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ACTION Remarks by Mr. Kastenmeier

HEARINGS ON H.R. 3685, RELATING TO TRADEMARK LAW

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KASTENMEIER) is recognized for 5 minutes.

● Mr. KASTENMEIER. Mr. Speaker, the Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice will hold hearings on October 17 and 18 on H.R. 3685, to amend the Lanham Trademark Act to deny the Federal Trade Commission authority to apply for the cancellation of registered trademarks solely on the ground that such trademarks have become the common descriptive names of articles or substances.

It is especially appropriate that the Judiciary Committee and its trademark subcommittee examine carefully at this time the issues raised in H.R. 3685, since they have found their way into other legislation not specifically directed at trademark policy, being processed by other committees which have not had experience with this rather technical area of the law.

The statute in question is part of the Lanham Trademark Act, which was enacted in 1946. The trademark law has historically fallen within the jurisdiction of the Committee on the Judiciary, as have the patent and copyright laws which also grant limited monopoly rights to creators of intellectual property.

Unlike the patent and copyright laws, the trademark law does not limit the number of times a particular mark can be renewed. Thus, trademarks may remain under monopoly control for extended periods. For this reason special provisions have been written into the trademark statute which permit cancellation of marks under certain circumstances. The right to petition for the cancellation of a mark is vested under 15 U.S.C. 1064 in "any person who believes that he is or will be damaged by the registration of a mark * * *". In writing the Lanham Act in 1946, the Congress understood that there may be cases in which specific individuals or corporate persons will not perceive sufficient damage to cause them to expend the time and money to seek to cancel a registration which no longer meets the requirements of the act. However, the general public interest may be adversely affected in these cases. For this reason, the Federal Trade Commission was empowered to act as a public counsel for the purpose of initiating review of a trademark registration under certain circumstances.

It is important to keep in mind that the Federal Trade Commission may not itself cancel a trademark registration; it may merely initiate review of an existing trademark by the Patent and Trademark Office. In reviewing the validity of a mark, the Patent and Trademark Office must apply specific criteria set forth in the law.

Any limitation on the authority of the Federal Trade Commission to initiate review by the Patent and Trademark Office raises serious policy issues with respect to the structure of trademark law itself. For example, if the Federal Trade Commission is not properly performing its public counsel role, perhaps another Government agency should be assigned this task. It may be possible that the solution would be to place a definite limited term on trademarks, similar to the terms now a part of patent and copyright law.

These are all questions which fall within the unique jurisdictional expertise of the Committee on the Judiciary, which has historically exercised responsibility for patent, copyright, and trademark law. It is my hope that a serious examination of the issues raised in H.R. 3685 by the committee and its trademark subcommittee will assist Members of the House when trademark policy is raised in connection with legislation emanating from other committees. Inquiries with respect to the upcoming hearings should be directed to the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, 2137 Rayburn House Office Building, Washington, D.C. 20515, 202/225-3926.●