

118TH CONGRESS
1ST SESSION

S. 2173

To amend the Trademark Act of 1946 to provide that the licensing of a mark for use by a related company may not be construed as establishing an employment relationship between the owner of the mark, or an authorizing person, and either that related company or the employees of that related company, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2023

Mr. KING (for himself, Mr. LANKFORD, Mr. MANCHIN, Mr. BRAUN, Ms. SINEMA, Mr. TILLIS, Mr. CORNYN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Trademark Act of 1946 to provide that the licensing of a mark for use by a related company may not be construed as establishing an employment relationship between the owner of the mark, or an authorizing person, and either that related company or the employees of that related company, 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 “Trademark Licensing
5 Protection Act of 2023”.

1 **SEC. 2. SAFE HARBOR.**

2 Section 5 of the Act entitled “An Act to provide for
3 the registration and protection of trademarks used in com-
4 merce, to carry out the provisions of certain international
5 conventions, and for other purposes”, approved July 5,
6 1946 (commonly known as the “Trademark Act of 1946”)
7 (15 U.S.C. 1055), is amended—

8 (1) in the first sentence, by striking “Where a”
9 and inserting the following:

10 “(a) IN GENERAL.—Where a”; and

11 (2) by adding at the end the following:

12 “(b) CONSISTENCY IN USE.—

13 “(1) DEFINITIONS.—In this subsection—

14 “(A) the term ‘authorizing person’ means
15 a person that is authorized by the owner of a
16 mark to license that mark for use by a related
17 company;

18 “(B) the term ‘communicate’, with respect
19 to subparagraph (D)(i)(II), does not include
20 any communication related to a personnel or
21 employment policy or procedure;

22 “(C) the term ‘employment relationship’
23 means any type of joint employer relationship,
24 single employer relationship, or other employ-
25 ment-related status or relationship;

1 “(D) the term ‘exercise control over the
2 mark’—

3 “(i) includes, but is not limited to, re-
4 quiring a related company to—

5 “(I) complete training conducted
6 for the purpose of preserving or en-
7 hancing goodwill, a reputation, uni-
8 formity, or the expectation of the pub-
9 lic with respect to the nature and
10 quality of goods or services associated
11 with a mark; or

12 “(II) communicate with the
13 owner of a mark, or an authorizing
14 person, with respect to preserving or
15 enhancing goodwill, a reputation, uni-
16 formity, or the expectation of the pub-
17 lic with respect to the nature and
18 quality of goods or services associated
19 with a mark; and

20 “(ii) does not include any personnel or
21 employment policy or procedure that is
22 communicated—

23 “(I) by—

24 “(aa) the owner of a mark;

25 or

1 “(bb) an authorizing person;

2 and

3 “(II) to—

4 “(aa) a related company
5 with respect to the mark; or

6 “(bb) any employee of a re-
7 lated company described in item
8 (aa);

9 “(E) the term ‘franchise’ means a fran-
10 chise, as defined—

11 “(i) in section 436.1(h) of title 16,
12 Code of Federal Regulations, as in effect
13 on the date of enactment of this sub-
14 section; or

15 “(ii) under an applicable State fran-
16 chise law;

17 “(F) the term ‘franchisee’ means a
18 franchisee, as defined—

19 “(i) in section 436.1(i) of title 16,
20 Code of Federal Regulations, as in effect
21 on the date of enactment of this sub-
22 section; or

23 “(ii) under an applicable State fran-
24 chise law;

1 “(G) the term ‘franchisor’ means a
2 franchisor, as defined—

3 “(i) in section 436.1(k) of title 16,
4 Code of Federal Regulations, as in effect
5 on the date of enactment of this sub-
6 section; or

7 “(ii) under an applicable State fran-
8 chise law; and

9 “(H) the term ‘personnel or employment
10 policy or procedure’ means—

11 “(i) any contractually retained right
12 of the owner of a mark, or an authorizing
13 person, to directly control a related com-
14 pany’s hiring, promotion, firing, or dis-
15 cipline of the employees of such related
16 company;

17 “(ii) any contractually retained right
18 of the owner of a mark, or an authorizing
19 person, to directly control a related com-
20 pany’s rates of pay, including wages and
21 fringe benefits;

22 “(iii) any contractually retained right
23 of the owner of a mark, or an authorizing
24 person, to directly control a related com-

1 pany’s assignment of employee work sched-
2 ules;

3 “*(iv)* any contractually retained right
4 of the owner of a mark, or an authorizing
5 person, to directly control collective bar-
6 gaining procedures or labor relations; and

7 “*(v)* any contractually retained right
8 of the owner of a mark, or an authorizing
9 person, to directly supervise the employees
10 of a related company.

11 “(2) *APPLICABILITY*.—For the purposes of the
12 National Labor Relations Act (29 U.S.C. 151 et
13 seq.) and the Fair Labor Standards Act of 1938 (29
14 U.S.C. 201 et seq.), none of the following may be
15 construed, alone or in combination with any other
16 factor, as establishing an employment relationship
17 between the owner of a mark that is a franchisor,
18 or an authorizing person that is a franchisor, and a
19 related company with respect to that franchisor, or
20 the employees of that related company:

21 “(A) The licensing of the mark for use by
22 that related company or the employees of that
23 related company.

1 “(B) Any exercise of control over the mark
2 by that owner or authorizing person, as applica-
3 ble—

4 “(i) with respect to the use of the
5 mark by that related company or the em-
6 ployees of that related company; and

7 “(ii) for the purpose of preserving or
8 enhancing goodwill, a reputation, uni-
9 formity, or the expectation of the public
10 with respect to the nature and quality of
11 goods or services associated with the
12 mark.”.

13 **SEC. 3. APPLICABILITY.**

14 This Act, and the amendments made by this Act,
15 shall not apply to any proceeding before the National
16 Labor Relations Board that is commenced before the date
17 of enactment of this Act.

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