



Phil Mullin

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 334**

123rd General Assembly

(As Reported by H. State Government)

**Reps. Callender, Krebs, Hood, Bateman, Tiberi, Opfer, O'Brien, Schuler, Terwilleger, Bender, Van Vyven, Damschroder, Williams, Householder, Brading, Harris, Corbin, Padgett, Young**

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### **BILL SUMMARY**

- Prohibits any person from claiming the protection of a trademark, trade dress, or similar right for the shape, design, image, or structure of a public building.

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### **CONTENT AND OPERATION**

#### **Prohibition**

The bill prohibits any person from claiming, holding, enforcing, or applying for registration of, any *trademark* (see **COMMENT 1**), trade dress, or similar right, or from seeking any legal remedy for violation of any alleged right resulting from an application for that registration, in connection with the shape, design, image, or structure of any *public building*. For purposes of this prohibition, a public building generally includes any building or other structure to which either of the following applies: (1) the state, any state agency, public institution, or political subdivision, or any other organized body, office, or entity established by Ohio law *owns* the building or structure for the *exercise of any function of government* or (2) the original or current owner constructed or acquired the building or structure with the use of any *government money that equaled or exceeded 51%* of the total cost of its construction or acquisition. (Sec. 9.561(A) and (B).) The bill's prohibition does *not apply* to or affect any building or other structure owned by a *state institution of higher education*, which includes all four-year state colleges and universities, community colleges, university branches, technical colleges, state community colleges, the Medical College of Ohio at Toledo, and the Northeastern Ohio Universities College of Medicine (sec. 9.561(D)).

### Associated civil relief

Under the bill, any person who suffers any injury or loss because of the actions of another in violation of the prohibition may bring a civil action to recover from the person or entity that engaged in the violation any appropriate relief, including, but not limited to, all of the following: (1) an award of triple the actual damages suffered as a result of the violation, (2) the cost and expenses of maintaining the civil action, and (3) reasonable attorney's fees (sec. 9.561(C)).

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## COMMENT

1. Current Ohio law (1) defines a "trademark" to mean any word, name, symbol, device, or any combination of any word, name, symbol, or device, that is adopted and used by a person to identify and distinguish the goods of that person, including a unique product, from the goods of other persons, and to indicate the source of the goods, even if that source is unknown, (2) authorizes persons to register trademarks with the Secretary of State, and (3) allows the owner of a registered trademark to bring a civil action to enjoin the manufacture, use, display, or sale of counterfeits or imitations of the trademark and to recover profits derived from and damages arising as a result of that wrongful manufacture, use, display, or sale (secs. 1329.54 to 1329.67, not in the bill). Ohio's Deceptive Trade Practices Law (secs. 4165.01 to 4165.04, not in the bill) also applies to trademarks, and Ohio's Criminal Code prescribes the offense of trademark counterfeiting (sec. 2913.34, not in the bill).

Federal law defines a "trademark" to include any word, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register under the federal Trademark Law to identify and distinguish the person's goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown (15 U.S.C. 1127). The owner of a trademark used in commerce may apply to register the trademark with the United States Patent and Trademark Office and may bring a civil action for trademark infringement.

2. The United States Court of Appeals for the Sixth Circuit indicated that the Rock and Roll Hall of Fame and Museum in Cleveland may *not be able to claim* trademark protection for the design or image of the Museum when it held that a photograph of the Museum in a poster does not function as a trademark. *Rock and Roll Hall of Fame and Museum, Inc., v. Gentile Productions*, 134 F.3d 749 (6th Cir. 1998) (reversing 934 F.Supp. 868 (N.D. Ohio 1996)). The Court of Appeals (1) vacated a preliminary injunction the district court had issued ordering

the defendant not to distribute a poster featuring a photograph of the Museum against a colorful sunset and (2) remanded the case back to the district court for further consideration. The building design of the Museum had been registered for trademark protection with the Secretary of State.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	05-11-99	p. 624
Reported, H. State Gov't	06-03-99	p. 771

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