominated over disparaging ones. This Article builds on that analysis and breaks ground on examining trademark law's relationship with LGBTQ+ persons. To date, there has been practically no trademark law scholarship on the LGBTQ+ community.

This Article presents an empirical analysis of 144 LGBTQ+-oriented trademark applications filed before and after Tam. This study finds that the number of LGBTQ+-oriented trademark applications has increased over twofold since Tam. More surprisingly, LGBTQ+-oriented marks have been unanimously affirming in nature; not a single disparaging use of the slurs in trademarks was identified over the entire nine-year period. Based on these findings, I posit that Tam and Brunetti have facilitated increasing applications for and registrations of LGBTQ+-oriented trademarks by and for the LGBTQ+ community rather than symbols of hate against it.

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“[O]ne man’s vulgarity is another’s lyric.”¹

I. INTRODUCTION

Nearly fifty years ago, a group of two dozen female motorcyclists rode at the head of the San Francisco Pride Parade.² Despite the parade’s celebratory nature, the situation for LGBTQ+ persons in 1976 was bleak.³ Earlier that year, the Supreme Court upheld laws criminalizing same-sex relations.⁴ LGBTQ+

1. *Cohen v. California*, 403 U.S. 15, 25 (1971).

2. *Our History*, DYKES ON BIKES, <https://www.dykesonbikes.org/history> (last visited Oct. 2, 2023) [<https://perma.cc/3C8C-AA89>].

3. I use the term LGBTQ+ throughout this paper to refer to individuals who identify as lesbian, gay, bisexual, transgender, or queer, with the “+” sign recognizing and encompassing the limitless sexual orientations and gender identities used by our community. See *Glossary of Terms*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/glossary-of-terms> (May 31, 2023) [<https://perma.cc/55CX-FTK4>].

4. See *Doe v. Richmond*, 425 U.S. 901, 901 (1976) (upholding the district court’s decision in *Doe v. Richmond*, 403 F. Supp. 1199, 1201 (E.D. Va. 1975), which held that Virginia’s criminalization of sodomy was constitutional).

individuals had no protected right to love, marry, work, or housing.⁵ To march for LGBTQ+ rights in 1976 was courageous. These motorcyclists fought for recognition and equal rights in the face of persistent legal oppression.⁶

Over the coming decades, this nascent group developed into a prominent LGBTQ+ group: the San Francisco Dykes on Bikes Women's Motorcycle Contingent ("SFDOBWMC").⁷ Although the group used the term "dyke" in an empowering way to counter anti-LGBTQ+ hate, the SFDOBWMC was challenged every step of the way when it tried to register "DYKES ON BIKES" as a trademark (or "mark") because the term historically disparaged lesbians.⁸ The Lanham Act—the federal law on trademarks and related areas of the law—prohibited the federal registration of trademarks that were "disparaging" towards individuals or groups under Section 2(a).⁹ This stopped the SFDOBWMC from registering its trademark or gaining the accompanying economic, legal, and symbolic benefits. The SFDOBWMC repeatedly had to demonstrate that the meaning of "dyke" had evolved and that the very group that had once been hatefully labeled with the word was now using it in a nonderogatory, empowering way.¹⁰

Then, in 2017, the U.S. Supreme Court struck down this bar against "disparaging" trademarks as unconstitutional in *Matal v. Tam*.¹¹ DYKES ON BIKES could be registered without issue.¹² Two years later, the Supreme Court invalidated a similar bar on immoral or scandalous marks in *Iancu v. Brunetti*, further lowering the challenges to registering slurs as trademarks.¹³

5. These rights would only come decades later. See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003) (holding that laws criminalizing the private sexual relations of two people of the same sex were unconstitutional); *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015) (holding that the right to marry is a fundamental right that cannot be denied to same-sex couples); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1754 (2020) (holding that Title VII prevents employers from firing LGBTQ+ persons merely because of their sexual orientation or gender identity); Press Release, U.S. Dep't Hous. & Urb. Dev., HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity (Feb. 11, 2021) (announcing that the U.S. Department of Housing and Urban Development will enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity).

6. See *Our History*, *supra* note 2 and accompanying text.

7. See *Our History*, *supra* note 2 (describing the development of the SFDOBWMC from 1976 until the present).

8. See *id.* (explaining the challenges the SFDOBWMC faced in registering both the wordmark "DYKES ON BIKES" and the design mark containing that wordmark).

9. 15 U.S.C. § 1052 ("No trademark . . . shall be refused registration . . . unless it—Consists of . . . matter which may disparage . . . persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.").

10. See, e.g., U.S. Trademark Application Serial No. 78/281,746 (filed Aug. 23, 2004), Correspondence Incoming (supplemental trademark filing containing twelve exhibits on how the meaning of the term "dyke" had changed over time); U.S. Trademark Application Serial No. 78/281,746 (filed Apr. 28, 2005), Correspondence Incoming (supplemental trademark filing containing over 300 pages of evidence); U.S. Trademark Application Serial No. 86/609,566 (filed Jan. 4, 2016), Response to Office Action (attaching dozens of exhibits referencing the non-disparaging use of DYKES ON BIKES by the SFDOBWMC in support of the design mark application).

11. 582 U.S. 218, 247 (2017).

12. Diane Anderson-Minshall, *The Supreme Court Loves Dykes on Bikes*, *ADVOCATE* (May 21, 2018, 4:03 AM), <https://www.advocate.com/current-issue/2018/5/21/supreme-court-loves-dykes-bikes> [<https://perma.cc/G8H5-XX2E>].

13. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019).

While DYKES ON BIKES is a success story, there is also the more unsavory history of slur-based trademarks, such as the National Football League (“NFL”) team formerly known as the Washington Redskins.¹⁴ The term “redskins” is derogatory towards Native Americans, signifying the bloodied scalps of Native Americans that white colonizers traded for bounties.¹⁵ A movement of Native Americans and others organized to protest the NFL team’s name and its registration as a trademark.¹⁶ Two separate cases sought to cancel the Redskins’ trademark registration on the grounds that the mark was disparaging under Section 2(a). The first case failed under laches,¹⁷ but the second succeeded in initially cancelling the registration—until *Tam*.¹⁸ At least one commentator thought the marks were cancellable as scandalous or immoral,¹⁹ but the Supreme Court’s decision in *Brunetti* mooted this strategy.²⁰

The Dykes on Bikes and Washington Redskins stories show that *Tam* and *Brunetti* have a potentially considerable impact—positive or negative—on minorities. Legal scholarship examining trademark law through the lens of any minority, let alone LGBTQ+ persons, is rare.²¹ But a significant amount of scholarship has been written on Section 2(a), *Tam*, *Brunetti*, and the salacious trademarks those decisions could engender. The focus of this scholarship has primarily been on the overarching impact of the law²² or its impact on racial or

14. See Victoria F. Phillips, *Beyond Trademark: The Washington Redskins Case and the Search for Dignity*, 92 CHI.-KENT L. REV. 1061, 1063–67 (2018) (describing the social and legal challenges against the federally registered REDSKINS trademark between 1992 and 2017).

15. *Id.* at 1061–62.

16. *Id.*

17. *Pro-Football, Inc. v. Harjo*, 567 F. Supp. 2d 46, 62 (D.D.C. 2008), *aff’d*, 565 F.3d 880 (D.C. Cir. 2009), *cert. denied*, 558 U.S. 1025 (2009).

18. *Pro-Football, Inc. v. Blackhorse*, 112 F. Supp. 3d 439, 488–90 (E.D. Va. 2015), *vacated*, 709 F. App’x 182, 183–84 (4th Cir. 2018) (remanding in light of *Tam*).

19. See Doori Song, Note, *Blackhorse’s Last Stand?: The First Amendment Battle Against the Washington “Redskins” Trademark After Matal v. Tam*, 19 WAKE FOREST J. BUS. & INTELL. PROP. L. 173, 199–200 (2019) (arguing that REDSKINS could come to be considered immoral or scandalous by the general public, and thus subject to cancellation on that Section 2(a) ground). *But see* Mark Conrad, *Matal v. Tam—A Victory for The Slants, A Touchdown for the Redskins, but an Ambiguous Journey for the First Amendment and Trademark Law*, 36 CARDOZO ARTS & ENT. L.J. 83, 130 (2018) (arguing that, in any event, the immoral or scandalous bar is inapplicable to marks that would offend a racial or ethnic group).

20. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019).

21. For some of the limited recent examples, see Sonia K. Katyal, *Trademark Intersectionality*, 57 UCLA L. REV. 1601, 1601–02, 1682–97 (2010) (advocating for the understanding of trademarks as public goods that should be understood intersectionally as the result of their “economic, commercial, and cultural identities”); Miriam Marcowitz-Bitton & Emily Michiko Morris, *The Distributive Effects of IP Registration*, 23 STAN. TECH. L. REV. 306, 342–45, 371–72 (2020) (examining and proposing remedies for the distributive effects of registration of patents, copyrights, and trademarks on women and racial minorities, such as by eliminating certain advantages of registered trademarks); Anjali Vats & Deidré A. Keller, *Critical Race IP*, 36 CARDOZO ARTS & ENT. L.J. 735, 777–93 (2018) (advocating for examining intellectual property law through the lens of critical race theory).

22. See, e.g., Barton Beebe & Jeanne C. Fromer, *Immoral or Scandalous Marks: An Empirical Analysis*, 8 N.Y.U. J. INTELL. PROP. & ENT. L. 169, 171–72 (2019) (examining the marks that were refused registration between 2003 and 2015 on the basis that they were immoral or scandalous); Megan M. Carpenter & Mary Garner, Note, *NSFW: An Empirical Study of Scandalous Trademarks*, 33 CARDOZO ARTS & ENT. L.J. 321, 332–34, 344, 359–62 (2015) (a study of forty terms that resulted in a refusal to register by the PTO due to being immoral or scandalous); Llewellyn Joseph Gibbons, *Liberty or Licentiousness: Disinsenting, Disparaging, and Scandalous*

ethnic groups in particular.²³ The most profound study to date on *Tam* and *Brunetti*'s impact on minority groups is by Vicki Huang, who examined whether in-group or out-group members of different races filed trademark applications containing racial slurs.²⁴

This Article builds on the line of investigation started by Huang and analyzes the effect of *Tam* and *Brunetti* on LGBTQ+ persons. Until now, trademark law research has almost entirely neglected the LGBTQ+ community.²⁵ Yet, as Andrew Gilden has explained, queer theory can be useful for more deeply understanding current intellectual property issues and its intersection with social culture.²⁶ In this spirit, this Article aims to provide one of the first studies on the relationship between LGBTQ+ persons and trademark law. It empirically

Marks Post-Tam and Brunetti, 12 HASTINGS SCI. & TECH. L.J. 83, 86–87 (2021) (advocating for a bar against registering profane marks akin to hate speech or fighting words); Timothy T. Hsieh, *The Hybrid Trademark and Free Speech Right Forged from Matal v. Tam*, 7 N.Y.U. J. INTELL. PROP. & ENT. L. 1, 2 (2018) (describing how First Amendment rights and trademark protection are inextricably intertwined following the Supreme Court's decision in *Tam*); Ned Snow, *Immoral Trademarks After Brunetti*, 58 HOUS. L. REV. 401, 404 (2020) (advocating for a bar on the registration of vulgar trademarks); Rebecca Tushnet, *The First Amendment Walks into a Bar: Trademark Registration and Free Speech*, 92 NOTRE DAME L. REV. 381, 382–83 (2016) (discussing how the constitutionality of Section 2 of the Lanham Act was in doubt due to free speech concerns, especially given the overexpansion of the First Amendment, but that Section 2 is actually constitutional); Jasmine Abdel-khalik, *To Live in In-"Fame"-Y: Reconceiving Scandalous Marks as Analogous to Famous Marks*, 25 CARDOZO ARTS & ENT. L.J. 173, 177–78 (2007) (suggesting that similar factors to those for determining when a mark is famous could be used to determine when a mark is scandalous); Jake MacKay, Note, *Racist Trademarks and Consumer Activism: How the Market Takes Care of Business*, 42 LAW & PSYCH. REV. 131, 144 (2018) (arguing that, following *Tam*, consumer activism is the main path to restricting the use of marks that disparage certain groups).

23. See, e.g., Ilhyung Lee, *Tam Through the Lens of Brunetti: THE SLANTS, FUCT*, 69 EMORY L.J. ONLINE 2001, 2016 (2019) (expressing concern about the registration of marks that are offensive to minority racial and ethnic groups); Esther H. Sohn, Note, *Countering the "Thought We Hate" with Reappropriation Use Under Trademark Law*, 94 N.Y.U. L. REV. 1729, 1758–64 (2019) (arguing that target groups should be allowed to counter disparaging trademarks by using those same marks for the purpose of reappropriation); Phillips, *supra* note 14, at 1063–67 (examining whether, in light of *Tam* ending the Washington Redskins trademark cancellation litigation, the use of Native American-related trademarks constitutes a dignity taking).

24. See Vicki Huang, *Trademarks, Race and Slur-Appropriation: An Interdisciplinary and Empirical Study*, 2021 U. ILL. L. REV. 1605, 1607 (2021).

25. The main exception is nearly twenty years old: Llewellyn Joseph Gibbons, *Semiotics of the Scandalous and the Immoral and the Disparaging: Section 2(A) Trademark Law After Lawrence v. Texas*, 9 MARQ. INTELL. PROP. L. REV. 187, 193–94 (2005). A few articles that discuss trademark issues relating to minorities more broadly also address LGBTQ+ persons in passing. See, e.g., Sonia K. Katyal, *Brands Behaving Badly*, 109 TRADEMARK REP. 819, 824–26 (2019) (positing that registration of trademarks that offensively target racial and ethnic minorities, LGBTQ+ persons, and other minorities are more likely to be registered for the purpose of hate speech than for reappropriation); Carpenter & Garner, *supra* note 22, at 359 (discussing the inconsistent application of the disparagement, immoral, and scandalous bars against trademarks containing certain terms). Until now, most LGBTQ+ intellectual property scholarship has been focused on copyright or patent law. See, e.g., Andrew Gilden, *Intellectual Property's Queer Turn*, in THE OXFORD HANDBOOK OF LAW AND HUMANITIES 549 (Simon Stern, Maksymilian Del Mar & Bernadette Meyler eds., 2020) (describing the prospects for queer theory in understanding intellectual property as applied to creativity); Eden Sarid, *A Queer Analysis of Intellectual Property*, 2022 WIS. L. REV. 91, 93 (2022) (analyzing queer spaces and applying a queer lens to primarily copyright law); Timothy R. Holbrook, *The Expressive Impact of Patents*, 84 WASH. U. L. REV. 573, 581 (2006) (discussing the implications of the government granting a patent on genes related to sexual orientation); Andrew Gilden & Sarah R. Wasserman Rajec, *Pleasure Patents*, 63 WM. & MARY L. REV. 571, 576 (2022) (describing the trends in patenting of sexual pleasure devices and changes in descriptions over time).

26. Gilden, *supra* note 25, at 549.

examines how *Tam* and *Brunetti* have affected the application for and registration of trademarks containing LGBTQ+-oriented slurs.

Tam and *Brunetti* created an uncertain new regime for trademark registration, one where both the SFDOBWMC could register DYKES ON BIKES (without a fourteen-year legal battle) and the NFL could keep its registration for REDSKINS. The Supreme Court issued these decisions when increasingly odious speech targeted minorities in the U.S. Not only could members of communities attempting to reappropriate these slurs register them as trademarks, but also those seeking to spread hate and demean the target communities. For example, following *Tam* and *Brunetti*, people rushed to register racially offensive marks as trademarks.²⁷ Words have incredible power, the ability to elevate and demean.²⁸ Only time would tell whether this development would favor minorities attempting to reappropriate and disempower slurs or those who would use them to disparage target groups.

This Article demonstrates that, at least in the short term, reaffirming, LGBTQ+-oriented trademark applications have prevailed. Analysis of a dataset of 144 LGBTQ+-oriented trademark applications from before and after *Tam* was decided shows that *Tam* and *Brunetti* seem to have been used by and for the LGBTQ+ community rather than as weapons against it.²⁹ For example, *Tam* streamlined the registration of DYKES ON BIKES. At a macroscopic level, following *Tam*, the number of LGBTQ+-oriented trademark applications and registrations grew both in absolute and relative terms.³⁰ All these uses were either intended to be affirming and reclaim the underlying slurs for the LGBTQ+ community or the intent was indeterminable; no applications appear to disparage LGBTQ+ persons.³¹ LGBTQ+-oriented mark applications are also diversifying in practically every way: they cover more classes of goods and services, come from more states, and are more intersectional.³²

In Part II, this Article will provide an overview of the legal and symbolic benefits provided by federal trademark registration, the legal challenges to registering the DYKES ON BIKES trademarks, and the *Tam* and *Brunetti* decisions. After providing this conceptual framework, in Part III, this Article will discuss the countervailing arguments regarding slurs' harms and the promise of reappropriating them. Part IV will address *Tam* and *Brunetti*'s potential impact on the marketplace of ideas and other scholars' concerns about *Tam*. Most of this Article will then be dedicated to presenting the findings of an empirical study on LGBTQ+-oriented trademarks. Part V first presents a literature review of

27. See, e.g., Ailsa Chang, *After Supreme Court Decision, People Race to Trademark Racially Offensive Words*, NPR (July 21, 2017, 4:25 PM), <https://www.npr.org/2017/07/21/538608404/after-supreme-court-decision-people-race-to-trademark-racially-offensive-words> [<https://perma.cc/4VV8-AN27>].

28. See Jack Schafer, *Words Have Power*, PSYCH. TODAY (Nov. 2, 2010), <https://www.psychologytoday.com/us/blog/let-their-words-do-the-talking/201011/words-have-power> [<https://perma.cc/WKW9-7NAJ>] (describing the power of words).

29. See *infra* Appendix.

30. See *infra* Figures 1, 4.

31. See discussion *infra* Section VI.B.

32. See *infra* notes 386–95.

previous empirical studies on disparaging, scandalous, and immoral trademark applications and registrations and explains the methodology used in this study, which looks at LGBTQ+-oriented trademarks prior to and following *Tam*. This study's findings are explained in Part VI, which shows that *Tam* and *Brunetti* have been exclusively used by or for LGBTQ+ persons rather than against them. The applications for LGBTQ+-oriented trademarks are growing, and the uses are entirely aimed at reappropriation rather than disparagement.³³ The U.S. Patent and Trademark Office ("PTO") is registering more LGBTQ+-oriented trademarks. LGBTQ+-oriented trademark applications are covering a larger number of classes of goods and services and are reflecting greater geographic diversity. Finally, these trademark applications are reflecting an increasing awareness of the intersectionality of individuals' race, gender identity, and sexual orientation.

II. TRADEMARK LAW AND PROTECTABLE MARKS

Understanding the importance of registration is necessary to evaluating the impact of LGBTQ+-oriented trademark applications and registrations. In this Section, this Article first provides an overview of federal trademark registration and the types of trademarks that have been excluded from registration. It then provides an example of these restrictions in practice: the fourteen-year legal saga of the SFDOBWMC registering the DYKES ON BIKES trademarks. Finally, this Section provides an overview of the *Tam* and *Brunetti* decisions, which allowed certain types of trademarks to be registered, including many LGBTQ+-oriented ones.

A. *A Trademark Owner's Rights*

Trademark law protects distinctive marks, such as words, symbols, designs, and other indicia that are used in commerce to identify the source of goods or services.³⁴ While trademark law predates the founding of the United States,³⁵ modern federal trademark law began in 1946 with the Lanham Act.³⁶ Federal

33. With the exception of a limited set of LGBTQ+-oriented trademarks whose intent is indeterminable due to limited information in the trademark applications and a limited online presence for the applicants. See *infra* Section VI.B.

34. 15 U.S.C. § 1127. One of the main benefits of a trademark for the rights owner is that it serves as a source identifier for the rights owner's goods and services in the eyes of consumers. *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97 (1918).

35. See *Matal v. Tam*, 582 U.S. 218, 224 (2017) ("Trademarks and their precursors have ancient origins, and trademarks were protected at common law and in equity at the time of the founding of our country.").

36. *Id.* at 225. Congress passed earlier legislation protecting trademarks in 1870 and 1876, but this legislation was held to be unconstitutional by the Supreme Court within a few years under both the Intellectual Property Clause and the Commerce Clause. *In re Trade-Mark Cases*, 100 U.S. 82, 94, 97–98 (1879); see also Zvi S. Rosen, *Federal Trademark Law: From Its Beginnings*, 11 A.B.A. LANDSLIDE 34, 37 (2019) (recounting the origins of federal trademark law in the United States). Congress successfully passed three federal trademark laws between the Trade-Mark Cases and the Lanham Act. A statute passed in 1881 limited trademark registration to marks used in commerce with foreign nations or Indian tribes. Act of Mar. 3, 1881, ch. 138, 21 Stat. 502. The Trademark Act of 1905 expanded protection, but still limited registration to fanciful and arbitrary marks and

trademark registration offers several advantages to rights holders, including prima facie proof of nationwide rights in the mark.³⁷ The rights federal registration brings can also provide the trademark owner with significant (and sometimes undervalued) economic benefits, including contributing substantially to firm value.³⁸

Yet, not just any word or logo can qualify for federal trademark registration. Section 2 of the Lanham Act lists types of trademarks that cannot be registered, regardless of their use in commerce.³⁹ For example, until recently, this was the section that prevented the registration of marks that consist of immoral, scandalous, or disparaging content.⁴⁰

If a mark is not federally registered, it may still be used as a trademark.⁴¹ The rightsholder also may still have some (albeit more limited) recourse against would-be infringers. Section 43(a) of the Lanham Act provides for protection against another's use of a mark, whether federally registered or not.⁴² Marks may also be protected under state common law and may be registered with a state government.⁴³

B. *The Symbolic Value of LGBTQ+ Trademark Registration*

While the legal and economic benefits of trademarks and federal registration may be more prominent, there is also significant symbolic value to registering and maintaining a trademark.⁴⁴ The literature has established that trademarks have a profound semiotic function as well as a commercial one.⁴⁵ For example,

marks that had been in actual use for ten years preceding the 1905 Act's passage. Act of Feb. 20, 1905, ch. 592, § 5, 33 Stat. 724 (codified as amended in 15 U.S.C. § 85). Finally, the Trademark Act of 1920 further expanded the ambit of federal trademark law, prohibiting willful or intentional misrepresentation of the source of merchandise. *See generally* Act of Mar. 19, 1920, ch. 104, Pub. L. No. 66-163, 41 Stat. 533. These three laws were ultimately replaced by the much more comprehensive Lanham Act, which was passed in 1946 and became effective in 1947. *See* Ethan Horwitz & Benjamin Levi, *Fifty Years of the Lanham Act: A Retrospective of Section 43(a)*, 7 *FORDHAM INTELL. PROP., MEDIA & ENT. L.J.* 59, 60–64 (1996) (explaining the pre-Lanham Act legislation and how the Lanham Act was passed).

37. 15 U.S.C. §§ 1057(b), 1065, 1072; *see also* B&B Hardware, Inc. v. Hargis Indus., Inc., 575 U.S. 138, 142–43 (2014) (noting federal registration “confers important legal rights and benefits on trademark owners who register their marks”).

38. *See* William M. Landes & Richard A. Posner, *Trademark Law: An Economic Perspective*, 30 *J.L. & ECON.* 265, 269–70 (1987) (describing the economic benefits of trademarks in reducing consumer search costs by associating one's goods and their quality with one's trademark); Po-Hsuan Hsu, Dongmei Li, Qin Li, Siew Hong Teoh & Kevin Tseng, *Valuation of New Trademarks*, 68 *MGMT. SCI.* 257, 276 (2022) (“Our evidence suggests that new trademark activities represent intellectual property that contributes substantially to firm value, but are undervalued by investors at the time of their registrations.”).

39. 15 U.S.C. § 1052.

40. *Id.* § 1052(a).

41. *Tam*, 582 U.S. at 225.

42. 15 U.S.C. § 1125(a).

43. *See Tam*, 582 U.S. at 226.

44. *See generally* Katyal, *supra* note 21 (arguing that trademarks are intersectional and have economic, commercial, and cultural identities).

45. *See, e.g.,* Barton Beebe, *The Semiotic Analysis of Trademark Law*, 51 *UCLA L. REV.* 621, 624 (2004); Gibbons, *supra* note 25, at 192–93; Rochelle Cooper Dreyfuss, *Expressive Genericity: Trademarks as Language in the Pepsi Generation*, 65 *NOTRE DAME L. REV.* 397, 397–98 (2014).

Barton Beebe has explained that “consumers consume trademarks to signal status, and that courts routinely invest trademarks with legal protection in an effort to preserve this status-signaling function.”⁴⁶ Jerre Swann, David Aaker, and Matt Reback have suggested there is a psychological element in consumers purchasing from certain brands.⁴⁷ Llewellyn Joseph Gibbons focused on the social aspect of trademark semiotics and theorized that by wearing a mark, the wearer constructs a social identity around the mark that is understood by others “in the know.”⁴⁸ Building upon this earlier research, Sonia Katyal argued that trademarks can operate not just as commercial devices, but as vehicles of expression, culture, and social meaning.⁴⁹ This intersectionality means that trademarks are not just source identifiers, but expression.⁵⁰ Indeed, Congress wrote cultural and social meaning into the Lanham Act and its predecessors by prohibiting the registration of immoral and scandalous marks, and courts enforced this meaning according to their own mores and beliefs.⁵¹ As Eugene Volokh explained, the moral classifications under Section 2(a) gave courts “considerable discretion” to permit and bar trademark registrations based on their own cultural and social views.⁵²

The symbolic function of trademarks has the potential to represent not just a commercial good, but an identity. Consumers are choosing a particular brand for a variety of reasons, including the quality of the good or service, goodwill, and the connotations that good or service emanates.⁵³ As Deborah Gerhardt, among others, has explained, as a community invests in a mark, it gains new meaning and takes on a specific identity that reflects and symbolizes associated values.⁵⁴

This symbolic aspect of trademarks can be particularly profound for LGBTQ+ communities. Unlike race, which has associated physical signals, LGBTQ+ persons must create identifiers. These identifiers can be expressed through trademarks.⁵⁵ Madhavi Sunder aptly noted that intellectual property

46. See Beebe, *supra* note 45, at 624.

47. Jerre B. Swann, David A. Aaker & Matt Reback, *Trademarks and Marketing*, 91 TRADEMARK REP. 787, 790 (2001).

48. Gibbons, *supra* note 25, at 194.

49. Katyal, *supra* note 21, at 1606.

50. *Id.*

51. See *id.* at 1623–38 (describing the history of Congress enacting and courts applying the immoral and scandalous and disparagement clauses).

52. Eugene Volokh, *Freedom of Speech and Intellectual Property: Some Thoughts After Eldred*, 44 LIQUORMART, and BARTNICKI, 40 Hous. L. Rev. 697, 709–10 (2003).

53. See, e.g., Jessica Litman, *Breakfast with Batman: The Public Interest in the Advertising Age*, 108 YALE L.J. 1717, 1726 (1999) (describing how trade symbols have intrinsic value as symbols themselves, not just as signifiers of the quality of goods or services to which they are attached).

54. See Deborah R. Gerhardt, *The Last Breakfast with Aunt Jemima and Its Impact on Trademark Theory*, 45 COLUM. J.L. & ARTS 231, 239, 254 (2022) (describing consumer investment theory).

55. Gibbons, *supra* note 25, at 190. Although they do not have to be. For example, the rainbow—a widely recognized LGBTQ+ symbol—is not trademarked or copyrighted. Although there would likely be challenges to either intellectual property claim, Gilbert Baker (the artist who popularized the original Pride flag) purposefully chose to not trademark or copyright the rainbow flag for the LGBTQ+ community to use it. Jada Boggs, *Copyright, Pride, and Progress: Navigating Ownership, Representation, and Cultural Rights*, COPYRIGHT ALL. (June 13, 2023), <https://copyrightalliance.org/copyright-pride-progress> [<https://perma.cc/8389-9789>].

