

Blog Post

Municipal Takedown: TTAB Refuses to Register the County of Orange Logos

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The Trademark Trial & Appeal Board (TTAB) affirmed the US Patent & Trademark Office's (PTO) refusal to register two different logo marks filed by California's County of Orange (County) on the ground that they constitute insignia of a municipality.

In 2017, the County applied to register two logo marks. The application described one mark as "a circle with the image of three oranges in front of an orange grove and... mountains with the words 'COUNTY OF ORANGE'... and... 'CALIFORNIA'... [around] the circle" ("Circular Mark"). The second logo mark featured a park ranger badge design that encompassed the Circular Mark in its entirety ("Badge Mark," and together with the Circular Mark, "Marks").



Circular Mark



Badge Mark

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The PTO concluded that the Marks consisted of the insignia of a municipality and, thus, refused registration. In reaching this conclusion, the PTO relied on Trademark Act Section 2(b), 15 U.S.C. § 1052(b), which imposes an absolute bar on registration of a mark that “[c]onsists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.”

On the appeal, the County argued that the proposed Marks do not constitute “insignia” because they were not an “official” seal of the County, and, even if they were, the County is not a “municipality.” The TTAB rejected the County’s arguments and affirmed the PTO’s decision.

The County argued that the proposed Marks do not constitute “insignia” because a two-step approval process must be followed for a seal to become a county’s official seal. The County further argued that it followed the required process and adopted its official seal, a single orange with a stem with three leaves, on August 5, 1889.



Official Seal

The TTAB rejected the County’s arguments. It reasoned that, although the Marks had not undergone the two-step process to become an “official” seal, the County’s prominent and repeated display of the Circular Mark to denote traditional government records, functions, and facilities would reasonably lead members of the general public to perceive the proposed mark as an “insignia” of the County.

For example, the TTAB noted that the Circular Mark is displayed on the official County website, which provides links to various services offered by the County, and on the website for the Clerk-Recorder's office, which manages many official government documents. The TTAB also noted that the Circular Mark appears prominently on signage for County government offices and on maps depicting the location of County offices. Further, the TTAB reasoned that Section 2(b) does not distinguish between "official" and "unofficial" insignia. The TTAB concluded that formal adoption of an "official" seal is not required for insignia to fall under the Section 2(b) bar to registration.

The TTAB also rejected the County's argument that it is not a municipality for Section 2(b) registration purposes. The TTAB relied on the PTO's definition of "municipality" as "[a] political unit, such as a city, town, or village, that is incorporated for local self-government," and third-party evidence from ballotpedia.org identifying the County as a "charter county of the state [recognized] as its own governmental body." The TTAB further noted that the County's own website identifies it as a local governmental authority functioning as a municipality. The TTAB dismissed the County's argument that it is not a municipality under the PTO's definition because the County is not incorporated for local self-government; rather, it was formed specifically by legislative enactment from the State. The TTAB explained that the exact nature and timing of the formation of the County are irrelevant as to Section 2(b) because evidence has shown that the County has some powers of self-government. Therefore, the TTAB concluded that the County is a "municipality" for the limited purpose of determining whether the County may register its proposed Circular Mark under Section 2(b).

Lastly, the TTAB found examples of other trademarks registered by the County containing some of the same elements of the Circular Mark not persuasive because, it reasoned, those prior

registrations were different from the Circular Mark. Accordingly, the TTAB found that the Circular Mark constituted an insignia of a municipality and, therefore, affirmed the PTO's refusal to register it under Section 2(b).

Concerning the Badge mark, the TTAB held that because the Badge Mark comprises an insignia of a municipality as it encompasses the Circular Mark in its entirety, it was also unregistrable.

Although this decision only applies to attempts to register a "flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation," because the TTAB denoted it as precedential, it is worth noting (and blogging).

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