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Thoughts on Applying to Register Trademarks for COVID, CORONAVIRUS, and CORONA

In the past few weeks, you no doubt have heard of persons or entities who have applied to register trademarks with the U.S. Patent and Trademark Office (PTO), which contain the terms COVID, CORONAVIRUS, and variations of the term CORONA. The applications cover various goods and services ranging from apparel to magazines, to financial/venture capital services, to vaccines. This rush to file applications to capitalize on a trending term is not new.

For example, when President Trump used the term “Covfefe” in a late-night tweet, many entrepreneurial spirits quickly filed applications to register the mark for various products. Similarly, many parties filed applications to register the term “Philly Special” seeking to cash in on the Philadelphia Eagles’ successful Super Bowl play for goods and services like food and apparel. None of those marks are registered to date, and most of the applications did not proceed past the examination stage. So, why would a pandemic’s name be any different?

To date, 28 trademark applications have been filed for “COVID” or “COVID-19.” There are 26 applications pending for marks containing the term “CORONAVIRUS,” and approximately 50 recently filed applications for variations of “CORONA.” The first CORONA application appears to have been filed on January 27, 2020, for the mark WUHAN CORONA VAX filed by a Boston biotech company for “vaccines.” Many of the applications were filed for apparel items, and feature marks such as **I♥Covid-19** and CLASS OF COVID-19.

Many of the applicants are individuals and may not understand that the purposes of a trademark are to identify a source of a good or service and to protect consumers from confusingly similar trademarks. Applying to register a common phrase or word for a piece of clothing when many other parties are using a similar phrase or common wording will not result in a registration and will not become the sought-after moneymaker that the individual or even company hopes it will be. Also, many of the applications will never make it past the PTO trademark examiners, let alone make it to registration.

Some dubious examples of recent trademark application filings are the aforementioned distasteful “I heart COVID-19” and equally distasteful COVID-19 INFECTED for t-shirts. Even more dubious, the COVID-19 INFECTED application was filed based on actual use in commerce as of Feb. 14, 2020, a mere month after the first U.S. case of the coronavirus was detected. Given the stringent requirements for showing use in commerce of a trademark, this application will likely fail to proceed beyond examination, as will many of the other applications. As stated, many of the applications filed are for apparel items and filed by individuals hoping to capitalize on being clever. Some commentators have found many of

the filings in poor taste, ill-advised, and a waste of time, and go so far as to say that people should just stop filing applications for marks containing these terms.

But, what about marks such as COVID-VENTURES for venture capital fund management services, filed by a digital health and telemedicine company? What about COVID CARE for Software as a Service (SaaS) for supporting individuals, teams, and organizations responding to crisis and emergency events? How about CORONAVIRUS TAX AMNESTY PROGRAM for tax planning advice and consulting services? None of these marks appear to be offensive or distasteful but are using the terms to describe a feature or purpose of their services. Although none of these groups would have exclusive rights to the terms COVID or

CORONAVIRUS, their designations as a whole, arguably, serve as a source identifier for a particular service and could function as a trademark even if the trademark and service are a result of a deadly worldwide pandemic.

Perhaps most important, the trademark applications for these marks were filed by attorneys likely skilled in trademark law. Many of the applications for apparel items were filed by individuals without an attorney. It would be wise for anyone considering adoption of a COVID, CORONAVIRUS, or CORONA trademark to consult with a trademark practitioner, who can advise on the best course of action for use and registration of such a mark, and better yet, to tell you whether you are wasting your time.



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