

## Chairman Thom Tillis - Questions for the Record

### **“Fraudulent Trademarks: How they undermine the trademark system and harm American consumers and businesses”**

#### Questions for all witnesses

- 1. Can you explain to me why the presumption of irreparable harm is important in the trademark context, and can you particularly focus on why monetary damages alone aren't a sufficient remedy in this context?**

It is my understanding that it is an important issue to many private practitioners who handle intellectual property litigation. To date, Target has not pursued trademark litigation as a remedy to fraudulent filers because the speed of our business does not allow for these lengthy proceedings. That said, as proposals are developed regarding changes to the irreparable harm standard, we commit to reviewing in more detail and contributing thoughts where we have experience.

- 2. In the patent context I've long had concerns about legislating a presumption of harm. The worry with patents is that you present a risk of holdup and may actually incentivize “trolling” behavior. Is the same risk present in the trademark context? In other words, can you explain why a presumption of irreparable harm for trademarks *won't* lead to that abusive behavior?**

Target is a large patent holder across multiple categories including technology, software, supply chain innovations, and product design and I understand your concerns. It is critical not to create a structure that would incentivize the trolling of trademarks as it has existed with patents. As noted above, Target has not pursued litigation as a remedy to fraudulent filers, and, accordingly, has not had any first-hand experience with “trolling” in the trademark context.

- 3. Do you have any suggestions or recommendations on how Congress can legislate in this area? In other words, what would an effective remedy to these recent court decisions look like?**

This hasn't been an area of concern for Target, and, accordingly, we have not had a need to engage on this issue previously. If we encounter a situation where our experiences may be useful to the discussion, we commit to providing further thoughts.

- 4. Can you explain why trademarks are valuable assets to businesses, particularly focusing on how critical they are to small businesses and startups?**

While Target is not a small business or startup, trademarks exist to protect innovative and creative designs and brands, regardless of the size or scope of a business. At Target, we seek trademark protection for our owned brands, also considered private label brands, because they are integral to our business. Owned brands differentiate Target from other retailers and are a strategic growth driver for our overall business. For example, in the third quarter of fiscal year 2019, Target experienced double-digit growth in our apparel and accessories category which is dominated by owned brands that we have developed with our Minneapolis headquarters team.

**5. Over the last six years we've seen a massive increase in fraudulent trademarks, leading to a cluttering of the register. Why is this cluttering of fraudulent trademarks a problem for new and expanding businesses?**

A cluttered trademark register affects all legitimate businesses, regardless of size or scope. Under the best circumstances, it is an expensive and time-consuming process to develop and register a new trademark. As the register becomes cluttered with illegitimate marks, this process only becomes more difficult. This has had a significant time and expense impact to Target. While we may have the resources to absorb these additional costs, they may be devastating for new and small businesses – in some cases even preventing the launch of new lines entirely. Even if a legitimate business is able to secure trademark rights, the value of those rights is diminished when they are forced to coexist with fraudulent registrations that are afforded the same privileges and presumptions of validity.

**6. Can you explain in more detail the impact fraudulent filers have on your company when you develop a trademark?**

Creating a Target designed and owned brand is a time-intensive process. A cross-functional team works together for about a year on everything from idea generation to product and packaging design. The intellectual property that goes into development and design of a brand resides in Minneapolis. When we design and develop our owned brands, I work in concert with more than 50 people at our Minneapolis headquarters. It takes the collaboration of teams across Target including creative, legal, product design, and merchandising – to move an idea from creation to trademark application.

When our preferred choice in trademark is blocked by fraudulent filers causing a cluttered register, we must go back to the drawing board to develop an alternative, losing the benefits of our significant investment. Fraudulent filers and their trademarks limit our choice and result in additional investment when we are forced to move away from a well-researched and developed trademark. In addition, as there is little recourse to the timely removal of a fraudulent trademark from the registry, the fraudulent filers clutter the registry and it continues to grow, and preventing legitimate trademark filers from registering their marks.

**7. What programs has the USPTO developed to address the Chinese filers and are they effective?**

USPTO has developed several programs to address the problem but they have had limited effect.

First, the specimen mailbox pilot has limited grounds and is not frequently used. Based on testimony by the USPTO and our conversations with them, they have expunged fewer than 20 trademarks. It is unclear to us if this program is still operating.

