

## A Lesson in Laches: You Waited Too Long to Start Your Kar

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After the district court, on remand, held that laches did not bar relief, the US Court of Appeals for the Third Circuit again determined that the district court abused its discretion by not properly applying the presumption in favor of laches and issued an order to vacate and remand with instructions to dismiss a charity's trademark infringement claims with prejudice. *Kars 4 Kids Inc. v. America Can!*, Case Nos. 23-1273; -1281 (3rd Cir. Apr. 17, 2024) (Bibas, Porter, **Fisher**, JJ.)

Kars 4 Kids and America Can! Cars for Kids are charities that sell donated vehicles to fund children's education programs and have been engaged in a trademark dispute since 2003. Both parties have alleged federal and state trademark infringement, unfair competition and trademark dilution over their respective KARS 4 KIDS and CARS FOR KIDS trademarks. The parties were last before the [Third Circuit in 2021](#), when the Court held that America Can was first to use its CARS FOR KIDS trademark in Texas, and Kars 4 Kids waived any challenge to the validity of America Can's marks. In that 2021 decision, the Third Circuit also vacated the district court judgment in part and remanded the case for the district court to reexamine its laches and disgorgement conclusions, which had been decided in favor of America Can.

The Lanham Act does not contain a statute of limitations. Instead, it subjects all claims to the principles of equity. To determine whether laches bars a claim, a court considers two elements: whether the plaintiff inexcusably delayed in bringing suit, and whether the defendant was prejudiced as a result of the delay. With respect to the burden of proof for the laches claim at issue, America Can and Kars 4 Kids agreed that their Lanham Act claims were properly analogous to New Jersey's six-year fraud statute. Therefore, because America Can first discovered the Kars 4 Kids trademark in Texas in 2003 and did not bring counterclaims until 2015, America Can was subject to a presumption that its claims were barred by laches unless it was able to prove both that its delay in filing suit was excusable and that it did not prejudice Kars 4 Kids.

On the issue of delay, the Third Circuit found that the district court erred because it did not find that America Can met its burden of establishing that its delay in bringing suit was excusable and that a reasonable person in its shoes would have waited to file suit. Instead, the district court improperly placed the burden on Kars 4 Kids to establish whether its advertisements in Texas were viewed by a sufficient number of Texans so as to put America Can on notice. As the Third Circuit explained, this was error. The district court should have held America Can to the burden of persuasion to show that it was not sufficiently aware of Kars 4 Kids's use of its mark in Texas and to show what it did to identify and stop any potentially infringing behavior.

On the issue of prejudice, the Third Circuit held that the district court improperly skipped the required prejudice analysis by concluding that Kars for Kids “assumed the risk” of a claim following its receipt of a 2003 cease-and-desist letter from America Can. Under the proper framework, America Can bore the burden of establishing that Kars 4 Kids was not prejudiced because of America Can’s delay in bringing a claim. With that burden in mind, and noting that America Can took no proactive steps to police the marketplace or protect its mark for almost 12 years after sending the 2003 cease-and-desist letter (while Kars 4 Kids grew its nationwide presence and investment in the Texas market), the Court found that America Can failed to meaningfully rebut the presumption that Kars 4 Kids suffered prejudice during the time America Can inexcusably delayed in acting.

Finally, in response to America Can’s arguments that a laches defense was inappropriate because Kars 4 Kids acted with unclean hands, the Third Circuit held that the district court erroneously found that Kars 4 Kids engaged in conduct that satisfied the legal standard for unclean hands. According to the Court, even “willful” conduct on the part of Kars 4 Kids was not shown to have the necessary fraudulent intent or bad faith to apply the unclean hands doctrine.

The Third Circuit reminded the district court that the remit of the Third Circuit’s 2021 remand required the district court to hold America Can to its burden to establish that its delay was excusable, and that Kars 4 Kids was not prejudiced as a result of that delay. Because America Can failed to meet that burden, the Third Circuit held that America Can did not overcome the presumption of laches, which barred its claims against Kars 4 Kids. And under the Lanham Act, because a case of “actual laches” (a failure to rebut the presumption in favor of laches as to both delay *and* prejudice) may bar both legal and equitable relief, the Third Circuit vacated the district court’s judgment granting monetary and injunctive relief and again remanded the case with instructions to the district court to dismiss America Can’s claims with prejudice due to laches.

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