

## PATENT & TRADEMARK POLICY REPORT MARCH 24, 2023



### I. Congressional Developments:

- Next Tuesday, March 28<sup>th</sup>, at 10:30am ET, the House Energy & Commerce Communications and Technology Subcommittee will hold a hearing titled “Preserving Free Speech and Reining in Big Tech Censorship.” No witnesses have been listed yet. More info. [here](#).
- Next week, appropriators in both the House and the Senate are slated to hold budget hearings on the Department of Justice’s proposed Fiscal Year (FY) 2024 budget. Attorney General Merrick Garland will testify before the Senate Appropriations Commerce-Justice-Science (CJS) Subcommittee on Tuesday at 2:30pm ET and then Inspector General Michael E. Horowitz will first testify before the House Appropriations CJS Subcommittee at 9:30am ET on Thursday. The hearings will be live-streamed [here](#) and [here](#).
- On Tuesday, Senator Michael Bennet (D-CO) wrote a letter to the CEOs of OpenAI, Microsoft, Snap, Google, and Meta to highlight the potential harm to younger users of rushing to integrate generative artificial intelligence (AI) in their products and services. “Few recent technologies have captured the public’s attention like generative AI. It is a testament to American innovation, and we should welcome its potential benefits to our economy and society. But the race to deploy generative AI cannot come at the expense of our children,” wrote Bennet. “Responsible deployment requires clear policies and frameworks to promote safety, anticipate risk, and mitigate harm.” The full text of the letter is available [here](#) and the press release [here](#).

### Headlines and Highlights:

- House E&C Communications and Tech Subcommittee to hold hearing on “Reining in Big Tech Censorship” next week.
- House and Senate appropriators to consider proposed DOJ FY2024 budget at hearings next week.
- USPTO to host third event in its 2023 Women’s Entrepreneurship program next week.
- Supreme Court hears oral arguments in a trademark infringement case brought by Jack Daniel’s against a dog chew-toy maker VIP.
- Federal Trade Commission reportedly poised to take action in some investigations into Amazon.
- Senators urge Big Tech CEOs to consider potential harm to younger users when deploying AI.

## II. Administration Updates:

- On Tuesday, the Commerce Department released its proposed rules to prevent \$52 billion in semiconductor manufacturing and research funding from being used by China and other countries deemed of concern. According to *Reuters*, “The proposal limits recipients of U.S. funding from investing in the expansion of semiconductor manufacturing in foreign countries of concern such as China and Russia, and limits recipients of incentive funds from engaging in joint research or technology licensing efforts with a foreign entity of concern.” Commerce Secretary Gina Raimondo said, “these guardrails will help ensure we stay ahead of adversaries for decades to come.” The Commerce Department also announced that they plan to start accepting applications for the programs subsidies in late June. Read more [here](#).
- On Monday, *Politico* reported that the Biden Administration is planning to take action on at least three of its six current investigations into Amazon. For instance, the Federal Trade Commission (FTC) is considering challenging Amazon on its \$1.7 billion acquisition of robot vacuum maker iRobot with a potential case expected within the next few months. The FTC also has two privacy related investigations, one with Amazon’s Ring camera and another with the Amazon Alexa voice assistant. The article states that the result of at least one of those investigations could come in the next few months. Another potential case in the pipeline would be a wide-ranging antitrust case targeting Amazon’s retail operations. “Though the details of a complaint are not known, it could include the bundling of services through its Prime subscription business and its use of competitor data to out-muscle rival retailers on its platform.” Representatives for the FTC and Amazon both declined to comment on the investigations. Read more [here](#).

## III. USPTO Updates:

- Next Wednesday, March 29<sup>th</sup>, from 2:00 – 4:00pm ET, the USPTO is hosting its third event in its 2023 Women’s Entrepreneurship program. Panelists from the private sector and academic will discuss how their ideas impacted the tech we use today; challenges in bringing new innovations to the market; and types of funding available and how to find it. Interested participants may register for the virtual event [here](#).

## IV. Judicial Updates:

- On Wednesday, the Supreme Court heard oral arguments in a trademark infringement case brought by Jack Daniel’s against a dog chew-toy maker. Jack Daniel’s is arguing that by infringing its trademark, the company that manufactures the toy, VIP, is confusing consumers and tarnishing its reputation. The dog toy in question associates the whiskey with dog poop. The toy looks like a vinyl version of a Jack Daniel’s whiskey bottle, but the label is called Bad Spaniels, and instead of listing the alcohol content by volume, it promises “43% poo” and “100% smelly.” Meanwhile, VIP contended that it is constitutionally entitled to make fun of iconic brands, which their lawyer likened to poking fun at celebrities. *Reuters* reports that both Justice Samuel Alito and Justice Sonia Sotomayor both asked questions about how the first amendment right of free speech intersects with trademark laws that are meant to protect brands and other IP. Read more [here](#).

## V. International Updates:

- On Wednesday, *Reuters* reported that the recent developments in AI, such as ChatGPT, have complicated the efforts of European Union lawmakers who are trying to come to an agreement on AI laws. The European Commission proposed draft rules nearly two years ago, which have since been rendered nearly obsolete due to the recent advancements with the technology. Many still expect an agreement by the end of this year, while some foresee a delay into 2024. “The pace at which new systems are being released makes regulation a real challenge,” said Daniel Leufer, a senior policy analyst at rights group Access Now. “It’s a fast-moving target, but there are measures that remain relevant despite the speed of development: transparency, quality control, and measures to assert their fundamental rights... Discussions must not be rushed, and compromises must not be made just so the file can be closed before the end of the year,” said Leufer. “People's rights are at stake.” Read more [here](#).