Second, the USPTO has pointed to the post-registration audit program as a solution. It has been in place for a couple of years and the USPTO claims it has removed some clutter from the register. However, the audits stop short of cancelling registrations. At most, a few goods may be removed from a given class. This means the trademark itself remains on the register, but for a smaller subset of goods. This approach does not address the overall problem, and creates undue burdens for legitimate trademark owners.

Third, USPTO instituted the US local counsel rule in early August 2019. The US local counsel rule requires foreign filers to retain US-based counsel. This gives third-parties legal recourse against bad actors in the US system that are aiding fraudulent filers, and may theoretically serve as a financial deterrent for fraudulent filers as retention of US-based counsel could be cost prohibitive. While we are in the early days of this requirement, we see evidence that some bad actors are circumventing it by creating shell corporations in the US, stealing US lawyers credentials, or finding unknowing or unscrupulous lawyers to file the fraudulent applications on their behalf. More importantly, the enforcement mechanism is lacking and vague.

Fourth, while the USPTO has the authority to deal with many of these fraudulent applications, examining attorneys are not consistently rejecting obviously fraudulent applications. Bad actors continue to successfully register trademarks at an alarming rate. We appreciate the training examining attorneys received in June 2019, but it appears only to have altered examination practices for a handful of examiners, creating inconsistent review that has not been effective in changing the overall landscape. In addition, examining attorneys appear hesitant to refuse fraudulent trademark applications on other substantive grounds, such as failure to function as a trademark or ornamentation.

**8. What are the hallmarks or tell-tale signs of fraudulent filers? OR Can you describe, in laymans terms, the hallmarks or consistent attributes of fraudulent filers?**

Bad actors use a variety of easily identifiable methods to submit fraudulent trademarks including the following practices:

- **First**, they file as use in commerce, not intent to use. This means they are claiming to be actively using the trademark in the US and that items are for sale or have been sold bearing their mark.
- **Second**, they file single class applications, meaning the applicant is seeking trademark protection for use in only one class or category. It might be men's shirts or towels. There are 45 classes or categories in which to register a mark, and a trademark applicant has to pay a separate fee for each class applied for. By limiting applications to a single class, these fraudulent filers limit their expenses while maximizing the number of individual registrations they can obtain.
- **Third**, they use digitally altered images that are clearly evident upon looking at the image. For example, you see a halo of discoloration where the image has been changed or shading within an image is inconsistent.
- **Fourth**, they use stock photography with a brand name digitally placed on the image.
- **Fifth**, they use duplicative images where the same image is submitted repeatedly from a purportedly different company for a different trademark. For example, we found evidence of one image submitted three times in the same day in connection with three applications filed under three different applicant names.
- **Sixth**, they submit photos of items with other companies' trademarks clearly visible. We have seen a specimen where a third-party's trademark is clearly visible on the button of a garment, to which a fake hangtag bearing the fraudulent trademark has been applied. In other cases, fraudulent filers have simply added their mark to boxes or other packaging without bothering to remove other third-party labeling.
- **Seventh**, the tags that are submitted as specimens are simplistic, such as index cards with block letters that have been hole-punched or simply placed on top of an item, with no or mismatched tags affixed to the item.
- **Finally**, specimens are submitted where pricing is not in US dollars or consumers are directed to websites that end in a foreign country code, such as .cn. When you visit these sites, they are in a foreign language or inactive.

In summary, bad actors use a variety of easily identifiable methods to submit fraudulent marks. We believe a specialized examination team, leveraging collective knowledge could pull these applications for rigorous and consistent review. There is precedent in the USPTO system for using a series of automated 'filters' to trigger post registration audits and we believe that method could be conceptually applied to this group of applications.

**9. Fraudulent trademarks don't just impact businesses, they also harm consumers. Can any of you talk about the negative impact and harm to consumers caused by fraudulent trademarks?**

At Target, we have developed our owned brands to deliver quality products at an affordable price. Target's customers are middle-class working families, earning just above the median U.S. household income. They manage family budgets and count on us to provide the best value for their everyday needs. They shop our stores and online for basics such as kids clothing, baby items, bedsheets, and towels. These are categories

where we have invested in the development of our owned brands to best meet the needs of these consumers. When Target is unable to secure trademark rights, it may delay the addition of a new owned brand, or product line, disappointing our guests and reducing their shopping options.