“structures cultural and social relations.”⁵⁶ In this vein, Andrew Gilden, for example, recognized that LGBTQ+ identity, like all social constructs, is created through interactions in society.⁵⁷ So the use of LGBTQ+ marks—and their protection or lack thereof—can be integral to the formation of LGBTQ+ identity and how others in society interact with LGBTQ+ individuals and culture.⁵⁸

Therefore, trademarks (and, implicitly, their registration) can have valuable symbolic meaning to all, and perhaps especially LGBTQ+ persons. Yet, as Gibbons has explained, LGBTQ+ persons, in particular, were often prevented from registering trademarks that expressed their identity due to Section 2(a)’s bars on disparaging and immoral or scandalous marks.⁵⁹ As sex is often deemed immoral or unsavory under U.S. mores and popular culture, an examiner, the TTAB, or the Court could find trademarks implicating sexual orientation to be not only derogatory, but potentially per se scandalous or immoral.⁶⁰ These denials symbolized what some see as the government’s imprimatur against the LGBTQ+ community.⁶¹ This second-class legal status for LGBTQ+-oriented marks perpetuated a social hierarchy that harmed LGBTQ+ persons more than any trademark.⁶² This had the effect of limiting LGBTQ+-oriented trademarks and the free speech and free association that is critical to advancing LGBTQ+ well-being.⁶³ Perhaps the most prominent example of a denial of LGBTQ+-oriented trademark registration—and the accompanying symbolic value—involved DYKES ON BIKES, which this Article examines in the next Section.

C. *The Fight for DYKES ON BIKES*

As part of its fight against LGBTQ+ oppression, the group of brave women who marched at the 1976 San Francisco Pride Parade unknowingly started a tradition that created a space for LGBTQ+ women in the Bay Area.⁶⁴ For over a decade afterwards, women simply showed up to Pride and rode.⁶⁵ But by the late 1980s, as Pride and the number of riders grew, the group formally coalesced as the Women’s Motorcycle Contingent.⁶⁶ The organization held regular meetings

56. MADHAVI SUNDER, FROM GOODS TO A GOOD LIFE 83 (2012).

57. Gilden, *supra* note 25, at 554–59.

58. *Id.* at 556.

59. Gibbons, *supra* note 25, at 190–91 (“Section 2(a) is particularly problematic for the Queer community as the denial of queer marks places the U.S. government’s imprimatur of scandalous and immorality upon the mark (and by extension on the queer community).”).

60. *Id.* at 221.

61. See, e.g., Holbrook, *supra* note 25, at 578–79 (positing that the government granting a—scandalous—trademark is giving it a stamp of approval). *But see In re Old Glory Condom Corp.*, 26 U.S.P.Q.2d (BNA) 1216, 1220 n.3 (T.T.A.B. 1993) (rejecting as erroneous the “concern that the issuance of a trademark registration for applicant’s mark amounts to the awarding of the U.S. Government’s ‘imprimatur’ to the mark”).

62. See Gilden, *supra* note 25, at 559 (“[P]utting off the needs and experience of the present may perpetuate the cycles of social hierarchy that will continue to be internalized by those same imagined future generations.”).

63. See generally CARLOS A. BALL, THE FIRST AMENDMENT AND LGBT EQUALITY: A CONTENTIOUS HISTORY (2017) (examining the importance of the First Amendment in the LGBTQ+ rights movement).

64. *Our History*, *supra* note 2.

65. *Id.*

66. *Id.*

to develop a sense of community, first at a member's home, then at a lesbian bar (Amelia's), and, finally, at The Eagle Tavern, a gay bar where the group still meets to this day.⁶⁷

Early in its history, one of the founders of the Women's Motorcycle Contingent coined the phrase "Dykes on Bikes."⁶⁸ The term became used in the press and in popular LGBTQ+ culture to refer to the group.⁶⁹ In 2003, the group formally voted to change its name to the San Francisco Dykes on Bikes Women's Motorcycle Contingent ("SFDOBWMC").⁷⁰ The "Dykes on Bikes" name was not only recognizable and catchy,⁷¹ but reflected the group's purpose of promoting lesbian civil rights and resisting harmful stereotypes about the LGBTQ+ community.⁷² Like many organizations, SFDOBWMC applied to register its new name as a trademark with the PTO.⁷³ It had been used in commerce for at least two decades by this point and was widely recognized by the media and LGBTQ+ community in the Bay Area, which should have made for fairly standard approval of the trademark DYKES ON BIKES.⁷⁴ But the use of the term "dyke" sparked controversy—it was an LGBTQ+ slur, even if used in a reaffirming way.⁷⁵

This trademark launched a decade-long legal battle. The PTO examiner denied SFDOBWMC's application because the proposed mark was derogatory towards lesbians and therefore unregistrable under Section 2(a).⁷⁶ In response, SFDOBWMC's legal counsel wrote a letter explaining how, while originally pejorative, the term "dyke" had become, by 2003, an accepted term of pride and identification for women within the LGBTQ+ community, and should be federally registerable as a trademark.⁷⁷ In support of its argument, SFDOBWMC attached twelve documents illustrating how the term "dyke" was now used in an affirming sense by the LGBTQ+ community.⁷⁸

Nonetheless, the PTO made its Section 2(a) refusal final, finding that some women still found the term derogatory.⁷⁹ Historian Joan Nestle observed, "I cannot imagine a more ironic twist of thinking than to judge this reclaimed badge of

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *See id.*

72. *See generally* Brief for San Francisco Dykes on Bikes Women's Motorcycle Contingent, Inc. as Amici Curiae at 2, *Matal v. Tam*, 582 U.S. 218 (2017) (No. 15-1293) [hereinafter Amicus Brief].

73. U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Application.

74. *See* U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Ex. 24, Specimen (detailing the history and use of the DYKES ON BIKES mark).

75. *See generally* Amicus Brief, *supra* note 72.

76. *See* U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Ex. 22, Off. Action Outgoing (refusing the application on the basis that a reasonable person of ordinary sensibilities would consider the term "dyke" to be derogatory or offensive towards lesbians).

77. U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Ex. 20, Paper Correspondence Incoming.

78. *Id.*

79. U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), 19. Off. Action Outgoing.

honor as insulting to the very community who has created its power.”⁸⁰ SFDOBWMC’s counsel then produced over three hundred pages of evidence and testimony from twenty-six experts showing that the mark was not disparaging.⁸¹ When the PTO relented and the mark was finally published for opposition in 2006, it was opposed by Michael McDermott, a resident of San Francisco, on the basis that the SFDOBWMC was carrying out an “Anti Male Hate Riot.”⁸² The Trademark Trial and Appeal Board (“TTAB”) rejected McDermott’s claim, holding that he failed to show that any other men would find the mark disparaging towards them and that he lacked standing for a lesbian disparagement-related claim because he was not a lesbian.⁸³ The Federal Circuit upheld the TTAB’s decision.⁸⁴ Shortly thereafter, the PTO finally registered SFDOBWMC’s DYKES ON BIKES trademark on October 30, 2007.⁸⁵ The matter seemed to be settled once and for all in 2008—five years after SFDOBWMC had first applied to register its mark with the PTO—when the Supreme Court declined to grant certiorari to McDermott.⁸⁶ The SFDOBWMC finally had their trademark registration and had achieved a symbolic victory for the LGBTQ+ community.

But the legal challenges to the DYKES ON BIKES trademark were not yet over. In 2015, SFDOBWMC submitted another trademark application to the PTO—this time for its logo, a triangle with the letters “W,” “M,” and “C” in each corner and a gear design in the middle containing the words “Dykes on Bikes.”⁸⁷ Like with SFDOBWMC’s wordmark application, the PTO rejected the new application on the basis that the proposed trademark disparaged lesbians.⁸⁸ In response, SFDOBWMC filed hundreds of pages of evidence in opposition, including the history of the DYKES ON BIKES wordmark (which, of course, had eventually been registered by the PTO notwithstanding Section 2(a)) and new evidence showing how the term “dyke” was not being used derogatorily.⁸⁹ For the first time, the SFDOBWMC also argued that the disparagement bar under Section 2(a) was unconstitutional, as the Federal Circuit had recently held in a

80. Joe Garofoli, *Attorneys Find Dykes on Bikes Patently Offensive, Reject Name*, SFGATE (July 14, 2005), <https://www.sfgate.com/politics/joegarofoli/article/Attorneys-find-Dykes-on-Bikes-patently-offensive-2655626.php> [<https://perma.cc/W2Z4-2SYF>].

81. See U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Ex. 18, Paper Correspondence Incoming.

82. *McDermott v. S.F. Women’s Motorcycle Contingent*, 81 U.S.P.Q.2d 1212, No. 91169211, 2006 WL 2682345, at *1 (T.T.A.B. 2006).

83. *Id.* at *6–7.

84. *McDermott v. S.F. Women’s Motorcycle Contingent*, 240 F. App’x 865, 868 (Fed. Cir. 2007).

85. See U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003), Registration Certificate.

86. *McDermott v. S.F. Women’s Motorcycle Contingent*, 552 U.S. 1109 (2008).

87. U.S. Trademark Application Serial No. 86/609,566 (filed Apr. 24, 2015), Ex. 24, TEAS Plus New Application.

88. U.S. Trademark Application Serial No. 86/609,566 (filed Apr. 24, 2015), Ex. 20, Off. Action Outgoing.

89. See U.S. Trademark Application Serial No. 86/609,566 (filed Apr. 24, 2015), Ex. 17, Response to Off. Action (attaching dozens of exhibits referencing the non-disparaging use of DYKES ON BIKES by the SFDOBWMC).

case known as *In re Simon Shiao Tam*.⁹⁰ Nonetheless, the PTO rejected the SFDOBWMC's arguments and affirmed the denial.⁹¹

Contemporaneously, the *Tam* case SFDOBWMC had referenced was now pending before the Supreme Court.⁹² The SFDOBWMC filed an amicus curiae brief in support of Tam, arguing that Section 2(a)'s disparaging bar unconstitutionally restricted political speech and was applied arbitrarily, citing its own trademark registration odyssey in support.⁹³ In 2017, the Supreme Court agreed with Tam and the SFDOBWMC, holding that Section 2(a)'s bar on the registration of disparaging trademarks was unconstitutional under the First Amendment.⁹⁴ Following the decision in *Tam*, the PTO finally registered the DYKES ON BIKES logo, fourteen years after the SFDOBWMC first applied to register its wordmark.⁹⁵

The DYKES ON BIKES saga demonstrated the extraordinary lengths to which LGBTQ+ individuals had to go to obtain federal trademark registration. The Section 2(a) bars on disparaging and immoral or scandalous marks could serve as bars on registering LGBTQ+ marks in general, as, for many, LGBTQ+ culture is synonymous with sex and therefore per se scandalous.⁹⁶ Moreover, as mentioned above, LGBTQ+ persons have to create their own symbols and sources of identity,⁹⁷ so these bars can be especially harmful to the LGBTQ+ community as they prevent registration of building blocks of LGBTQ+ identity.⁹⁸ The removal of those bars, therefore, could have a significant impact on the LGBTQ+ community.

D. *Tam and Brunetti's Effect on Section 2(a)*

The opportunity for such an impact presented itself when the Supreme Court eliminated the disparaging and immoral or scandalous bars in 2017 and 2019, respectively.⁹⁹

In *Matal v. Tam*, the Supreme Court addressed whether a dance-rock band name, The Slants, was barred from registration as disparaging.¹⁰⁰ The PTO (and the TTAB and, initially, the Federal Circuit) had denied the band's application

90. See *id.* at Ex. A (arguing that *Tam* was rightly decided and attaching the Federal Circuit decision).

91. U.S. Trademark Application Serial No. 86/609,566 (filed Apr. 24, 2015), Ex. 20, Off. Action Outgoing.

92. See *Matal v. Tam*, 582 U.S. 218 (2017).

93. See Amicus Brief, *supra* note 72, at 7–10.

94. *Tam*, 582 U.S. at 247.

95. U.S. Trademark Application Serial No. 86/609,566 (filed Apr. 24, 2015), Registration Certificate.

96. Gibbons, *supra* note 25, at 188 n.8.

97. See *supra* Section II.B.

98. Gibbons, *supra* note 25, at 191.

99. While outside the scope of this Article, a recent Federal Circuit decision also held the Section 2 bar against using the name, portrait, or signature of a living individual at least partially unconstitutional. *In re Elster*, 26 F.4th 1328, 1339 (Fed. Cir. 2022). As *Elster* only partially abrogated this bar and the Supreme Court granted cert (and heard oral argument in November 2023), it is too early to determine what effect, if any, *Elster* has on LGBTQ+-oriented marks, although it may be a promising avenue for future research. See *id.*, cert. granted *sub nom.* Vidal v. Elster, 143 S. Ct. 2579 (2023).

100. *In re Tam*, 785 F.3d 567 (5th Cir. 2015), *rev'd en banc as corrected* 808 F.3d 1321, 1358 (Fed. Cir. 2015) *sub nom.* *Matal v. Tam*, 582 U.S. 218, 223 (2017).

because the mark can be a derogatory term for individuals of Asian descent.¹⁰¹ But the Federal Circuit, sitting en banc, ultimately found the disparagement clause unconstitutional under the First Amendment.¹⁰² The Supreme Court had to decide whether to uphold the Federal Circuit or enforce the disparagement clause.¹⁰³

While the term disparagement may suggest particularly bad actors, the plaintiffs in *Tam* were anything but. Simon Tam and his fellow band members are Asian Americans and intended to use the mark to empower themselves and other Asian Americans, much like the SFDOBWMC's use of DYKES ON BIKES for LGBTQ+ persons.¹⁰⁴ In their own words, they chose the name "The Slants" specifically to "'reclaim' and 'take ownership' of stereotypes about people of Asian ethnicity."¹⁰⁵ The band "draws inspiration for its lyrics from childhood slurs and mocking nursery rhymes," and gives its albums names such as "The Yellow Album" and "Slanted Eyes, Slanted Hearts," that are based on reclaiming such slurs.¹⁰⁶ In addition, the term "slants," while certainly used as a slur, has a multitude of other common, nonderogatory meanings and is not the most offensive contemporary term against Asian Americans.¹⁰⁷ The band members wanted the trademark to help them get a record deal and protect their brand.¹⁰⁸ These facts, while not a formal consideration in the court's analysis, certainly provided an attractive test case for challenging the disparagement clause.

Justice Samuel Alito, writing for a plurality, found that the disparagement clause could not even pass constitutional muster under intermediate scrutiny, which requires that a restriction of speech serve "a substantial interest" and must be "narrowly drawn."¹⁰⁹ The Court held that the government's purported interests in preventing disparaging language in advertising and protecting the orderly flow of commerce were inadequate because there is a First Amendment interest in protecting offensive (and even hateful) speech.¹¹⁰ Yet the breadth of the disparagement bar meant the bar was effectively a "happy-talk clause [that] goes much further than is necessary to serve the interest asserted."¹¹¹ Accordingly, the Court held the disparagement clause unconstitutional.¹¹²

101. *Tam*, 582 U.S. at 228–29 (reciting the PTO's finding that there is "a substantial composite of persons who find the term in the applied-for-mark offensive").

102. *In re Tam*, 808 F.3d at 1358.

103. *Tam*, 582 U.S. at 227, 229.

104. *Id.* at 228.

105. *Id.*

106. *Id.*

107. *See Lee*, *supra* note 23, at 2006–08 (discussing how the term "slants" was less offensive than other anti-Asian derogatory terms, which may have played a role in the Supreme Court reaching the result it did).

108. *The Slants Frontman Fights Government to Register His Band's Name*, NPR: CODE SWITCH (May 8, 2015, 1:04 PM), <https://www.npr.org/transcripts/404748835?ft=nprml&f=404748835> [<https://perma.cc/AVD9-6Y6V>].

109. *Tam*, 582 U.S. at 228 (quoting *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 564–65 (1980)).

110. *Tam*, 582 U.S. at 245–46.

111. *Id.* at 246.

112. *Id.* at 247.

Despite *Tam*, the immoral or scandalous clause still potentially barred marks such as THE SLANTS.¹¹³ Two years later, that provision of the Lanham Act was at stake in *Iancu v. Brunetti*.¹¹⁴ The Supreme Court, heavily relying on its reasoning in *Tam*, determined that the immoral or scandalous clause was unconstitutional because it too violated the First Amendment.¹¹⁵

Like in *Tam*, the plaintiff was somewhat more sympathetic than one might presume. Erik Brunetti is an artist and entrepreneur who created a clothing line that uses the mark FUCT (allegedly pronounced as four separate letters, F-U-C-T, not the pronunciation many readers undoubtedly first used).¹¹⁶ Based on how the mark appears to be pronounced, the PTO denied it registration because it was “total[ly] vulgar” (*i.e.*, immoral or scandalous).¹¹⁷ The TTAB, on review, similarly associated the mark with “decidedly negative sexual connotations” and “misogyny, depravity, [and] violence.”¹¹⁸ But, similar to *Tam*, the Federal Circuit found that the immoral or scandalous bar was unconstitutional.¹¹⁹

The Supreme Court upheld the Federal Circuit’s ruling, holding that, like the disparagement clause, the immoral or scandalous clause was viewpoint-based and unconstitutional.¹²⁰ While most of U.S. society may not wish to have trademarks such as AL QAEDA or BONG HITS 4 JESUS, “a law disfavoring ‘ideas that offend’ discriminates based on viewpoint, in violation of the First Amendment.”¹²¹ Even if the clause were valid, banning all immoral or scandalous marks was overbroad.¹²²

Thus, following *Tam* and *Brunetti*, disparaging, scandalous, and immoral trademarks can be federally registered. These decisions potentially allow a significant number of new trademarks to be registered.¹²³ But, even in the absence of the Section 2(a) bar, such trademarks would still need to meet the other requirements for federal registration, including use in commerce and identifying the source of the applicant’s goods.¹²⁴ For example, the TTAB recently decided that Brunetti, the founder of FUCT, could not register “Fuck” as a trademark for carrying cases, jewelry, handbags, and retail services because it failed to function

113. Lee, *supra* note 23, at 2004; 15 U.S.C. § 1052(a), held unconstitutional by *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019).

114. *Brunetti*, 139 S. Ct. at 2297.

115. *Id.*

116. *Id.* Cf. TRADEMARK MANUAL OF EXAMINING PROC. § 1207.01(b)(iv), at 1200–33 (Catherine P. Cain ed. 2022) (“For purposes of the §2(d) analysis, there is no ‘correct’ pronunciation of a mark because it is impossible to predict how the public will pronounce a particular mark . . .”).

117. *Brunetti*, 139 S. Ct. at 2298.

118. *Id.*

119. *Id.*

120. *Id.* at 2298–99; see also Kent Greenfield, *Trademarks, Hate Speech, and Solving a Puzzle of Viewpoint Bias*, 2019 SUP. CT. REV. 183, 188–89 (2019) (explaining that the *Brunetti* decision was important for clarifying the confines of viewpoint discrimination).

121. *Brunetti*, 139 S. Ct. at 2300-01 (quoting *Matal v. Tam*, 582 U.S. 218, 223 (2017)).

122. *Id.* at 2302.

123. See *infra* notes 205–08 and accompanying text.

124. See 15 U.S.C. §§ 1051(a), 1052(f).

as a trademark.¹²⁵ Nonetheless, there is controversy about whether this increased license for trademark registrations will be used by and for minorities or against them, as will be discussed in detail below.¹²⁶

III. REAPPROPRIATION OF SLURS

Before analyzing this new post-*Tam* and *Brunetti* landscape for LGBTQ+-oriented trademark applications, it is important to first understand the relative harms of slurs and the potential benefits of their reappropriation by the very groups they target. Reappropriating a slur is to render it powerless by shifting its use to proudly self-identify members of their own group rather than be a derogatory label imposed by outsiders.¹²⁷ Vicki Huang was one of the first to examine the social science literature on slurs, harms, and appropriation, and apply it to racially-oriented trademarks.¹²⁸ I adopt a similar approach to that literature here but apply it to LGBTQ+ marks.

A. *The Damage of Slurs*

As Vicki Huang explained, social science research has shown that slurs can have significant harmful effects both on the communities they target and on wider society.¹²⁹ Hate speech damages the dignity and reputation of individuals in the targeted group.¹³⁰ For example, the use of derogatory terms, including—or perhaps especially—as registered trademarks, can constitute a dignity taking: dehumanization or infantilization associated with loss.¹³¹

The use of slurs can cause significant harm to targeted individuals from sociological, linguistic, and psychological perspectives. Sociologically, slurs are used to “otherize” the target group,¹³² and this otherization distinguishes members of the group from the rest of society and sets up potential future intergroup

125. *In re Brunetti*, 2022 WL 3644733, at *27 (T.T.A.B. Aug. 22, 2022) (“The refusal to register FUCK for failure to function as a mark under Sections 1, 2, 3 and 45 of the Trademark Act for the goods and services identified in Application Serial Nos. 88308426, 88308434, 88308451 and 88310900, is affirmed.”).

126. *See infra* Part IV.

127. Gregory Coles, *The Exorcism of Language: Reclaimed Derogatory Terms and Their Limits*, 78 COLL. ENG. 424, 425–26 (2016).

128. Huang, *supra* note 24, at 1611–19.

129. *Id.* at 1611–14.

130. JEREMY WALDRON, *THE HARM IN HATE SPEECH* 139, 165 (2012) (addressing “the damage done by hate speech and group libel to the dignity of members of vulnerable minorities”).

131. *See* BERNADETTE ATUAHENE, *WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM* 20–34 (2014) (defining a “dignity taking” in the context of physical property loss); Phillips, *supra* note 14, at 1063 (expanding the definition of a dignity taking to also cover intangible property such as intellectual property). For example, Victoria Phillips has argued that the Washington Redskins’ use of the REDSKINS trademark and other sports teams’ use of Native American-related mascots constitute dignity takings against Native Americans. *Id.* at 1075–85 (arguing that the continued use of trademarks connected to Native American identities is a taking from a group that is infantilized or dehumanized in practice).

132. *See, e.g.*, Jennifer Whitson, Eric M. Anicich, Cynthia S. Wang & Adam D. Galinsky, *Navigating Stigma and Group Conflict: Group Identification as a Cause and Consequence of Self-Labeling*, 10 NEGOT. & CONFLICT MGMT. RSCH. 88, 88–89 (2017).

conflicts.¹³³ Sociological studies have even found a positive relationship between the number of slurs used and the level of hatred towards a group.¹³⁴

Similarly, from a linguistic perspective, slurs are intended to dehumanize their subjects, lower inhibitions toward the target group, and facilitate hateful acts.¹³⁵ For example, two studies on homophobic epithets found that those exposed to derogatory terms associated less human-related words with LGBTQ+ persons and physically distanced themselves from gay men.¹³⁶ These studies demonstrate the severe harm that derogatory terms can have on marginalized groups: they are not just words, but can isolate and cause inhuman treatment.¹³⁷ Vitriolic homophobic language reinforces and maintains homophobia.¹³⁸

Studies have also shown that slurs harm communities at a deep psychological level.¹³⁹ For example, LGBTQ+ children face much greater levels of verbal bullying than their straight peers.¹⁴⁰ The use of homophobic slurs amplifies the emotional impact of bullying, inflicting greater trauma on LGBTQ+ youth.¹⁴¹ Discrimination, carried out in part through slurs, also negatively affects target groups' social environment, economic opportunities, and health.¹⁴²

Slurs also harm society in general. Sociologically and linguistically, slurs and other hate-filled discourse balkanize society, increasing the risk of inter-group conflict and a repeated cycle of hate.¹⁴³ Offensive words can ossify biases

133. See *id.* at 90 (“In short, slurs act as verbal brands or tattoos of membership in groups discredited or degraded in a wider culture.”); Adam D. Galinsky et al., *The Reappropriation of Stigmatizing Labels: The Reciprocal Relationship Between Power and Self-Labeling*, 24 PSYCH. SCI. 2020, 2020 (2013) (“Derogatory labels express contempt and derision, and, as carriers of stigma, they represent mechanisms of social control that reinforce a group’s disempowered state.”); Hyacinth Udah, *Searching for a Place to Belong in a Time of Othering*, 8 SOC. SCIS. 1, 4 (2019); (“Othering practices usually manifest in negative portrayal, derogatory slurs, verbal insults and racist discourses about the Other.”); see also Brenda Major & Laurie T. O’Brien, *The Social Psychology of Stigma*, 56 ANN. REV. PSYCH. 393, 394 (2005) (providing a literature review on the study of stigma).

134. See, e.g., Erdman B. Palmore, *Ethnophaulisms and Ethnocentrism*, 67 AM. J. SOCIO. 442, 442 (1962) (“There is a close association between the amount of prejudice against an out-group and the number of ethnophaulisms for it.”).

135. See Adam M. Croom, *How to Do Things with Slurs: Studies in the Way of Derogatory Words*, 33 LANGUAGE & COMM’N 177, 189 (2013) (“[B]y dehumanizing others either verbally or physically, one acts to disarm people’s inhibitions against treating them cruelly, and enables people to perform destructive actions against other humans.”); Fabio Fasoli et al., *Not “Just Words”: Exposure to Homophobic Epithets Leads to Dehumanizing and Physical Distancing from Gay Men*, 46 EUR. J. SOC. PSYCH. 237, 237–38 (2016) (“As the definition implies, derogatory group labels not only elicit a negative evaluation of the target but also achieve much more. Rather than functioning like a generic insult, homophobic epithets may serve to dehumanize their target.”).

136. Fasoli et al., *supra* note 135, at 239–44 (laying out the findings of the two studies).

137. *Id.* at 244–45.

138. *Id.* at 245.

139. See Katyayal, *supra* note 25, at 830 (explaining the potentially deep psychological harm registering slurs as trademarks could cause to target groups).

140. Paz Elipe, Dorothy L. Espelage & Rosario Del Rey, *Homophobic Verbal and Bullying Victimization: Overlap and Emotional Impact*, 19 SEXUALITY RSCH. & SOC. POL’Y 1178, 1178–79 (2022).

141. *Id.* at 1185 (finding that LGB students being verbally bullied with homophobic slurs led to a significant emotional impact and perhaps adverse health outcomes).

142. See Huang, *supra* note 24, at 1613 (summarizing social science research on the negative externalities caused by slurs on the target communities).

143. Whitson et al., *supra* note 132, at 89.

and engender harm against the targeted group(s) and its members.¹⁴⁴ This, in turn, creates backlash that exacerbates conflict and worsens society as a whole.¹⁴⁵

B. *The Promise and Challenges of Reappropriation*

As Huang wondered, “given the negative implications discussed above, why would [someone] willingly choose to self-appropriate and label themselves with a slur?”¹⁴⁶ Given the substantial harms of slurs, it would seem that they are irredeemable. Yet, as Huang noted upon review of the social sciences literature, target groups have been able, over time, to reappropriate some slurs, greatly weakening, if not fully nullifying, their power to dehumanize.¹⁴⁷ While it would be difficult if not impossible to reappropriate generic hate-laden terms such as “vermin” or “lowlife,” the group-specific slurs have the potential to be reclaimed. Relying on this possibility, Simon Tam declared the Supreme Court ruling in *Tam* “a win for all marginalized groups.”¹⁴⁸ While Tam is correct that reappropriation of slurs can provide noteworthy benefits to target populations, attempted reappropriation is not without risks.¹⁴⁹

As Huang elucidated from the social sciences literature, despite, or perhaps because of, the harmful effects of slurs, it can be empowering for members of the target community to change the meaning of those slurs.¹⁵⁰ First, research has shown that members of a group self-identifying with a slur can weaken its otherizing effect and challenge the negative attributes embedded in it.¹⁵¹ For example, Gregory Coles, a scholar of English and sexuality, found that the act of “reclaim[ing] . . . a derogatory term rescreens a site that one perspective has imbued

144. See, e.g., Richard Delgado, *Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133, 140 (1982) (“[R]acial labeling and racial insults directly harm the perpetrator. Bigotry harms the individuals who harbor it by reinforcing rigid thinking, thereby dulling their moral and social senses and possibly leading to a ‘mildly . . . paranoid’ mentality.”); Florian Arendt & Temple Northup, *Effects of Long-Term Exposure to New Stereotypes on Implicit and Explicit Attitudes*, 9 INT’L J. COMM’N 2370, 2379 (2015) (“[L]ong-term exposure to stereotypical news can increase the already present moderate implicit bias into a rather large bias.”); Cynthia S. Wang, Jennifer A. Whitson, Eric M. Anicich, Laura J. Kray & Adam D. Galinsky, *Challenge Your Stigma: How to Reframe and Revalue Negative Stereotypes and Slurs*, 26 CURRENT DIRECTIONS PSYCH. SCI. 75–76 (2017) (“[T]he discriminatory and internalized disadvantages of stigma are reinforced through derogatory group labels, or slurs.”).

