

Valentine's Day Greetings!

February 11, 2021

By [William M. Borchard](#)

The past year was truly heartbreaking, and our need to love each other—and life itself--seems more important now than ever.

Bad Covid, LLC d.b.a. Half Full, a Utah company, filed Trademark Application No. 88835791 to register a stylized version of the mark “I [heart] Covid-19” on the Principal Register for “athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms,” claiming use since March 15, 2020.

I ♥ C*vid-19

This mark, standing alone, appears to be in spectacularly bad taste. However, the message the applicant intended to convey is explained by the wording on the t-shirt filed as a specimen of use, which displays the applied-for mark above the words:

No School
No Work
No Problem

Of course, this wording is not part of the applied-for mark.

The Examining Attorney refused registration on the ground that the location of the mark on the front of the shirt, and its relatively large size, made it appear to be a slogan used in a merely decorative manner that would be perceived by consumers as having little or no particular source identifying significance.



The Examining Attorney could not base the refusal on the ground that this mark is in bad taste because of the U.S. Supreme Court decision that the registration of “immoral or scandalous” trademarks cannot be barred because that would violate the Free Speech Clause of the First Amendment. *Iancu v. Brunetti*, No. 18-302, 588 U.S. _____, 139 S. Ct. 2294 (2019)

The Examining Attorney also could not base the refusal on the increasing number of “failure to function” decisions because they generally have concerned marks that express allegiance to a person, place or thing and it would seem unlikely to interpret this mark in that way. Such decisions have included:

- **I LOVE YOU SO MUCH**, *In re Bunkhouse Management, LLC*, Application No. 87539883 (T.T.A.B. January 29, 2021).
- **TEXAS LOVE**, *In re Texas With Love, LLC*, Application No. 87793802 (T.T.A.B. October 29, 2020), reported in our December 2, 2020 [blog post](#).
- **I LOVE YOU**, *In re Peace Love World Live, LLC*, Application No. 86705287 (T.T.A.B. July 23, 2018), reported in our February 14, 2019 [blog post](#).
- **I ♥ DC**, *D.C. One Wholesaler, Inc. v. Jonathan E. Chen*, Consolidated Opposition and Cancellation No. 91199035 (T.T.A.B. October 4, 2016, redesignated as precedent November 9, 2016).



The most famous exception to this line of decisions seems to be the seminal iconic “I [heart] NY” mark designed for New York State by Milton Glaser (who died June 26, 2020 at the age of 91),” Registration No. 5113793 for “promoting the state of New York as a tourist attraction and enhancing its economic development,” claiming use since June 1, 1978.

The Bad Covid, LLC application was declared abandoned on February 3, 2021 for failure to respond to the Office Action rejecting it. Application No. 88835791.

We send our best wishes for health, prosperity and happiness to our clients and friends with our warm hope that we all continue to experience love on this Valentine’s Day and beyond.

For further information, contact [William M. Borchard](#) or your CLL attorney

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Bill advises on domestic and international trademark matters at the highest level. His practice consists of counseling clients and handling domestic and international trademark and copyright matters including clearance, registration, proper use, licensing, contested administrative proceedings and infringement claims.