**10. I'm concerned about how sophisticated criminal enterprises are using fraudulent trademarks to sell counterfeit products and fund their criminal organizations. Are any of you familiar with this business model and, if so, can you describe for us how this works and why this is harmful for consumers?**

While I have no knowledge of the business model you describe, the market for counterfeit goods has had less of an impact on Target given the average price point of Target's owned brand products, which are designed internally with high quality and low prices in mind.

We partner with vendors to achieve outstanding quality for Target-brand products. Our mission is to ensure that our vendors utilize efficient, safe and ethical factory environments where they can produce reliable, high-quality products. Internal teams including responsible sourcing, product safety and quality assurance, product investigations and recalls, and operations all work together to ensure compliance in keeping our vendor standards and all applicable U.S. laws.

That said, while Target has developed vendor standards to protect consumers, more broadly we're concerned about the growth of counterfeit products for sale to consumers. The Government Accountability Office (GAO) and the Senate Finance Committee have produced reports highlighting the findings of products in the health and technology space that present safety risks to consumers when these products do not meet the standards set by U.S. regulators such as the Consumer Product Safety Commission.

**11. Professor Beebe's research shows that 70% of applications from China are fraudulent. This is alarming. How many fraudulent applications does this translate to annually? How long do these registrations remain active?**

I defer to Professor Beebe to comment on his research. In addition to the time it takes for the USPTO to process an application, trademark registrations are active a minimum of six years and can be renewed indefinitely in 10-year increments.

**12. Why is China doing this more than other countries? Are they trying to steal or IP or purposely hinder our US registry?**

At Target, we have asked ourselves the same questions as to what motivates fraudulent filers. While we have conducted no independent research to ascertain and verify motivations, the USPTO has published there has been 1200 percent increase in filings from China over the past five years. In addition, the USPTO IP Attaché in China publicly acknowledged that some provincial governments are providing subsidies to entities who successfully gain trademark and patent registrations.

**13. As I mentioned in my opening statement, I've been proud to participate in the bipartisan, bicameral working group on fraudulent trademarks led by Chairman Nadler and Ranking Member Collins. We recently circulated a draft of our proposed legislation to stakeholders. Have any of you reviewed it and, if so, do you have any comments on what we've proposed?**

We have had an opportunity to review the legislation and strongly support elements of the draft legislation including the following provisions:

- Providing for third-party submission of evidence during examination (letters of protest)
- Ability for the USPTO to alter timeframes for responses to less than six months
- Ex Parte Reexamination & Expungement Proceedings. We believe that one provision needs to be edited within the Expungement section to prevent establishing extended rights to fraudulent filers and we have submitted that edit to the trademark working group.

**14. Are there additional noncontroversial, consensus items we should consider including in this package?**

The draft bill has several concepts we strongly support and believe it will provide narrow, but available avenues to challenge fraudulent applications that have in effect blocked our trademark filings. We have three recommendations for the Committee's consideration:

- **Require a report by the Government Accountability Office (GAO) to assess the programs and methods used by the USPTO to combat fraudulent trademark filings.** Chairman Tillis commented that there is a role for Congress at the hearing and we believe Congressional oversight is needed to provide guidance on effective measures to maintain the integrity of the US trademark register.
- **Establish rulemaking for third-party submission of evidence during examination.** It is quicker and more efficient to address issues with fraudulent filings when they are still in the application phase. This section refers to the current ability for third parties to write a letter of protest to a pending application. This current process is ad hoc, not codified, and is not impactful when challenging an

application. We recommend that the process instead be set by regulation. We are primarily concerned with the variability by which USPTO examines applications and the more process in place, the more uniformity. Codification of this practice with defined regulation and clarity will end this variability and provide more clarity and guidance for third-parties who wish to avail themselves of this remedy.

- **Establish a specialized examination team to review fraudulent trademark applications.** We recommend that Congress consider directing the USPTO to create a specialized examination review team to review applications in categories particularly susceptible to fraudulent filings and where several of the above-mentioned telltale signs of fraud exist. There is precedent within patent examination practice for specialized review teams; and, earlier this year, the USPTO established a specialized trademark review team to examine cannabis-related applications. In addition, the USPTO sets filters to trigger post-registration audits of renewal filing, and we believe the hallmarks of fraudulent filers could be established as filters to create a pool of applications that examiners review to leverage existing resources and expertise from this dedicated team.

