

Finance be authorized to meet during the session on Wednesday, March 8, 2006, at 10 a.m., in 215 Dirksen Senate Office Building, to hear testimony on "Taking a checkup on the nation's health care tax policy: a prognosis".

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, March 8, 2006, at 10 a.m. to hold a hearing on Nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations' Subcommittee on Western Hemisphere, Peace Corps, and Narcotics Affairs be authorized to meet during the session of the Senate on Wednesday, March 8, 2006, at 2:30 p.m. to hold a hearing on The Impact on Latin America of the American Servicemembers' Protection Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR,
AND PENSIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions meet in executive session during the session of the Senate on Wednesday, March 8, 2006, at 10 a.m. in SD-430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, March 8, 2006, at 9:30 a.m. for a hearing titled, "Hurricane Katrina: Recommendations for Reform."

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, March 8, 2006, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct a hearing on S. 2078, Indian Gaming Regulatory Act Amendments of 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Wednesday, March 8, 2006, at 9:30 a.m. in Senate Dirksen Building Room 226.

Agenda

I. Nominations: Steven G. Bradbury to be an Assistant Attorney General for the Office of Legal Counsel; John F. Clark to be Director of the United States Marshals Service; Donald J.

DeGabrielle, Jr. to be U.S. Attorney for the Southern District of Texas; John Charles Richter to be U.S. Attorney for the Western District of Oklahoma; Amul R. Thapar to be U.S. Attorney for the Eastern District of Kentucky; Mauricio J. Tamargo to be Chairman of the Foreign Claims Settlement Commission of the United States.

II. Bills: S. , Comprehensive Immigration Reform [Chairman's Mark]; S. 1768, a bill to permit the televising of Supreme Court proceedings; SPECTER, LEAHY, CORNYN, GRASSLEY, SCHUMER, FEINGOLD, DURBIN; S. 829, Sunshine in the Courtroom Act of 2005; GRASSLEY, SCHUMER, CORNYN, LEAHY, FEINGOLD, DURBIN, GRAHAM, DEWINE, SPECTER; S. 489, Federal Consent Decree Fairness Act; ALEXANDER, KYL, CORNYN, GRAHAM, HATCH; S. 2039, Prosecutors and Defenders Incentive Act of 2005; DURBIN, SPECTER, DEWINE, LEAHY, KENNEDY, FEINSTEIN, FEINGOLD; S. 2292, A bill to provide relief for the Federal judiciary from excessive rent charges; SPECTER, LEAHY, CORNYN, FEINSTEIN, BIDEN.

III. Matters: S.J. Res. 1, Marriage Protection Amendment; ALLARD, SESSIONS, KYL, HATCH, CORNYN, COBURN, BROWNBACK.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on March 8, 2006 at 2:30 p.m. to hold a closed briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION AND INTERNATIONAL SECURITY

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Federal Financial Management, Government Information, and International Security be authorized to meet on Wednesday, March 8, 2006, at 2:30 p.m. for a hearing regarding "Crime Victims Fund Rescission: Real Savings or Budget Gimmick?"

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON INTERNATIONAL TRADE AND FINANCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on International Trade and Finance be authorized to meet during the session of the Senate on March 8, 2006, at 10 a.m., to conduct a hearing on "Reauthorization of the Export-Import Bank of the United States."

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TRADE, TOURISM, AND ECONOMIC DEVELOPMENT

Mr. LOTT. Mr. President, I ask unanimous consent that the subcommittee on Trade, Tourism, and Economic Development be authorized to meet on Wednesday, March 8, 2006, at 2:30 p.m., on the "Impact of Piracy and Counterfeiting of American Goods and Intellectual Property in China."

The PRESIDING OFFICER. Without objection, it is so ordered.

TRADEMARK DILUTION REVISION
ACT OF 2006

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 366, H.R. 683.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 683) to amend the Trademark Act of 1946 with respect to dilution by blurring or tarnishment.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 683

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.]

[(a) SHORT TITLE.—This Act may be cited as the "Trademark Dilution Revision Act of 2005".

[(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.).

[SEC. 2. DILUTION BY BLURRING; DILUTION BY TARNISHMENT.]

[Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended—

[(1) by striking subsection (c) and inserting the following:

["(c) DILUTION BY BLURRING; DILUTION BY TARNISHMENT.—

["(1) INJUNCTIVE RELIEF.—Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

["(2) DEFINITIONS.—(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

["(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

["(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

["(iii) The extent of actual recognition of the mark.

