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The Consolidated Appropriations Act Provides Significant Changes to Trademark and Copyright Laws

Legal Update

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Beyond coronavirus-related provisions, the Consolidated Appropriations Act (the Act), which was signed into law on December 27, 2020, contains significant changes to trademark and copyright laws, including:

- Establishing ex parte procedures to seek expungement and reexamination of a registered trademark for non-use; and
- Establishing a copyright small-claims tribunal.

Trademarks

The Trademark Modernization Act establishes an ex parte procedure for expunging registrations that have never been used in commerce. This procedure may be initiated by anyone (not just interested parties) or the U.S. Patent and Trademark Office itself. This procedure will be available for registrations that are between three and ten years old and will help clear the register of dead trademarks.

The Trademark Modernization Act also establishes an ex parte procedure for reexamining registrations that were not used in commerce prior to the relevant registration date. This procedure may be initiated by anyone (not just interested parties) or the U.S. Patent and Trademark Office itself. This procedure will be available for registrations that are less than five years old and, like the expungement procedure, will help clear the register of dead trademarks.

Copyrights

The Copyright Alternative in Small-Claims Enforcement Act of 2020 establishes a three-officer panel within the U.S. Copyright Office to hear claims for copyright infringement, a declaration of non-infringement, and claims for misrepresentations in Digital Millennium Copyright Act (DMCA) takedown notices and counter-notices, as well as related counterclaims. Parties may not seek more than \$30,000 in one proceeding. This small-claims tribunal provides a less expensive and quicker forum for copyright disputes.

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In short, the 5,593-page Act imposes sweeping developments for trademark and copyrights laws, and the impact of these changes will be closely monitored in the coming years.

For more information, contact a member of the Advertising, Marketing & Trademark Group.