145. See, e.g., WALDRON, *supra* note 130, at 77–89 (analyzing hatred and law in a “well-ordered society”).

146. Huang, *supra* note 24, at 1614.

147. *Id.* at 1614–17.

148. Joe Coscarelli, *Why the Slants Took a Fight Over Their Band Name to the Supreme Court*, N.Y. TIMES (June 19, 2017), <https://www.nytimes.com/2017/06/19/arts/music/slants-name-supreme-court-ruling.html> [<https://perma.cc/FBD9-KRFE>].

149. Huang, *supra* note 24, at 1614.

150. *Id.*

151. See Galinsky et al., *supra* note 133, at 2020 (“[S]elf-labeling with a derogatory group may ironically weaken its stigmatizing force and even revalue it, transforming the very words designed to demean into expressions of self-respect.”); Whitson et al., *supra* note 132, at 102 (“Self-labeling and reappropriation represent active resistance to subordination at the hands of dominant out-group members. They serve to confront and defuse stigma—transforming individual victims into collectively identified challengers of stigma.”); see also Wang et al., *supra* note 144, at 77 (“However, by engaging in overt and public reframing—for instance, declaring to others that being a woman gives one a leadership or negotiation advantage—one challenges and potentially weakens the stigma not only internally for in-group members but also for out-group members.”).

with fearful power and renders it benign.”¹⁵² Second, reappropriation of slurs can give that group a sense of power by “limit[ing] the dominant out-group’s control of the words and reduc[ing] their power to define stigmatized groups.”¹⁵³ Third, taking action is psychologically perceived both by the group itself and by outsiders as an expression of actual power.¹⁵⁴ Psychological studies have shown that reappropriation of slurs and self-labeling can be a means of empowering the individual and the group.¹⁵⁵ Some English scholars have also found that reclamation of slurs can establish group solidarity or self-identity, render language ambivalent or even powerless, and battle patriarchal norms and systems of oppression.¹⁵⁶ Legal scholar Richard Delgado noted that narratives *against* symbols of hate are “powerful means for destroying mindset—the bundle of presuppositions, received wisdoms, and shared understandings.”¹⁵⁷

Recognizing these potential benefits, marginalized individuals and groups—including the SFDOBWMC and Tam—have tried and sometimes succeeded for decades (if not longer) to reappropriate slurs targeted at them. For example, in 1972, Black female artist Betye Saar created *The Liberation of Aunt Jemima*, which brought together different caricatures of Black “mammies” into one figure and made her, in the artist’s words, “revolutionary, like she was rebelling against her past enslavement . . . to empower the Black woman.”¹⁵⁸ Today, Apache artist Jason Lujan creates two-dimensional works that juxtapose Apache helicopters with foreign language publications and other paper materials

152. Coles, *supra* note 127, at 431; *see also* Gibbons, *supra* note 22, at 87–88 (explaining that marginalized groups sometimes adopt pejorative terms targeting them to pursue semiotic sovereignty, the ability to control the terms that define a group and their meanings).

153. Wang et al., *supra* note 144, at 78; *see also* Adam M. Croom, *Slurs and Stereotypes for Italian Americans: A Context Sensitive Account of Derogation and Appropriation*, 81 J. PRAGMATICS 36, 45 (2015) (quoting Nicole A. Thompson, *John Leguizamo & Kanye West Use Re-appropriation to Change Perceptions*, LATIN POST (Nov 11, 2013, 9:08 PM), <https://www.latinpost.com/articles/3547/20131111/kayne-west-john-leguizamo-celebrities-reappropriate-term-object.htm> (last visited Sept. 26, 2023) [<https://perma.cc/Q2UX-U246>] (“The key for the transformation of an undermining, racist term is for it to be handled as a tool of empowerment, voided of any previous connotations, and utilized by the offended party.”)); Andrea Carnaghi & Anne Maass, *In-Group and Out-Group Perspectives in the Use of Derogatory Group Labels: Gay Versus Fag*, 26 J. LANGUAGE & SOC. PSYCH. 142, 153 (2007) (“If in-group favoritism is such a powerful and pervasive phenomenon, homosexual participants may favorably react to any reference to their own group, even when stated in derogatory terms.”).

154. *See* Joe C. Magee, *Seeing Power in Action: The Roles of Deliberation, Implementation, and Action in Inferences of Power*, 45 J. EXPERIMENTAL SOC. PSYCH. 1, 13 (2009) (“Extensive deliberation and the failure to act convey little power, and focusing on goal implementation and bold action signal that one is doing what one wants and thus possesses power.”).

155. *See, e.g.*, Galinsky et al., *supra* note 133, at 2022 (“[S]elf-labeling with a derogatory group term will lead other individuals to see the group as having greater power.”); Whitson et al., *supra* note 132, at 100 (discussing how efforts to change negative connotations around the term “Black,” such as through the “Black is Beautiful” movement, shifted outside perspectives of not just the individuals engaged in the movement, but the Black community as a whole).

156. *See* Coles, *supra* note 127, at 425–26 (providing a literature review of these theories, as espoused by scholars such as Michel Foucault and Judith Butler).

157. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989).

158. *The Liberation of Aunt Jemima*, BERKELEY REVOLUTION, <https://revolution.berkeley.edu/liberation-aunt-jemima> (last visited Sept. 26, 2023) [<https://perma.cc/YJ69-2TVK>].

with the aim of “highlight[ing] a more contemporary context where everyone is connected.”¹⁵⁹

LGBTQ+ persons have also reappropriated symbols that were once used to oppress them, in a process the philosopher Michel Foucault described as “reverse discourse.”¹⁶⁰ These symbols have since become important expressions of identity for the LGBTQ+ community. For example, in Nazi Germany, Nazi officials used an upside-down pink triangle to mark gay men for persecution, internment, and execution.¹⁶¹ This symbol of death was gradually reappropriated by the gay rights movement—in fact, it was chosen over the less controversial Greek letter lambda, which symbolized the more tolerant Hellenic views towards homosexuality.¹⁶² Most notably, the AIDS Coalition to Unleash Power (“ACT UP”) used the pink triangle as its emblem.¹⁶³ As one of the most important LGBTQ+ movements in the fight against the AIDS epidemic, ACT UP brought the pink triangle to the forefront of representative symbols in the fight for LGBTQ+ representation and equality in the 1980s, flipping it right-side up and featuring it alongside the group’s famous war cry, “Silence=Death.”¹⁶⁴ As Avram Finkelstein, one of the creators of the logo, explained:

An icon would not only liberate us from the complexities of representation but also enable us to draw on existing queer codes. . . . So we resigned ourselves to the use of the pink triangle, convincing ourselves that the codes activated by the triangle were open-ended enough to be useful, signifying lesbian and gay identity to some audience members, maleness to others, and referencing the historical meanings of genocide to audiences familiar with that history.¹⁶⁵

Finkelstein’s words demonstrate that the pink triangle evoked multiple meanings for different viewers precisely because of its historical symbolism. ACT UP both acknowledged its historical meaning and recontextualized it for a modern era.¹⁶⁶ But the reclamation of the pink triangle was not without criticism. Stuart Marshall explains: “I’ve spoken with people who were forced to wear the pink triangle in concentration camps, and they were horrified by its contemporary use by the gay movement.”¹⁶⁷ But others saw it as a powerful warning

159. Tanvi Misra, *Native American Artists Reclaim Images that Represent Them*, NPR: CODE SWITCH (Aug. 31, 2014, 11:47 AM), <https://www.npr.org/sections/codeswitch/2014/08/31/344306508/native-american-artists-reclaim-images-that-represent-them> [<https://perma.cc/4FBD-4GEW>].

160. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: VOLUME I: AN INTRODUCTION* 101 (Robert Hurley trans., 1990).

161. Kenji Yoshino, *Suspect Symbols: The Literary Argument for Heightened Scrutiny for Gays*, 96 COLUM. L. REV. 1753, 1781 (1996).

162. *Id.* at 1781–82.

163. Olivia B. Waxman, *How the Nazi Regime’s Pink Triangle Symbol Was Repurposed for LGBTQ Pride*, TIME (May 31, 2018, 5:39 PM), <https://time.com/5295476/gay-pride-pink-triangle-history> [<https://perma.cc/YH37-3YA9>].

164. *Keeping the Pink Triangle in Context*, ACT UP, <https://actupny.com/keeping-the-pink-triangle-in-context> (last visited Sept. 26, 2023) [<https://perma.cc/W3XX-QZY7>].

165. AVRAM FINKELSTEIN, *AFTER SILENCE: A HISTORY OF AIDS THROUGH ITS IMAGES* 44–45 (2018).

166. See Katyal, *supra* note 25, at 820 (explaining the importance of Finkelstein’s use of the pink triangle).

167. Stuart Marshall, *The Contemporary Political Use of Gay History: The Third Reich*, in HOW DO I LOOK? QUEER FILM AND VIDEO 65, 91 (Bad Object-Choices ed., 1991).

against complacency.¹⁶⁸ Today, the pink triangle is one of the most recognizable symbols in the fight for LGBTQ+ rights from the United States to Russia, but it is still anchored to its roots of oppression and resistance.¹⁶⁹ As an important symbol of LGBTQ+ identity, it is a critical step in the development of group pride.¹⁷⁰

Through efforts such as these (whether intentional or accidental), the meaning and impact of slurs and symbols shift over time, with varying speed and intensity.¹⁷¹ For example, the term “queer” was once used to derogate homosexuality as deviant, but it is being reappropriated as a term of identity by the LGBTQ+ community.¹⁷² It would have been nearly impossible to destroy the word, but LGBTQ+ activists such as Queer Nation started to undermine its prejudicial meaning by using the term in community-focused slogans such as “Queers Read This” and “We’re here. We’re queer. Get used to it.”¹⁷³ One LGBTQ+ activist felt that “[b]y defining myself as queer I can invert society’s definitions, redefine them, and add new layers of meaning.”¹⁷⁴ Another explained, “[f]or me, the taking back of negative words has been a survival strategy . . . to reclaim [the terms from negative meanings].”¹⁷⁵ This shift ultimately led to younger LGBTQ+ individuals recognizing the term as a symbol of pride rather than hate.¹⁷⁶ Today, many in the community use it as an umbrella term to describe all LGBTQ+ individuals or all those outside of heteronormative constructs.¹⁷⁷

But the historical meanings of words are difficult, if not impossible, to erase entirely. While many younger LGBTQ+ individuals have embraced the term “queer,” others, especially older generations, continue to think of the term as

168. Yoshino, *supra* note 161, at 1782.

169. See Waxman, *supra* note 163.

170. See ERIC OBERLE, THEODOR ADORNO AND THE CENTURY OF NEGATIVE IDENTITY 6 (2018) (“In its ideal self-conception, to have an identity means to be awakened to who one is, and this awakening shapes subsequent questions of what one must do and of how one sees and knows the world.”); Llewellyn Joseph Gibbons, *Redux, Successfully De-Bowdlerizing the Trademark Register or One Person’s Vulgarity Is Another Person’s Lyric*, 59 LAW REV. FRANKLIN PIERCE CTR. FOR INTELL. PROP. 89, 100 (2018) (“[T]o proudly cry out ‘I am what I am!’ [i]s the first step in developing self-sufficiency and pride”).

171. See generally ELIZABETH CLOSS TRAUOGOTT & RICHARD B. DASHER, REGULARITY IN SEMANTIC CHANGE 4 (2002) (examining how semantic change, or the evolution of how a word is used, occurs); see also Coles, *supra* note 127, at 429 (“Terms, like shadows, are always in flux and invite continual reconceptualization.”).

172. See Merrill Perlman, *How the Word ‘Queer’ Was Adopted by the LGBTQ Community*, COLUM. JOURNALISM REV. (Jan. 22, 2019), https://www.cjr.org/language_corner/queer.php [<https://perma.cc/EQ4Y-YE7N>] (“Originally a derogatory name for a homosexual, ‘queer’ has been embraced by some in the nonheterosexual community.”).

173. Coles, *supra* note 127, at 433.

174. Clark D. Cunningham, *Learning from Law Students: A Socratic Approach to Law and Literature*, 63 U. CIN. L. REV. 195, 212 (1994).

175. See Laurie Rose Kepros, *Queer Theory: Weed or Seed in the Garden of Legal Theory?*, 9 LAW & SEXUALITY 279, 279 n.1 (1999–2000).

176. See Perlman, *supra* note 172 (describing the historical debate around the reclamation of the term “queer” by the LGBTQ+ community); Coles, *supra* note 127, at 433–34 (describing the development in meaning of the term “queer”).

177. See Jessica N. Fish & Stephen T. Russell, *Queering Methodologies to Understand Queer Families*, 67 FAM. RELS. 12, 13 (2018) (“We use this language, however, to describe a broad set of identities that represent the ‘doing’ of sexuality, gender, and family outside of heteronormative binaries.”) (citation omitted).

irredeemably derogatory and belittling.¹⁷⁸ Even terms that are seemingly widely accepted, such as “gay,” can, and continue to be, used pejoratively, even if not necessarily in a homophobic way. One need only remember the elementary school playground or high school classroom where something lame was “so gay.”¹⁷⁹

As shown by the “queer” example, the reappropriation of offensive terms is unlikely to be universally favored.¹⁸⁰ Members of a group react in different ways to attempted reclamation, such as by either accepting the reappropriated identity or rejecting it in favor of dominant cultural norms.¹⁸¹ This was the case in *Tam*, where Asian-American organizations and individuals filed amicus briefs both for and against the registration of THE SLANTS as a mark.¹⁸²

Despite efforts to reclaim them, some words, such as “faggot,” have retained their vitriolic connotations and are only used, on occasion, within in-group settings.¹⁸³ Who can use reclaimed terms can be an important consideration in the reclamation of a term.¹⁸⁴

Of course, slur reappropriation can be a lengthy and arduous process.¹⁸⁵ While terms that were once primarily derogatory, such as “gay,” have now largely escaped their troubled past valences (despite echoes of using “gay” as an

178. See Kepros, *supra* note 175, at 281 (“In particular, a generation gap emerged with older people cringing at ‘queer’ after so many years of hearing it as a weapon of animus.”); Juliette Rocheleau, *A Former Slur Is Reclaimed, And Listeners Have Mixed Feelings*, NPR: PUB. ED. (Aug. 21, 2019, 10:33 AM), <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings> [<https://perma.cc/2VEU-R7FA>] (describing how older generations still find the term “queer” problematic while younger generations are often okay with it); see also Coles, *supra* note 127, at 434 (“In a sense, then, as long as the word is still remembered to have carried a screen of derogation, its rescreening can never be total. . . . [O]lder speakers who have spent years embedded in a term’s pernicious past tend to be more resistant toward reclamation efforts.”).

179. See Amy Ashenden, *The “Gay” Word: What Does It Mean When Young People Use It Negatively?*, GUARDIAN (Dec. 21, 2015, 10:20 AM), <https://www.theguardian.com/education/2015/dec/21/the-gay-word-what-does-it-mean-when-young-people-use-it-negatively> [<https://perma.cc/85D9-KUP7>].

180. See Coles, *supra* note 127, at 434.

181. See Gibbons, *supra* note 170, at 100 (“Some individual members of the group will reject this negative identity and then conform to dominant cultural norms. Others will reject the dominant cultural norms and embrace a so-called negative or deviant identity descriptor.”); Coles, *supra* note 127, at 434 (describing how terms such as “queer” have been only partially reclaimed by the target group).

182. See Brief for the Fred T. Korematsu Center for Law and Equality et al. as Amici Curiae Supporting Petitioner at 5, *Matal v. Tam*, 582 U.S. 218 (2017) (No. 15-1293) (in favor of the maintenance of the Section 2(a) disparagement bar); Brief for Professors Edward Lee & Jake Linford as Amici Curiae Supporting Respondent at 14, *Matal v. Tam*, 582 U.S. 218 (2017) (No. 15-1293) (arguing in favor of *Tam* and Section 2(a) being found unconstitutional); see generally Brief for Asian Americans Advancing Justice et al. as Amici Curiae Supporting Neither Party at 1, *Matal v. Tam*, 582 U.S. 218 (2017) (No. 15-1293) (supporting neither side but arguing that reappropriation is more complicated than the en banc Federal Court decision implied).

183. See Coles, *supra* note 127, at 436–37 (describing the differing redemptive and restricted models of reclamation and why and how they emerge); see also Mihaela Popa-Wyatt & Jeremy L. Wyatt, *Slurs, Roles and Power*, 175 PHIL. STUD. 2879, 2881 (2018) (“[S]lurs vary in the degree of offence they cause.”).

184. See Coles, *supra* note 127, at 435 (noting that positive mainstream uses of a formerly derogatory term “do not necessarily signify that non-group members have complete access to the reclaimed term”); Popa-Wyatt & Wyatt, *supra* note 183, at 2882 (describing the relative offensiveness of in-group and out-group usage of the “n-word”).

185. See Coles, *supra* note 127, at 425.

insult in primary and secondary schools),¹⁸⁶ the meanings of others are still being contested.¹⁸⁷ Contrary to this is what Huang (and David Embrick before her) described as a false parallel for slurs across different social groups; there are different power dynamics between those who identify as, for example, White and Black, straight and gay, or man and woman.¹⁸⁸ For example, a slur against a straight white man is far less likely to seriously harm in the contemporary United States than a slur against an individual without one, or multiple, of those identities, nor will it be as difficult to overcome that slur's negative connotations.¹⁸⁹ This lengthy battle for the future of words can negatively affect the psychological health of members of the in-group.¹⁹⁰ In particular, social psychologist Adam Galinsky and his co-authors found that “[s]elf-labeling may not have positive effects on perceived power or stigma attenuation when the label is soaked in legitimate contempt or when the group has too little power.”¹⁹¹ While slur appropriation can potentially generate notable benefits, it is not without these potential risks and pitfalls.

IV. THE SPECTER OF DISPARAGING AND HATEFUL MARKS

The potential rewards of slur appropriation face significant headwinds. Historically, more speech was seen as improving society,¹⁹² but this marketplace of ideas theory has started to crumble due to changed media consumption models.¹⁹³ In addition, scholars have worried that *Tam* and *Brunetti* will allow hate to further seep into society, with lasting consequences for minorities.¹⁹⁴ The following sections explain these understandable concerns about the post-*Tam* and *Brunetti* world.

186. See Ashenden, *supra* note 179.

187. See Coles, *supra* note 127, at 425 (describing certain terms that were once derogatory but are now commonly used without their former negative meaning); see also Rocheleau, *supra* note 178 (describing mixed reactions to the word “queer” as a label for the LGBTQ+ community, including strong resistance to the attempted reappropriation of the word).

188. See Huang, *supra* note 24, at 1618–19 (discussing this “false parallel”); see also David G. Embrick & Kasey Henricks, *Discursive Colorlines at Work: How Epithets and Stereotypes Are Racially Unequal*, 36 *SYMBOLIC INTERACTION* 197, 198 (2013) (discussing the different relative power of White, Black, and Latino communities in the United States, and how this gives anti-Black and anti-Latino slurs greater negative outcomes than anti-White slurs, as White Americans have greater strength to overcome and reject such slurs’ import).

189. See Embrick & Henricks, *supra* note 188, at 197–98 (the impact of slurs on different racial groups is a “false parallel . . . because it ignores the historical responsibility for racism”); see also Huang, *supra* note 24, at 1618 (summarizing studies that found that anti-White slurs in the United States carried less power than ones against other racial groups).

190. Galinsky et al., *supra* note 133, at 2028.

191. *Id.*

192. See *infra* note 197 and accompanying text.

193. See *infra* note 201 and accompanying text.

194. See *infra* note 212 and accompanying text.

A. *The Marketplace of Odious Ideas*

Trademark law helps mediate the marketplace of goods, but the cultural aspects of trademarks also affect the marketplace of ideas.¹⁹⁵ The marketplace of ideas is a long-standing justification for protecting free speech, based on Justice Oliver Wendell Holmes' dissent in *Abrams v. United States* and Justice Louis Brandeis' concurring opinion in *Whitney v. California*.¹⁹⁶ The idea is that more speech is beneficial to finding the ultimate truth because ideas compete and the market (*i.e.*, the public) accepts the best ones.¹⁹⁷

But the marketplace of ideas rationale is increasingly undermined and can serve as a vehicle for hate speech.¹⁹⁸ For example, C. Edwin Baker suggested that the marketplace of ideas is mistaken because “the marketplace of ideas is improperly biased in favor of presently dominant groups.”¹⁹⁹ Relatedly, Mari Matsuda believed the First Amendment does little to protect against harmful or disparaging content, including against racial or other minorities.²⁰⁰ More recently, a growing number of scholars have debunked the marketplace of ideas theory. The balkanization of the town square by the Internet and social media has led to filtered bubbles, not open competition where the best idea triumphs.²⁰¹ There has been a marked increase in fake news.²⁰² There has also been a significant increase in hate speech. In early 2021, the United Nations special rapporteur on minority issues, Fernand de Varennes, reported the “overwhelming scale of

195. Katyal, *supra* note 21, at 1642–44 (describing the intersection of trademarks and the marketplaces of goods and ideas).

196. Rodney A. Smolla, *The Meaning of the “Marketplace of Ideas” in First Amendment Law*, 24 COMM. & POL. 437, 437–38 (2019); *see also* *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting); *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring), *overruled on other grounds by* *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969).

197. Geoffrey R. Stone, *Restriction of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. CHI. L. REV. 81, 103 (1978) (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

198. *See* C. Edwin Baker, *Scope of the First Amendment Freedom of Speech*, 25 UCLA L. REV. 964, 978 (1978).

199. *Id.*

200. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2357 (1989).

201. *See, e.g.*, Nabiha Syed, *Real Talk About Fake News: Towards a Better Theory for Platform Governance*, YALE L.J.F. 337, 345–53 (2017) (identifying five features of contemporary online media access that restrict the viewpoints to which consumers are exposed); Philip M. Napoli, *What if More Speech Is No Longer the Solution? First Amendment Theory Meets Fake News and the Filter Bubble*, 70 FED. COMM. C'NS L.J. 55, 70–71 (2018) (describing how technological advancements have changed the media consumption models upon which the marketplace of ideas theory was premised); Michael P. Goodyear, *Priam's Folly: United States v. Alvarez and the Fake News Trojan Horse*, 73 STAN. L. REV. ONLINE 194, 208 (2021) (“The marketplace of ideas is broken, and counterspeech is screened out by filtered social media bubbles.”).

202. *See, e.g.*, Michael P. Goodyear, *Inherent Powers and the Limits of Public Health Fake News*, 95 ST. JOHN'S L. REV. 319, 326–27 (2022) (describing the increase of fake news relating to COVID-19).

hate speech targeting minorities on social media.”²⁰³ Hate speech against the LGBTQ+ community is especially prevalent.²⁰⁴

This odious marketplace of ideas could be flooded with likeminded trademark applications and registrations following *Tam* and *Brunetti*. The government more broadly regulated the expressive qualities of trademarks (and thus their role in the marketplace of ideas) prior to *Tam* and *Brunetti*.²⁰⁵ Those two decisions further broke down the barriers between trademarks’ roles in the marketplace of goods and the marketplace of ideas.²⁰⁶ Because “the government cannot police the private speech market to ensure that expression is in good taste, decent, or not upsetting,” disparaging, immoral, and scandalous marks are more protected and potentially embedded in the marketplace of ideas.²⁰⁷ The growth of hate speech could, in light of *Tam* and *Brunetti*, facilitate more odious trademarks circulating in the marketplace of ideas.²⁰⁸ In the era of filtered online information exchange, more speech may not ultimately lead to the truth and could, in some cases, even have costly consequences for society’s most vulnerable.

B. *The Tam and Brunetti Threat*

Given the above risks, there is the very real danger that *Tam* and *Brunetti* may cause considerable harm to minorities, including LGBTQ+ persons, now that the PTO can no longer deny trademarks registration because they are disparaging, immoral, or scandalous.²⁰⁹ As Justice Alito prophesized during oral argument in *Brunetti*, “[t]here’s going to be a mad scramble by people to register these marks.”²¹⁰ There is a very legitimate concern about what happens when such potentially harmful words are registered not by well-meaning members of the target group, such as Tam and the SFDOBWMC, but more nefarious actors who seek to further hate.²¹¹ Scholars and other commentators were understandably concerned that *Tam* and *Brunetti* have opened the floodgates to registering racist and other hateful words and images as trademarks.²¹² For example, much

203. Fernand de Varennes (Special Rapporteur on minority issues), *Recommendations Made by the Forum on Minority Issues at Its Thirteenth Session on the Theme “Hate Speech, Social Media and Minorities,”* ¶ 4, U.N. Doc. A/HRC/46/58 (Jan. 26, 2021).

204. See generally GLAAD, SOCIAL MEDIA SAFETY INDEX (2021), <https://assets.glaad.org/m/5eba7ae7cc159bae/original/2021-GLAAD-Social-Media-Safety-Index.pdf> [<https://perma.cc/TG93-LPE3>].

205. Katyal, *supra* note 21, at 1662.

206. *Id.* at 1663 (noting that even prior to *Tam*, “marks that seemingly originate from the marketplace of goods are often deeply evocative of the marketplace of ideas, and vice versa”).

207. Leslie Gielow Jacobs, *The Public Sensibilities Forum*, 95 NW. U. L. REV. 1357, 1357 (2001).

208. See *infra* notes 209–14 and accompanying text.

209. See, e.g., Huang, *supra* note 24, at 1646 (“Although the number of racially-oriented applications has been historically low, the result of *Tam* is that future applications are much more likely to become registered trademarks.”).

