

## Joseph Matal in Law360: 'Late-Night Relief Bill Will Spur Big Changes to IP'

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**PRACTICES** Intellectual Property, Copyright, Trademark and Advertising

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Haynes Boone Partner Joe Matal talked with *Law360* about how intellectual property (IP) measures tucked into a huge government spending bill that Congress passed last week have potentially dramatic ramifications for trademark and copyright law.

Below is an excerpt:

In addition to pandemic economic relief and government funding, the 5,593-page bill that lawmakers hurriedly approved makes it easier for trademark owners to win injunctions, creates new ways to challenge trademarks, establishes a copyright small claims court and makes illegal streaming of copyrighted material a felony.

Most of the measures had been discussed in committees or voted on in some fashion in recent months, but the entire package sailed through with little debate on Monday. Despite receiving only limited scrutiny before becoming law, the trademark and copyright measures could have a profound impact if the package is signed into law by President Donald Trump.

"This is the biggest trademark law that has been enacted since the Lanham Act itself nearly three-quarters of a century ago," said Joseph Matal of Haynes Boone, a former acting director of the U.S. Patent and Trademark Office.

### **Trademark Measures**

The bill includes the Trademark Modernization Act, which makes two major changes that will reshape how trademark cases are litigated while also allowing existing marks to be targeted for revocation.

First, the bill establishes that trademark plaintiffs seeking an injunction are entitled to a rebuttable presumption of irreparable harm upon a finding of infringement. In many cases, that will make it easier to get an injunction and keep infringing products off the market, which is often the main goal of a trademark case.

Some circuit courts had set a higher bar for injunctions in trademark cases, so for litigants in those parts of the country, the new bill will mean that "there's a much more secure right to an injunction," Matal said.

While under the new law, accused infringers can present evidence that the trademark owner has not been harmed and should not get an injunction, Matal said that likely will not happen often.

"It's a rebuttable presumption, but the presumption is very rarely rebutted," he said. "I am pretty sure that the past experience was that once you showed a violation, overwhelmingly people obtain the injunction at that point."

The new measures are intended to be cheaper and easier to use than existing cancellation proceedings, which can be expensive and complicated, so they will be "accessible to a much bigger universe of people," Matal said.

The new measures will be available for marks that are less than 10 years old, but the bill creates an exception where during the first three years after the bill is enacted, even older, established marks can be challenged.

"People have seemed not to have noticed that's in there, but that's a big deal," Matal said.

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