#### Questions for Individual Witnesses

**Stephen Lee:**

- 1. How often have you encountered registrations that appear to have overbroad or fraudulent use claims to be a hurdle to Target's trademark clearance process?**

This issue comes up in every trademark clearance search we conduct. At Target, we became aware of the problem when we were selecting a new brand for an upcoming product launch. We landed on a preferred name, but our trademark search uncovered a prior application that would have blocked our registration. We conducted additional research and could not find the mark in use in the US. We retained a trademark investigative firm, and they could not find the company, name, or contact information. We had little recourse and moved on to another mark, costing us millions of dollars in time and expense.

After this finding, we audited 12 of our most recently launched owned brands. In all cases, at least one bad faith filing was uncovered that would have been a block to our proposed mark, and in many cases, we identified multiple – between 3 and 5 - bad faith filings per proposed mark. Subsequently, we encountered fraudulent filers in every new brand launch to date.

Furthermore, we have recently identified several fraudulent applications that the USPTO approved for registration that we believe, if these marks were actually in use in the US, would infringe our already-registered trademarks. We are currently in the process of opposing these applications, which will likely result in a significant outlay of time and expense.

**a. What is Target’s typical practice when it discovers a potentially blocking registration for which it believes the use claim is improper?**

Target has shared our concerns about a group of filings with the USPTO. However, all current pathways available at the USPTO do not provide a timely resolution for Target to pursue opposition or cancellation, which takes a minimum of six months and often several years. The speed in which our business brings products to consumers requires us to move to an alternate brand as opposed to living with the uncertainty these lengthy legal proceedings bring. In several cases, we have attempted to locate the purported owner of a suspect filing in an attempt to clear the potential conflict, but could not find the company to begin a dialogue.

**b. If a mark has already registered, what are Target’s options to clear the registration under the current law?**

Our current remedies are limited to a lengthy and expensive cancellation proceeding, which, as noted above, can take several years from initiation to conclusion. Because these fraudulent filers cannot be located, the current expedited proceeding pilot program, which requires consent from both parties, is not available

**c. How often does Target file cancellation petitions with the TTAB to clear blocking registrations?**

We file multiple opposition and cancellation actions each year. For the most part, these are filed to address new applications or registrations that infringe our prior-existing marks. This does not address the issue of fraudulent applications and registrations, which block us from adopting a mark in the first place. While we have filed petitions with the TTAB, this process does not provide resolution in a short enough timeframe to allow us to make business decisions regarding new brands and product lines. In addition, where Target does not have pre-existing rights, we may not have the necessary standing to pursue an opposition or cancellation action at all.

**d. Does Target sometimes move onto another mark instead of petitioning to cancel a registration, even if it believes the registration is not valid?**

**i. If that’s so, why does Target move onto another mark?**



Yes, in almost every case we move onto another mark. As noted above, procedures for current available remedies are not too lengthy.

**ii. What happens (or doesn't happen) to the registration Target has reason to believe is invalid if Target moves on instead of filing a petition to cancel?**

Having to move off of a preferred, well-researched mark and select an alternative brand costs us millions of dollars in time and expense. That said, Target moves on to another trademark because the speed in which our business brings products to consumers requires us to move to another trademark concept as opposed to the uncertainty legal proceedings bring. Target designed and owned brands are integral to our business, driving shoppers to our stores and website, and need trademark protection.

You asked what happens to the registration or application we believe is invalid. We have shared our concerns and highlighted specific application and registrations to the USPTO Director and Commissioner of Trademarks to request a review. We have also reported our concerns to the Office of Enforcement and Discipline at the suggestion of the USPTO Commissioner of Trademarks. We have not been made aware of any actions taken to revoke the registration or reject an application. As a result, these fraudulent applications and registrations remain on the register, contributing to the growing clutter we are hoping to address.

**2. Would the trademark system benefit from more efficient practices to address fraudulent and overbroad use claims in registrations?**

Yes, the Trademark Office would benefit from more efficient and consistent internal practices. We believe they have the authority to address many of the issues raised, but are not fully or consistently utilizing that existing authority. We believe Congress needs to provide direction to the USPTO Trademark Office to make it a priority to address the problem of fraudulent filers.

**3. If we were to consider adding ex parte cancellation procedures on the trademark side, as already exist on the patent side, should we consider adding a standing requirement for a third-party petitioner?**

**a. Why not?**

**b. What practical concerns do you have about including a standing requirement for an ex parte cancellation proceeding?**

It is our understanding that some intellectual property groups support a more descriptive standing requirement. While we believe it is not necessary and will not come into play in a meaningful way, Target would not oppose this additional language.

