

## QUESTIONS FOR THE RECORD FROM REP. LOU CORREA

Hearing on “Counterfeits and Cluttering: Emerging Threats to the Integrity of the Trademark System and the Impact on American Consumers and Businesses”

July 18, 2019

The USPTO has a history of emphasizing the importance of educating, assisting, and guiding small businesses and startups.

[In my district of California](#), I have small business franchise establishments that are responsible for over 15,000 jobs and more than \$1.5 billion in economic output. These small businesses represent a significant percentage of women- and minority-owned small businesses.

I have heard from franchise owners that the value of their trademarks is being diluted at the federal level. As you know, brand controls are needed to preserve the value of the brands.

I understand these business owners are facing a conflict of laws issue between the Lanham Act and federal employment law. Specifically, the Lanham Act requires trademark holders to exert brand controls to retain uniformity and consistency of their trademarks in the public, but the established brand controls have been used as evidence of employment control in litigation. See *Ocampo v. 455 Hospitality, LLC*, 2016 WL 4926204, at\*7 (S.D.N.Y.) and *In re Jimmy John’s Overtime Litig.*, 14 C 5509, 2018 WL 3231273, at\*3-4, 6, and 19-20 (N.D. Ill. June 14, 2018).

Please comment on this conflict between employment law and trademark law facing the franchise sector. Will the US Patent and Trademark Office work with this Committee and business owners to help alleviate this contradiction in federal law?