

## ***Registered but Replaced***

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This is an early-stage idea exploring whether US trademark law provides inadequate protection for federal registered marks by small companies that are thereafter used by bigger companies. Although there is a doctrine of reverse confusion that permits a small company to sue a well-known company, registered owners may still fail to stop the larger company, not only because of the time and cost of litigation, but also because courts often rule in favor of the large company even before trial. There have been prior cases against household names including ESPN, Meta, Victoria's Secret and Dreamworks, as well as a pending case by small company Gemini against Alphabet/Google with respect to the mark "Gemini" (used for Google's generative AI). There is admittedly an argument for permitting the larger company use a mark first used – and even registered – by another based on fundamental trademark policy that favors lowering search costs. However, if only search costs are considered, then why bother with registration at all? I plan to explore whether this is a new type of trademark bullying where large companies have little respect for registered marks knowing that they can likely prevail in court or through settlement. I aim to consider whether policies in favor of registration and consumer search costs can be reconciled, as well as how to promote distributive justice.