

December 28, 2020

# Coronavirus Relief Legislation Creates Substantial Changes to Copyright and Trademark Law

The Consolidated Appropriations Act, 2021, the \$2.3 trillion omnibus spending and coronavirus relief bill signed into law by the President yesterday, includes sections, including the Trademark Modernization Act of 2020 and the Copyright Alternative in Small-Claims Enforcement (or CASE) Act of 2020, that will make substantial changes to trademark and copyright law.

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On the trademark side, the most significant aspects of the Trademark Modernization Act of 2020 are as follows:

- To help clear deadwood from the register, it allows parties to file an *ex parte* “petition to expunge a registration of a mark on the basis that the mark has never been used in commerce on or in connection with some or all of the goods or services recited in the registration” or “petition to reexamine a registration of a mark on the basis that the mark was not in use in commerce on or in connection with some or all of the goods or services recited in the registration on or before the relevant date.” These provisions, however, will require rulemaking by the Patent & Trademark Office to become effective.
- To help protect Trademark Trial & Appeal Board decisions from challenge under the Appointments Clause of the Constitution (and, specifically, in view of the controversial *Arthrex* patent decision by the United States Court of Appeals for the Federal Circuit), it grants the Director of the U.S. Patent and Trademark Office “the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board.”
- To restore a presumption eroded by recent case law, it confirms that a plaintiff seeking an injunction “shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction or upon a finding of likelihood of success on the merits for a violation identified in this subsection in the case of a motion for a preliminary injunction or temporary restraining order.”

On the copyright side, the CASE Act creates a small claims court, the Copyright Claims Board, “which shall serve as an alternative forum in which parties may voluntarily seek to resolve certain copyright claims regarding any category of copyrighted work.” (Again, regulations will be required to implement this new forum and process.) Damages will be capped at \$15,000 per work infringed or \$30,000 total, excluding attorneys’ fees and costs.

In addition, an amendment to criminal copyright law makes it a felony, punishable by up to 10 years in prison, to provide a digital transmission service that “(1) is primarily designed or provided for the purpose of publicly performing works protected [by copyright] by means of a digital transmission without the authority of the copyright owner or the law; (2) has no commercially significant purpose or use other than to publicly perform works protected [by copyright law] by means of a digital transmission without the authority of the copyright owner or the law; or (3) is intentionally marketed by or at the direction of that person to promote its use in publicly performing works protected [by copyright] by means of a digital transmission without the authority of the copyright owner or the law.”