**4. What type of standards does Target impose on sellers and vendors who sell their products both in store and online?**

Target has vendor standards and legal requirements for any company who wishes to sell products at Target, Target.com and Target Plus, our online marketplace. We partner with vendors to achieve outstanding quality for Target-brand products. Our mission is to ensure that our vendors utilize efficient, safe and ethical factory environments where they can produce reliable, high-quality products. Internal teams including responsible sourcing, product safety and quality assurance, product investigations and recalls, and operations all work together to ensure compliance in keeping our vendor standards and all applicable U.S. laws.

**5. How do you verify that these products are fraudulent or counterfeit?**

In the hearing, you asked about our vendor compliance process related to our marketplace, TargetPlus. TargetPlus was launched in early 2019 and we operate with an invitation-only partnership model and is a curated online assortment of products from select third-party sellers in key areas such as home, toys and sporting goods that complement our existing assortment at Target.com and in our stores. Examples of third-party sellers on TargetPlus include Mizuno, the Guitar Center, and Kaplan Early Learning Company. The third-party sellers we are working with are headquartered in the United States and seeking to expand their exposure to consumers across digital channels.

**Questions for Stephen Lee  
From Senator Mazie Hirono**

- 1. Much of the discussion on fraudulent trademarks centers around Chinese applications that contain inaccurate—if not outright fraudulent—evidence of use of the mark in commerce. Showing use of a mark in commerce is already a requirement of the trademark system.**
  - a. Does the problem of fraudulent trademarks require new legislation or is the Patent and Trademark Office coming up short in its examination of trademark applications?**
  - b. I understand the Patent and Trademark Office has issued a rule requiring foreign-domiciled applicants to be represented by U.S. counsel. Are there additional steps the Patent and Trademark Office should be taking to combat the problem?**

The USPTO deserves recognition for their efforts to date, but we believe the USPTO needs more clear direction from Congress, additional authority, and improvements to the examination process. We believe an equal amount of focus needs to be placed on examination, possibly creating a dedicated examination group to review these applications, based on hallmarks of fraudulent filers. The USPTO has some authority to address these problems, but needs to utilize this authority to use consistent procedures to address the problem of fraudulent filers.

The USPTO has testified to Congress and shared with us that they have put three programs in place to address challenges, including fraudulent filers. These programs have done little to stop the successful registration of fraudulent trademarks.

First, the specimen mailbox pilot has limited grounds and is not frequently used. Based on testimony by the USPTO and our conversations with them, they have expunged fewer than 20 trademarks.

Second, the post-registration audit program may demonstrate the removal of goods or services on which a mark has not been used, BUT they stop short of actually removing trademarks from the register. This means the trademark registration itself remains, but a subset of goods or services within a class may be removed. That approach does not appear to resolve the overall problem.

Third, you asked about the U.S. local counsel rule that requires foreign filers to retain US-based counsel. This is helpful, but we see evidence that bad actors are circumventing the requirement or finding unknowing or unscrupulous lawyers to take the same applications and file them. It's really too early to tell if the US local counsel rule is an effective deterrent. It's new and we think the bad guys are adjusting their approach. Both USPTO and our outside counsel have shared with us efforts to circumvent this new requirement. Outside counsel shared with us an email they received from a bad actor asking if they could use the lawyer's name and address to file applications. USPTO saw some reports of use of US attorneys' credentials without their permission. Finally, unknowing or unscrupulous US

attorneys are filing trademark applications that have the tell-tale signs of fraudulent applications. In some cases, US attorneys who had previously filed very few or even no trademark applications are now, after implementation of the US attorney rule, filing dozens or even hundreds of applications on behalf of what appear to be bad actors.

Fourth, we believe that more scrutiny needs to be applied during the examination process and we have recommended the establishment of a specialized examination corps to review fraudulent applications. We have recommended this to the USPTO, and the Commissioner of Trademarks has indicated that this would be difficult to do. We subsequently learned that the USPTO has created a specialized team within their existing authority to address cannabis-related applications. While we believe that the USPTO has existing authority to set up a specialized examination team to address fraudulent filers, they have been reluctant to do so and it may be that Congress needs to provide direction to the USPTO to create such a team.