210. Transcript of Oral Argument at 22, *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019) (No. 18-302).

211. Katyal, *supra* note 25, at 828 (noting concern arises “when those words—and images—play into the wrong hands”).

212. See, e.g., *In re Tam*, 808 F.3d 1321, 1364 (Fed. Cir. 2015) (Dyk, J., concurring in part) (“[T]he inevitable consequence of this decision . . . [is] ‘the wider registration of marks that offend vulnerable communities.’”)

ink has been spilled over how *Tam* stymied legal action by Native Americans to de-register the NFL's trademarks involving Native American imagery, such as the Washington Redskins.²¹³ Scholarly discourse has generally been directed at either explaining the harm *Tam* and *Brunetti* will pose or attempting to reign in the registration of offensive and harmful marks despite those decisions.²¹⁴

In an example of the former, Ilhyung Lee was concerned that the *Tam* decision did not consider the motivation or purpose of the registrant relevant to registration.²¹⁵ Lee worried that, under this neutral standard, blatantly derogatory words, jingles, and pictures could be registered as marks.²¹⁶ Not just *Tam*'s benign and possibly empowering use of the SLANTS mark would be registered, but also much more offensive trademarks, such as ones spitefully incorporating the racist term "Gooks," the stereotypical "Asian jingle," and narrower eyes.²¹⁷

Similarly, Sonia Katyal remarked that the Supreme Court's decision in *Tam* created a curious irony that allowed "empowered individuals like Simon Tam to reclaim and reappropriate historically derogatory terms [but] . . . also . . . extends protection to the most entrepreneurial of haters."²¹⁸ Katyal understood there to be at least three distinct types of disparaging marks that were registerable following *Tam*: (1) self-referential marks, such as *Tam*'s; (2) hate speech; and (3) defensive registration, or registration of a mark to prevent others from using it.²¹⁹ Katyal expressed concern that *Tam*'s triumph "has revealed itself to be far from a landscape of empowering reappropriation" under the first of these categories.²²⁰ Indeed, on the day the Supreme Court issued its opinion in *Tam*, individuals filed applications for trademarks targeting, among others, Black people,

(quoting majority opinion at 1357–58); Huang, *supra* note 24, at 1607 ("[T]he loss of § 2(a)'s 'disparaging' and 'scandalous/immoral' provisions may entrench and legitimize the use of slurs against more vulnerable 'marginalized groups.'"); Conrad, *supra* note 19, at 89 (addressing whether *Tam* opens the door to the registration of racist and other offensive marks); Christina S. Loza, Matal v. Tam: *Disparaging Trademarks, Like the Slants, Can Be Registered Trademarks*, <https://flasllp.com/2017/09/12/matal-v-tam-disparaging-trademarks-like-the-slants-can-be-registered-trademarks/> (last visited Sept. 26, 2023) [<https://perma.cc/4LSQ-LHJZ>] ("There is, of course, a concern that the floodgates have been opened. Will every hateful person file marks and begin filling our Trademark Register with racial slurs? There is certainly a chance.").

213. See, e.g., Huang, *supra* note 24, at 1610 (stating the Redskins cases "provoked passionate debate between free speech advocates (such as Simon Tam) and those that favor greater cultural sensitivity"); Song, *supra* note 19, at 199–200 (suggesting that the immoral or scandalous clause of Section 2(a) could fill the gap created by *Tam* in regards to the Redskins litigation, but the subsequent decision in *Brunetti* nullified this strategy); Anthony J. McShane & Andrea Stein Fuelleman, *The Trademarks THE SLANTS, REDSKINS, and Now FUCT Are Registrable Trademarks Following the Supreme Court's Iancu v. Brunetti Ruling*, 31 INTELL. PROP. & TECH. L.J. 1, 1 (2019) (noting that the mark REDSKINS, previously found to be unregistrable by a court, was reinstated following *Tam*).

214. See, e.g., Lee, *supra* note 23, at 2008; Huang, *supra* note 24, at 1619.

215. Lee, *supra* note 23, at 2008.

216. *Id.* at 2009.

217. *Id.* at 2009–10.

218. Katyal, *supra* note 25, at 824.

219. *Id.* at 825–27.

220. *Id.* at 824.

Asian people, women, and vegans,²²¹ although some trademark owners also registered racially-oriented marks for the purpose of changing the narrative of hate (Katyal’s third category).²²² But especially in a world replete with brands, it can be difficult to tell the difference, at least at first glance, between disparaging marks that are meant to offend and those that are attempting to reclaim.²²³ Katyal concluded that due to inequalities in U.S. society, the real winners of *Tam* and *Brunetti* are likely the second group of would-be registrants: the haters.²²⁴

Vicki Huang similarly thought that because “minorities face inequity in an unequal way . . . the loss of § 2(a)’s ‘disparaging and scandalous/immoral’ provision may entrench and legitimize the use of slurs against more vulnerable ‘marginalized groups.’”²²⁵ Huang reasoned that protecting derogatory, immoral, and scandalous marks can amplify the existing power imbalance between groups.²²⁶ She acknowledges that a member of the target group registering a trademark containing a slur can serve to empower that group by (1) denying outsiders the ability to define the slur; (2) giving, in a sense, the reappropriated use a government stamp of approval; and (3) increasing the registrant’s own sense of agency.²²⁷ But, she also warns that the opposite can be true: the registration of a work by outsiders—such as the NFL registering the mark REDSKINS—could entrench stigmatization of the target group because (1) outsiders have the ability to define the slur; (2) the outsider receives a stamp of government approval; and (3) the registrant, not the target group, is presumed to have agency.²²⁸

Concerned by the dangers *Tam* and *Brunetti* potentially pose to minorities—such as those identified by Lee, Katyal, and Huang—many recent proposals have focused on how to contain offensive trademarks notwithstanding those two decisions.²²⁹ For example, in *Brunetti*, several justices suggested that

221. See Chang, *supra* note 27 (stating these applications included the marks “Gutter sluts, chink, damn vegans,” and five uses of the n-word); Justin Wm. Moyer, *Trademark for n-word, Swastika Filed After Legal Ruling*, CHI. TRIB. (Aug. 2, 2017, 10:31 AM), <https://www.chicagotribune.com/business/ct-n-word-swastika-trademark-20170802-story.html> [<https://perma.cc/9GSL-TRJL>].

222. See, e.g., Huang, *supra* note 24, at 1634 (describing applications for marks such as SLANTEYE, CHOLO LOCO CLOTHING, and YID that included the applicants’ desire to reclaim and re-interpret these slurs); Moyer, *supra* note 221.

223. See Katyal, *supra* note 25, at 830 (explaining that if trademark law and we as individuals are not able to tell the difference between these intended uses, this will ultimately harm society).

224. *Id.* at 832 (“Brands, like people, don’t exist on a level playing field. The real winners here are the Dan Snyders of the world. The rest of us are probably FUCTION.”).

225. Huang, *supra* note 24, at 1607.

226. *Id.* at 1619 (“[T]rademark law can only serve to amplify these positive and negative dynamics.”).

227. *Id.*

228. *Id.* at 1619–20.

229. See, e.g., Gibbons, *supra* note 22, at 86–87 (proposing a bar against registering “profane” marks akin to hate speech or fighting words); Snow, *supra* note 22, at 404 (advocating for a bar on registration of vulgar trademarks); Michael Stephenson, *The Lanham Act’s Immoral or Scandalous Provision: Down, But Not Out*, 111 TRADEMARK REP. 877, 893–97 (2021) (proposing a new framework for barring federal registration for scandalous and immoral trademarks, based on separating the analysis for those two bars and then applying category-specific tests based on prior First Amendment jurisprudence to more narrowly prohibit (1) obscenity and profanity, and (2) terrorism and drug use); Jordan J. Kilijanski, Note, *A Legislative Framework to Avoid a Vulgar Trademark System*, 69 BUFF. L. REV. 909, 939 (2021) (arguing that the PTO could be partially underwritten by

a future ban on vulgar, profane, and obscene marks may pass constitutional muster.²³⁰ Ned Snow has endorsed the justices' suggestion and advocated for the denial of protection for vulgar, profane, and obscene marks because denying protection should discourage the use of such marks.²³¹ But a ban on vulgar, profane, and obscene marks, like the disparagement and immoral or scandalous clauses, would be highly subjective.²³² Barton Beebe and Jeanne Fromer's research, among others, has shown the application of these criteria, like disparagement, immorality, and scandalousness, would likely be applied in an arbitrary manner based on PTO examining attorneys' own tastes and mores.²³³ These categories of prohibited marks would not be easily or uniformly applied, such as for the prohibitions on the use of national flags in trademarks.²³⁴ Indeed, by relying on whether the "public generally finds the use of such language to be highly offensive and immoral, especially in the context of commercial advertising,"²³⁵ Snow's test, and the justices' original suggestion, inherently requires the PTO to make normative judgments about society.²³⁶ This can prevent registration of both minimally and highly expressive marks.

While Snow assures his audience that such a proposal would only ban "emphasis" rather than the actual communication of ideas, it is still far from certain whether examining attorneys evaluating trademark applications will be able to determine where emphasis ends and an idea begins. Snow's own definitions of "vulgarity," "profanity," and "obscenity" betray the vagueness of the terms. Snow states that such marks "consist of crude and base descriptions of certain subject matter . . . [t]hey are generally offensive to readers."²³⁷ Indeed, some of the examples he provides²³⁸ are the same sort of marks that would have been barred under the now abrogated provisions of Section 2(a), such as the f-word²³⁹ and expressions against religious figures such as Jesus or Jehovah.²⁴⁰ Even the

public funds so that Congress can impose limits on the use of those funds and Congress should grant the Department of Commerce the authority to hold words unregistrable after notice and comment rulemaking).

230. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2303 (2019) (Roberts, C.J., concurring in part and dissenting in part) ("[R]efusing registration to obscene, vulgar, or profane marks does not offend the First Amendment."); *id.* (Alito, J., concurring) ("Our decision does not prevent Congress from adopting a more carefully focused statute that precludes the registration of marks containing vulgar terms that play no real part in the expression of ideas."); *id.* at 2306 (Breyer, J., concurring in part and dissenting in part) ("[I]t is hard to see how a statute prohibiting the registration of only highly vulgar or obscene words discriminates based on 'viewpoint.'"); *id.* at 2318 (Sotomayor, J., concurring in part and dissenting in part) ("With 'scandalous' narrowed to reach only obscene, profane, and vulgar content, the provision would not be overly broad.").

231. Snow, *supra* note 22, at 404.

232. *See id.* at 434.

233. *See, e.g.,* Beebe & Fromer, *supra* note 22, at 171–72, 182–89 (finding from a statistical study that the PTO inconsistently applied the immoral or scandalous prohibitions in Section 2(a)).

234. *See* 15 U.S.C. § 1052(b).

235. Snow, *supra* note 22, at 410.

236. *See id.* at 409.

237. *Id.* at 407.

238. *Id.* at 408.

239. *See Iancu v. Brunetti*, 139 S. Ct. 2294, 2297–98, 2302 (2019) (finding that the mark FUCT could not be denied protection on the grounds of being immoral or scandalous).

240. *See* Beebe & Fromer, *supra* note 22, at 181–82 (noting that supposedly blasphemous marks such as GOD IS GAY were rejected by the PTO on the grounds of being immoral or scandalous).

exhortation that “[t]he PTO should not deny protection if only the idea itself—rather than the language used to express the idea—is highly offensive,”²⁴¹ does not assuage fears that refusals would creep into expression as well as emphasis. For example, Snow would deny registration for F— THE DEVIL,²⁴² which expresses an idea about the devil but seemingly not the mark LOVE THE DEVIL, which expresses the opposite idea, one that some may consider equally or even more profane.

In a recent article, Gibbons offers a similar proposal to Snow, advocating for the judicial regulation of certain “profane” terms that are akin to hate speech or fighting words, such as the n-word or f-word.²⁴³ But, as Gibbons acknowledges, there is no bright line for when a term is used in a profane and, under his proposed rule, unregistrable way, as compared to a permissible one.²⁴⁴ For example, Gibbons recognizes that the use of an offensive term by a member of the group targeted by that term may “add value to the social discourse.”²⁴⁵ This would allow the same imposition of personal mores by PTO examiners that occurred with the disparaging and scandalous or immoral bars.²⁴⁶

Despite these fears and suggested solutions, the First Amendment broadly protects speech, even speech that offends, and the Lanham Act cannot discriminate on this basis.²⁴⁷ Hate speech is constitutional speech.²⁴⁸ In *Tam*, Justice Alito remarked that “[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is *hateful*; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’”²⁴⁹

But despite this reality, granting trademark registration to hateful words may not be a net negative. According to Jeremy Waldron, restricting hate speech can “drive racist sentiment out of the marketplace of ideas into spaces where it cannot easily be engaged.”²⁵⁰ Constitutional law scholars Erwin Chemerinsky and Howard Gillman have also found that there is “no evidence that the presence or absence of hate speech laws results in more tolerant attitudes toward vulnerable groups or in less discrimination.”²⁵¹ Therefore, there is some doubt about whether, in practice, laws allowing hate speech will actually cause it to proliferate.

241. Snow, *supra* note 22, at 409.

242. *Id.*

243. Gibbons, *supra* note 22, at 86–87.

244. *Id.* at 87.

245. *Id.*

246. See Snow, *supra* note 22, at 438–39; *infra* note 262 and accompanying text.

247. *Matal v. Tam*, 582 U.S. 218, 223 (2017).

248. *Id.* at 246.

249. *Id.* (emphasis added) (quoting *United States v. Schwimmer*, 279 U.S. 644, 655 (1929) (Holmes, J., dissenting)).

250. WALDRON, *supra* note 130, at 95.

251. ERWIN CHEMEKINSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* 109 (2017).

V. METHODOLOGY

Despite the valid concerns raised by other scholars, the relative harms and possibilities of allowing disparaging, immoral, or scandalous marks is legally moot following *Tam* and *Brunetti*. As will be discussed below, previous studies show that, in practice, trademark applications involving racial slurs have largely involved reappropriation by in-group members rather than disparagement by outsiders.²⁵² Until now, however, there was no study on the effect of *Tam* and *Brunetti* on the registration of trademarks involving slurs directed at LGBTQ+ people, one of the most vulnerable segments of the U.S. population.²⁵³ Empirical studies can be critical for understanding the role of social norms vis-à-vis intellectual property and how the law should respond to such norms.²⁵⁴ The remaining portion of this Article presents an empirical study on LGBTQ+-oriented trademark applications post-*Tam* and the (perhaps astonishing) trend of reaffirming uses by and for the LGBTQ+ community.

A. Previous Empirical Studies

There are a line of empirical studies examining the disparaging and immoral or scandalous bars under the Lanham Act.²⁵⁵ In 2011, Anne Gilson LaLonde and Jerome Gilson examined trademark applications incorporating the term “milf.”²⁵⁶ In 2015, Megan Carpenter and Mary Garner explored trademark applications incorporating a lexicon of words relating to profanity, sex, ethnicity, and other potentially offensive topics.²⁵⁷ Then, on the eve of the *Brunetti* decision, Barton Beebe and Jeanne Fromer coded trademark applications from 2003–2015 that were rejected on the basis of being immoral or scandalous.²⁵⁸ Vincenc Feliu used a lexicon of seven vulgar words to determine the number of immoral or scandalous trademark applications applied for between the Federal Circuit’s

252. See discussion *infra* Section V.A.

253. See Sharita Gruber, Lindsay Mahowald & John Halpin, *The State of the LGBTQ Community in 2020*, CTR. AM. PROGRESS (Oct. 6, 2020), <https://www.americanprogress.org/article/state-lgbtq-community-2020> [<https://perma.cc/9UWL-9MKG>] (presenting the results of a national public opinion study, which found that many LGBTQ+ people continue to face significant discrimination in various aspects of their lives); Press Release, UCLA Sch. L. Williams Inst., *LGBT People Nearly Four Times More Likely than Non-LGBT People to Be Victims of Violent Crime*, (Oct. 2, 2020) <https://williamsinstitute.law.ucla.edu/press/ncvs-lgbt-violence-press-release> [<https://perma.cc/JD4Q-M7TV>] (describing the results of a study finding that LGBTQ+ people are almost four times more likely to suffer from violent crimes than straight people). This is especially true for LGBTQ+ people of color. See, e.g., Lindsay Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination*, CTR. AM. PROGRESS (July 13, 2021), <https://www.americanprogress.org/article/black-lgbtq-individuals-experience-heightened-levels-discrimination> [<https://perma.cc/VH4H-29HE>] (finding that the compounding effects of discrimination for Black LGBTQ+ persons are evident across U.S. society, from healthcare, to employment, to police interactions).

254. Gildea, *supra* note 25, at 556.

255. See *infra* notes 256–60 and accompanying text.

256. Anne Gilson LaLonde & Jerome Gilson, *Trademarks Laid Bare: Marks That May Be Scandalous or Immoral*, 101 TRADEMARK REP. 1476, 1478 (2011).

257. Carpenter & Garner, *supra* note 22, at 332.

258. Beebe & Fromer, *supra* note 22, at 177.

2017 decision in *Brunetti* and the Supreme Court's 2019 decision.²⁵⁹ Finally, in 2021, Vicki Huang undertook an empirical study analyzing racially-oriented trademark applications submitted from 2010–2020 to determine the practical effect of the *Tam* and *Brunetti* decisions on those applications.²⁶⁰

The studies by LaLonde and Gilson, Carpenter and Garner, Beebe and Fromer, and Huang showed that PTO examiners had inconsistently applied the disparaging and immoral or scandalous bars.²⁶¹ Beebe and Fromer's research, in particular, demonstrated that the application of these criteria would likely be applied in an arbitrary manner based on the PTO examining attorney's own tastes and mores, leading to divergent outcomes even for the same or similar marks.²⁶² For example, the Federal Circuit in *Tam* highlighted the inconsistency with which the PTO applied the disparagement bar, noting that the PTO had denied registration for MARRIAGE IS FOR FAGS but allowed the mark F*A*G FABULOUS AND GAY.²⁶³

But Huang's article is the only empirical study to examine the aftereffects of the Supreme Court's decisions in both *Tam* and *Brunetti*.²⁶⁴ Huang examined the limits of racial slur reappropriation via trademark registration through a social science lens.²⁶⁵ She found that there was no overall increase in the number of racially-oriented trademark applications following *Tam*.²⁶⁶ Following *Tam*, applications for racially-oriented trademarks by in-group members had actually increased in absolute and relative numbers.²⁶⁷ Prior to *Tam*, most racially-oriented trademark applications were filed by those outside of the target group.²⁶⁸ After *Tam*, this ratio reversed, with more reappropriation trademark applications being filed.²⁶⁹ Perhaps not surprisingly, Huang found many applicants who were

259. Vincenc Feliu, *The F Word - An Early Empirical Study of Trademark Registration of Scandalous and Immoral Marks in the Aftermath of the In re Brunetti Decision*, 18 J. MARSHALL REV. INTELL. PROP. L. 404, 412–13 (2019).

260. Huang, *supra* note 24, at 1605.

261. See LaLonde & Gilson, *supra* note 256, at 1478 (studying applications for the mark MILF and finding that the PTO had refused registration twenty times for MILF because it was scandalous or immoral but did not refuse registration on that basis on twenty other occasions); Carpenter & Garner, *supra* note 22, at 332–34, 359–62 (studying forty terms rendering 232 trademark records that contained an immoral or scandalous refusal, finding inconsistency in how the PTO treated proposed marks such as SHIT and POTHEAD); Beebe & Fromer, *supra* note 22, at 171–72, 182–89 (studying 1,901 marks that were refused registration between 2003 and 2015 on the basis that they were immoral or scandalous, finding that the PTO's evaluation of marks on this basis was arbitrary and discriminating on viewpoint); Huang, *supra* note 24, at 1640–41 (finding that, prior to *Tam* and *Brunetti*, the PTO had inconsistently applied the Section 2(a) bar against racial slurs, approving and denying applications for the same marks in different cases, including, for example, SLANTS, MAMMY, and NEGRO).

262. See, e.g., Beebe & Fromer, *supra* note 22, at 171–72, 182–89 (finding from an empirical study that the PTO inconsistently applied the immoral or scandalous prohibitions in Section 2(a)).

263. *In re Tam*, 808 F.3d 1321, 1342 n.7 (Fed. Cir. 2015).

264. See Huang, *supra* note 24, at 1610.

265. *Id.* at 1610–20.

266. *Id.* at 1631–32. This was based on a lexicon of racially-oriented slurs that she compiled from two existing comprehensive lists of slurs.

267. *Id.* at 1628–29, 1633. Huang determined the identity of the applicant both on the basis of what was included in their trademark application and based on their last name. *Id.*

268. *Id.*

269. *Id.*

applying for a racially-oriented trademark affirmatively disclosed their intention and racial identity in their application.²⁷⁰ Her study determined, however, that, at a race-specific level, outsider-filed trademark applications targeting Native American persons far exceeded applications filed by Native American persons themselves.²⁷¹ Other racial groups in Huang's study either were tied between applications by in-group members and outsiders or had a greater number of applications by members.²⁷² For Black-oriented trademarks, for example, there were far more member applications than outsider ones.²⁷³

B. *The Dataset*

This article seeks to add to the literature by achieving for LGBTQ+ persons what Huang's article did for racial minorities. This study examines the effects of *Tam* and *Brunetti* on the application for and registration of trademarks incorporating traditionally anti-LGBTQ+ slurs, examining the numbers of LGBTQ+-oriented trademark applications and their reappropriative and disparaging uses. This article does not make claims about the uses of anti-LGBTQ+ slurs as trademarks in general—for which common law rights could apply—but federal applications and registrations. I adopt a similar methodology to Carpenter and Garner, Feliu, and Huang by creating a bespoke lexicon of offensive slurs and referencing them against the PTO's trademark databases.²⁷⁴

As a threshold issue, researching sexual orientation instead of race presents unique challenges. Comprehensive lists of anti-LGBTQ+ terms are lacking.²⁷⁵ In part, this is due to the changing meaning of terms and the limited geographical usage of some LGBTQ+ slurs.²⁷⁶ Given this limitation, this study is not able to examine a complete range of trademarks involving terms that disparage LGBTQ+ persons. In any event, there would be disagreement about which terms should qualify as disparaging. As discussed previously, slurs are at different stages in the reappropriation process, and the ages and experiences of in-group members can lead to differing opinions about the term.²⁷⁷ As a substitute, to best capture the trends of trademark applications and registration, this study uses a lexicon of terms widely known as either currently or historically disparaging

270. *Id.* at 1627 (“[T]he type of applicant that applies for a slur as a trademark is often forthright in public statements about their intention, race, or ethnicity.”).

271. *Id.* at 1637 (demonstrating twenty-eight applications versus eight).

272. *Id.*

273. *Id.* (comparing thirty-three applications versus six).

274. *See infra* note 279 and accompanying text.

275. In comparison, there are quite comprehensive lists of racial slurs. *See, e.g., List of Ethnic Slurs*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_ethnic_slurs (last visited Sept. 26, 2023) [<https://perma.cc/JJ6Z-GEX7>]; RACIAL SLUR DATABASE, <http://www.rsd.org/> (last visited Sept. 26, 2023) [<https://perma.cc/BRJ5-VPXW>].

276. For example, while the term “poof” is a common slur for LGBTQ+ men in the United Kingdom and Australia, the slur is fairly rare in the United States. *See* KAREN STOLLZNOW, ON THE OFFENSIVE: PREJUDICE IN LANGUAGE PAST AND PRESENT 113 (2020) (describing the different LGBTQ+ slurs used in the United States versus the United Kingdom).

277. *See supra* notes 178–91 and accompanying text.

LGBTQ+ persons.²⁷⁸ This is in line with previous empirical studies, most of which used a limited lexicon of specific terms as proxies.²⁷⁹

To form the lexicon in this study, I drew from glossaries of LGBTQ+ terms created by both LGBTQ+ advocacy groups and intergovernmental bodies.²⁸⁰ Due to the complications with analyzing trademarks consisting only of images (e.g., the pink triangle), I restricted this analysis to applications for wordmarks and other marks containing words. The resulting lexicon consists of eleven well-known terms of varying offensiveness and stigmatizing impact on members of the LGBTQ+ community, some of which are at different stages of reappropriation by the LGBTQ+ community.²⁸¹ These terms are “butch,” “dyke,” “fag,” “faggot,” “he/she” (and “heshe,” “he-she”), “homo,” “homosexual,” “queer,” “she-male” (and “shemale”), “sodomite,” and “tranny.” While this group of terms is undoubtedly underinclusive of the entire LGBTQ+-oriented slur lexicon, as a set of some of the most prominent slurs, it should provide a suitable proxy for understanding the effects of *Tam* and *Brunetti*.

This study searched for trademark applications filed for these eleven terms between January 1, 2013, and June 18, 2017 (the date *Tam* was decided) and between June 19, 2017, and December 31, 2021, roughly even periods of time before and after the *Tam* ruling. I searched for applications on the PTO’s Trademark Electronic Search System (“TESS”).²⁸² Nonreferential uses of the lexicon terms (e.g., the use of the name “Butch” or “Van Dyke” in a mark, the use of “homo” to mean homo sapien) were excluded. If an individual applied for multiple trademarks using the same term (e.g., Driven Communications, LLC

278. See *infra* notes 280–82 and accompanying text.

279. See Huang, *supra* note 24, at 1623 (using a lexicon of racial slurs based on lists from Wikipedia and the Racial Slurs Database); Feliu, *supra* note 259, at 412–13 (using a lexicon of seven vulgar terms); Carpenter & Garner, *supra* note 22, at 332 (using a lexicon of terms relating to profanity, sex, violence, disability, ethnicity, religion, politics, and scatology); LaLonde & Gilson, *supra* note 256, at 1478 (using the term MILF).

280. See *SOGIESC Full Glossary of Terms*, IOM UN MIGRATION, <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/IOM-SOGIESC-Glossary-of-Terms.pdf> (Nov. 2020) [<https://perma.cc/MPQ6-CHJA>]; *LGBTQ+ Vocabulary*, SAFE ZONE PROJECT, <https://thesafezoneproject.com/resources/vocabulary> (last visited Sept. 26, 2023) [<https://perma.cc/UU3B-L5FE>]; *GLAAD Media Reference Guide—Terms to Avoid*, GLAAD, <https://web.archive.org/web/20211119220404/https://www.glaad.org/reference/offensive> (last visited Sept. 26, 2023) [<https://perma.cc/7PBV-HU5R>]; *GLAAD Media Reference Guide—11th Edition—Transgender*, GLAAD, <https://www.glaad.org/reference/transgender> (last visited Sept. 26, 2023) [<https://perma.cc/AMJ6-2XSM>]; *Definitions Related to Sexual Orientation and Gender Identity*, ANTI-DEFAMATION LEAGUE (Aug. 27, 2018), <https://www.adl.org/education/resources/glossary-terms/definitions-related-to-sexual-orientation-and-gender-identity> [<https://perma.cc/5YDN-9T32>].

281. For example, many in the LGBTQ+ community have come to use the term “queer” as an alternative; today, it is perhaps a more popular umbrella term than “LGBTQ+.” See, e.g., Cory Collins, *Is Queer OK to Say? Here’s Why We Use It*, LEARNING FOR JUST. (Feb. 11, 2019), <https://www.learningforjustice.org/magazine/is-queer-ok-to-say-heres-why-we-use-it> [<https://perma.cc/9MWS-HM7H>] (noting despite the troubled history of the term, this organization, among others, uses it as “an inclusive term to refer to those who fall outside of cisgender or heterosexual identities”). Yet, due to the long and painful history of using the term as a slur, and some LGBTQ+ individuals’ continued resistance to the term, I have included it in this list of relevant LGBTQ+ slurs for purposes of this study. See also *supra* notes 171–78 and accompanying text (describing the history of the reappropriation of the term queer for the LGBTQ+ community and continued mixed feelings in the community about using the term to describe the community).

282. See *Trademark Electronic Search System (TESS)*, USPTO, https://tmsearch.uspto.gov/bin/gate.exe?f=login&p_lang=english&p_d=trmk (last visited Sept. 26, 2023) [<https://perma.cc/HKK7-J4LX>].

applied for the marks DO IT YOURSELF DYKE, D.I.Y. DYKE, and DYKE IT YOURSELF), I only counted a single use to not skew the data.

Following this initial search, I then reviewed the applicable filings on the PTO's Trademark Status & Document Retrieval ("TSDR") system to determine the proposed uses of the trademarks as well as the identities of the applicants.²⁸³ This presented some difficulties. The PTO is required to evaluate marks neutrally as to an applicant's identity, so there is no data on applicants' sexual orientation and gender identity (just like there is none on the applicant's race).²⁸⁴ Additionally, while surnames can often be used as a proxy for identity,²⁸⁵ no such straightforward method can be applied to LGBTQ+ persons, as LGBTQ+ identity (or the lack thereof) cuts across race, class, gender, and other axes of social difference and is not apparent on name or appearance alone. The lack of clear proxy makes it difficult to determine whether an LGBTQ+-oriented mark is being used by an LGBTQ+ individual or by a non-LGBTQ+ individual hoping to market their goods or services to LGBTQ+ persons and allies.²⁸⁶ Some applications contained information suggesting the identity of the applicant or the purpose of the proposed mark. But in other cases, especially where the trademark application had not proceeded very far before it was abandoned or lacked a specimen of use, the identity and intended purpose were unclear. To perceive intent, I also searched the Internet for references to the mark and the mark owner to determine the intended use. While the use could be determined in most cases, for some it was unclear whether the mark was used in an empowering or derogatory way. To code the aim of the trademark applicant, I use the term "affirming" for reappropriation or another use of the term in a positive light, "disparaging" for negative or hostile uses of the terms against LGBTQ+ persons, and "undetermined" for applications whose intent was unclear.

