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Herbert C. Wamsley

July 31, 2012

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
B-351 Rayburn House Office Building
Washington, D.C. 20515

RE: IPO's Support for H.R. 6215, To amend the Trademark Act of 1946 to correct an error in the provisions relating to remedies for dilution

Dear Chairman Smith and Ranking Member Conyers:

Intellectual Property Owners Association (IPO) writes to express its support for H.R. 6215, a bill that would correct a drafting error in Section 43(c)(6) of the Lanham Act that may prevent owners of famous marks from enforcing their trademark rights against diluting marks.

IPO is a trade association representing companies and individuals in all industries and fields of technology who own, or are interested in intellectual property rights. IPO's membership includes more than 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members.

As the Trademark Dilution Revision Act of 2006 (TDRA) made its way through the legislative process, a section was renumbered, resulting in a provision immunizing owners of federal trademark registrations from all dilution claims – even those based in federal law. As currently drafted, section 43(c)(6) of the Lanham Act (15 U.S.C. § 1125(c)(6)) reads such that ownership of a federal trademark registration is a complete bar to an action against the trademark owner that: A) is brought by another person under the common law or state statute 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.

Reviewing the structure of § 43(c)(6), subsection (A) bars only state law dilution claims. However, subsection (B) contains no such limitation. Consequently, in its entirety, § 43(c)(6) appears to bar all types of dilution claims, both state and federal, which stands to significantly harm owners of famous marks in their efforts to enforce their trademark rights using a federal dilution claim.

We believe this result is contrary to the history and intent behind the TDRA. Legislative history clearly shows that the TDRA was intended to expand the federal registration defense to protect against state law dilution claims only. IPO believes that H.R. 6215 makes the necessary corrections to conform this section to original legislative

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intent and restore to owners of famous marks the full scope of protection to which they are entitled under the Lanham Act.

Thank you for your interest in this important issue. IPO supports H.R. 6215 and stands ready to assist the Committee in any way it can.

Sincerely,

A handwritten signature in cursive script that reads "Herbert C. Wamsley". The signature is written in black ink and is positioned below the word "Sincerely,".

Herbert C. Wamsley
Executive Director