

119TH CONGRESS
2D SESSION

H. R. 10025

To amend the Trademark Act of 1946 to clarify the applicability of Federal trademark law in the area of digital replicas of identifying characteristics of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 2026

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

A BILL

To amend the Trademark Act of 1946 to clarify the applicability of Federal trademark law in the area of digital replicas of identifying characteristics of individuals, and for other purposes.

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 “Preventing Abuse of
5 Digital Replicas Act”.

6 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Recent advances in artificial intelligence
2 (AI) technology, including generative AI technology,
3 represent an important opportunity for continued
4 technological leadership by the United States in a
5 critical and emerging technology area.

6 (2) Leadership in AI development will be vital
7 for the United States economy and the competitive-
8 ness of American businesses abroad, as well as for
9 the national security of the United States.

10 (3) Excessive regulation of AI technology devel-
11 opment and applications would hinder their advance-
12 ment and place the United States at a disadvantage
13 compared to strategic competitors, including the
14 People's Republic of China.

15 (4) AI technology and its myriad applications
16 are already subject to numerous existing laws and
17 regulations, including at the Federal level, which
18 should be considered when determining whether fur-
19 ther legislation or regulation is necessary.

20 (5) AI technology is already starting to trans-
21 form numerous industries, create new industries and
22 markets, and contribute to countless new products
23 and services that benefit American consumers and
24 consumers abroad, including with respect to health

1 care, communications, transportation and mobility,
2 education, and entertainment.

3 (6) While AI technology will provide many ben-
4 efits to Americans, it also presents significant risks
5 to individuals and society in general, one of which is
6 the abuse of “deepfakes” and other digital replicas.

7 (7) The internet is already plagued with count-
8 less advertisements and other media using unauthor-
9 ized, AI-generated digital replicas of individuals to
10 falsely imply those individuals’ endorsement of var-
11 ious products, services, businesses, and other enti-
12 ties.

13 (8) Abusive use of an unauthorized digital rep-
14 lica to fraudulently ascribe endorsement or other
15 statements to a person without his or her knowledge
16 or consent can cause tremendous distress and inflict
17 serious harm on that person as well as his or her
18 reputation, dignity, and livelihood.

19 (9) False endorsements, advertisements, or
20 other commercial speech or promotion using unau-
21 thorized AI-generated digital replicas can also cause
22 substantial confusion and harm to consumers, in-
23 cluding by fraudulently inducing them to purchase
24 and use dangerous products that pose risks to their
25 health and safety based on the consumers’ mistaken

1 belief that a trusted individual endorsed the prod-
2 ucts.

3 (10) Section 43 of the Trademark Act of 1946
4 already provides a cause of action for the improper
5 use in commerce of a replica of a person's name,
6 image, likeness, signature or device, voice, logo, etc.

7 (11) Some individuals have encountered dif-
8 ficulties in some jurisdictions in protecting their
9 rights via section 43, such as due to their lack of
10 general fame or their lack of the resources necessary
11 to gather sufficient evidence of consumer confusion,
12 as may be required under the case law of certain ju-
13 risdictions.

14 (12) Due to the seriousness of the potential
15 harms and the high risk of consumer confusion when
16 the prohibited activity involves the use of an iden-
17 tical or indistinguishable digital replica of an individ-
18 ual's face or voice or other identifying personal char-
19 acteristics, the amendments to section 43 of the
20 Trademark Act of 1946 in this Act are necessary to
21 provide protection against such abuses throughout
22 the country.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that the Trademark Act of 1946 should remain con-
25 strained to its historical scope, prevent the improper re-

1 capture of works in the public domain, and avoid con-
2 flicting with copyright laws that govern primarily creative
3 expression, including when aided by AI technology such
4 as in films depicting historical figures or music that sam-
5 ples preexisting audio.