Despite this study relying on objective, public data, almost invariably there are disagreements and mischaracterizations about sexual orientation, gender identity issues, and the gradual reappropriation of LGBTQ+-oriented slurs. I coded the trademark applications in this study myself, reducing inconsistencies due to multiple coders. I also acknowledge that the methods employed in this study entail some subjective judgment on questions such as which underlying slurs to include and how to determine the manner of use. To ameliorate some of this subjectivity, the Appendix contains a chart with all the underlying data included in this study, as well as quotes demonstrating how the individual trademarks were used.²⁸⁷ Despite these limitations, this study analyzes a meaningful dataset that sheds light on LGBTQ+-oriented trademark trends post-*Tam*.

283. See TSDR, USPTO, <https://tsdr.uspto.gov> (last visited Sept. 26, 2023) [<https://perma.cc/2W92-JJ35>].

284. Huang, *supra* note 24, at 1626–27 ("The PTO, however, does not require applicants to disclose their race, religion, or ethnicity, and are required to adopt a neutral stance to the applicant's identity.")

285. For example, Huang used surnames as proxies for race where race was not directly identified in the trademark applications. *Id.* at 1627.

286. See David M. Skover & Kellye Y. Testy, *LesBiGay Identity as Commodity*, 90 CALIF. L. REV. 223, 230–31 (2002).

287. See *infra* Appendix.

VI. THE REALITY OF LGBTQ+-ORIENTED TRADEMARKS

The disparaging and immoral or scandalous clauses of Section 2(a) were historically used to deny trademark registration for marks incorporating racist, misogynist, and other sorts of highly offensive marks.²⁸⁸ But these clauses blocked registration of *all* uses of potentially offensive marks, irrespective of user intent. Attempts to reappropriate historically derogatory symbols and terms were denied federal trademark registration along with uses that intended to disparage minority groups.²⁸⁹

This study of trademark applications involving LGBTQ+-oriented trademark applications finds that, post-*Tam*, the number of LGBTQ+-oriented trademarks is growing, and that the uses are almost unanimously aimed at reappropriation of these slurs by or for members of the LGBTQ+ community.

A. Applications Are Growing in Number

Prior to *Tam* and *Brunetti*, the PTO denied LGBTQ+-oriented trademarks registration even when the very groups targeted were attempting to reappropriate those terms, as was the case for *Tam* and *The Slants*. For example, in 2010, the PTO rejected an application for the mark AMERICAN FAGGOT for books regarding “opinions, experiences, expressions and historical references with regard to being a gay male in America,” in part because the mark violated the disparaging clause of Section 2(a).²⁹⁰ But Section 2(a) was not applied equally to all potentially LGBTQ+-disparaging marks. For example, the PTO registered TECHNODYKE without issue.²⁹¹ But, as described above, the SFDOBWMC only managed to register the mark DYKES ON BIKES after resisting the PTO’s initial determinations that the mark was disparaging.²⁹²

Following the decision in *Tam*, however, the absolute number of LGBTQ+-oriented trademark applications increased. This is different from racially-oriented trademarks, whose overall numbers remained static.²⁹³ During the period from January 1, 2013, to December 31, 2021, 144 trademark applications were filed that incorporated LGBTQ+-oriented slurs. As shown in Figure 1, forty-one of these applications were filed prior to the *Tam* decision on June 18, 2017.²⁹⁴

288. See Huang, *supra* note 24, at 1608–09.

289. See Katyal, *supra* note 25, at 821 (“[W]hen it comes to reappropriated symbols or terms, trademark law has often provided a far less protective response for such semiotic disobedience than one might imagine.”).

290. U.S. Trademark Application Serial No. 77/963,909 (filed Mar. 19, 2010).

291. Megan M. Carpenter & Kathryn T. Murphy, *Calling Bulls**t on the Lanham Act: The 2(a) Bar for Immoral, Scandalous, and Disparaging Marks*, 49 LOUISVILLE L. REV. 465, 473 (2011).

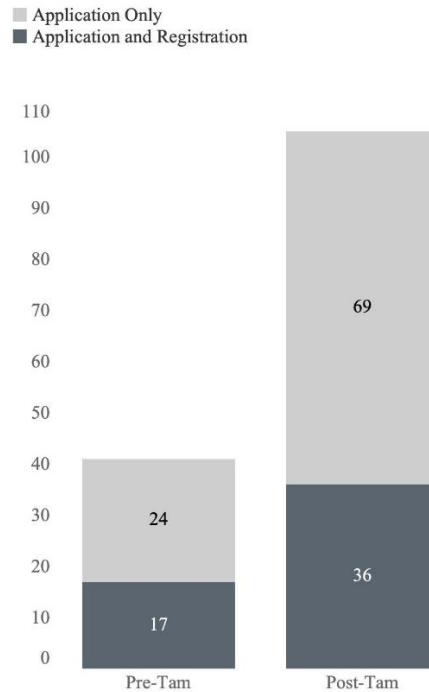
292. See *supra* Section II.C; see also U.S. Trademark Application Serial No. 78/281,746 (filed July 31, 2003).

293. See *infra* notes 294–309 and accompanying text. For static racially-oriented trademarks, see Huang, *supra* note 24, at 1631–32.

294. Two applications (for DYKES ON BIKES and QUEER AS ME) are purposely double counted in the breakdown of years because they were applied for both before and after *Tam*. See *infra* Figure 1; see also *infra* Appendix.

One hundred and five—over double that amount—were filed after *Tam* through the end of 2021.

FIGURE 1: APPLICATIONS AND REGISTRATIONS



LGBTQ+-oriented applications also increased relative to all trademark applications. During the years 2013–2017, 1,854,428 trademark applications were filed.²⁹⁵ From 2017 to 2021, 2,684,335 trademark applications were filed.²⁹⁶ This was a 45% increase from the pre-*Tam* period to the post-*Tam* period. But LGBTQ+-oriented trademarks experienced a 156% increase over the same period. This relative increase could be even higher given that a significant portion of applications in the last few years were filed by foreign nationals, particularly in China, who would likely not be using LGBTQ+-oriented marks (no Chinese applications were found in this dataset).²⁹⁷

295. USPTO PERFORMANCE & ACCOUNTABILITY REPORT 183 (2017), <https://www.uspto.gov/sites/default/files/documents/USPTOFY17PAR.pdf> [https://perma.cc/ANT5-7J5E].

296. USPTO PERFORMANCE & ACCOUNTABILITY REPORT 223 (2021), <https://www.uspto.gov/sites/default/files/documents/USPTOFY21PAR.pdf> [https://perma.cc/QK2D-4HRB].

297. See David Gooder, *What a Huge Surge in Trademark Filings Means for Applicants*, USPTO (June 23, 2021), <https://www.uspto.gov/blog/director/entry/what-a-huge-surge-in#:~:text=As%20of%20June%2017%2C%20the,of%2017%25%20over%20December%202019> [https://perma.cc/P26R-H9NT] (explaining that there was a significant increase in trademark filings between 2020 and 2021); *2021 Trends in Trademarks*, DECHERT LLP (Mar. 31, 2021), <https://www.dechert.com/knowledge/publication/2021/3/2021-trends-in-trademarks.html>

Even at a word-specific level, the number of applications increased or stayed level across the post-*Tam* period for all but one word. The use of the word “butch” in trademark applications increased from six in the first period to nine in the second. “Dyke” increased from two to five. “Fag” stayed equal with two applications per period. “Faggot” increased from zero to one. “Homo” increased from four to thirteen. “Queer” increased from twenty-five to seventy-one. “Tranny” increased from one to two. There were no applications across the period for “he/she (he-she),” “she-male (shemale),” or “sodomite” in either period. The use of the word “homosexual” was the only one that decreased, from two applications in the first period to zero after *Tam*.

These increases could partially be explained by the general increased use of these terms. According to Google Trends, the use of “queer” as a search term dipped from 2004 to 2006 and then remained consistent until early 2018, when use of the term increased.²⁹⁸ Despite the occasional spike, use of the terms “butch,” “dyke,” “faggot,” and “tranny” as search terms were more or less consistent before and after *Tam*.²⁹⁹ The use of the terms “fag” and “homo” actually decreased post-*Tam*.³⁰⁰

This stark increase in the number of LGBTQ+-oriented trademark applications could be explained by the *Tam* (and later *Brunetti*) decisions lowering the potential bars to registering such marks.³⁰¹ Attorneys filed an increased amount of LGBTQ+-oriented trademarks during this period compared to pro se applications.³⁰² This could suggest greater awareness, through counsel, of the *Tam* and *Brunetti* decisions. In the pre-*Tam* period, only thirteen out of forty-one trademark applicants had legal representation (31.7% of apps).³⁰³ But in the post-*Tam* period fifty-three out of one hundred and three applicants had legal representation (51.5% of apps).³⁰⁴ Trademark attorneys should have been familiar with *Tam* and *Brunetti*, which could have helped increase the number of applicants for these marks that would have likely been barred from registration pre-*Tam*.

[<https://perma.cc/WH8A-6AUS>] (describing increase in trademark applications from 2019 to 2020 and from 2020 to 2021); Beth Kowitt, *China Is Flooding the U.S. with Trademark Applications and No One Is Sure Why*, FORTUNE (July 1, 2021, 9:00 AM), <https://fortune.com/2021/07/01/china-us-trademark-applications-uspto> [<https://perma.cc/PX4G-8JZA>] (noting that 29% of all trademark applications in the first half of 2021 came from China-based applicants).

298. See *Queer*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=queer> (last visited Sept. 26, 2023) [<https://perma.cc/9NZU-LK53>]

299. See *Butch*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=butch> (last visited Sept. 26, 2023) [<https://perma.cc/HMJ3-U726>]; *Dyke*, *Google Trends*, <https://trends.google.com/trends/explore?date=all&geo=US&q=dyke> (last visited Sept. 26, 2023) [<https://perma.cc/CD9B-T9D3>]; *Faggot*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=faggot> (last visited Sept. 26, 2023) [<https://perma.cc/5TGE-HEVG>]; *Tranny*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=tranny> (last visited Sept. 26, 2023) [<https://perma.cc/KCG6-DJY4>].

300. See *Fag*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=fag> (last visited Sept. 26, 2023) [<https://perma.cc/NU5L-DK22>]; *Homo*, GOOGLE TRENDS, <https://trends.google.com/trends/explore?date=all&geo=US&q=homo> (last visited Sept. 26, 2023) [<https://perma.cc/HC7R-9X9J>].

301. See *supra* Section II.D.

302. See *infra* Appendix.

303. See *infra* Appendix.

304. See *infra* Appendix.

This trend could also be explained by the increasing reappropriation and acceptance of the underlying terms by the LGBTQ+ community.³⁰⁵ But even excepting trademarks containing “queer”—increasingly used to identify the LGBTQ+ community—there was still a sizeable, albeit more modest, increase in LGBTQ+-oriented trademarks.³⁰⁶

This increase could also potentially be explained by non-LGBTQ+ persons using LGBTQ+-oriented marks to market their goods or services to the LGBTQ+ community.³⁰⁷ LGBTQ+ individuals and allies are a potent market.³⁰⁸ This has led to not just members of the community using LGBTQ+ symbols and messaging, but also outsiders who would commodify LGBTQ+ identity.³⁰⁹

Regardless of the reason, there is a clear trend of increasing LGBTQ+-oriented trademark applications following the *Tam* decision.

B. Uses Are Affirming

The trademark applications incorporating LGBTQ+-oriented marks have all been used for affirming reappropriation purposes or the purpose was indeterminate—both in the period before and after *Tam*. Unlike what Huang found with racially-oriented marks,³¹⁰ during the period examined, none of the registrations were used to disparage the LGBTQ+ community.³¹¹ One hundred and fourteen of the applications appear to be bona fide attempts to reappropriate the underlying term to affirmingly refer to LGBTQ+ persons or culture.³¹²

The affirming nature of the use was clear on the face of many of these applications. For example, the application for BUTCH APPÉTIT explicitly stated that the mark was for an “on-line dating application for gay, lesbian, and bisexual individuals.”³¹³ The specimen of use submitted along with the application for NATIONAL QUEER THEATER INC. (Figure 2) says that the organization’s mission is to “foster and support LGBTQ+ communities through social justice in the performing arts.”³¹⁴ The specimen for THE QUEER AGENDA (Figure 3) shows that it is a LGBTQ+ party game.³¹⁵

305. See *supra* Section III.B.

306. See *infra* Appendix.

307. See Skover & Testy, *supra* note 286, at 230–31.

308. *Id.* at 224–25.

309. Gibbons, *supra* note 25, at 189–90.

310. See Huang, *supra* note 24, at 1630–37 (finding that there were trademark applications for disparaging racially-oriented marks both before and after *Tam*).

311. See *infra* Appendix.

312. See *infra* Appendix.

313. U.S. Trademark Application Serial No. 97/038,526 (filed Sept. 21, 2021), Application.

314. U.S. Trademark Application Serial No. 88/865,959 (filed Apr. 9, 2020).

315. See U.S. Trademark Application Serial No. 88/595,126 (filed Aug. 27, 2019), Specimen (“A Hilarious Queer Themed Card Game! Match LGBTQ+ Question and Answer Cards to Find the Best Matches!”).

FIGURE 2: SPECIMEN FOR NATIONAL QUEER THEATER



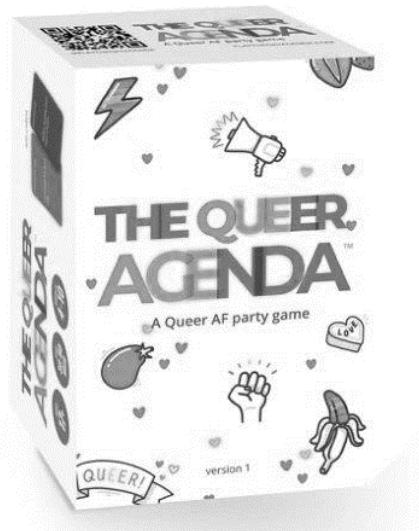
National Queer Theater is a 501(c)(3) nonprofit organization based in New York City. Our mission is to foster and support LGBTQ communities through social justice in the performing arts.

By producing socially-conscious plays about issues in the community, the theater raises awareness about LGBTQ rights in the general public.



Through partnership-based education programs, National Queer Theater teaches acting and storytelling skills to underserved groups in the LGBTQ community to instill pride and promote creative leadership.

FIGURE 3: SPECIMEN FOR THE QUEER AGENDA



But the aims of the registrants were not clear in most trademark applications. For these applications, I reviewed the applicants' websites and social media pages to determine how the marks were being used. Associated websites, social media accounts, and news articles indicated how most of the remaining applied-for-trademarks were being used.

For twenty-nine of the 144 applications, I was unable to determine how the mark was being used due to the applicant having minimal or no online

presence.³¹⁶ Accordingly, these applications were labeled “undetermined.” Eighteen of these twenty-nine applications were filed as intent to use (“ITU”) applications—not actual use applications—which helps explain why the intent was not ascertainable.³¹⁷ The Lanham Act requires bona fide use in commerce or bona fide intent to use in commerce to register the trademark so the lack thereof likely sank most of these applications.³¹⁸ Twenty-one of these undetermined applications were filed post-*Tam*, compared to nine before.³¹⁹ But thirteen of those twenty-one applications are still live as of the writing of this article,³²⁰ so the aims of those applicants could become clearer if and when those marks are used in commerce or when those applicants file specimens of use.

There are at least four reasons that could help explain this reappropriation trend: increasing rights for LGBTQ+ persons, the history of LGBTQ+-oriented marks (as compared to racially-oriented ones), the Lanham Act’s “use in commerce” requirement, and limited commercial appeal of disparaging marks. First, studies have found that increased legal protections for minority groups can encourage attempted reappropriation of oppressing and otherizing terms.³²¹ For example, Galinsky and his colleagues found that the use of former slurs by target groups was preceded by increases in the target group’s rights.³²² Black people reappropriated slurs following the passage of the U.S. Civil Rights Act in 1964 and LGBTQ+ people first started to reappropriate the term “queer” following states starting to repeal sodomy laws in the 1980s.³²³ Even *Tam*’s reappropriation of “slants” may be tied to the rise of Asian-American civil rights activism.³²⁴

During the last two decades, LGBTQ+ rights have undoubtedly increased. In 2003, the Supreme Court condemned laws banning same-sex relations.³²⁵ In 2015, it ruled that same-sex couples had the right to marry.³²⁶ In 2020, the Court held that Title VII covers LGBTQ+ persons and that an employer cannot fire an

316. See *infra* Appendix.

317. See *infra* Appendix.

318. 15 U.S.C. § 1051(a)–(b) (“The owner of a trademark *used in commerce* may request registration of its trademark on the principal register A person who has a *bona fide intention* . . . to use a trademark *in commerce* may request registration of its trademark on the principal register.” (emphasis added)).

319. See *infra* Appendix; see also *Matal v. Tam*, 582 U.S. 218 (2017) (noting decision date of June 19, 2017).

320. See *infra* Appendix.

321. See, e.g., Galinsky et al., *supra* note 133, at 2020 (“[L]egal protections for stigmatized groups may facilitate reappropriation attempts.”); Wang et al., *supra* note 144, at 78 (describing studies finding the same).

322. Galinsky et al., *supra* note 133, at 2022.

323. *Id.*

324. Huang, *supra* note 24, at 1617.

325. See *Lawrence v. Texas*, 539 U.S. 558, 578 (2003):

The case does involve two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle. The petitioners are entitled to respect for their private lives. The State cannot demean their existence or control their destiny by making their private sexual conduct a crime.

326. See *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015):

[T]he right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them.

employee for being LGBTQ+.³²⁷ Despite recent horrific laws targeting LGBTQ+ rights—including transphobic laws and attempts to ban drag³²⁸—there has undoubtedly been an increase in rights and in popular support for those rights. It is possible that increased LGBTQ+ rights may, at least in part, be driving the upsurge in affirming LGBTQ+-oriented trademark applications.³²⁹

Second, the drive to reclaim disparaging marks may, in part, also be influenced from the history of minority-related trademarks.³³⁰ Even before the early twentieth century, some brands were based on caricatures of racial and ethnic minorities.³³¹ Some still exist today, but many brands, such as Aunt Jemima and Land O'Lakes, have started to rebrand in response to public pressure against these offensive caricatures.³³²

But LGBTQ+-oriented trademarks have a somewhat different history from racially-oriented ones. While racial minorities were deformed into caricatures and exploited for use in trademarks, LGBTQ+ subjects were instead treated largely as taboo.³³³ In addition, while critical race theory has prompted intense backlash from certain segments of the U.S. population,³³⁴ queer theory has, at least for now, stayed largely under the radar.³³⁵ These differences in the treatment

327. See *Bostock v. Clayton Cty.*, Ga., 140 S. Ct. 1731, 1754 (2020):

In Title VII, Congress adopted broad language making it illegal for an employer to rely on an employee's sex when deciding to fire that employee. We do not hesitate to recognize today a necessary consequence of that legislative choice: An employer who fires an individual merely for being gay or transgender defies the law.

328. See, e.g., *Friends of Georges, Inc. v. Mulroy*, No. 23-cv-02163-TLP-tmp, 2023 WL 3790583, at *1 (W.D. Tenn. June 2, 2023) (permanently enjoining Tennessee's law banning drag shows because it is an unconstitutional restriction on the freedom of speech); Nicole Narea, *The Staggering Fine Print of Texas and Florida's New Anti-Trans Bills*, VOX (May 18, 2023, 2:50 PM), <https://www.vox.com/23728830/anti-trans-legislation-lgbtq-gender-affirming-care-bans-texas-florida> [<https://perma.cc/Y4ZS-MUWX>] (describing laws banning gender-affirming care for transgender youth).

329. See *supra* notes 323–28 and accompanying text.

330. See, e.g., Katyal, *supra* note 25, at 819; Gerhardt, *supra* note 54, at 259–61.

331. Katyal, *supra* note 25, at 819 (describing how companies such as Aunt Jemima employed racist caricatures in their advertising).

332. See Gerhardt, *supra* note 54, at 259–61 (describing how brands abandoned trademarks featuring racially-charged imagery and terms, including Aunt Jemima); Marguerite Ward & Melissa Wiley, *15 Racist Brands, Mascots, and Logos that Were Considered Just Another Part of American Life*, INSIDER (Feb. 3, 2022, 10:54 AM), <https://www.businessinsider.com/15-racist-brand-mascots-and-logos-2014-6> [<https://perma.cc/8K98-6WMU>] (providing examples of different brands that are disparaging to minority racial and ethnic groups, including whether they have changed or have plans to change the presentation of their brands). Trademarks, however, could survive abandonment by these companies because then other entities could attempt to register them and potentially use them in derogatory ways. Jon J. Lee, *Racism and Trademark Abandonment*, 91 GEO. WASH. L. REV. 932, 987–88 (2003).

333. See, e.g., Jordan Carr Peterson, *The Walking Dead: How the Criminal Regulation of Sodomy Survived Lawrence v. Texas*, 86 MO. L. REV. 857, 863 (2021) (explaining that most states criminalized sodomy and other same-sex acts for much of the twentieth century); William N. Eskridge, Jr., *Body Politics: Lawrence v. Texas and the Constitution of Disgust and Contagion*, 57 FLA. L. REV. 1011, 1036 (2005) (describing how the *Miller* test, which determines when speech is obscene and unprotected by the First Amendment, “render[ed] homosexuality itself the epitome of obscenity”).

334. See, e.g., Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory*, BROOKINGS INST., <https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory> (Nov. 21, 2021) [<https://perma.cc/4YPP-NSWV>].

335. See Kepros, *supra* note 175, at 280.

of racial minorities and LGBTQ+ persons could help explain the rush of applications for racially-oriented slurs after *Tam* and the complete lack of applications for disparaging uses of LGBTQ-oriented slurs.

Third, the requirements for registration may also dissuade individuals from filing applications for trademarks that disparage LGBTQ+ persons.³³⁶ As a threshold matter, trademarks must be used in commerce and be distinctive of the applicant's goods or services to be registerable.³³⁷ This is different from copyrights or patents, which protect expression and invention regardless of their use (or lack thereof).³³⁸ The LGBTQ+-oriented trademark has to actually function as a trademark: consumers must recognize that term or symbol as the source of goods or services.³³⁹ Otherwise, the mark fails to function as a trademark and is not registerable.³⁴⁰ For example, merely ornamental use, such as text on a shirt, generally does not function as a trademark.³⁴¹ Registrants, therefore, cannot just use an LGBTQ+-oriented trademark as an offensive term or gimmick, but must actually label its products or services with the underlying slur.³⁴² Consumers would have to recognize the slur as synonymous with the goods or services produced by that individual, a potentially high bar for slurs. Scholars including Alexandra J. Roberts, Lisa P. Ramsey, and Samuel F. Ernst have recognized failure to function as a potentially significant barrier to these sorts of would-be trademarks.³⁴³ Historical ties to discrimination and xenophobia may also prevent the public from understanding the term as a trademark.³⁴⁴ For example, in her study, Huang found that the PTO rejected five trademark applications for the n-word even after *Brunetti* on the basis that they failed to function as a mark.³⁴⁵ This

336. See *infra* notes 339–44 and accompanying text.

337. 15 U.S.C. § 1052(f).

338. See 17 U.S.C. § 102 (stating a copyright protects “original works of authorship fixed in any tangible medium of expression”); 35 U.S.C. § 101 (stating a patent protects the “invent[ion] or discover[y] of] any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof”). The PTO used to reject patents if they were immoral under the theory that immoral uses per se lacked utility, but that was abrogated by the Federal Circuit in *Juicy Whip, Inc. v. Orange Bang, Inc.* 185 F.3d 1364, 1366 (Fed. Cir. 1999). See also Holbrook, *supra* note 25, at 601.

339. 15 U.S.C. § 1052(f).

340. *Id.*

341. See TRADEMARK MANUAL OF EXAMINING PROC. § 1202.03 (July 2022) (“Subject matter that is merely a decorative feature does not identify and distinguish the applicant’s goods and, thus, does not function as a trademark.”).

342. *Id.*

343. See Alexandra J. Roberts, *Trademark Failure to Function*, 104 IOWA L. REV. 1977, 1984–85 (2019) (explaining that distinctiveness of a mark is not enough: it must actually function as a source identifier); Lisa P. Ramsey, *Free Speech Challenges to Trademark Law After Matal v. Tam*, 56 HOUS. L. REV. 401, 463–64 (2018) (describing failure to function as an internal speech-protective safeguard); Samuel F. Ernst, *Trump Really Is Too Small: The Right to Trademark Political Commentary*, 88 BROOK. L. REV. 839, 879 (2023) (explaining, in the context of Section 2(c) and *Elster*, that failure to function could significantly curtail the registration of marks that are primarily political or social commentary).

344. See, e.g., Eloise Chin, *The Perils of Offensive Trademarks: Trademark Function, Freedom of Expression, and Why We Should Be Barring the Registration of Offensive Marks*, 10 VICTORIA U. WELLINGTON LEGAL RES. PAPERS 38/2020, 35–36 (2019) (finding that the mark YELLOW PERIL would be unlikely to function as a source identifier due to its historical ties to discrimination, anti-immigration, and Sinophobic attitudes).

345. Huang, *supra* note 24, at 1642–43.

barrier to registration would likely deter at least some potential trolls.³⁴⁶ It would seem more likely that affirming uses of LGBTQ+-oriented marks would function as source-identifiers because the individuals behind them would put time and energy into developing the brand. There is a possibility that even a highly offensive mark could come to be understood as a source identifier, given sufficient investment. Lazy bigots, however, are unlikely to dedicate the amount of time and expense necessary to develop secondary meaning in the marketplace.

Finally—perhaps the most compelling rationale—is a practical one: even if registrants are willing to label their goods or services with an LGBTQ+-oriented slur, it may be difficult to sell any goods or services emblazoned with an offensive mark.³⁴⁷ The mark, even if it could be registered, may be fairly useless from a business perspective. Most consumers would likely not select a product or service wrapped in racist, sexist, or homophobic words or imagery.³⁴⁸ This means depressed sales and, as discussed above, possibly even failure to function as a trademark altogether. The use of LGBTQ+-oriented trademarks by outsiders could even face widespread public condemnation if used in a disparaging or otherwise offensive manner, further harming the business.³⁴⁹ For example, in the copyright context, French designer Isabel Marant used patterns similar to those in the *huipil*, the traditional Tlahuitoltepec blouse of the indigenous Mixe people of Mexico.³⁵⁰ Although her work did not violate copyright law, the apparent cultural appropriation of the *huipil* led to negative reactions on social media and calls for the removal of the dress from Marant’s collection.³⁵¹ Therefore, consumer activism provides an extralegal check on disparaging, immoral, and scandalous marks.

Backlash could be especially strong because acceptance of LGBTQ+ persons has been steadily increasing in the United States in recent years. A 2021 study by PPRI found that approximately 79% of Americans favor laws to protect LGBTQ+ persons against discrimination in employment, housing, and public accommodations.³⁵² Majorities of Republicans, Mormons, Catholics, and evangelical Protestants support LGBTQ+ rights.³⁵³ Sixty-eight percent of Americans support gay marriage.³⁵⁴ In addition, 66% of Americans oppose small business

346. *See id.* (discussing the PTO’s ability to refuse marks because they failed to function as a source-indicator).

347. *See, e.g.,* MacKay, *supra* note 22, at 144.

