



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-T-2020-0035]

Secondary Trademark Infringement Liability in the E-Commerce Setting

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments; reopening of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) published a request for comments in the Federal Register on November 13, 2020, seeking information from intellectual property rights holders, online third-party marketplaces and other third-party online intermediaries, and other private sector stakeholders on the application of the traditional doctrines of trademark infringement to the e-commerce setting. Through this notice, the USPTO is reopening the period for public comment until [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

DATES: *Comment date:* Written comments must be received on or before
[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER].

ADDRESSES: You may submit comments by one of the following methods:

- a) **Electronic Submissions:** Submit all electronic comments via the Federal e-Rulemaking Portal at www.regulations.gov (at the homepage, enter **PTO-T-2020-0035** in the “Search” box, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments). The materials in the docket will not be edited to remove identifying or contact information, and the USPTO cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF formats only. Comments containing references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Please do not submit additional materials. If you want to submit a comment with confidential business information that you do not wish to be made public, submit the comment as a written/paper submission in the manner detailed below.

b) Written/Paper Submissions: Send all written/paper submissions to: United States Patent and Trademark Office, Mail Stop OPIA, P.O. Box 1450, Alexandria, VA 22314. Submission packaging should clearly indicate that materials are responsive to Docket No. PTO-T-2020-0035, Office of Policy and International Affairs, Comment Request; Secondary Trademark Infringement Liability in the E-Commerce Setting.

Submissions of **Confidential Business Information:** Any submissions containing confidential business information must be delivered in a sealed envelope marked “confidential treatment requested” to the address listed above. Submitters should provide an index listing the document(s) or information they would like the USPTO to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document. Submitters should provide a statement explaining their grounds for objecting to the disclosure of the information to the public as well. The USPTO also requests that submitters of confidential business information include a non-confidential version (either redacted or summarized) of those confidential submissions that will be available for public viewing and posted on www.regulations.gov. In the event that the submitter cannot provide a non-confidential version of its submission, the USPTO requests that the

submitter post a notice in the docket stating that it has provided the USPTO with confidential business information. Should a submitter fail to either docket a non-confidential version of its submission or post a notice that confidential business information has been provided, the USPTO will note the receipt of the submission on the docket with the submitter's organization or name (to the degree permitted by law) and the date of submission.

FOR FURTHER INFORMATION CONTACT: Holly Lance, USPTO, Office of Policy and International Affairs, at Holly.Lance@uspto.gov or 571-272-9300. Please direct media inquiries to the USPTO's Office of the Chief Communications Officer at 571-272-8400.

SUPPLEMENTARY INFORMATION: On November 13, 2020, the USPTO published a notice in the Federal Register requesting public input on the application of contributory and/or vicarious trademark infringement liability (secondary infringement liability) to e-commerce. *See Request for Comments on Secondary Trademark Infringement Liability in the E-Commerce Setting*, 85 FR 72635 (Nov. 13, 2020). In that notice, the USPTO indicated that it is seeking input from the private sector and other stakeholders as to the application of the traditional doctrines of trademark infringement to the e-commerce setting, including whether to pursue changes in the application of the secondary infringement standards to e-commerce platforms, in accordance with the call to

action in the Department of Homeland Security’s January 24, 2020, Report to the President of the United States titled “Combating Trafficking in Counterfeit and Pirated Goods.” To assist in gathering public input, the USPTO published questions, and sought focused public comments, on the effectiveness of the traditional doctrines of secondary trademark infringement in the e-commerce setting, and also invited recommendations for resolving any shortcomings in the application of these doctrines. The notice requested public comments on or before December 28, 2020.

Through this notice, the USPTO is reopening the period for public comment until [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], to give interested members of the public additional time to submit comments. All other information and instructions to commenters provided in the November 13, 2020, notice remain unchanged. Previously submitted comments do not need to be resubmitted.

Andrei Iancu,
Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

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