

118TH CONGRESS
2D SESSION

H. R. 10550

To amend the Trademark Act of 1946 to clarify the applicability of Federal trademark law in the area of digital replicas of identifying characteristics of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2024

Mr. ISSA (for himself, Mr. OBERNOLTE, and Mr. CLINE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Trademark Act of 1946 to clarify the applicability of Federal trademark law in the area of digital replicas of identifying characteristics of individuals, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Abuse of
5 Digital Replicas Act”.

1 **SEC. 2. APPLICABILITY OF FEDERAL TRADEMARK LAW IN**
2 **THE AREA OF DIGITAL REPLICAS OF IDENTI-**
3 **FYING CHARACTERISTICS OF INDIVIDUALS.**

4 (a) IN GENERAL.—Section 43 of the Trademark Act
5 of 1946 (15 U.S.C. 1125) is amended—

6 (1) in subsection (a)—

7 (A) in paragraph (1), by striking “or de-
8 vice,” and inserting “device, or digital replica,”;
9 and

10 (B) by adding at the end the following:

11 “(4) In a civil action brought pursuant to paragraph
12 (1)(A) for the use of a digital replica by a person on or
13 in connection with any goods or services, or any container
14 for goods there shall be a rebuttable presumption that
15 such use is likely to cause confusion, or to cause mistake,
16 or to deceive as to the affiliation, connection, or associa-
17 tion of such person with another person, or as to the ori-
18 gin, sponsorship, or approval of his or her goods, services,
19 or commercial activities by another person.

20 “(5) A person shall not be liable in a civil action
21 brought pursuant to paragraph (1)(A) for the use of a
22 digital replica on or in connection with any goods or serv-
23 ices, or any container for goods if such use is—

24 “(A) for bona fide news, public affairs, or
25 sports broadcast or account, or any portion thereof;

1 “(B) for bona fide commentary, criticism, sat-
2 ire, or parody, or any portion thereof;

3 “(C) for bona fide scholarship or educational
4 purposes;

5 “(D) a creative work, the character and pur-
6 pose of which is primarily expressive or artistic in
7 nature rather than commercial, or any portion there-
8 of;

9 “(E) otherwise protected by the First Amend-
10 ment to the Constitution of the United States; or

11 “(F) any combination of the above.

12 “(6) With the exception of relief sought under sec-
13 tions 32 and 43(c) of this Act, section 501 of title 17,
14 and section 271 of title 35, a person may not seek relief
15 under any other provision of Federal, State, local, or mu-
16 nicipal law for any use of a digital replica for which the
17 person files a civil action asserting liability under this sec-
18 tion and relies upon the rebuttable presumption in para-
19 graph (4) in a pleading, dispositive motion, response to
20 a dispositive motion, or at trial on the merits; and

21 “(7) This subsection shall be considered a law per-
22 taining to intellectual property for the purposes of section
23 230(e) of the Communications Act of 1934 (47 U.S.C.
24 230).

25 “(8) In this subsection—

1 “(A) the term ‘digital replica’ means computer-
2 generated representation of an identifying char-
3 acteristic of a subject person, who at the time of the
4 use of the representation is a living individual
5 human being, where—

6 “(i) the identifying characteristic is an
7 image, voice, likeness, or other characteristic of
8 the subject person, or a characteristic of the
9 creative works of the subject person, that is dis-
10 tinctive to the subject person such that the use
11 of such characteristic is likely to be associated
12 with the subject person and no other person by
13 reasonable and ordinary participants in the rel-
14 evant industry or market;

15 “(ii) the representation is identical with, or
16 substantially indistinguishable from, the actual
17 identifying characteristic of the subject person
18 from the perspective of reasonable and ordinary
19 participants in the relevant industry or market;
20 and

21 “(iii) based on the representation itself, it
22 is apparent to reasonable and ordinary partici-
23 pants in the relevant industry or market that
24 the purpose of the representation, in whole or

1 in part, was to duplicate the identifying char-
2 acteristic of the subject person; and

3 “(B) the term “relevant industry or market”
4 means the industry or market for the goods or serv-
5 ices that are the subject of the civil action brought
6 pursuant to paragraph (1)(A).”.

7 (b) RULE OF CONSTRUCTION.—Nothing in this Act,
8 or the amendments made by this Act, may be construed
9 so as to limit the scope of section 43 of the Trademark
10 Act of 1946 (15 U.S.C. 1125) as such section existed prior
11 to the enactment of this Act.

12 (c) APPLICATION.—This Act, and the amendments
13 made by this Act, shall apply only to a civil action—

14 (1) brought pursuant to section 43(a) of the
15 Trademark Act of 1946 after the date of the enact-
16 ment of this Act; and

17 (2) for the use of a digital replica on or in con-
18 nection with any goods or services, or any container
19 for goods, after the date of the enactment of this
20 Act.

21 (d) SEVERABILITY.—If any provision of this Act, or
22 the application thereof to any person or circumstance, is
23 held invalid, the remainder of the Act, and the application
24 of such provision to other persons or circumstances shall
25 not be affected thereby.

1 (e) DEFINITION.—In this section, the term “Trade-
2 mark Act of 1946” means the Act entitled “An Act to
3 provide for the registration and protection of trademarks
4 used in commerce, to carry out the provisions of certain
5 international conventions, and for other purposes”, ap-
6 proved July 5, 1946.

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