6 **SEC. 3. APPLICABILITY OF FEDERAL TRADEMARK LAW IN**
7 **THE AREA OF DIGITAL REPLICAS OF IDENTI-**
8 **FYING CHARACTERISTICS OF INDIVIDUALS.**

9 (a) IN GENERAL.—Section 43(a) of the Trademark
10 Act of 1946 (15 U.S.C. 1125) is amended by adding at
11 the end the following:

12 “(4) In a civil action brought pursuant to para-
13 graph (1)(A), the court shall apply a rebuttable pre-
14 sumption that the use is likely to cause confusion,
15 or to cause mistakes, or to deceive as to the affili-
16 ation, connection, or association of such person with
17 another person, or as to the origin, sponsorship, or
18 approval of his or her goods, services, or commercial
19 activities by another person, if—

20 “(A) the claim asserted under paragraph
21 (1)(A) is for a use of a digital replica by a per-
22 son on or in connection with any goods or serv-
23 ices, or any container for goods; and

1 “(B) the person bringing the civil action
2 expressly invokes the rebuttable presumption in
3 a pleading.

4 “(5) The rebuttable presumption in paragraph
5 (4) shall not be available in a civil action brought
6 pursuant to paragraph (1)(A) for the use of a digital
7 replica on or in connection with any goods or serv-
8 ices, or any container for goods—

9 “(A) for any claim asserted under para-
10 graph (1)(A) for indirect liability;

11 “(B) if the use is in an expressive work or
12 in promotional material for that expressive
13 work; or

14 “(C) if the use is otherwise protected by
15 the First Amendment to the Constitution of the
16 United States.

17 “(6) With the exception of relief sought under
18 sections 32 and 43(c) of this Act, section 501 of title
19 17, and section 271 of title 35, a person may not
20 seek relief under any other provision of Federal,
21 State, local, or municipal law for any use of a digital
22 replica for which the person files a civil action as-
23 serting liability under this section and expressly in-
24 vokes the rebuttable presumption in paragraph (4)
25 in a pleading.

1 “(7) This subsection shall be considered a law
2 pertaining to intellectual property for the purposes
3 of section 230(e) of the Communications Act of
4 1934 (47 U.S.C. 230).

5 “(8) In this subsection—

6 “(A) the term ‘digital replica’ means a
7 computer-generated representation that is iden-
8 tical to, or substantially indistinguishable from,
9 an identifying characteristic of a subject person,
10 who at the time of the use of the representation
11 is a living individual human being, where—

12 “(i) the identifying characteristic is an
13 image, voice, or likeness of the subject per-
14 son, which is distinctive to the subject per-
15 son such that the use of such characteristic
16 is likely to be associated with the subject
17 person and no other person by reasonable
18 and ordinary participants in the relevant
19 industry or market; and

20 “(ii) based on the representation
21 itself, it is apparent to reasonable and or-
22 dinary participants in the relevant industry
23 or market that the purpose of the rep-
24 resentation, in whole or in part, was to du-

1 plicate the identifying characteristic of the
2 subject person; and

3 “(B) the term ‘relevant industry or mar-
4 ket’ means the industry or market for the goods
5 or services that are the subject of the civil ac-
6 tion brought pursuant to paragraph (1)(A).”.

7 (b) RULE OF CONSTRUCTION.—Nothing in this Act,
8 or the amendments made by this Act, may be construed
9 so as to limit the scope of section 43 of the Trademark
10 Act of 1946 (15 U.S.C. 1125) as such section existed prior
11 to the enactment of this Act.

12 (c) APPLICATION.—This Act, and the amendments
13 made by this Act, shall apply only to a civil action—

14 (1) brought pursuant to section 43(a) of the
15 Trademark Act of 1946 after the date of the enact-
16 ment of this Act; and

17 (2) for the use of a digital replica on or in con-
18 nection with any goods or services, or any container
19 for goods, after the date of the enactment of this
20 Act.

21 (d) SEVERABILITY.—If any provision of this Act, or
22 the application thereof to any person or circumstance, is
23 held invalid, the remainder of the Act, and the application
24 of such provision to other persons or circumstances shall
25 not be affected thereby.

1 (e) DEFINITION.—In this section, the term “Trade-
2 mark Act of 1946” means the Act entitled “An Act to
3 provide for the registration and protection of trademarks
4 used in commerce, to carry out the provisions of certain
5 international conventions, and for other purposes”, ap-
6 proved July 5, 1946.

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