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# another covid-19 surprise: important new trademark and copyright legislation buried in spending and relief package

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*MSK Client Alert*

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Yesterday, Congress's omnibus spending and COVID-19 relief bill, **H.R. 133**, was signed into law. Buried in the legislation are two new acts that potentially have sweeping implications for intellectual property owners. The Trademark Modernization ("TM") Act and the Copyright Alternative in Small-Claims Enforcement ("CASE") Act introduce measures that are poised to significantly impact the way that trademark and copyright owners protect and enforce their rights. Below is a discussion of the most notable changes promised by the new legislation.

## The Trademark Modernization (TM) Act

In addition to navigating the **new fee structure** for U.S. Patent and Trademark Office (USPTO) filings starting on January 2, 2021, practitioners will be addressing new changes in the law resulting from the TM Act. First, and perhaps most notably, the TM Act provides trademark owners with a statutory rebuttable presumption of irreparable harm in trademark infringement actions, effective one year after the enactment of the TM Act. Historically, trademark plaintiffs who prevailed in court were presumed to suffer irreparable harm as a result of the violation, which essentially guaranteed that the court would award an injunction against the defendant's continuing use of the infringing mark. However, in 2006, the U.S. Supreme Court issued a landmark decision, *eBay, Inc. v. MercExchange LLC*, 547 U.S. 388 (2006), which upended the standard for injunctive relief and created a circuit split as to whether prevailing plaintiffs are entitled to such a presumption in trademark infringement cases. The TM Act restores the presumption of irreparable harm nationwide, making it easier once again for trademark owners to obtain an injunction and prevent consumer confusion in

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## practice areas

entertainment & ip litigation  
intellectual property  
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the marketplace. This legislation has no effect on copyright or patent cases, in which the presumption has been eliminated following *eBay*...

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