

111TH CONGRESS
1ST SESSION

H. R. 3499

To amend the Trademark Act of 1946 to allow civil actions against persons who use trademarks that are misleading as to the origin of goods in certain cases.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. MAFFEI introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Trademark Act of 1946 to allow civil actions against persons who use trademarks that are misleading as to the origin of goods in certain cases.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trademark Protection
5 Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) Trademarks allow quick identification of a
9 seller’s product, and can become an indicator of a

1 product's quality. Thus, a trademarked good may
2 command a premium in the marketplace because of
3 its reputation.

4 (2) Trademarks that describe some feature or
5 quality of the goods or that are based on someone's
6 name or a geographic term are considered to be
7 "weak", and thus are not protectable under trade-
8 mark law. However, once the trademark owner can
9 demonstrate substantial sales, advertising, or other
10 public awareness of a weak trademark, the trade-
11 mark will be considered distinctive and can be reg-
12 istered with the United States Patent and Trade-
13 mark Office (USPTO).

14 (3) Syracuse China was an upstate New York
15 manufacturer in the city of Syracuse. The company
16 was founded in 1871 as the Onondaga Pottery Co.
17 and was one of the last major china makers in the
18 United States. On April 9, 2009, after more than
19 130 years in business, Libbey Inc. (of Toledo, Ohio)
20 halted production in Syracuse, eliminating 275 local
21 jobs. Libbey plans to continue selling dinnerware
22 under the name "Syracuse China" even after they
23 stop production at the New York-based plant, but
24 the company will manufacture the product in other
25 countries and import them into the United States.

1 **SEC. 3. AMENDMENTS TO TRADEMARK ACT.**

2 (a) FALSE DESIGNATIONS OF ORIGIN.—Section
3 43(a)(1) of the Act entitled “An Act to provide for the
4 registration and protection of trademarks used in com-
5 merce, to carry out the provisions of certain international
6 conventions, and for other purposes”, approved July 5,
7 1946 (commonly referred to as the “Trademark Act of
8 1946”; 15 U.S.C. 1125(a)(1)), is amended—

9 (1) in subparagraph (A), by striking “or” after
10 the comma at the end;

11 (2) by redesignating subparagraph (B) as sub-
12 paragraph (C); and

13 (3) by inserting after subparagraph (A) the fol-
14 lowing:

15 “(B) is misleadingly misdirective as to origin,
16 or”.

17 (b) DEFINITIONS.—Section 45 of such Act (15
18 U.S.C. 1127) is amended by inserting after the definition
19 of “Internet” the following:

20 “The term ‘misleadingly misdirective as to origin’ re-
21 fers to the use of a trademark, which has as an exclusive
22 element the name of a State or municipality within a
23 State, on or in connection with goods that are not or are
24 no longer produced in whole or in part in such State or
25 municipality or that do not contain a component produced
26 in such State or municipality.”.

1 **SEC. 4. EFFECTIVE DATE.**

2 The amendments made by this Act apply to any civil
3 action brought on or after the date of the enactment of
4 this Act, with respect to any cause of action arising on
5 or after that date.

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