348. *Id.* (“You look at different brands of salad dressings. On one label, there is a field of green lettuces and carrots growing in the sunlight. On another, there is a racist image of a worker picking vegetables in the field. Which would you buy?”).

349. Amber Lee, *Homage or Faux Pas: Cultural Appropriation in Fashion Apparel*, CTR. ART L. (June 29, 2020), <https://itsartlaw.org/2020/06/29/homage-or-faux-pas-cultural-appropriation-in-fashion-apparel> [<https://perma.cc/S6LK-NQU9>].

350. *Id.*

351. *Id.*

352. PPRI, AMERICANS’ SUPPORT FOR KEY LGBTQ RIGHTS CONTINUES TO TICK UPWARD: FINDINGS FROM THE 2021 AMERICAN VALUES ATLAS 9 (2022), <https://www.ppri.org/wp-content/uploads/2022/03/PPRI-Mar-2022-LGBTQ-AVA.pdf> [<https://perma.cc/3JMG-HXE3>].

353. *Id.* at 9–11.

354. *Id.* at 18.

owners being able to refuse service to LGBTQ+ persons based on their religious beliefs.³⁵⁵ This normative shift could help explain the lack of disparaging marks both because fewer people will want to disparage LGBTQ+ persons in the first place, and there may be a greater commercial reluctance by the dwindling minority that would.

Indeed, based on this public pressure, as well as goodwill and common business sense, a few commentators, such as Timothy Hsieh, doubted that *Tam* would lead to a substantial increase in registrations of offensive marks.³⁵⁶ At least to a certain degree, Hsieh was correct. For example, after *Tam*, it appeared that the Washington Redskins could maintain their mark.³⁵⁷ Yet public opinion turned against the Washington Redskins, leading to a substantial drop in merchandise sales and pressure to change the team's name,³⁵⁸ ultimately leading the team to do so in 2020.³⁵⁹ In 2022, it adopted the more neutral name "Commanders."³⁶⁰ Similarly, public pressure ultimately led to Cleveland's Major League Baseball team dropping the controversial "Chief Wahoo" logo and changing its name from the "Indians" to the "Guardians."³⁶¹ In the nonsports context, following *Tam*, significant outrage at a Los Angeles restaurant named "Yellow Fever" (which has a negative connotation with Asian Americans) caused the restaurant to shutter.³⁶²

On the other hand, there is a much stronger incentive for those seeking to reappropriate anti-LGBTQ+ slurs.³⁶³ As explained above, the LGBTQ+

355. *Id.* at 14.

356. Hsieh, *supra* note 22, at 19.

357. *See id.* at 19 ("Only in rare cases where businesses have successfully built up goodwill in a mark, despite the mark being potentially disparaging or offensive—such as the Washington Redskins trademark—would the mark be worth registering with the USPTO."); *id.* at 23–24; Phillips, *supra* note 14, at 1066 ("While the case may have been dismissed under *Tam* and the team's trademark registrations reinstated, the numerous judicial decisions in the long-running Harjo and Blackhorse litigations are filled with evidence of the offensiveness of the term and the real harms caused to Native people."); *see also* Pro-Football, Inc. v. Blackhorse, 709 F. App'x 182, 183–84 (4th Cir. 2018) (vacating and remanding the district court's decision cancelling the REDSKINS mark in light of the Supreme Court's decision in *Tam*).

358. Conrad, *supra* note 19, at 138–39 (describing public pressure against the then Washington Redskins to change their name).

359. Rosa Sanchez, *NFL's Washington Redskins to Change Name Following Years of Backlash*, ABC NEWS (July 13, 2020, 10:34 AM), <https://abcnews.go.com/US/washington-redskins-change-years-backlash/story?id=71744369> [<https://perma.cc/U36X-MGAT>].

360. Zachary Zagger, *Washington Football Team Unveils 'Commanders' Name*, LAW360 (Feb. 2, 2022, 12:55 PM), <https://plus.lexis.com/newsstand/law360/article/1460751?crd=a545a85e-b8b0-4362-8500-503d5c8b343a> [<https://perma.cc/LU76-Q7FP>].

361. David Waldstein & Michael S. Schmidt, *Cleveland's Baseball Team Will Drop Its Indians Team Name*, N.Y. TIMES, <https://www.nytimes.com/2020/12/13/sports/baseball/cleveland-indians-baseball-name-change.html> (July 23, 2021) [<https://perma.cc/Z56U-8K9X>]; Conrad, *supra* note 19, at 139 (discussing the now Cleveland Guardians' decision to abandon their Chief Wahoo logo).

362. Farley Elliott, *LA's Yellow Fever Restaurant Chain to Close After Sparking Cultural Debate*, L.A. EATER (May 31, 2019, 9:40 AM), https://la.eater.com/2019/5/31/18646247/yellow-fever-restaurant-long-beach-cultural-debate-closing-los-angeles?fbclid=IwAR0E_D1MQTQrsS11DvqIzIQU1_KcIprbz5wp7ZJi6ZZNyn3wLqR7M1rj_Z4 [<https://perma.cc/FF95-2HQC>].

363. *See supra* notes 307–09 and accompanying text.

consumer market is burgeoning, and consumers would likely react better to reclamation than disparagement.³⁶⁴

As Lee surmised, the market will decide whether a mark survives and thrives in U.S. society.³⁶⁵ In the case of the Washington Redskins, Chief Wahoo, and the Los Angeles restaurant, the market condemned the marks.³⁶⁶ There was enough market pressure to push these problematic marks out even without the Section 2(a) bars. But other offensive trademarks may survive. Rebecca Tushnet has cautioned that disparaging marks may be targeted at small segments of the population that will support the use of such marks, including white supremacists, misogynists, and xenophobes.³⁶⁷ And even if they are ultimately condemned, such trademarks can still harm members of the target groups while they exist. For example, Lee was concerned that “[t]rademarks with racial epithets may perpetuate stereotypes, alienate members of American society along racial lines at a time of heightened divisiveness, and perhaps even have a physiological impact on some persons.”³⁶⁸ But, at least for now, these fears are unrealized: the market appears to have promoted only affirming LGBTQ+-oriented trademarks in the periods before and after *Tam*.

C. Registrations Are Increasing

In addition to the number of LGBTQ+-oriented trademark applications increasing after *Tam*, so did the number of registrations. As shown in Figure 1, only seventeen LGBTQ+-oriented trademarks were registered pre-*Tam*, but thirty-six were registered post-*Tam*.³⁶⁹ This does not include the large number of post-*Tam* applications that are still pending before the PTO.³⁷⁰

In terms of percentages, however, Figure 4 illustrates that 41.46% of LGBTQ+-oriented trademarks were registered pre-*Tam*, but 34.29% were registered post-*Tam*.³⁷¹ This is likely due in part to the large number of applications that remain pending. In the coming years, the full effect of *Tam* on the registration of these marks will become clearer. As of now, however, *Tam* and *Brunetti* have at least lowered the bars to registration for LGBTQ+-oriented marks, which may partially account for the thirty-six trademarks that have been registered since *Tam*.³⁷² This is especially true for trademarks such as TRANNY HOUSEWIFE, a gender fluid OnlyFans account that suggests a sexual connection that likely

364. See *supra* notes 307–09 and accompanying text.

365. Lee, *supra* note 23, at 2015.

366. Conrad, *supra* note 19, at 138–39; Elliott, *supra* note 362.

367. Tushnet, *supra* note 22, at 388 n.25 (“[D]isparaging marks [may] target only subsets of the population; a market can segment so that racists, or even people who just do not care about harm to the target group, can support the trademark owner.”).

368. Lee, *supra* note 23, at 2016.

369. See *supra* Figure 1.

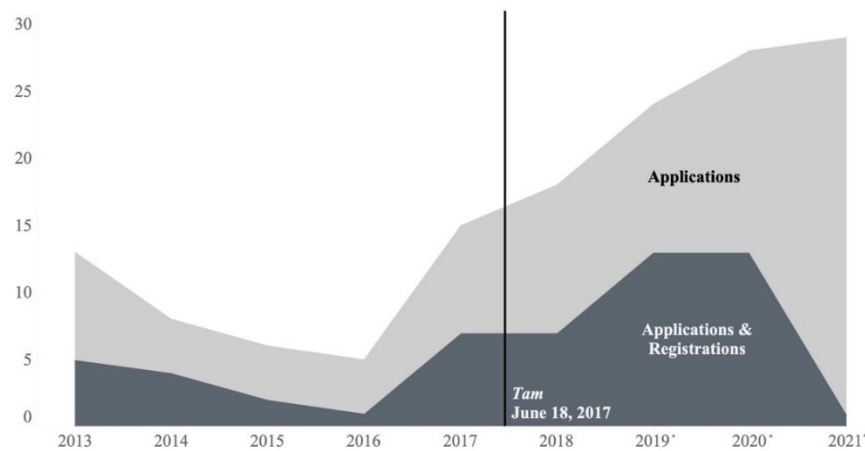
370. See *supra* Figure 1.

371. See *infra* Figure 4.

372. See *supra* Figure 1; *Matal v. Tam*, 582 U.S. 218, 247 (2017) (striking down the ban against disparaging trademarks); *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (striking down the ban against scandalous or immoral trademarks).

would have been barred as either disparaging, scandalous, or immoral prior to *Tam* and *Brunetti*.³⁷³

FIGURE 4: APPLICATIONS AND REGISTRATIONS OVER TIME³⁷⁴



D. Classes Are Diversifying

The PTO uses forty-five international classes for trademarks.³⁷⁵ These classes cover thirty-four categories for goods and eleven for services.³⁷⁶

Before *Tam*, the largest number of LGBTQ+-oriented trademark applications were for classes 25 (fourteen applications, clothing) and 41 (eleven applications, education and entertainment).³⁷⁷ This is similar to what Beebe and Fromer found in their study, where they discovered that the classes of marks that were denied for being immoral or scandalous were apparel, entertainment services, and printed material.³⁷⁸ The next largest categories (with four applications each) were classes 35 (advertising and business)³⁷⁹ and 45 (personal and legal).³⁸⁰ There were also one to three applications in thirteen other classes,

373. See *supra* notes 120–22 and accompanying text; *infra* note 548 and accompanying text.

374. Some applications from 2019–2021 are still pending before the PTO. Therefore, the registration data for these years is incomplete as of this date. See *supra* Figure 1.

375. See *Nice Agreement Tenth Edition—General Remarks, Class Headings and Explanatory Notes—Version 2012*, USPTO, <https://www.uspto.gov/trademarks/trademark-updates-and-announcements/nice-agreement-tenth-edition-general-remarks-class> (last visited Sept. 26, 2023) [<https://perma.cc/2QS4-CTQV>] [hereinafter *Class Headings*] (providing the list of forty-five classes of goods and services as published by the World Intellectual Property Organization (“WIPO”)); *Get Ready to Search—Classification and Design Search Codes*, USPTO, <https://www.uspto.gov/trademarks/search/get-ready-search-classification-and-design> (last visited Sept. 26, 2023) [<https://perma.cc/ZW6F-T6V2>] [hereinafter *Classification and Design Search Codes*] (providing an overview of the international classes that the PTO uses for trademarks).

376. *Classification and Design Search Codes*, *supra* note 375.

377. See *infra* Appendix; *Class Headings*, *supra* note 375.

378. Beebe & Fromer, *supra* note 22, at 180–81.

379. See *infra* notes 535, 538.

380. See *infra* notes 538, 543, 546.

including 3 (cosmetics and cleaning preparations),³⁸¹ 16 (paper goods and printed matter),³⁸² 21 (housewares and glass),³⁸³ and 38 (telecommunication).³⁸⁴ The largest of these categories are for highly expressive types of goods and services, which are at the core of First Amendment protection.³⁸⁵

Following *Tam*, the largest number of LGBTQ+-oriented applications were still for the highly expressive classes 25 and 41 (thirty-three and thirty-seven applications, respectively).³⁸⁶ The number of classes applied for post-*Tam*, however, increased from eighteen classes to twenty-four classes (with two pre-*Tam* classes not being applied for during the second period).³⁸⁷ Those eight new classes included classes 4 (lubricants and fuels),³⁸⁸ 20 (furniture and articles),³⁸⁹ 26 (fancy goods),³⁹⁰ 28 (toys and sporting goods),³⁹¹ 30 (staple foods),³⁹² 34 (smokers' articles),³⁹³ 40 (treatment of materials),³⁹⁴ and 42 (computer and scientific).³⁹⁵ This demonstrates an increasing diversity in the types of uses and markets for LGBTQ+-oriented marks.

E. Geographic Locations Are Expanding

During the period examined, there were LGBTQ+-oriented trademark applications filed from applicants in thirty-one states, the District of Columbia, and five foreign countries (Germany, the United Kingdom, the Netherlands, Italy, and Canada).³⁹⁶ Perhaps not surprisingly, the two states that had the most trademark applicants were California and New York, two of the most populous and progressive states,³⁹⁷ which had forty and thirteen applicants each.³⁹⁸ More unexpectedly, however, three of the next four largest contributors of applicants

381. See *infra* note 444.

382. See *infra* notes 534, 541, 549.

383. See *infra* Appendix.

384. See *infra* note 535.

385. See generally Appendix.

386. See *infra* notes 436–37, 442–43, 446, 450, 457, 460–61, 464, 465–67, 474–75, 477, 479, 480, 482, 486, 491, 506, 512, 520, 522 (identifying as class 25). See *infra* notes 436, 439, 448–50, 455–56, 458, 467, 469–70, 477–78, 484–85, 488, 492–93, 495, 496, 499–501, 503–05, 507, 509–10, 512, 516, 519, 524 (identifying as class 41).

387. See generally Appendix.

388. See generally Appendix; *Class Headings*, *supra* note 375.

389. See, e.g., Appendix (noting *Maison Homo*).

390. See, e.g., *infra* note 454.

391. See, e.g., Appendix (noting *Big Butch*).

392. See, e.g., *infra* note 512.

393. See generally Appendix.

394. See, e.g., *infra* note 525.

395. See, e.g., *infra* note 491.

396. See generally Appendix.

397. See *U.S. States by Population*, WORLDATLAS, <https://www.worldatlas.com/geography/us-states-by-population.html> (last visited Sept. 26, 2023) [<https://perma.cc/8AZB-LCN9>] (ranking California as the most populated state and New York as the fourth most populated state using data from the United States Census Bureau in June, 2023); MOST LIBERAL STATES, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/most-liberal-states> (last visited Sept. 26, 2023) [<https://perma.cc/YFQ7-WD8P>].

398. See *infra* Figure 5.

were in the South, which is known for more conservative social beliefs: Georgia (ten), Texas (eight), and Florida (six).³⁹⁹

This geographic diversity was not limited to major cities in these states. While most applicants lived in major metropolitan areas, there were exceptions.⁴⁰⁰ For example, the applicant for the mark THE BUTCH BRAND lived in Sugar Hill, Georgia, an hour from Atlanta.⁴⁰¹ The applicant for SNOHOMO is in Everett, Washington, north of Seattle.⁴⁰² The applicant for THE QUEER WITCH resided in Chicopee, Massachusetts, on the western side of the state.⁴⁰³

Figure 5 shows that the geographic diversity of LGBTQ+-oriented trademark applications also increased following *Tam*. In the first period, applicants were located in only fifteen states and the District of Columbia.⁴⁰⁴ Following *Tam*, applicants were based in twenty-eight states and the District of Columbia.⁴⁰⁵ Many of these new states were, on average, more conservative and have longer track records of opposing LGBTQ+ rights, such as South Carolina, Missouri, Louisiana, Wyoming, Kentucky, and Oklahoma.⁴⁰⁶ This trend may suggest that federal recognition of a LGBTQ+-oriented trademark is seen as a way of expressing acceptance of one's sexual orientation or gender expression even in locations where the local government or population may be opposed to such acceptance.

399. See *infra* Figure 5.

400. See *infra* notes 401–03 and accompanying text.

401. U.S. Trademark Application Serial No. 90/722,235 (filed Mar. 19, 2021), Application.

402. U.S. Trademark Application Serial No. 87/776,957 (filed Jan. 30, 2018), Application.

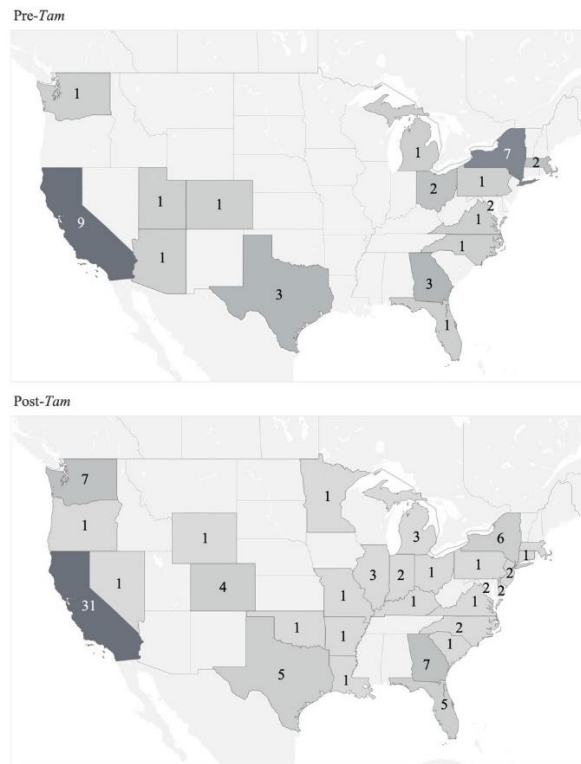
403. U.S. Trademark Application Serial No. 88/145,720 (filed Oct. 7, 2018), Application.

404. See *infra* Figure 5.

405. See *infra* Figure 5.

406. See *Political Ideology by State*, PEW RSCH. CTR, <https://www.pewresearch.org/religion/religious-landscape-study/compare/political-ideology/by/state/> (last visited Sept. 26, 2023) [<https://perma.cc/85S9-6VEB>]; *2021 State Equality Index*, HUM. RTS. CAMPAIGN FOUND., https://reports.hrc.org/2021-state-equality-index-2?_ga=2.24350202.1967308338.1693320525-1769848819.1693320525 (last visited Sept. 26, 2023) [<https://perma.cc/5AC6-ZJLL>].

FIGURE 5: APPLICATIONS BY STATE



F. Intersectional Marks Are Increasing

Sexual orientation and gender identity do not operate in a vacuum but exist in tandem with other axes of social difference to make us unique individuals.⁴⁰⁷ Reflecting the registrants' intersectional identities, some trademark applications referenced both LGBTQ+ individuals and either race and/or gender.

Ten trademark applications referred to race, either explicitly in the application or in use.⁴⁰⁸ For example, the mark **BLACK QUEER FLAG** references Black LGBTQ+ individuals, and the applicant hopes the mark “will be a symbol of belonging for black queer folks around the world.”⁴⁰⁹ **THERAPY FOR QPOC**

407. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 140 (1989) (coining the term “intersectionality” to describe the particularized subordination of Black women, as compared to the subordination inflicted upon Black men or white women, reflecting the importance of the interplay between individuals' different identities).

408. See generally Appendix.

409. See Ms. Wanda's Full Circle Radio, *Ep. 2026 Black Queer & Trans An Ally Conversation—Autumn Jackson Asters & Ebony Ava Harper*, SPOTIFY (July 2020), <https://open.spotify.com/episode/0ltxEZC6rL7Hhof-HFY6p2q> [https://perma.cc/XH9U-Y3UC].

QUEER PEOPLE OF COLOR is meant to “connect Queer & Trans People of Color to affirming anti-oppressive mental health professionals.”⁴¹⁰ Other trademarks do not necessarily indicate race on their face, but media about the applicant and the mark show it. For example, Kokumo Kinetic applied for the trademark QUEER SOUL, which has been described as a “genre of music birthed via the mental womb of a proud, intersex, dark-skin, plus-size, non-cis queer femme woman.”⁴¹¹

Gender is also reflected in some LGBTQ+-oriented trademark applications.⁴¹² Gender is inherently reflected in those trademarks that incorporate the slurs “butch”⁴¹³ and “dyke,”⁴¹⁴ both of which have historically been used to refer to those perceived to be lesbian.⁴¹⁵ Similarly, it is inherent in those trademarks that included the word “tranny” to refer to transgender individuals. Even with removing those three terms from the analysis, there were eight trademarks that referred to gender identity either in their application or use.⁴¹⁶ For example, the mark SOCIAL QUEER was specifically aimed at “professional queer womxn.”⁴¹⁷ Library 729723, which applied for the NEW QUEER LITERATURES trademark, is an independent press “primarily focusing on the gay male voice.”⁴¹⁸

Five trademark applications represent all three social axes of LGBTQ+ status, race, and gender identity.⁴¹⁹ As mentioned above, QUEER SOUL reflects Kokumo Kinetic’s identity as an “intersex, dark-skin, plus-size, non-cis queer femme woman.”⁴²⁰ A trademark application for PRO BLACK, PRO QUEER, PRO HOE refers to the applicant’s poetry, which celebrates Black femmes,⁴²¹ and QUEER BLACK BOY reflects the applicant’s identity as an LGBTQ+, Black male.⁴²² A CONCOCTION OF ALL THINGS QUEER, CULTURE, AND CURRENT is used for a magazine that covers issues relating to LGBTQ+ persons, African American individuals, and women.⁴²³ Perhaps most

410. See THERAPY FOR QUEER PEOPLE OF COLOR, <https://www.therapyforqpoc.com> (last visited Sept. 26, 2023) [<https://perma.cc/4CSP-HDKZ>].

411. See *Kokumo Kinetic*, DODGE POETRY PROGRAM, <https://members.dodgepoetry.org/people/kokumo-kinetic> (last visited Sept. 26, 2023) [<https://perma.cc/UX54-92RM>].

412. See, e.g., *infra* note 526.

413. See, e.g., *infra* notes 441–42.

414. See, e.g., *infra* note 450.

415. See *Dyke*, SUSAN’S PLACE TRANSGENDER RESOURCES, <https://www.susans.org/wiki/Dyke> (last visited Sept. 26, 2023) [<https://perma.cc/Y5B9-T7KA>].

416. See *infra* notes 499–506.

417. See U.S. Trademark Application Serial No. 88/524,415 (filed July 19, 2019), Specimen.

418. See LIBRARY 729723, <http://www.library729723.com> (last visited Sept. 26, 2023) [<https://perma.cc/A552-TT3L>] (“Library 729723 Editions is an independent press devoted to publishing queer literature, primarily focusing on the gay male voice.”).

419. See *infra* notes 420–24.

420. See *Kokumo Kinetic*, *supra* note 411.

421. See Jordannah Elizabeth, *Pro Black, Pro Queer, Pro Hoe: Britteney Black Rose Kapri’s Poetry Celebrates Black Femmes*, BITCH MEDIA (Nov. 30, 2018, 12:11 PM), <https://www.bitchmedia.org/article/britteney-black-rose-kapri-interview> [<https://perma.cc/88UM-74H9>].

422. See *infra* note 525.

423. See *infra* note 545.

symbolically of intersectionality is the application for INDIGENOUS PEOPLES BLACK LATINO ASIAN PACIFIC ISLANDER ARAB MULTICULTURAL MIXED BROWN WHITE PERSON OF COLOR WOMAN CHILD MAN LESBIAN GAY BISEXUAL TRANSGENDER PERSON WITH DISABILITY ELDER POOR REFUGEE VETERAN YOUTH IMMIGRANT PERSECUTED FOR RELIGION SURVIVOR WORKER HOMELESS UNDOCUMENTED INCARCERATED QUEER EVERYONE ALL, which reflects a plethora of different identities in society (even if this commentary suggests that it is less likely to actually function as a mark).⁴²⁴

The trademarks post-*Tam* showed a stark increase in marks that reflect intersectionality. Nine out of ten of the LGBTQ+-oriented marks that invoked race were applied for after *Tam*.⁴²⁵ Similarly, seven out of eight of the LGBTQ+-oriented marks that explicitly evoked gender were applied for after *Tam*.⁴²⁶ This demonstrates not only a remarkable upsurge in affirming LGBTQ+-oriented trademark applications but also a positive trend in the increasing recognition of intersectional identities, particularly LGBTQ+ persons of color.⁴²⁷

VII. CONCLUSION

While the Supreme Court's decisions in *Tam* and *Brunetti* may have significantly affected trademark law, they have not—at least so far—presented the foretold deluge of disparaging trademark applications and registrations. In fact, based on this study of eleven traditionally LGBTQ+ slurs, the two decisions appear to have stimulated (or at least not stymied) applications for LGBTQ+-oriented trademarks by and for the LGBTQ+ community rather than have enhanced disparagement and homophobia. The number of LGBTQ+-oriented trademark applications has over doubled since *Tam*.⁴²⁸ All these uses were either attempts to reappropriate the terms by or for LGBTQ+ persons or the intent was indeterminable; none of the uses appear to have been attempting to disparage LGBTQ+ persons.⁴²⁹ More LGBTQ+-oriented trademarks have been registered, and they have been used across wider ranges of classes and geographies, including more conservative-leaning states and nonmajor metropolitan areas.⁴³⁰ A growing number of trademark applications also pay homage to individuals' intersectionality, acknowledging their identity as LGBTQ+ persons as well as their race or gender, or a combination of all three.⁴³¹

This study is necessarily limited by only reviewing a subset of LGBTQ+-oriented trademarks (albeit the most prominent ones), but, in combination with Huang's study on racially-oriented trademark applications, it demonstrates that

424. See *infra* note 524.

425. See generally Appendix.

426. See generally Appendix.

427. See generally Appendix.

428. See *supra* Figure 1.

429. See *supra* Section VI.B.

430. See *supra* Figure 5.

431. See *supra* notes 419–24 and accompanying text.

the concerns about the flood of disparaging, scandalous, and immoral trademark applications stemming from *Tam* and *Brunetti* were greatly exaggerated. Most applications for trademarks targeting minorities (at least racial minorities and LGBTQ+ persons) appear to be attempting to reappropriate previously derogatory terms, and registration of such marks is increasing, unrestricted by the now-defunct disparaging and immoral or scandalous bars.

While this study and Huang's demonstrate a promising landscape for reappropriation and defanging of slurs by the people they target, this subject will need to be reassessed in the future. The lack of disparaging uses of LGBTQ+ slurs in trademark applications should not be taken as a proxy for discourse around gender and sexuality in U.S. society at large, and disparaging LGBTQ+-oriented common law trademarks could exist. For example, Westboro Baptist Church, which is widely considered a hate group, maintains a website titled "godhatesfags.com" and sold merchandise with the same terrible message.⁴³² But, the Church has, for whatever reason, not applied for a trademark.

Applications for trademarks incorporating slurs targeted at minorities should continue to be monitored for any changes in these trends. For now, *Tam* and *Brunetti* have expanded opportunities for LGBTQ+ individuals to reappropriate slurs and express themselves on their own terms. But, even if these Supreme Court decisions have not opened the foretold deluge of trademarks that consist of racist, homophobic, and otherwise hateful slurs, the possibility remains. Especially with deepening cultural and identity rifts emerging in the United States, the possibility of registering such marks could ossify into a strategy of furthering hate and divisions in the future.⁴³³

There is also the possibility that as LGBTQ+-oriented marks are registered, rights owners could aggressively police those marks.⁴³⁴ This could limit the reclamation of LGBTQ+ slurs for the LGBTQ+ community as a whole. The rights owner could attempt to prevent any other uses of their registered mark, even if those uses are genuine attempts to identify themselves or their goods or services as being LGBTQ+ or LGBTQ+-owned. The coming years will show whether trademark trolls will attempt to restrict speech using these reclaimed LGBTQ+ slurs.

To guard against such possibilities, it is imperative that new legal research considers how trademark law and intellectual property law more broadly affect minorities such as LGBTQ+ persons. Further research may show disproportionate effects on LGBTQ+ persons, racial minorities, and other historically marginalized populations and will hopefully generate ideas to remedy those effects.

