

TB Is Headed to TB...and He's Taking His Trademark with Him

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Even though professional sports are on an indefinite and unprecedented hiatus due to the global outbreak of coronavirus, professional athletes are still making moves behind the scenes. In particular, NFL quarterback and six-time Super Bowl champion, Tom Brady (often referred to as “TB”), will be relocating from Boston to Tampa Bay for the upcoming NFL season.

Brady began his NFL career with the New England Patriots and spent 20 seasons with the Patriots under the leadership of Coach Bill Belichick. Together, the two built a dynasty that spawned an impressive list of accomplishments, including the only undefeated 16-game regular season in NFL history, appearances in eight straight AFC Championship games (2011-2018), and six Super Bowl victories in nine appearances.

At the age of 42, and after his longstanding history and unparalleled success with the Patriots, sports fan began to wonder what was next for TB. Will he retire? Or will Brady try his hand for the first time in a non-Patriots uniform? On March 20, 2020, these questions were answered. Brady ended his tenure with the Patriots and signed a two-year, \$50 million contract with the Tampa Bay Buccaneers. Brady’s NFL contract wasn’t the only thing he signed that day. With “TB” now headed to “TB,” Brady seized the opportunity to capitalize on the play on words and [filed a US trademark application](#) for the mark **TB X TB** in connection with various clothing items in Class 25 (App. No. 88/841,801). Tampa Bay also took advantage of the TB connection and included “TB X TB” in a video announcing Brady’s arrival to the Bucs. Presumably, the parties have an agreement in place regarding shared use of the phrase, but the application was filed by Brady’s team.

It seems Brady and the Bucs are not the only ones trying to score rights in “TB Squared.” On March 23, 2020, three days after Brady signed with the Bucs, an individual, Connor Patrick Hegarty, [filed a US trademark application](#) for a stylized version of **TB²** (“TB Squared”) in connection with various clothing items in Class 25 (App. No. 88/844,457). The description of the mark indicates that it is “[i]ntended to be read as ‘TB Squared’,”

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and that the stylized letters and number signify the union between “Tom Brady” and “Tampa Bay.” The application does not contain a statement from Tom Brady providing his consent to register.

There is nothing preventing Hegarty from using “TB” as an abbreviation for “Tampa Bay,” as this is a generic reference to a specific geographic place. However, Hegarty’s use of “TB” as an abbreviation for Tom Brady is more problematic. Although celebrities do not automatically enjoy trademark rights in their names, if the name (or nickname) achieves secondary meaning and is recognized as a source for particular goods or services, then the name can be a protectable trademark.



Brady owns a number of pending trademark applications and existing registrations for the mark **TB12** (both word marks and stylized marks) in connection with an array of goods and services, including clothing. Each registration includes the following statement: “The name, portrait, and/or signature shown in the mark identifies Tom Brady, whose consent to register is made of record.” The TB12 mark has been used in connection with clothing goods since at least as early as 2008, including the type of clothing items claimed in Hegarty’s application. Therefore, Brady’s initials, TB, have come to develop secondary meaning as an indicator of source, separate from reference to Tom Brady as an individual.

Here, Hegarty specifically included “TB” in his TB² trademark as a direct reference to Tom Brady. Such use of TB in connection with goods that Brady offers under the TB mark is likely to mislead consumers into believing that Hegarty’s goods are related to, sponsored by, or somehow affiliated with Brady. Moreover, not only does the inclusion of TB imply a (presumably) false association with Brady, the mark itself, TB², is arguably similar to the TB12 and TB X TB marks, making confusion between the sources even more likely. Although it is too early to tell what the fate of Hegarty’s application will be in the eyes of the United States Patent and Trademark Office (“USPTO”), it would be surprising if Brady’s team didn’t “throw the flag” and challenge Hegarty’s application and any corresponding use of the mark.

Incidentally, this is not the first time Brady has made headlines for his trademark filings. As [previously reported](#) in the TMCA Blog, the USPTO preliminarily refused Brady’s applications for **TOM TERRIFIC** after receiving a letter of protest claiming that “Tom Terrific” is actually the nickname for Tom Seaver, an MLB Hall of Fame Pitcher who played for the New York Mets. Brady had until February 22, 2020, to respond to the refusals but failed to do so. As such, the TOM TERRIFIC applications, as well as TB’s hopes for a nickname with perfect alliteration, are now dead.