



March 11, 2020

The Honorable Jerrold Nadler
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Doug Collins
Ranking Member
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Thom Tillis
Chairman
Senate Judiciary Subcommittee on
Intellectual Property
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
Ranking Member
Senate Judiciary Subcommittee on
Intellectual Property
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Hank Johnson
Chairman
House Judiciary Subcommittee on Courts,
Intellectual Property, & the Internet
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Martha Roby
Ranking Member
House Judiciary Subcommittee on Courts,
Intellectual Property, & the Internet
2138 Rayburn House Office Building
Washington, DC 20515

Chairman Nadler, Ranking Member Collins, Senator Tillis, Senator Coons, Congressman Johnson, & Congresswoman Roby:

Thank you for introducing the Trademark Modernization Act to address emerging threats to the U.S. trademark system and mitigate negative impacts on U.S. businesses. As the Chief Intellectual Property Counsel for Target, I believe that some of the changes in the legislation will provide legitimate third parties avenues to challenge bad faith and fraudulent applications that are not available today. In addition, this legislation will modernize efforts within the U.S. Patent and Trademark Office (USPTO) to limit the time that applications are pending, a much needed improvement given the existing time period was crafted when actual products had to be physically mailed to the USPTO.

Target is one of America's largest retailers – with more than 350,000 team members supporting almost 1,900 stores across all 50 states. As a company, we're in the midst of a multi-year

transformation strategy. We've invested in remodeling our stores, increasing wages, and re-inventing our portfolio of Target designed, owned brands. In fact, since 2017, Target has introduced more than three dozen new brands – from food, to apparel, to home goods. This work makes Target one of the leading trademark filers in the United States and one of the top five globally.

The development of intellectual property and a strong means to protect our designs is a key to our success. Yet we are concerned about fraudulent trademarks flooding the U.S. Register. When the USPTO approves a fraudulent trademark application, it can effectively block our legitimate efforts to trademark our owned brands.

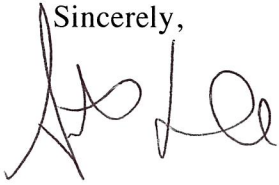
The bill provides several different avenues for a third party, typically a trademark brandholder, to object and offer evidence regarding registrations and pending applications. Today, a third party has no effective and timely path to present evidence of bad faith or challenge a pending application or, for that matter, an issued registration. This legislation codifies an informal process and makes it a requirement to include evidence filed in support of an objection within the application. An examiner is required to review challenges as part of the application process. We also support ex parte re-examination as an alternative to challenging a bad faith or fraudulent application. Today's opposition and cancellation proceedings are too slow and too costly to provide an avenue for relief during the clearance process, often taking up to three years. This bill allows third parties to submit evidence of bad faith and raise challenges to bad faith applications earlier on and on an expedited resolution schedule. This could then become a viable means of removing an obstacle to use or registration as part of the clearance process. If applications were easier to challenge, this would be an indirect means of weakening the publicly reported incentives for filing fraudulent applications. Collectively, these avenues could become a viable means for third parties to help declutter the Register.

This bill also gives the USPTO the flexibility to review an application in less than six months. Today, the USPTO must give applicants a minimum of six months to respond to an Office action, or inquiry by an examiner because of statutory limitations. Shortening the time for an applicant to respond from six months to 90 days or less would keep pending applications moving through the system, decreasing pendency. This timeframe was set when applicants had to physically mail in specimens for inspection and does not reflect the online filing system in use today.

In addition to these concepts contained in the legislation, we hope the Committee will continue to make refinements to improve the consistency and quality of examination at the USPTO. I testified to the Senate Judiciary Subcommittee on Intellectual Property that USPTO may need Congressional direction to create a specialized review team to protect the integrity of the system. Examiners are not currently rejecting applications that seem fraudulent on their face and more rigorous examination is needed. We also believe artificial intelligence technology and machine learning could be deployed by the examiners. A study completed by the New York University School of Law estimated that approximately two-thirds of applications within a specific class were fraudulent in nature and approximately 25 percent had digitally altered photos.

In closing, we want to reiterate our support for the Committee's efforts and our strong support for concepts included in the legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Lee', with a stylized, cursive script.

Stephen Lee
Chief Intellectual Property Counsel
Target