As shown by the fourteen-year struggle for DYKES ON BIKES, it can be more valuable to understand diverse perspectives and allow them to develop than

432. WESTBORO BAPTIST CHURCH, <https://godhatesfags.com> (last visited Sept. 26, 2023) [<https://perma.cc/3WRB-9XDQ>].

433. See Chang, *supra* note 27; Gerhardt, *supra* note 54.

434. Indeed, this is what Gilbert Baker, the popularizer of the rainbow flag, was worried about when he challenged an LGBTQ+ advocacy organization that tried to register the flag as a trademark. Boggs, *supra* note 55.

categorically bar a category of expression that can be used for both hating and empowering minorities. While there may not have been rampant infringement of the DYKES ON BIKES mark, providing protection for the mark was a matter of equal dignity. Registering the mark facilitated greater public and government recognition for the LGBTQ+ community—a process that has accelerated post-*Tam*.

APPENDIX

Trademark	Application Date	Application/Registration Number	Registrant	Aim	Counsel?	Class	Geography	Status
Butch								
Butch Appétit	Sept. 21, 2021	97038526	Jane Sheehan	Reaffirming ⁴³⁵	No	45	California	Live
	May 6, 2020	88903931						Dead
Last Butch	July 21, 2021	90841521	Elena Rosa	Reaffirming ⁴³⁶	No	25, 41	California	Live
The Butch Brand	May 19, 2021	90722235	Conner Mims	Reaffirming ⁴³⁷	No	25	Georgia	Live
Butch Charming	Aug. 3, 2020	90089730	Linda Bowman	Undetermined (ITU)	Yes	25	Nevada	Dead
Butch Femme	Dec. 20, 2019	88734811	Megan Picurro	Affirming ⁴³⁸	No	3	New Jersey	Dead
Butch Pump Fashion	Mar. 5, 2019	88326142	Butch Pump, LLC	Reaffirming ⁴³⁹	Yes	41	Florida	Dead
Butch Pump	June 16, 2018	88003352						Live
Butch & Sissy	Apr. 27, 2018	87897669, Reg. 5627407	Connie Colingsworth DBA Butch & Sissy	Affirming ⁴⁴⁰	Yes	35	Kentucky	Live
Big Butch	Feb. 2, 2018	5808963, Reg. 5808963	Adp Gauselmann	Undetermined	Yes	9, 28	Germany	Live
Butchout	Oct. 16, 2017	87646850	Ronald Thompson	Affirming ⁴⁴¹	No	36	North Carolina	Dead
The Butch Queen	July 20, 2017	87535612	John Spankovich	Affirming ⁴⁴²	No	25	North Carolina	Dead
Butch Queen	Mar. 8, 2017	87363074	Dean Malka	Affirming ⁴⁴³	Yes	25	Canada	Dead
Brutus & Butch	Mar. 1, 2017	87354988, Reg. 5310207	Gwen Lonigro Inc.	Affirming ⁴⁴⁴	No	3	California	Live
Butch on Tap	Jan. 27, 2015	86516145, Reg. 5013723	Tristan Higgins DBA ButchOn-Tap.com	Affirming ⁴⁴⁵	Yes	41	California	Live
Butch`her	Mar. 31, 2014	86237123	Noel Stewart	Affirming ⁴⁴⁶	No	25	Arizona	Dead
Butch Soap	June 27, 2013	85971249	Dr Rick's botanicals	Undetermined (ITU)	Yes	3	Texas	Dead

435. See U.S. Trademark Application Serial No. 97/038,526 (filed Sept. 21, 2021), Registration Certificate, (“On-line gay, lesbian and bisexual social networking services.”).

436. See U.S. Trademark Application Serial No. 90/841,521 (filed July 21, 2021), Application (“An interactive ~lesbian bar~ herstory project.”).

437. See @Thebutchbrand, INSTAGRAM, <https://www.instagram.com/thebutchbrand> (last visited Sept. 26, 2023) [<https://perma.cc/JU6C-6Y9T>] (“All Inclusive•Gender Non-Specific•Hats•Stickers”).

438. U.S. Trademark Application Serial No. 88/734,811 (filed Dec. 20, 2019), Specimen (“Vegan, cruelty free, clean formulas, clean packaging, inclusive, and authentically queer.”).

439. See Butch Pump, FACEBOOK, <https://www.facebook.com/butchpumpmovement> (last visited Sept. 26, 2023) [<https://perma.cc/6P4L-XDRV>] (“Butch Pump (v.) - to wear Men’s clothing with Heels while being unbothered.”).

440. See *ButchandSissy*, ETSY, <https://www.etsy.com/shop/ButchandSissy> (last visited Sept. 26, 2023) [<https://perma.cc/7F2A-DNTH>] (“A modern lifestyle brand for those looking beyond a flag and a cliché to make a bold and stylish LGBT flair statement.”).

441. See BUTCHOUT, <https://butchout.org> (last visited Sept. 26, 2023) [<https://perma.cc/BG4C-78HS>] (supporting organizations that advance LGBTQ+ persons and issues).

442. See U.S. Trademark Application Serial No. 87/535,612 (filed July 20, 2017), Specimen (displaying a t-shirt tagged with “the butch queen,” “gay pride,” and “lesbian pride”).

443. See *About Us*, SWISH EMBASSY, <https://swishembassy.com/pages/about-us2> (last visited Sept. 26, 2023) [<https://perma.cc/Q2T6-JHPT>] (“Embassy was started as a bet after a few trips to Provincetown . . . These great gay destinations had fun nightlife and great activities.”).

444. See *About Brutus & Butch*, BRUTUS & BUTCH, <https://www.brutusandbutch.com/pages/our-story-1> (last visited Sept. 26, 2023) [<https://perma.cc/4L3A-9R83>] (“As an affiliate carrying Brutus & Butch products, you are helping to support important causes, including issues of the LGBTQIA community and at risk youth.”).

445. See *About*, BUTCHONTAP, <https://butchontap.com/about> (last visited Sept. 26, 2023) [<https://perma.cc/U62W-SACV>] (“I am a butch.”).

446. See *Butch`her Clothing (@Butch`her_TM)*, TWITTER, https://twitter.com/butch`her_tm (last visited Sept. 26, 2023) [<https://perma.cc/CE62-28HN>] (“Company started by a boy [sic] show support for his mom, a butch lesbian, during her fight with breast cancer.”).

Dyke									
Dyke Beer	Oct. 8, 2020	90241465	Sarah Hallonquist, Loretta Chung	Affirming ⁴⁴⁷	Yes	32	New York	Live	
Dyke Soccer	Feb. 13, 2020	88796041, Reg. 6457888	Alex Schmidt	Affirming ⁴⁴⁸	Yes	41	New York	Live	
Dykes with Drills	Jan. 17, 2020	88763635, Reg. 6118129	Julie Peri DBA Dykes With Drills	Affirming ⁴⁴⁹	No	41	California	Live	
Dykes on Bikes	Dec. 16, 2019	88728928, Reg. 6100379	San Francisco Dykes on Bikes Women's Motorcycle Contingent	Affirming ⁴⁵⁰	Yes	25, 26	California	Live	
	Apr. 24, 2015	86609566, Reg. 5389061				41			
D.L.Y. Dyke	Oct. 19, 2017	87651421, Reg. 5490690	Driven Communications, LLC and Avanthi Govender	Undetermined	Yes	41	Michigan	Live	
Dyke It Yourself		87651425						Dead	
Do It Yourself Dyke		87651431							
Dyke Wine	June 11, 2017	87483629	Leslie Ann Wisner	Affirming ⁴⁵¹	No	33	California	Dead	
Fag									
Fagatron	Sept. 21, 2020	90197311	Edwin Resto	Affirming ⁴⁵²	Yes	16	Florida	Dead	
Fag	Oct. 24, 2019	88667247	F.Beauty, LLC	Undetermined (ITU)	Yes	3	Delaware	Live	
FagOut!	Oct. 31, 2013	86107041	Christopher Recio	Undetermined (ITU)	No	24, 25	California	Dead	
Fag Forever A Genius!	Oct. 11, 2013	86089512	George D. Braun	Undetermined (ITU)	No	25	Ohio	Dead	
Faggot									
Faggot	Oct. 24, 2019	88667227	F.Beauty, LLC	Undetermined (ITU)	Yes	25	Delaware	Live	
	June 17, 2019	88477049				3			
He/She (and Heshe, He-She)									
None									
Homo									
Maison Homo	Dec. 28, 2021	97192315	Laex Corp.	Undetermined (ITU)	No	3, 4, 18, 20, 25	California	Live	
Know Homo	July 1, 2021	90806952	Danielle Lyons AKA PF Elle	Undetermined	No	25	Georgia	Live	
#Handy-Homos	Jan. 24, 2021	90485111	Jessie Esquiro	Undetermined	No	25	Hawaii	Live	
Homo Moronicus	Dec. 31, 2020	90437359	Sandra Guiza Medina	Undetermined (ITU)	No	25	Texas	Live	

447. See *About Dyke Beer*, DYKE BEER, <https://lovedykebeer.com/#about> (last visited Sept. 26, 2023) [<https://perma.cc/9TGR-5ZVH>] (“People could grab a Dyke Beer to go and bring home some solidarity with them. Dyke Beer says, ‘You exist and you are important.’”).

448. See *DYKE SOCCER*, <https://www.dykesoccer.org> (last visited Sept. 26, 2023) [<https://perma.cc/6ANG-7DBY>] (“@dykesoccer divines pop-up pickups that encourage queer cruising, promote physical and mental health, and provide a network for queers to find each other.”).

449. See *DYKES WITH DRILLS*, <https://www.dykeswithdrills.com> (last visited Sept. 26, 2023) [<https://perma.cc/NK4U-6CQS>] (“We are a group of queer womxn empowering people with the tools to build.”).

450. See *DYKES ON BIKES*, <https://www.dykesonbikes.org> (last visited Sept. 26, 2023) [<https://perma.cc/H2QX-5V82>] (“Our mission is to support philanthropic endeavors in the lesbian, gay, bisexual, transgender and women’s communities, and to reach out to empower a community of diverse women through rides, charity events, Pride events and education.”).

451. See *2017 North Bay LGBTQI Families 2nd Annual Campout and Pride Celebration* (June 10, 2017), <https://www.slideshare.net/LeslieWiserPMP/2017-north-bay-lgbtqi-families-2nd-annual-campout-and-pride-celebration> [<https://perma.cc/R88F-EWVS>] (including the brand in a Sonoma LGBTQ+ Pride event).

452. See *Fagatron*, @fagatronlives, INSTAGRAM, <https://www.instagram.com/fagatronlives/?hl=en> (last visited Sept. 26, 2023) [<https://perma.cc/LT5Z-DVF5>] (“A GAY IN THE LIFE OF A SUPERHERO”).

Homogenius	Sept. 28, 2020	90216031	Mark West	Affirming ⁴⁵³	No	35	California	Dead
	Oct. 18, 2018	88159772				35, 45		
Homo Hair	Sept. 12, 2020	90176231	Daft Boy LLC dba Homo Hair Ltd.	Affirming ⁴⁵⁴	Yes	3, 21	California	Live
Promo-Homo.TV	Apr. 27, 2020	88889975, Reg. 88889975	Nicholas Snow Productions LLC	Affirming ⁴⁵⁵	Yes	41	California	Live
Two Hungry Homos	Apr. 8, 2020	88864055, Reg. 6349743	Leite's Culnaria, Inc.	Affirming ⁴⁵⁶	Yes	41	Connecticut	Live
Yoko Homo	Dec. 6, 2019	88718660, Reg. 6112109	Kyle Francis Leuck AKA Yoko Homo	Undetermined	Yes	41	Illinois	Live
Homogoods	Aug. 7, 2019	88569548	Alexander McDermott	Affirming ⁴⁵⁷	No	25	California	Dead
Homo for the Holidays	Aug. 22, 2018	88089139	Erica Mason DBA Lou Henry Hoover	Affirming ⁴⁵⁸	Yes	41	Washington	Live
homo sapien	Apr. 19, 2018	87883679	I Can 413 LLC	Undetermined (ITU)	No	25	New York	Dead
SnoHomo	Jan. 30, 2018	87776957	AIDS Project Snohomish County	Affirming ⁴⁵⁹	No	36	Washington	Dead
Everyone Is Homo	Apr. 21, 2017	87420022	Nicholas Komor and Stephen Wayne Clark	Affirming ⁴⁶⁰	No	25	Georgia	Live
Homo	Sept. 16, 2015	86758765, Reg. 5087988	Nicholas Komor					
homoscapien	Nov. 11, 2016	87234603	The Escape Illusion Micah Linan	Undetermined (ITU)	No	25	Texas	Dead
Homokind	Sept. 2, 2016	87160017, Reg. 5181177	Douglas Braunstein	Affirming ⁴⁶¹	Yes	18, 25	New York	Live

453. See Mark Christopher West (@markchristopherwest), INSTAGRAM, <https://www.instagram.com/markchristopherwest/?hl=en> (last visited Sept. 26, 2023) [<https://perma.cc/6E4N-EVD5>] (“Yoga for LGBT”).

454. See HOMO HAIR, <https://www.homohair.com> (last visited Sept. 26, 2023) [<https://perma.cc/5BHE-65EK>] (“Your Hair But Gay-er”).

455. See *Network Origins*, PROMO.HOMO.TV, <https://promohomo.tv/networkorigins> (last visited Sept. 26, 2023) [<https://perma.cc/6TCA-Q6VM>] (“NICHOLAS SNOW WENT FROM BEING TINSELTOWN’S QUEER TO EVERYBODY’S PROMOHOMO!”).

456. See David Leite, *Q&A Cocktails with Leite’s Culnaria’s Two Fat Homos*, YOUTUBE, <https://www.youtube.com/watch?v=qTKwacQ31qk&list=PLHNYrGSs0O7RYUBTSaU2-AoxMYjF5Kd2-&index=9> (last visited Sept. 26, 2023) [<https://perma.cc/97M2-DZQG>] (identifying as a cooking show hosted by a same-sex couple).

457. See Zoë Sessums, *This New Collective Caters Toward Life, Art, and the Queer Perspective*, ARCHITECTURAL DIG. (Sept. 26, 2019), <https://www.architecturaldigest.com/story/homogoods-caters-toward-life-art-and-the-queer-perspective> [<https://perma.cc/7Q53-UHTK>] (“I’d say the whole point of Homogoods is to make queer people feel more accurately reflected in the art they see, the items they buy, and the educations they receive.”).

458. See HOMO FOR THE HOLIDAYS, Registration No. 5,714,957, Specimen, (“JINGLE ALL THE GAY”).

459. See *Our Mission and History*, AIDS PROJECT SNOHOMISH COUNTY, <https://aidsprojectsnoco.org/history-mission-values> (last visited Sept. 26, 2023) [<https://perma.cc/T9WV-F6XG>] (“Board members and volunteers donate their time to initiatives which support HIV/AIDS awareness, education, and prevention.”).

460. See *About*, HOMO, <https://www.everyoneishomo.com/about> (last visited Sept. 26, 2023) [<https://perma.cc/WF4G-ULZ5>] (“Homos who recognize that being Homo is more than who or how you care to love.”).

461. See *HomoKind*, ETSY, <https://www.etsy.com/shop/HomoKind> (last visited Sept. 26, 2023) [<https://perma.cc/83P8-RT23>] (“MADE WITH PRIDE!!!”).

Hemo Homo	Apr. 30, 2013	85918899, Reg. 4461617	Anthony Romeo	Affirming ⁴⁶²	No	41	New York	Dead
Homosexual								
Con- firmedHomo- sexual	Feb. 3, 2017	87323458	Scott Fausett	Affirming ⁴⁶³	Yes	41	Utah	Dead
Homosexual Declarado	June 11, 2014	86306108	Jose Luis Resendez Santos	Affirming ⁴⁶⁴	No	25	Florida	Dead
Queer								
QueerFull	Dec. 28, 2021	97194122	Pablo Merced- Velazquez dba Queer- Full	Undetermined	No	35	California	Live
Queers on Gears	Nov. 22, 2021	97136940	Caroline Castro	Affirming ⁴⁶⁵	No	16, 24, 25	California	Live
Queer Surf Club	Nov. 17, 2021	97128755	Frazer Riley	Affirming ⁴⁶⁶	Yes	25	United Kingdom	Live
Trans Queer Lesbian Bisexual Coming Out for Love Dating Show	Oct. 19, 2021	97082697	Nicole Conn Films Global, Inc.	Affirming ⁴⁶⁷	Yes	21, 25, 41	California	Live
Queer Pong	Sept. 10, 2021	97020958	Cock & Tails LLC	Affirming ⁴⁶⁸	No	28	California	Live
Queer Inc.	Aug. 23, 2021	90896605	Queer En- terprises Inc.	Affirming ⁴⁶⁹	No	41	Washington	Live
Queer You Are	Aug. 9, 2021	90872963	Turner In- ternational Latin Amer- ica, Inc.	Affirming ⁴⁷⁰	Yes	41	Georgia	Live
	June 29, 2021	90801721	Turner Broadcast- ing System Europe Ltd.					

462. See U.S. Trademark Application Serial No. 85/918,899 (filed Apr. 30, 2013), Registration Certificate (“On-line journals, namely, blogs featuring opinion and fact about bleeding disorders and/or homosexuality; Providing a website featuring blogs and non-downloadable publications in the nature of fact sheets and articles featuring opinion and fact about bleeding disorders and/or homosexuality in the field(s) of health and education.”).

463. See U.S. Trademark Application Serial No. 87/323,458 (filed Feb. 3, 2017), Application (“Providing on-line non-downloadable articles in the field of LGBT lifestyle, culture, current events; Providing an interactive website featuring information and links relating to LGBT lifestyle topics, LGBT support groups, and LGBT social services.”).

464. See U.S. Trademark Application Serial No. 86/306,108 (filed June 11, 2014), Application (depicting a mark with a rainbow).

465. See Queens on Gears (@queersongears), INSTAGRAM, <https://www.instagram.com/queersongears/?hl=en> (last visited Sept. 26, 2023) [<https://perma.cc/2DUH-MJ7C>] (“#motorcycle #queers. Meet new riding buddies 🏍️👯 Allies welcome!”).

466. See QUEER SURF CLUB, www.queersurfclub.com (last visited Sept. 26, 2023) [<https://perma.cc/L6F9-MPSX>] (“We’re a community of LGBTQ+ surfers (and allies) from across the globe – connected by our identities and a love of the oceans”).

467. See Nicole Conn Films Global, *Coming Out for Love: Acclaimed Lesbian Filmmaker Nicole Conn’s LGBTQ+ Reality Dating Show Gets Underway with Jessica Clark as Host*, CISION PR NEWSWIRE (Sept. 9, 2021, 11:00 AM), <https://www.prnewswire.com/news-releases/coming-out-for-love-acclaimed-lesbian-filmmaker-nicole-conns-lgbtq-reality-dating-show-gets-underway-with-jessica-clark-as-host-301372098.html> [<https://perma.cc/33BJ-XLJ8>] (discussing an LGBTQ+ reality dating show).

468. See U.S. Trademark Application Serial No. 97/020,958 (filed Sept. 10, 2021), Specimen (“BEER PONG, BUT MAKE IT FAB”).

469. See QUEER INC., https://queerenterprises.com/?page_id=85 (last visited Sept. 26, 2023) [<https://perma.cc/3J97-YB8S>] (“Queer Inc is driven to lead and inspire the services and products the LGBTQ+ community needs and deserves.”).

470. See *Queer You Are*, IMDB, <https://www.imdb.com/title/tt13138498> (last visited Sept. 26, 2023) [<https://perma.cc/BZC4-CZ7T>] (identifying a Spanish television series depicting “the coming-of-age story of a boy in search of his own identity”).

QUEER Migration	July 20, 2021	90837975	Alexandra Stephanie Audate	Affirming ⁴⁷¹	Yes	45	Florida	Live
Queer Counsel	June 24, 2021	90792826	Andre Bean, Jr.	Affirming ⁴⁷²	Yes	44	Texas	Live
Fabulous Queers	June 24, 2021	90792258	Sharon Faye Sullivan	Undetermined (ITU)	No	25, 38, 41	Netherlands	Live
Black Queer Flag	June 22, 2021	90787074	Autumn Rene Jackson aka Autumn Asters	Affirming ⁴⁷³	No	24	California	Live
Queer	May 27, 2021	79331225	Constantini Franco	Undetermined	Yes	16, 28, 34	Italy	Live
Queer and Ally	May 25, 2021	90733032	Ten Thirty Project LLC	Affirming ⁴⁷⁴	Yes	35	Texas	Live
	Jan. 31, 2020	88780932, Reg. 6494153				25		
New Breed Queer Clothing	Apr. 28, 2021	90677851	Wolf Boy Media Corp.	Affirming ⁴⁷⁵	No	25	California	Live
Black Queer Tarot	Apr. 20, 2021	90658428	Kendrick Dave	Affirming ⁴⁷⁶	Yes	16	New York	Live
The Queer Creative	Apr. 19, 2021	90654574	The Queer Creative LLC	Affirming ⁴⁷⁷	Yes	18, 25, 41	Massachusetts	Live
Queer Money Gang	Apr. 8, 2021	90633332	Leveaux Group, Inc.	Affirming ⁴⁷⁸	Yes	41	Oklahoma	Live
DX: Q Diagnosis: Queer	Mar. 24, 2021	90598902	Nicholas Nicoletti	Affirming ⁴⁷⁹	No	25	Michigan	Live
Radically Queer	Mar. 16, 2021	90581022	Alt Pronouns, Inc.	Affirming ⁴⁸⁰	No	25, 35	New York	Live
Therapy for QPOC Queer People of Color	Mar. 3, 2021	90557477	Therapy for Queer People of Color, LLC	Affirming ⁴⁸¹	Yes	44	Georgia	Live

471. See *About Us*, ALEXANDRA STEPHANIE AUDATE, <https://audatelawgroup.com/about-us> (last visited Sept. 26, 2023) [<https://perma.cc/WU9S-98FT>] (“Your QueerMigration Lawyer wanted to create an environment where all are welcomed.”).

472. See Andre Bean, FACEBOOK, <https://www.facebook.com/andre.bean.129> (last visited Sept. 26, 2023) [<https://perma.cc/QT22-KTTV>] (containing a Pride rainbow).

473. See Ms. Wanda’s Full Circle Radio, *supra* note 409 (“Autumn is an artist and creator of the Black Queer Flag, something she hopes will be a symbol of belonging for black queer folks around the world.”).

474. See QUEER AND ALLY, Registration No. 6,944,488, Application, (“Marketing services in the field of branding, advertisement, and business promotion in support of the LGBTQIA+ community”).

475. See NEW BREED, <https://newbreedqueer.com> (last visited Sept. 26, 2023) [<https://perma.cc/N2TJ-HD8F>] (“New Breed serves gay graphic apparel for bears, queens, & everything in between.”).

476. See THE BLACK QUEER TAROT, <https://blackqueertarot.com/pages/about-us> (last visited Sept. 26, 2023) [<https://perma.cc/4MZV-BMSE>] (“We believe in a world that centers Black queer people.”).

477. See THE QUEER CREATIVE, <https://thequeercreative.com> (last visited Sept. 26, 2023) [<https://perma.cc/66L7-SF2U>] (“Co-hosts Renessa and Jonah sit down with Queer Creatives across various industries and disciplines for a conversation about queer ideas, the creative process, love, struggles, and the hustle.”).

478. See *Queer Money Gang*, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20220316001411/https://queermoneygang.com/> (last visited Sept. 26, 2023) [<https://perma.cc/T8H9-WL99>] (“Queer Money Gang is different because we don’t just tolerate your queerness or your desire to be in business...WE CELEBRATE YOU!”).

479. See DIAGNOSIS: QUEER (July 16, 2020), <https://www.dxqueer.com/post/about-diagnosis-queer> [<https://perma.cc/4GDZ-2KFP>] (“Let’s get closer to a better understanding of how healthcare and the LGBTQ+ community intersect. We are queer and we are here, honey.”).

480. See *Alt Pronouns*, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20200810155844/https://altpronouns.com/pages/about> (last visited Sept. 26, 2023) [<https://perma.cc/G7S2-RM5A>] (“Alt Pronouns began as a way to honor the generations of queer activists before me who fought for the rights I have today, and as a way to discover my role in creating a safer, more accepting future for queer youth to discover, explore, live and love their true identity.”).

481. See THERAPY FOR QUEER PEOPLE OF COLOR, *supra* note 410 (“To connect Queer & Trans People of Color to affirming anti-oppressive mental health professionals.”).

We Are Queer Beer	Feb. 23, 2021	90542910	Chris G. Hartley	Affirming ⁴⁸²	Yes	21, 25	Massachusetts	Live
Queer Love Apparel	Feb. 1, 2021	90500590	Main Impact, LLC	Undetermined (ITU)	No	35	California	Live
Support Queer Art	Jan. 30, 2021	90499607	William Wright dba Castro & 18th Apparel	Affirming ⁴⁸³	No	35	California	Dead
QUEER-ISH	Dec. 22, 2020	90404340, Reg. 6516637	Pride Houston, Inc.	Affirming ⁴⁸⁴	Yes	41	Texas	Live
Queer Soul	Nov. 16, 2020	90321288	Kokumo Kinetic	Affirming ⁴⁸⁵	No	41	Illinois	Live
Rich Queer Aunties	Oct. 17, 2020	90261273	Christabel Mintah-Galloway	Affirming ⁴⁸⁶	No	9, 14, 16, 18, 21, 25	Indiana	Live
Queer Evangelism	Oct. 1, 2020	90229982	Queer Evangelism LLC	Affirming ⁴⁸⁷	Yes	35, 42	District of Columbia	Dead
Black + Love + Queer	Sept. 7, 2020	90162737, Reg. 6572248	Aaron F. Lucky	Affirming ⁴⁸⁸	Yes	41	Indiana	Live
Adoration of the Queer Mind	Sept. 3, 2020	90157894, Reg. 6603881	The Dancer's Life, LLC	Affirming ⁴⁸⁹	Yes	16	Georgia	Live
QueerProfs	Aug. 28, 2020	90146121	QueerProfs Alex Espinoza-Kulick	Affirming ⁴⁹⁰	No	42	California	Live
Queer Magnolias	Aug. 26, 2020	90139165	Danny E. White	Affirming ⁴⁹¹	No	25	California	Dead

482. See *PROVINCETOWN BREWING CO.*, <https://www.provincetownbrewingco.com/welcome/#pbc-draftivism> (last visited Sept. 26, 2023) [<https://perma.cc/383P-TW7K>] (“We donate 15% of all profits to specific causes and organizations that we believe in - from LGBTQ+ inclusion to environmental conservation and support of a year-round artists community on the Outer Cape.”).

483. See *Castro & 18th Apparel*, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20210129054422/https://www.castro-n-18thapparel.com> (last visited Aug. 28, 2023) [<https://perma.cc/2K9W-T36T>] (“Castro & 18th Apparel is an online clothing store that collaborates with queer artists to make handcrafted clothing for the community. We truly, SUPPORT QUEER ART!”).

484. See *QUEER•ISH*, Registration No. 6,516,637, Registration Certificate (“Entertainment services, namely, providing live webcasts, podcasts, and online non-downloadable audio and video recordings on matters affecting the queer community . . . on diversity and equal rights in the queer community as well as to commemorate and celebrate the history of the queer community.”).

485. See *Kokumo Kinetic*, *supra* note 411 (“KOKUMO. Is the Queen of Queer Soul. A genre of music birthed via the mental womb of a proud, intersex, dark-skin, plus-size, non-cis queer femme woman.”).

486. See *Christabel Mintah-Galloway*, *Rich Queer Aunties*, APPLE PODCASTS, <https://podcasts.apple.com/us/podcast/rich-queer-aunties/id1510828051> (last visited Sept. 26, 2023) [<https://perma.cc/4PXS-XJ68>] (“Our mission and hope is to remind you that you’re not alone in your journey, and that mental well-being and a rich life is a possibility for you. Being queer is a rich life meant to be celebrated and centered.”).

