

## Tom Brady's "Tom Terrific" U.S. Trademark Applications Thrown For A Loss

Tom Brady may be the greatest NFL quarterback of all time. But his efforts to register a TOM TERRIFIC trademark for T-shirts and posters and sporting cards have been thrown for a loss at the hands of the U.S. Patent and Trademark Office (USPTO). The applications serve as a reminder that U.S. trademark law does not permit marks to be registered if they create a false association with someone else.

Earlier this Summer, news of Brady's trademark applications drew ire from baseball fans, particularly those of the New York Mets team. Hall of Fame pitcher Tom Seaver bore the nickname TOM TERRIFIC during his 20-year major league career, most of which pitching for the Mets, and won baseball's World Championship for the Mets in 1969. One Mets fan (who is also a trademark attorney) went so far as to submit 84 pages to the USPTO of printouts from news articles, encyclopedias and columns referring to Tom Seaver by the nickname "Tom Terrific."

The USPTO took notice of this evidence and rejected the applications because the mark TOM TERRIFIC falsely suggests a connection between Brady and Tom Seaver. Under U.S. trademark law, a mark cannot be registered if the following criteria are satisfied:

1. The mark sought to be registered is the same as or similar to a name, nickname or identity previously used by another person or institution;
2. The mark would be recognized as such, in that it points uniquely and unmistakably to that person or institution;
3. The person or institution identified in the mark is not connected to the products or services identified in the application; and
4. The fame or reputation of the named person is such that a connection with such person would be presumed when the applicant's mark is used on the products.

Here, the USPTO Examining Attorney concluded that Tom Seaver is so well-known by the nickname TOM TERRIFIC that consumers would presume a connection between him and the T-shirts and posters marketed under the TOM TERRIFIC brand. "[T]he mark TOM TERRIFIC points uniquely and unmistakably to Tom Seaver and the fame or reputation of Tom Seaver as "Tom Terrific" is such that a connection between Mr. Seaver and the applied for goods would be presumed." The USPTO has used similar arguments in the past to reject applications to register nicknames of famous people, such as ROYAL KATE for fashion products (based on the fame of Kate Middleton as the Duchess of Cambridge) and TWIGGY for clothing (based on the fame of Leslie Hornby a/k/a Twiggy, the internationally known fashion model and actress).

Brady has 6 months in which to respond to the USPTO and argue his case. Fans of his New England Patriots football team hope he will leave the arguments to his trademark attorneys and focus his efforts on leading the team to another league championship. But the case serves as a reminder that, unless his attorneys can somehow demonstrate that there is a connection between Brady's business endeavors and Tom Seaver, some applications are better off not being filed in the first place.

### **Date Created**

August 26, 2019