

The BEAVER Act of 2026

Business Equality Against Vexatious Enforcement of Registrations Act

A Constituent Proposal to Amend the Lanham Act

I am writing to propose that Congress consider amending the Lanham Act to address a growing problem with trademark litigation: large companies being able to use the cost of federal litigation itself as leverage against small businesses.

Trademark owners absolutely have a right to protect their brands. If someone deliberately copies another company's name, logo, mascot, packaging, or overall branding in a way that is likely to confuse consumers, the trademark owner should have every right to take action.

The problem is what happens when the claim is weak, but one side has dramatically more money than the other.

A large corporation can file a federal trademark infringement lawsuit against a small, locally owned business knowing that defending the case may cost that business tens or even hundreds of thousands of dollars. Even if the small business ultimately has the stronger legal argument, it may never be able to afford to reach that point.

That creates a system where the question can become less about whether infringement actually occurred and more about which party can afford to keep paying lawyers the longest.

Recent trademark disputes involving Buc-ee's have brought renewed attention to this issue. Buc-ee's has filed lawsuits against small businesses using cartoon animal mascots, including businesses whose mascots and branding are arguably substantially different from its well-known beaver logo.

Regardless of how any particular lawsuit is ultimately decided, I believe these cases highlight a larger weakness in current trademark law.

No company should lose legitimate trademark protection simply because it is successful or because the public dislikes one of its lawsuits. Buc-ee's, Disney, Nike, Apple, a small family business, or an individual trademark owner should all have the same right to protect a legitimate trademark.

However, trademark law should not allow litigation costs themselves to become the weapon.

I would therefore encourage Congress to consider the Business Equality Against Vexatious Enforcement of Registrations Act, or BEAVER Act, amending the Lanham Act in several areas.

1. Create an Early Trademark Merits Review

A defendant in a federal trademark infringement case should be able to request an expedited review of whether the plaintiff has presented a reasonable factual basis for claiming that consumers are likely to be confused.

The court could examine factors including:

- the overall appearance of the marks;
- the names of the businesses;
- differences between mascots, logos, colors, and design;
- the products or services being offered;
- how long the businesses have coexisted;
- evidence of actual consumer confusion;
- evidence of intentional copying; and
- whether consumers are reasonably likely to believe the businesses are affiliated.

If the plaintiff presents a legitimate likelihood-of-confusion case, the lawsuit continues normally.

If the court determines that the claim lacks an objectively reasonable basis, the case could be dismissed before both parties spend enormous amounts of money on discovery and expert testimony.

This would not weaken legitimate trademarks. It would simply provide an earlier opportunity to separate legitimate infringement cases from cases that rely primarily on the financial pressure of litigation.

2. Limit Expensive Discovery Until the Initial Review Is Complete

One of the greatest expenses in federal litigation is discovery.

A small business can be required to collect and review years of emails, financial records, advertising materials, electronic files, social media records, customer information, and other documents. Depositions, expert witnesses, consumer surveys, and electronic discovery can quickly make defending even a questionable lawsuit financially impossible.

Congress should consider automatically limiting or staying broad discovery while an expedited trademark merits review is pending.

Limited discovery directly related to likelihood of confusion could still be permitted when necessary.

The purpose would be simple: determine whether there is a legitimate case before allowing litigation expenses to become overwhelming.

3. Require Attorney-Fee Awards for Objectively Unreasonable Trademark Claims

This may be the most important reform.

Under the current Lanham Act, 15 U.S.C. § 1117(a), courts may award reasonable attorney fees to the prevailing party in "exceptional cases."

I believe Congress should establish a clearer and stronger standard.

If a trademark plaintiff loses and the court determines that the infringement claim lacked an objectively reasonable factual or legal basis, the court should be required to award the defendant reasonable attorney fees and litigation expenses.

The difference between "may" and "shall" matters.

A large corporation considering a questionable trademark lawsuit should have to consider the possibility that it will be responsible not only for its own legal expenses, but also for the legal expenses it forced the defendant to incur.

That changes the incentive dramatically.

A company with a legitimate infringement case would still be free to file it.

A company considering a marginal lawsuit simply because it knows the defendant cannot afford to fight would have a reason to think twice.

4. Consider a Rebuttable Presumption When Marks Are Materially Different

Congress could also consider creating a rebuttable presumption against likelihood of confusion when two marks have substantial differences in their names, visual appearance, mascots, and overall commercial presentation.

This should not be an absolute rule.

For example, a business should not be allowed to copy nearly every element of a famous logo and avoid infringement simply by changing one minor feature or substituting one animal for another.

However, when businesses have clearly different names, substantially different mascots, different artwork, and independent histories, the trademark owner should be expected to provide meaningful evidence explaining why consumers would nevertheless believe the businesses are connected.

Evidence could include documented incidents of actual confusion, consumer surveys, misdirected communications, evidence of deliberate imitation, or other relevant information.

Trademark litigation should require more than identifying generic similarities such as both logos containing a smiling cartoon animal.

Protect the Trademark, Not the Litigation Budget

The purpose of this proposal is not to weaken trademark law.

Strong trademark protection benefits businesses and consumers. Consumers should be able to recognize who produced a product or service, and businesses should be protected from competitors deliberately trading on their reputation.

The goal is instead to address the imbalance that occurs when the cost of enforcing or defending a trademark becomes more important than the strength of the underlying claim.

A small business with a valid trademark should be able to protect itself against a large corporation.

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The same rules should apply to both.

What should not happen is a situation where one side can effectively say:

"We may or may not ultimately win, but we know you cannot afford to find out."

That is not trademark protection. That is using the cost of the federal court system as leverage.

Congress has previously amended federal trademark law when changes were necessary. The Trademark Modernization Act of 2020 created new procedures intended to provide faster and less expensive ways to address certain improper trademark registrations.

I believe Congress should now examine whether similar procedural reforms are needed for trademark infringement litigation.

An amendment providing expedited merits review, reasonable limitations on discovery, and mandatory attorney-fee reimbursement for objectively unreasonable claims would preserve strong trademark rights while providing meaningful protection to small businesses that otherwise may not be able to afford to defend themselves.

This issue should not be partisan.

Whether the business involved is a family-owned convenience store, a restaurant, a radio shop, a technology company, or one of the largest corporations in America, the principle should be the same:

Trademark law should protect legitimate brands. It should not allow the party with the largest legal budget to win simply because everyone else runs out of money first.

I respectfully ask Congress to examine this issue and consider amendments to the Lanham Act that would provide these protections.

Thank you for your time and consideration.

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