487. See U.S. Trademark Application Serial No. 90/229,982 (filed Oct. 1, 2020), Specimen (“Queer Evangelism is a digital marketing think tank with a mission to amplify unheard voices . . .”).

488. See *BLACKLOVEQUEER*, <https://www.blacklovequeer.com> (last visited Sept. 26, 2023) [<https://perma.cc/8EMJ-Y6GF>] (“BlackLoveQueer is a multilevel digital platform designed to promote Black Queer contributions to our world.”).

489. See *ADORATION OF THE QUEER MIND*, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20220121194259/https://www.queermind.com> (last visited Sept. 26, 2023) [<https://perma.cc/E27F-8XU8>] (“Join The Queer Journey. Write. BELIEVE IT. BE YOU. Offering A Space of Encouragement To Discover Your Identity, Love and accept who you are, And Live With Strength, Beauty, And Love!”).

490. See *QUEERPROFS*, <https://www.queerprofs.com> (last visited Sept. 26, 2023) [<https://perma.cc/CJ55-XJ7V>] (“We’re here to provide you with the support and information you need to embrace diversity, equity, and inclusion in a changing world.”).

491. See *Queer Magnolias Podcast*, APPLE PODCASTS, <https://podcasts.apple.com/us/podcast/queer-magnolias-podcast/id1532841025> (last visited Sept. 26, 2023) [<https://perma.cc/NN4Q-KPKM>] (“Each week, we talk about what it was like growing up gay in the South: the trials and tribulations, the joy and the struggles, and how we became who we are today...Queer and FABULOUS!”).

QueerCam	Aug. 24, 2020	90132279	Camilo R. Welch	Affirming ⁴⁹²	No	41	Minnesota	Dead
Queer Competency Certification Embody Emerge	July 29, 2020	90081755	Embody Emerge LLC	Affirming ⁴⁹³	Yes	41	Oregon	Live
Queer Competency Certification	June 15, 2020	90002845	Terra Anderson			41		Dead
Fearless Queer	July 3, 2020	90034932	Adrian Hubbard	Undetermined	No	35	Georgia	Dead
The Queer Agenda	May 27, 2020	88935173, Reg. 6211131	Fitz Games LLC	Affirming ⁴⁹⁴	Yes	28	California	Live
Middle-Aged Queers	Apr. 20, 2020	88878986, Reg. 6247817	Shaun Osburn	Affirming ⁴⁹⁵	Yes	9, 41	California	Live
National Queer Theater	Apr. 9, 2020	88865959, Reg. 6241885	National Queer Theater Inc.	Affirming ⁴⁹⁶	Yes	41	New York	Live
New Queer Literatures	Mar. 29, 2020	88851896	Library 729723 Editions LLC	Affirming ⁴⁹⁷	No	16	California	Dead
Your Queer Career	Feb. 26, 2020	88811228, Reg. 6143998	TopDog Learning Group, LLC	Affirming ⁴⁹⁸	Yes	35	Florida	Live
Queer Kitchen	Feb. 24, 2020	88808444, Reg. 6162668	Queer Kitchen LLC	Affirming ⁴⁹⁹	No	41	California	Live
Queericulum	Dec. 19, 2019	88734133, Reg. 6096243	Comfort & Joy Corp.	Affirming ⁵⁰⁰	Yes	41	California	Live
Queer Disco	Dec. 14, 2019	88727352, Reg. 6160432	Scott Swann	Affirming ⁵⁰¹	Yes	41	Colorado	Live
Queer Planet	Nov. 24, 2019	88704421, Reg. 6231397	Stephen Cogger	Affirming ⁵⁰²	Yes	9	Arkansas	Live
Queer Exchange	Nov. 15, 2019	88694747	Kiara Smith	Affirming ⁵⁰³	No	41	Texas	Dead

492. See U.S. Trademark Application Serial No. 90/132,279 (filed Aug. 24, 2020), Amendment (“Entertainment services, namely, web series and TV show featuring information concerning the lifestyles of gay, lesbian, bi-sexual and transgender people.”).

493. See *Queer Competency Training*, EMBODY EMERGE, <https://embodyemerge.com/online-course-shop/> (last visited Sept. 26, 2023) [<https://perma.cc/WEX9-EF37>] (“Gain the skills, knowledge and reputation you need to serve the LGBTQIA+ community with confidence.”).

494. See THE QUEER AGENDA, Registration No. 6,211,131, Specimen, (“A HILARIOUS QUEER THEMED CARD GAME! MATCH LGBTQ+ QUESTION AND ANSWER CARDS TO FIND THE BEST MATCHES!”).

495. See *generally Middle Aged Queers*, BANDCAMP, <https://middleagedqueers.bandcamp.com/music> (last visited Sept. 26, 2023) [<https://perma.cc/324E-B2PS>] (depicting punk rock band featuring LGBTQ+-related symbolism and language in their songs and marketing).

496. See NATIONAL QUEER THEATER, Registration No. 6,241,885 (“Our mission is to foster and support LGBTQ communities through social justice in the performing arts.”).

497. See LIBRARY 729723, *supra* note 418 (“Library 729723 Editions is an independent press devoted to publishing queer literature, primarily focusing on the gay male voice.”).

498. See YOUR QUEER CAREER, Registration No. 6,143,998, Specimen, (“‘THE GAY LEADERSHIP DUDE’ WANTS TO HELP ANSWER YOUR QUEER CAREER QUESTIONS.”).

499. See *Queer Kitchen*, FACEBOOK, <https://www.facebook.com/queerkitchenevents> (last visited Sept. 26, 2023) [<https://perma.cc/AWQ2-8C2H>] (“Queer Food Pop Up Events Building Queer Community & Green Spaces through -Food-Creativity-Collaboration.”).

500. U.S. Trademark Application Serial No. 88/734,133 (filed Dec. 19, 2019), Specimen (“An all-day, queer-centered educational urban retreat.”).

501. QUEER DISCO, <https://queerdiscodenver.com> (last visited Sept. 26, 2023) [<https://perma.cc/646Q-GJ3V>] (“[A]n all inclusive, safe, judgment free place to bring our community together to experience a [f]reaky, [f]unky, [f]un, [q]ueer [d]isco [d]ance [p]arty!”).

502. U.S. Trademark Application Serial No. 88/704,421 (filed Nov. 24, 2019), Application (“The word ‘Queer’ here is a reclaimed term used in celebration of the LGBT community by a member of the same”).

503. U.S. Trademark Application Serial No. 88/694,747 (filed Nov. 15, 2019), Application (“Queer centered information on providers, businesses and resources. Information, news and commentary in the field of current events relating to the queer/LGBTQIA+ community”).

Southern Queer Playwriting Festival	Oct. 24, 2019	88668116, Reg. 6486966	Richmond Triangle Players	Affirming ⁵⁰⁴	Yes	41	Virginia	Live
Cheers Queers	Aug. 28, 2019	88982613	CQ Holdings, LLC	Undetermined (ITU)	Yes	25	Wyoming	Live
		88596856				33		
The Queer Agenda	Aug. 27, 2019	88595126, Reg. 6196478	Nathan Gilligan	Affirming ⁵⁰⁵	No	41	California	Live
The Official Queer Agenda	Apr. 17, 2019	88390353, Reg. 6072499	The Official Queer Agenda, Nathan Gilligan			35		
Stay Queer as Fuck	Aug. 19, 2019	88583871, Reg. 6078369	Troy White	Affirming ⁵⁰⁶	Yes	14, 18, 25	California	Live
The Social Queer	July 19, 2019	88524415, Reg. 6044300	The Social Queer, LLC	Affirming ⁵⁰⁷	No	41	Washington	Live
Queer Baits Fishing Lures	July 17, 2019	88519107	Bryan Dardeau	Undetermined (ITU)	No	25, 28	Louisiana	Dead
Queer Bonnie Queer Clyde	June 21, 2019	88483879	Noel Druten	Affirming ⁵⁰⁸	No	35	California	Dead
Queer Majority	June 12, 2019	88470827, Reg. 6493881	American Institute of Bisexuality, Inc.	Affirming ⁵⁰⁹	Yes	41	California	Live
Queerdos	May 18, 2019	88436725	Emilie Wapnick	Affirming ⁵¹⁰	Yes	41	Canada	Live
Queer Gear	Apr. 23, 2019	88398408, Reg. 6056527	Queer Gear, LLC	Affirming ⁵¹¹	No	25	Michigan	Live
Queer Eye	Apr. 19, 2019	88393502, Reg. 6211967	Scout Productions, Inc.	Affirming ⁵¹²	Yes	30	California	Live
	Apr. 17, 2019	88390433				9, 14, 25, 41		
Naturally Queer	Apr. 2, 2019	88368239, Reg. 5884260	Jourdan Marie Porter	Affirming ⁵¹³	Yes	35	Pennsylvania	Live

504. SO.QUEER, <https://soqueer.org> (last visited Sept. 26, 2023) [<https://perma.cc/MK4H-CZUM>] (“The So. Queer Playwriting Festival is a competitive, biennial festival of LGBTQ+ works which will lead to the selection of one work by a playwright . . . to inspire and develop new LGBTQ+ musical and non-musical works.”).

505. See Mike Kurov, *The Queer Agenda: Local Drag Collective Celebrates One-Year Anniversary*, OUT VOICES (Feb. 22, 2019), <https://outvoices.us/queer-agenda-march-2019> [<https://perma.cc/X3LT-DHRD>] (drag show created by drag queen Camita Asada in Phoenix, AZ).

506. *About*, LOCKWOOD51, <https://www.lockwood51.com/about> (last visited Sept. 26, 2023) [<https://perma.cc/PU3B-88P5>] (“After 9 years, we are still at it, still employing Queer people and still pushing forward with our Queer agenda.”).

507. U.S. Trademark Application Serial No. 88/524,415 (filed July 19, 2019), Specimen (“The Social Queer is a purely social group for professional queer womxn in the greater Seattle area.”).

508. See Queer Bonnie Queer Clyde, FACEBOOK, <https://www.facebook.com/queerbonniequeerclyde> (last visited Sept. 26, 2023) [<https://perma.cc/Z6AU-MLXB>] (selling LGBTQ+ apparel).

509. *About*, QUEER MAJORITY, <https://www.queermajority.com/about1> (last visited Sept. 26, 2023) [<https://perma.cc/V2PS-3QJN>] (“[W]e believe that sexual and romantic freedoms are for everyone . . . [W]e employ the term ‘queer’ in an intentionally broad sense: to describe sexual, gender, relationship, and intimacy non-conformity. . . . And that such supposed abnormality or ‘queerness’ is not merely okay, but is worth celebrating.”).

510. Emilie Wapnick, COVERFLY, <https://writers.coverfly.com/profile/emiliewapnick> (last visited Sept. 26, 2023) [<https://perma.cc/6L2T-BKB3>] (novel project on a queer teenager “spending time with the other queer kids at her school and find[ing] a community of her own for the first time”).

511. *Our Story*, QUEER GEAR, <https://shopqueergear.com/pages/our-story> (last visited Sept. 26, 2023) [<https://perma.cc/FQC8-PM2N>] (“I’m a queer that makes stuff for queers!”).

512. See SCOUT PRODUCTIONS, <https://scoutproductionsinc.com> (last visited Sept. 26, 2023) [<https://perma.cc/ZEF3-QGJH>] (Netflix’s Queer Eye television show).

513. U.S. Trademark Application Serial No. 88/368,239 (filed Apr. 2, 2019), Application (“Retail store services featuring [LGBTQ] themed clothing, products, and accessories; Mobile retail store services featuring [LGBTQ] themed clothing, products, and accessories; On-line retail gift shops; On-line retail store services featuring a wide variety of consumer goods of others; On-line retail store services featuring [LGBTQ] themed clothing, products, and accessories”).

Queer	Nov. 21, 2018	88202306, Reg. 5775602	Orveda Ltd.	Affirming ⁵¹⁴	Yes	3	United Kingdom	Live
Queer Housing	Oct. 7, 2018	88145694, Reg. 5705650	QueerHousing.org	Affirming ⁵¹⁵	No	38	Colorado	Live
The Queer Witch	Oct. 7, 2018	88145720, Reg. 5870172	Anna J Sullivan	Affirming ⁵¹⁶	Yes	41	Massachusetts	Live
The Queer Dungeoneers	Sept. 12, 2018	88114297	Franklin Falkowski	Affirming ⁵¹⁷	No	9	Washington	Dead
Queer Your Beer	Aug. 6, 2018	88067396	Brown Naff Pitts OmniMedia Inc.	Affirming ⁵¹⁸	Yes	32	District of Columbia	Dead
Queer Nature	July 18, 2018	88043009, Reg. 5690692	Sophia Sinopoulos-Lloyd	Affirming ⁵¹⁹	Yes	41	Colorado	Live
Queer As Me	July 13, 2018	88036470	Queer As Me, LLC	Undetermined (ITU)	Yes	14, 16, 25, 35	Florida	Dead
	Dec. 18, 2016	87272510						
	Dec. 16, 2014	86481417						
	Apr. 4, 2013	85895267						
Fierce Queer	May 24, 2018	87934423	Nikson Mathews	Affirming ⁵²⁰	No	25	Washington	Dead
QUEERDOC	Apr. 23, 2018	87888484, Reg. 5653613	QueerDoc PLLC	Affirming ⁵²¹	No	44	Washington	Live
Pro Black, Pro Queer, Pro Hoe	Apr. 18, 2018	87882403	Brittney Shiller	Affirming ⁵²²	Yes	25	Illinois	Dead

514. See Cassie Steer, *Why Gender Neutral Beauty Brands Aren't a Trend; They're Here to Stay*, GLAMOUR (Oct. 20, 2021), <https://www.glamourmagazine.co.uk/gallery/gender-fluid-beauty-brands> [https://perma.cc/4L35-L28E] (genderless skincare products).

515. Queer Housing, FACEBOOK, <https://www.facebook.com/QueerHousing> (last visited Sept. 26, 2023) [https://perma.cc/L8BD-W2B5] (“[T]he new LGBTQ+ online classifieds website.”).

516. U.S. Trademark Application Serial No. 88/145,720 (filed Aug. 6, 2018), Specimen (“The Queer Witch is a podcast that explores the intersection between queerness and witchcraft.”).

517. *Queer Dungeoneers*, PODBEAN (Sept. 21, 2018), <https://queerdungeoneers.podbean.com> [https://perma.cc/PFT9-4GDS] (“An actual-play Dungeon World podcast about being who you are by being someone different.”).

518. U.S. Trademark Application Serial No. 88/067,396 (filed Aug. 6, 2018), Specimen (“#PridePils”).

519. QUEER NATURE, <https://www.queernature.org> (last visited Sept. 26, 2023) [https://perma.cc/QG8E-NZEB] (“Nature-intimacy, naturalist studies, [&] place-based skills for LGBTQIA+, Two-Spirit, & Non-Binary People and Allies.”) (alteration in original).

520. U.S. Trademark Application Serial No. 87/934,423 (filed May 24, 2018), Application (“[Clothing] for adults, women, men, gender non-binary”).

521. U.S. Trademark Application Serial No. 87/888,484 (filed Apr. 23, 2018), Specimen (“QueerDoc provides queer and gender focused healthcare online.”).

522. See Elizabeth, *supra* note 421 (applicant’s poetry celebrates Black femmes).

Erimus: Pride, Equality, Discovery, Diversity, House of Kiki, Emerald City, Inclusion, Stonewall, Shade, Fierce, Androgyny, Revolution, Rainbow, House of Zie-Hir, On the Pier, Truth, Unity, Victorious, Legendary, Ballroom, Bliss, Kings and Queens, Transitions, Vintage, Prop 69, Realness, Queer Factor, Milky White, Extravaganza, Polari, Fabulously, In the Life, Openness, Chosen, Freedom	Mar. 5, 2018	87820335	Louella E. Johnson	Affirming ⁵²³	No	3	New Jersey	Dead
Indigenous Peoples Black Latino Asian Pacific Islander Arab Multiracial Mixed Brown White Person of Color Woman Child Man Lesbian Gay Bisexual Transgender Person With Disability Elder Poor Refugee Veteran Youth Immigrant Persecuted for Religion Survivor Worker Homeless Undocumented Incarcerated Queer Everyone All	Feb. 27, 2018	87813434	PolicyLink Corp.	Affirming ⁵²⁴	Yes	35, 41	California	Live
queer black boy	Feb. 22, 2018	87806687	Jeffrey Martin	Affirming ⁵²⁵	No	40	Georgia	Dead
The Car Queer	Aug. 18, 2017	87574789	Robert Hunter	Undetermined	No	41	South Carolina	Dead
QUEER GIRL	July 19, 2017	87534016	Queergirl Deborah Masliah	Affirming ⁵²⁶	No	25	California	Dead

523. See U.S. Trademark Application Serial No. 87/820,335 (filed Mar. 5, 2018), Specimen (“The only fragrance house representing the entire global LGBT community.”).

524. See U.S. Trademark Application Serial No. 87/813,434 (filed Feb. 27, 2018), Specimen (calling for activists, organizers, and leaders to build a multiracial coalition.)

525. See @queerblackboy.studios, INSTAGRAM, <https://www.instagram.com/queerblackboy.studios> (last visited Sept. 26, 2023) [<https://perma.cc/3WQF-KHZ4>] (black queer artist studio and praxis agency).

526. Molly Sprayregen, *Meet the Women Behind QueerGirl Events, A Nightlife Company for Queer Women*, FORBES (Mar. 27, 2020, 5:00 PM), <https://www.forbes.com/sites/mollysprayregen/2020/03/27/meet-the-women-behind-queergirl-events-a-nightlife-company-for-queer-women/?sh=4b4c56c57389> [<https://perma.cc/W6K8-72DK>] (QueerGirl is “a company devoted to throwing diverse and culturally relevant events for queer women”).

Queer Money	June 22, 2017	87501613, Reg. 5629649	Debt Free Guys LLC	Affirming ⁵²⁷	Yes	36	Colorado	Live
Queer Plans	June 15, 2017	87490020, Reg. 5694365	P-LifeStyle Global Co.	Affirming ⁵²⁸	Yes	39	Georgia	Live
QueerRo- mance Ink	Apr. 2, 2017	87395631, Reg. 5363328	Mongoose On the Loose Web Design Inc.	Affirming ⁵²⁹	No	35	California	Live
Bedtime Sto- ries for Queer Folks (Printed short stories in the field of queer enter- tainment)	Feb. 20, 2017	87342747	Marc Boone	Affirming ⁵³⁰	No	16	New York	Dead
Wicked Queer	Feb. 15, 2017	87337035, Reg. 5591021	The Trust- tees of the Smith Foun- dation	Affirming ⁵³¹	No	25	Massachu- setts	Live
	Feb. 7, 2017	87326420, Reg. 5305484				41		
Queer Shop- ping Network For the Way We Shop	Aug. 22, 2016	87146099	Colavito Philip Marcello	Affirming ⁵³²	No	35	California	Dead
Community: The Queer Social Net- work	Apr. 20, 2016	87008319	Qommu- nity, LLC	Affirming ⁵³³	No	45	Massachu- setts	Dead
Ex- traqueerical r	Nov. 25, 2015	86831423	Erin Bums	Affirming ⁵³⁴	No	41	New York	Dead
Queers Makin' Beers	Oct. 19, 2015	86792294	Rebecca Sandidge	Affirming ⁵³⁵	No	38	California	Dead
Keep Austin Queer	Sept. 11, 2015	86754085	Keep Austin Queer Laney Gilbert	Affirming ⁵³⁶	No	25	Texas	Live
Queer Sci Fi	July 11, 2015	86690404	Jonathan Scott Coatsworth	Affirming ⁵³⁷	No	9, 16	California	Dead

527. U.S. Trademark Application Serial No. 87/501,613 (filed June 22, 2017), Specimen (“Queer Money Podcast . . . Be empowered with your pink dollars.”).

528. See *About*, QUEERPLANS, <https://queerplans.com/about-us> (last visited Sept. 26, 2023) [<https://perma.cc/FUA3-UY5V>] (describing QueerPlans as a LGBTQ+ travel community, digital platform and event promoter.).

529. See QUEERROMANCE INK, www.queerromanceink.com (last visited Sept. 26, 2023) [<https://perma.cc/Q3DS-5Y6Q>] (“We’re an inclusive library of romance titles across the queer rainbow.”).

530. U.S. Trademark Application Serial No. 87/342,747 (filed Feb. 20, 2017), Application (service provided being “[p]rinted short stories in the field of queer entertainment”).

531. See *About Us*, WICKED QUEER, <https://www.wickedqueer.org/about-us> (last visited Sept. 26, 2023) [<https://perma.cc/2232-ZAA4>] (“Boston’s LGBTQ+ Film Festival (formerly the Boston LGBT Film Festival) was founded in 1984 by film programmer George Mansour.”).

532. U.S. Trademark Application Serial No. 87/146,099 (filed Aug. 22, 2016), Application (“Promoting awareness of Gay charities; . . . Public advocacy to promote awareness of Gay spending power”).

533. U.S. Trademark Application Serial No. 87/008,319 (filed Apr. 20, 2016), Application (“Queer [s]ocial [n]etwork”).

534. U.S. Trademark Application Serial No. 86/831,423 (filed Nov. 25, 2015), Specimen (“[O]nline community for LGBTQIA+ where members can buy and sell event tickets and services in their area.”).

535. @queers_makin_beers, INSTAGRAM, https://instagram.com/queers_makin_beers (last visited Sept. 26, 2023) [<https://perma.cc/3LLY-A8WE>] (“We are a radical gaggle of queer folk making homebrews in Berkeley, CA and Bend, OR.”).

536. Keep Austin Queer, FACEBOOK, <https://www.facebook.com/KeepAustinQueer> (last visited Sept. 26, 2023) [<https://perma.cc/W57V-QZHG>] (“We are a social enterprise dedicated to starting & sustaining a scholarship for queer Austinites.”).

537. *About*, QUEER SCI FI, <https://www.queerscifi.com/about-qsf> (last visited Sept. 26, 2023) [<https://perma.cc/9SN7-6B2H>] (“We’re a blog and website that’s all about LGBT characters in science fiction, fantasy, paranormal and horror fiction. We’re dedicated to promoting the inclusion of LGBT characters in these genres.”).

Queer Pal for the Straight Gal	July 30, 2014	86352632, Reg. 4699581	Jack & Ellie, LLC	Affirming ⁵³⁸	No	45	Ohio	Dead
Tuff Queer	June 26, 2014	86321710, Reg. 5438501	Michael Ellis	Undetermined	Yes	6, 18, 21, 24, 25	North Carolina	Live
queer folk	June 7, 2014	86303370, Reg. 4742269	queer folk, inc. AKA queer folk records, inc.	Affirming ⁵³⁹	Yes	9, 41	Michigan	Live
From Queer to Eternity	Apr. 29, 2014	86264888	Philip Garbarino	Affirming ⁵⁴⁰	No	41	New York	Dead
Queercraft	Mar. 17, 2014	86222624, Reg. 4620679	Beau Hebert	Affirming ⁵⁴¹	No	41	Colorado	Dead
Queer Beer	Feb. 11, 2014	86189843	Odd Otter Brewing Co.	Affirming ⁵⁴²	Yes	32	Washington	Dead
Love Is Queer	Dec. 13, 2013	86143440, Reg. 4568331	Beebop Enterprises Inc.	Affirming ⁵⁴³	No	45	New York	Dead
its not queer to be gay	Oct. 25, 2013	86102389	Philip Huston dba its not queer to be gay	Undetermined	No	25	Canada	Dead
Queer BOIS	Aug. 2, 2013	86027392, Reg. 4510083	Latania McKenzie	Affirming ⁵⁴⁴	No	25	Georgia	Dead
A concoction of all things queer, culture, and current	May 24, 2013	85941854, Reg. 4462433	Kimberley McLeod	Affirming ⁵⁴⁵	No	16	District of Columbia	Dead
HEYQUEER!	May 16, 2013	85933948	Jackalope Hunters LLC	Affirming ⁵⁴⁶	No	45	District of Columbia	Dead
Cheers Queers	Mar. 26, 2013	85886709	New York/Milan LLC	Undetermined (ITU)	Yes	33	California	Dead
Queer Directions	Feb. 6, 2013	85842469	TheHuffington Post.com, Inc.	Affirming ⁵⁴⁷	Yes	41	Virginia	Dead

538. U.S. Trademark Application Serial No. 86/352,632 (filed July 30, 2014), Specimen (“Our goal is to provide a space for these future bff’s [a gay man and a straight woman] to meet each other and form a lasting bond . . . [and] to celebrate diversity, acceptance and equal rights in gay and straight communities one friendship at a time.”).

539. U.S. Trademark Application Serial No. 86/303,370 (filed June 7, 2014), Application (“[F]eaturing and promoting the music, performance art, music performances, stage performances, prerecorded audio and video performances, and artistic expressions of gay, lesbian, bisexual, and transgender artists and musicians and the same of their friends and allies”).

540. U.S. Trademark Application Serial No. 86/264,888 (filed Apr. 29, 2014), Specimen (“*From Queer to Eternity* is a Docu-reality TV series that chronicles the lives of enthusiastic gay and lesbian couples getting married.”).

541. QUEERCRAFT, <https://www.queercraft.net> (last visited Sept. 26, 2023) [<https://perma.cc/X5XG-Z3ES>] (“Queercraft is a gaming community and support network for LGBTQ+ individuals and their allies.”).

542. Kristina Vanous (@Queer Beer), BEHANCE, <https://www.behance.net/gallery/18540323/Queer-Beer> (last visited Sept. 26, 2023) [<https://perma.cc/Y2SE-9YTK>] (“Yes, in case you are wondering, two of the five owners are indeed gay. In fact, they were the very first couple to legally get married in WA state.”).

543. U.S. Trademark Application Serial No. 86/143,440 (filed Dec. 13, 2013), Specimen (“The relationship and social networking site for our community.”).

544. @queerbois, INSTAGRAM, <https://www.instagram.com/queerbois> (last visited Sept. 26, 2023) [<https://perma.cc/VP2R-RJVY>] (“fashion & lifestyle blog for masculine presenting women, trans men & allies.”).

545. U.S. Trademark Application Serial No. 85/941,854 (filed May 24, 2013), Application (“Magazines in the field of LGBT, African American, women content and issues.”).

546. See HEYQUEER!, INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20150801125834/http://heyqueer.com> (last visited Sept. 26, 2023) [<https://perma.cc/66W8-UJPF>] (“The queer dating app you were looking for.”).

547. U.S. Trademark Application Serial No. 85/842,469 (filed Feb. 6, 2013), Application (“Online journals, namely, blogs featuring issues of interest to gay, lesbian, bisexual, and transgender individuals and concerning gay, lesbian, bisexual, and transgender lifestyles.”).

QUEERDANCE	Feb. 4, 2013	85839870	Phoenix Entertainment Worldwide LLC	Undetermined (ITU)	No	35, 36, 41	Pennsylvania	Dead
She-Male (and Shemale)								
None								
Sodomite								
None								
Tranny								
Tranny Housewife	June 12, 2020	88963346, Reg. 6345118	Firehead Entertainment LLC	Affirming ⁵⁴⁸	No	41	Missouri	Live
Hillbilly Tranny Looks	Mar. 22, 2019	88353193	Bobo Marilyn	Undetermined (ITU)	No	45	Ohio	Dead
TrannyBear	Nov. 13, 2013	86117626, Reg. 4651627	Michael Hoefler	Affirming ⁵⁴⁹	No	44	New York	Dead

548. See U.S. Trademark Application Serial No. 88/963,346 (filed June 12, 2020), Specimen (identifying as a transgender OnlyFans account).

549. @deetrannybear, INSTAGRAM, <https://www.instagram.com/deetrannybear> (last visited Sept. 26, 2023 [https://perma.cc/LN4W-Z3TB] (“#TGNC #Trans #Nonbinary”).