["(B) For purposes of paragraph (1), 'dilution by blurring' is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is

likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

“(i) The degree of similarity between the mark or trade name and the famous mark.

“(ii) The degree of inherent or acquired distinctiveness of the famous mark.

“(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

“(iv) The degree of recognition of the famous mark.

“(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

“(vi) Any actual association between the mark or trade name and the famous mark.

“(C) For purposes of paragraph (1), ‘dilution by tarnishment’ is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

“(3) EXCLUSIONS.—The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

“(A) Fair use of a famous mark by another person in comparative commercial advertising or promotion to identify the competing goods or services of the owner of the famous mark.

“(B) Fair use of a famous mark by another person, other than as a designation of source for the person’s goods or services, including for purposes of identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

“(C) All forms of news reporting and news commentary.

“(4) ADDITIONAL REMEDIES.—In an action brought under this subsection, the owner of the famous mark shall be entitled only to injunctive relief as set forth in section 34, except that, if—

“(A) the person against whom the injunction is sought did not use in commerce, prior to the date of the enactment of the Trademark Dilution Revision Act of 2005, the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment, and

“(B) in a claim arising under this subsection—

“(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark, or

“(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark,

the owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36, subject to the discretion of the court and the principles of equity.

“(5) OWNERSHIP OF VALID REGISTRATION A COMPLETE BAR TO ACTION.—The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this Act shall be a complete bar to an action against that person, with respect to that mark, that is brought by another person under the common law or a statute of a State and that seeks to prevent dilution by blurring or dilution by tarnishment, or that asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.”; and

“(2) in subsection (d)(1)(B)(i)(IX), by striking “(c)(1) of section 43” and inserting “(c)”.

SEC. 3. CONFORMING AMENDMENTS.

“(a) MARKS REGISTRABLE ON THE PRINCIPAL REGISTER.—Section 2(f) of the Trademark Act of 1946 (15 U.S.C. 1052(f)) is amended—

“(1) by striking the last two sentences; and

“(2) by adding at the end the following: “A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be refused registration only pursuant to a proceeding brought under section 13. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be canceled pursuant to a proceeding brought under either section 14 or section 24.”.

“(b) OPPOSITION.—Section 13(a) of the Trademark Act of 1946 (15 U.S.C. 1063(a)) is amended in the first sentence by striking “as a result of dilution” and inserting “the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment”.

“(c) CANCELLATION.—Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) is amended, in the matter preceding paragraph (1)—

“(1) by striking “, including as a result of dilution under section 43(c),”; and

“(2) by inserting “(A) for which the constructive use date is after the date on which the petitioner’s mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), or (B) on grounds other than dilution by blurring or dilution by tarnishment” after “February 20, 1905”.

“(d) MARKS FOR THE SUPPLEMENTAL REGISTER.—The second sentence of section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended to read as follows: “Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

“(1) for which the effective filing date is after the date on which such person’s mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), or

“(2) on grounds other than dilution by blurring or dilution by tarnishment,

such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration.”.

“(e) DEFINITIONS.—Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by striking the definition relating to “dilution”.]

SECTION 1. SHORT TITLE.

“(a) SHORT TITLE.—This Act may be cited as the “Trademark Dilution Revision Act of 2006”.

“(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. DILUTION BY BLURRING; DILUTION BY TARNISHMENT.

Section 43 of the Trademark Act of 1946 (15 U.S.C. 1125) is amended—

(1) by striking subsection (c) and inserting the following:

“(c) DILUTION BY BLURRING; DILUTION BY TARNISHMENT.—

“(1) INJUNCTIVE RELIEF.—Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

“(2) DEFINITIONS.—(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

“(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.

“(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

“(iii) The extent of actual recognition of the mark.

“(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

“(B) For purposes of paragraph (1), ‘dilution by blurring’ is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

“(i) The degree of similarity between the mark or trade name and the famous mark.

“(ii) The degree of inherent or acquired distinctiveness of the famous mark.

“(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

“(iv) The degree of recognition of the famous mark.

“(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

“(vi) Any actual association between the mark or trade name and the famous mark.

