

New Tools for Canceling Trademarks

Have you ever come up with the perfect name for branding your goods or services, only to find out that someone else has already federally registered the trademark for similar goods or services? Unfortunately, it is happening more than ever because the U.S. Patent and Trademark Office (USPTO) trademark register is full of registrations, both legitimate and illegitimate.

Now, though, the recently-enacted U.S. Trademark Modernization Act provides two new tools to have some or all of the goods or services in a trademark registration canceled if the registrant fails to use the mark for those goods or services. First, you can challenge a registered trademark with the goal of cancellation so you can use yours. You can make a challenge by initiating an **expungement proceeding** against a registration that is three to 10 years old if the registered mark has never been used in commerce in connection with some or all of the registered goods or services. Second, you can initiate a **reexamination proceeding** against a registration that is less than five years old if the registered mark was not in use for some or all of the goods or services when the registration owner filed its declaration of use.

These new cancellation procedures are overseen by an examining attorney at the USPTO. They do not involve the Trademark Trial and Appeal Board unless the registration owner appeals the outcome. And, the challenger has no further involvement beyond the initial submission. As a result, each of the new cancellation tools is a relatively inexpensive option for the challenger and could lead to favorable outcomes for the newer brand.

If you would like to learn more about how to cancel a registered mark or how to protect your new or existing brand, please contact a member of the [Chambliss IP Group](#).