

# CLIENT ALERT

September 22, 2022

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## TTAB'S PRECEDENTIAL OPINION IN *IN RE COUNTY OF ORANGE* AFFIRMS REFUSAL OF REGISTERING ORANGE COUNTY'S UNOFFICIAL INSIGNIA

by Jennifer Ko Craft

### Introduction

On August 4, 2022, the Trademark Trial and Appeal Board (TTAB) affirmed refusals to register two proposed marks for various government related services.

While the County presented some solid arguments, the TTAB's ruling in *In re County of Orange* is consistent with Section 2(b) of the Lanham Act, which deems insignias of municipalities unregistrable. TMEP 1204.02(a) clarifies, "[an] insignia of the United States for purposes of §2(b)...[includes] Seals of Government Agencies."

### A Precedential Case

The key factor that led the TTAB to affirm the Examiner's refusal was how the County used the mark. The Board held that the County's mark -- not being adopted as an "official" seal -- does not preclude its functioning as an insignia within the meaning of Section 2(b). Whether the applicant adopted a charter or not is irrelevant to the Board's determining the applicant is a municipality. In other words, the government's determination of what a seal is and what a municipality is for its purposes is separate from the USPTO's determination of the same.

Using the mark in connection with the County Recorder denotes a service of the government, *not governmental authority* because the government has no authentication or validation process. In that instance, the mark is potentially registerable. However, because the County is also using the mark in connection with the court system, the symbol is clearly representing governmental authority.

*In re County of Orange* is not a clear-cut case because there is a thin line between an insignia that serves as an emblem of governmental authority -- which is unregistrable -- and an insignia that shows a service or facility of the government -- which is registerable. The County should consider revising how it uses the mark (i.e., focusing on a specific service of the government, like a governmental arm that maintains its beaches and parks or its roads). Then, it should be able to register its mark and enforce its rights broadly. Alternatively, the County should register the design as a copyrightable work, which can provide broader rights in some cases.

### In Conclusion

This case will likely have a cooling effect on governmental entities wanting to register their intellectual property, which is unfortunate because it is doable when the correct approach is taken. In fact, opportunistic third parties often utilize logos similar to governmental entities, attempting to dupe the public into thinking they are affiliated with the government when they are not. In those cases, we recommend registration, if possible.

For more information or to find out how our Intellectual Property group can assist with registering your marks, please give us a call.

### ABOUT THE AUTHORS



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