

Tom Brady Gets Sacked at the USPTO

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by J. Michael Keyes



Love him or hate him, everyone agrees that NFL Quarterback Tom Brady is terrific, except the USPTO. Earlier this year, Mr. Brady's company filed to register the trademark "Tom Terrific" for t-shirts and various other collectible items. Yesterday, the USPTO rejected those applications. Why did it throw shade at arguably one of the best slingers in the history of the NFL? Apparently because he is not the "original" Tom Terrific. That distinction belongs to another slinger of sorts.

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On August 4, the USPTO received a "letter of protest" from a third party claiming that "Tom Terrific" is actually the nickname for Tom Seaver, an MLB Hall of Fame Pitcher who tossed the New York Mets to a World Series victory in 1969. The letter of protest was apparently packed with evidence demonstrating the "Tom Terrific" moniker is currently enjoyed by Seaver. Section 2(a) of the Lanham Act—at least the portion that is still on the books after the Tam and Brunetti decisions from SCOTUS—prohibits any application that "consists of or comprises matter that may falsely suggest a connection with persons, institutions, beliefs, or national symbols." Based on the evidence in the letter of protest, the USPTO concluded that Brady's trademark would create a false connection with Seaver because Tom Terrific "points uniquely and unmistakably" to him. Seaver 1, Brady 0.

While Tom Terrific 2.0 may be down, he is not out. It is not time for a Hail Mary as the USPTO's decision is only an initial office action. Team Brady will have plenty of time to

amass its own evidence to overcome the rejection. They have until February 22, 2020 to respond. That gives Tom enough time to shoot for one more Super Bowl victory on February 2, and then set his sights on bringing home a trademark victory at the USPTO.