“(C) For purposes of paragraph (1), ‘dilution by tarnishment’ is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

“(3) EXCLUSIONS.—The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

“(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person’s own goods or services, including use in connection with—

“(i) advertising or promotion that permits consumers to compare goods or services; or

“(ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

“(B) All forms of news reporting and news commentary.

“(C) Any noncommercial use of a mark.

“(4) BURDEN OF PROOF.—In a civil action for trade dress dilution under this Act for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that—

“(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

“(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

“(5) ADDITIONAL REMEDIES.—In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 34. The owner of the famous mark shall also be entitled to the remedies set forth in sections 35(a) and 36, subject to the

discretion of the court and the principles of equity if—

“(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after the date of enactment of the Trademark Dilution Revision Act of 2006; and

“(B) in a claim arising under this subsection—

“(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or

“(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

“(6) OWNERSHIP OF VALID REGISTRATION A COMPLETE BAR TO ACTION.—The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this Act shall be a complete bar to an action against that person, with respect to that mark, that—

“(A)(i) is brought by another person under the common law or a statute of a State; and

“(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or

“(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

“(7) SAVINGS CLAUSE.—Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.”; and

(2) in subsection (d)(1)(B)(i)(IX), by striking “(c)(1) of section 43” and inserting “(c)”.

SEC. 3. CONFORMING AMENDMENTS.

(a) MARKS REGISTRABLE ON THE PRINCIPAL REGISTER.—Section 2(f) of the Trademark Act of 1946 (15 U.S.C. 1052(f)) is amended—

(1) by striking the last two sentences; and

(2) by adding at the end the following: “A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be refused registration only pursuant to a proceeding brought under section 13. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c), may be canceled pursuant to a proceeding brought under either section 14 or section 24.”.

(b) OPPOSITION.—Section 13(a) of the Trademark Act of 1946 (15 U.S.C. 1063(a)) is amended in the first sentence by striking “as a result of dilution” and inserting “the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment”.

(c) CANCELLATION.—Section 14 of the Trademark Act of 1946 (15 U.S.C. 1064) is amended, in the matter preceding paragraph (1) by striking “, including as a result of dilution under section 43(c),” and inserting “, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 43(c),”.

(d) MARKS FOR THE SUPPLEMENTAL REGISTER.—The second sentence of section 24 of the Trademark Act of 1946 (15 U.S.C. 1092) is amended to read as follows:

“Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

“(1) for which the effective filing date is after the date on which such person’s mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 43(c); or

“(2) on grounds other than dilution by blurring or dilution by tarnishment, such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration.”.

(e) DEFINITIONS.—Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127) is amended by striking the definition relating to the term “dilution”.

Mr. LEAHY. Mr. President, I am pleased that today the Senate is going to pass an important piece of legislation, the Trademark Dilution Revision Act, HR 683. The principal purpose of this law is to clarify Congress’s intentions when it first passed the Federal Trademark Dilution Act over a decade ago.

In 2003, the Supreme Court decided the case of Moseley v. V Secret Catalogue, Inc. The Court held that trademark holders had to show actual harm, not the likelihood of harm, from dilution before they could seek injunctions. As an original author and sponsor of the act, I know firsthand that this is contrary to what Congress intended when it passed the dilution statute. What we did intend was to stop diluting before actual harm could be realized and the value of any reputable trademark debased.

H. R. 683 makes clear Congress’s intent and corrects the law to provide that owners of famous trademarks can seek injunctions against anyone who attempts to use a mark that is likely to cause dilution. It also affords the court the ability to consider “all relevant factors” when determining whether a mark is “famous.” However, this legislation not intended to provide for injunctive or other relief against legitimate, third party trade in products manufactured under authority of the U.S. trademark owner of the distinctive, famous mark.

Furthermore, Senator HATCH and I were successful in including language that definitively shelters important constitutionally protected first amendment freedoms from being caught up in the liability net.

I thank Senators HATCH and SPECTER for their support in creating and pass-

ing this important bipartisan legislation.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (H.R. 683), as amended, was read the third time and passed.

ORDERS FOR THURSDAY, MARCH 9, 2006

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, March 9. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period for the transaction of morning business with Senators being permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, as we just heard, we were forced to file cloture on the lobbying reform bill. Under regular order that vote will occur on Friday morning unless and we intend to work out some other agreement.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:01 p.m., adjourned until Thursday, March 9, 2006, at 9:30 a.m.