

SENATE BILL No. 145

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-2-1-13.5.

Synopsis: Trademarks. Provides that the owner of a famous trademark may obtain an injunction prohibiting another person's commercial use of the trademark.

Effective: July 1, 2005.

Simpson

January 4, 2005, read first time and referred to Committee on Judiciary.

C
O
P
Y



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

C
o
p
y

SENATE BILL No. 145



A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-2-1-13.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2005]: **Sec. 13.5. (a) An owner of a trademark that is famous in**
- 4 **Indiana is entitled, subject to the principles of equity and terms a**
- 5 **court considers reasonable, to an injunction against another**
- 6 **person's commercial use of the trademark if the other person's use:**
- 7 **(1) begins after the trademark has become famous; and**
- 8 **(2) causes dilution or creates a likelihood of dilution of the**
- 9 **distinctive quality of the trademark.**
- 10 **(b) In determining whether a trademark is distinctive and**
- 11 **famous, a court may consider factors such as:**
- 12 **(1) the degree of inherent or acquired distinctiveness of the**
- 13 **trademark in Indiana;**
- 14 **(2) the duration and extent of use of the trademark in**
- 15 **connection with the goods or services with which the**
- 16 **trademark is used;**
- 17 **(3) the duration and extent of advertising and publicity of the**



- 1 trademark in Indiana;
- 2 (4) the geographical extent of the trading area in which the
- 3 trademark is used;
- 4 (5) the channels of trade for the goods or services with which
- 5 the trademark is used;
- 6 (6) the degree of recognition of the trademark in the trading
- 7 areas and channels of trade in Indiana as it relates to the use
- 8 of the trademark by the:
 - 9 (A) trademark's owner; and
 - 10 (B) person against whom the injunction is sought;
 - 11 (7) the nature and extent of use of the same or a similar
 - 12 trademark by a third party; and
 - 13 (8) whether the trademark is the subject of a:
 - 14 (A) registration in Indiana;
 - 15 (B) federal registration under the Act of March 3, 1881;
 - 16 (C) federal registration under the Act of February 20,
 - 17 1905; or
 - 18 (D) registration on the principal register.
 - 19 (c) In an action brought under this section, the owner of a
 - 20 famous trademark is entitled to injunctive relief and other
 - 21 remedies set forth in this chapter, subject to the discretion of the
 - 22 court and the principles of equity.
 - 23 (d) The following are not actionable under this section:
 - 24 (1) Fair use of a famous trademark by another person in
 - 25 comparative commercial advertising or promotion.
 - 26 (2) Noncommercial use of the trademark.
 - 27 (3) All forms of news reporting and news commentary.

COPY

