

FLAG DAY GREETINGS

By William M. Borchard

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On this Flag Day, our country continues to be blessed in so many ways despite its recent and ongoing tribulations. Many of us feel uplifted when we hear country music artist Lee Greenwood singing [GOD BLESS THE USA](#).



Mr. Greenwood filed an application to register GOD BLESS THE USA as a trademark for several items of home décor.

The Examining Attorney refused registration on the increasingly familiar ground that the term GOD BLESS THE USA fails to function as a trademark.

As a fallback, Lee Greenwood requested that the mark be amended to THE LEE GREENWOOD COLLECTION GOD BLESS THE USA, arguing that GOD BLESS THE USA would be commonly recognized as his signature song. The Examining Attorney refused to accept this amendment on the ground that it would materially alter the applied-for mark.

Mr. Greenwood appealed both refusals to the TTAB. In a precedential opinion issued in December 2020, the TTAB affirmed both refusals.

Concerning the applied-for mark, the evidence showed that this phrase was commonly used by many different sources on a vast array of household items shown in over three dozen websites. This common usage rendered it less likely that the public would perceive the phrase as identifying a single commercial source.

Lee Greenwood pointed out that his song "God Bless the USA" had been downloaded at least 2.5 million times, and occupied the first page of a Google search. But the TTAB concluded that, even if consumers were familiar with the song and Mr. Greenwood himself, they might not associate the household items sold under this mark with him or his song when so many third parties offer household items bearing the same wording. Therefore, the TTAB affirmed the conclusion that the mark failed to function as a trademark.

Concerning the proposed amended mark, the Applicant had previously registered the mark THE LEE GREENWOOD COLLECTION for the identical goods, and he merely sought to add it to the originally applied-for mark. The TTAB held that such an addition *may*, but not *must*, be permitted, depending on whether the proposed mark materially alters the applied-for mark so as to create a different commercial impression. This is a question of fact to be evaluated from the viewpoint of an ordinary consumer. The principal concern is to prevent an applied-for mark from serving as a placeholder for later amendments bearing little resemblance to the mark as originally filed. Ownership of a previously registered mark is just one factor to be considered, and it is not an exception to the rule against material alteration.

In this case, the TTAB concluded that the prominent appearance of THE LEE GREENWOOD COLLECTION as the first part of the amended mark would make a substantial difference in connotation and commercial impression, and that the additional seven syllables would create a noticeably different pronunciation. Accordingly, the TTAB affirmed the conclusion that the amended mark was a material alteration of the applied-for mark.

[In Re Lee Greenwood](#), Application No. 87168719 (T.T.A.B. December 1, 2020).

Author's Note: Lee Greenwood could file a fresh application to register the proposed amended mark THE LEE GREENWOOD COLLECTION GOD BLESS THE USA. He might have to adopt a different hang tag since the previously submitted hangtag did not exactly display this mark.

This procedure could sidestep the two grounds on which registration was refused in this case—that the mark as a whole fails to function to indicate source, and that the proposed mark materially alters the applied-for mark. However, it would not achieve the desired result of giving Mr. Greenwood a registration evidencing his exclusive right to use GOD BLESS THE USA by itself as a trademark for the home decor items. That phrase appears to be available to all of us.

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.