- 2. A number of people have called for the creation of new proceedings in the Patent and Trademark Office to allow for the cheaper, easier cancellation of fraudulent trademarks, including an expungement proceeding and an ex parte reexamination proceeding.**

**Should Congress go down the path of creating these reexamination proceedings, what potential unintended consequences may be associated with these proceedings?**

We believe Congress should consider giving authority to the Trademark Office to allow for limited ex parte and expungement proceedings that provide viable and timely avenues for opposing applications and challenging fraudulent registrations. The goal of these proceedings is not to make it easier, but timelier. The grounds for challenging as stipulated today in the draft bill are limited to use-based applications - where the applicant claims the mark was being used in US commerce at the time the application is filed – but where no legitimate use is evident.

We have heard concerns about possible “trolling” based largely on comparisons made between these proposed remedies and the ex-parte patent reexamination procedure. Patent rights by their very nature are somewhat nebulous and open to interpretation, which gives “trolls” an opening to abuse the system. We do not believe there is the same avenue for abuse on the trademark side. The additional remedies are limited to instances where a trademark was not used in US commerce. This is a very straightforward question that legitimate trademark owners should have little difficulty answering.

- 3. The Patent and Trademark Office has taken steps to address the problem of fraudulent trademarks, including its new rule requiring foreign-domiciled applicants to be represented by U.S. counsel. I have also seen reports that the Chinese government—including the provincial government in Shenzhen—has altered its incentive program in a way that may lead to a decrease in trademark applications from China.**

**a. Is there evidence that these changes might slow the tide of fraudulent trademark applications?**

In the months after the change to the US local counsel rule, we have not seen a significant decrease in applications from China, but Chinese based companies have retained US local counsel to comply with the new law. A cursory review of the specimens (photos) show no difference in the lack of quality of the applications. These applications contain all of the hallmarks of fraudulent filers.

**b. If the changes made by the Patent and Trademark Office and Chinese government are effective—and we see a real decline in the number of applications for fraudulent trademarks—is there a need for a permanent legislative fix to combat this problem or is it something that should sunset after a certain period of time sufficient to clean up the trademark registry?**

We believe the USPTO should have additional authorities that they do not currently have to more readily address fraudulent trademarks. These areas include codifying the letter of protest process with rulemaking, allowing for variable time periods that can be less than six months, and the establishment for limited ex parte and expungement proceedings.

In addition to legislative considerations, the USPTO does need to conduct more rigorous examination. We do believe that more scrutiny needs to be applied during the examination process and we have recommended the establishment of a specialized examination corps to review fraudulent applications. We have also recommended additional substantive refusals that trademark examining attorneys can utilize. For example, refusals based on a failure to function as a trademark or mere ornamental use, which could address a large subset of the current fraudulent filings.

We do not believe any of these solutions should expire. First, even if we are able to stem the tide of new fraudulent trademark applications, there are hundreds of thousands of illegitimate registrations currently on the register that will continue to clutter the system. Furthermore, given the right incentives, bad actors are likely to continue to evolve their methods. A robust system of remedies will allow the USPTO and legitimate trademark owners to react to and address future fraudulent schemes.

**4. Has Target used the Patent and Trademark Office’s Specimen Protest email box? If so, what has the company’s experience been? Are these programs effective?**

We have not utilized the Trademark Office’s specimen protest email box. The circumstances under which objections are considered under this program are so limited as to be nearly impossible to meet. The only scenario effectively addressed by this pilot program is one in which a fraudulent filer takes a publicly available image off the internet and superimposes their mark over a third-party’s mark. While this is a problem that should be addressed, it accounts for a very small portion of the fraudulent specimens that are submitted by bad actors.

We conducted research on a sampling of suspected fraudulent filings and many no longer had active web pages, nor could we find evidence of use in U.S. commerce. We shared our findings with the USPTO to demonstrate the lack of effectiveness given the conditions included in the specimens protest pilot program. Many of the applications we flagged have since matured to registration.

In addition, while we have pursued remedies in cases where our trademarks were infringed, we have not pursued opposition and cancellation proceedings regarding what we believe to be fraudulent filers because it's not timely. The opposition and cancellation process can take several years to come to a resolution. By contrast, Target brought 40 unique brands from idea generation to market in the past three years. Based on our business, the process limits the time we have to bring these new brands to market.

Finally, in the pending application phase, we can only file a letter of protest. This is a process established by the USPTO that has no teeth and no requirement that the examining attorney consider it when determining whether to refuse an application.