

**GOODWILL HARBORING:
THE TRADEMARK DILUTION REVISION ACT
OF 2006 LEGITIMATES THE GOODWILL
INVESTMENT IN A TRADEMARK WHILE
SAFEGUARDING THE FIRST AMENDMENT**

I. INTRODUCTION

“The life of the law has not been logic: it has been experience.”¹

Perhaps, the Trademark Dilution Revision Act of 2006 (TDRA), signed into law on October 6, 2006 by President George W. Bush, is best understood from Justice Holmes’s above quoted perspective. Subject to endless criticism from all angles of academia and the professional realm², the TDRA has lumbered through a painstaking series of revisions, redactions, and additions to resurrect a cause of action for trademark dilution in the form of blurring and tarnishment.³ Some critics view the TDRA as a duplicative cause of action stepping on the feet of infringement.

1. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

2. *See, e.g.*, J. Thomas McCarthy, *Dilution of a Trademark: European and United States Law Compared*, 94 TRADEMARK REP. 1163 (2004). Professor McCarthy notes:

No part of trademark law that I have encountered in my forty years of teaching and practicing IP law has created so much doctrinal puzzlement and judicial miscomprehension as the concept of “dilution” as a form of intrusion on a trademark. It is a daunting pedagogical challenge to explain even the basic theoretical concept of dilution to students, attorneys, and judges. Few can successfully explain it without encountering stares of incomprehension or worse, nods of understanding which mask and conceal bewilderment and misinterpretation.

Id. at 1163.

3. *See, e.g.*, Trademark Dilution Revision Act of 2005 (Reported in Senate), H.R. 683, 109th Cong. (2006).