

damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

(10)(A) The court shall hold a hearing, unless waived by all the parties, on the date set by the court in the order of seizure. That date shall be not sooner than ten days after the order is issued and not later than fifteen days after the order is issued, unless the applicant for the order shows good cause for another date or unless the party against whom such order is directed consents to another date for such hearing. At such hearing the party obtaining the order shall have the burden to prove that the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect. If that party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(B) In connection with a hearing under this paragraph, the court may make such orders modifying the time limits for discovery under the Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of such hearing.

(11) A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee. The court in its discretion may award prejudgment interest on relief recovered under this paragraph, at an annual interest rate established under section 6621 of title 26, commencing on the date of service of the claimant's pleading setting forth the claim under this paragraph and ending on the date such recovery is granted, or for such shorter time as the court deems appropriate.

(July 5, 1946, ch. 540, title VI, § 34, 60 Stat. 439; Jan. 2, 1975, Pub. L. 93-596, § 1, 88 Stat. 1949; Oct. 12, 1984, Pub. L. 98-473, title II, § 1503(1), 98 Stat. 2179; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Nov. 16, 1988, Pub. L. 100-667, title I, § 128(c)-(e), 102 Stat. 3945.)

REFERENCES IN TEXT

The Rules of Civil Procedure, referred to in subsec. (d)(10)(B), probably means the Federal Rules of Civil Procedure, which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 19, 20, 33 Stat. 729; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-667, § 128(c), inserted “or to prevent a violation under section 1125(a) of this title” after “Office” in first sentence.

Subsec. (c). Pub. L. 100-667, § 128(d), substituted “proceeding involving a mark registered” for “proceeding arising” and “judgment is entered or an appeal is

taken” for “decision is rendered, appeal taken or a decree issued”.

Subsec. (d)(1)(B). Pub. L. 100-667, § 128(e), inserted “on or” after “or designation used” in concluding provisions.

1986—Subsec. (d)(11). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1984—Pub. L. 98-473 designated first, second, and third undesignated pars. as subsecs. (a), (b), and (c), respectively and added subsec. (d).

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Judgment, costs, see rule 54.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Contempt proceedings, see sections 401, 402, 3285, and 3691 of Title 18, Crimes and Criminal Procedure.

Innocent infringement by publishers, injunction not to issue in certain cases, see section 1114 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1117, 1118, 1122 of this title.

§ 1117. Recovery for violation of rights; profits, damages and costs; attorney fees; treble damages

(a) When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, or a violation under section 1125(a) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direc-

tion. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

(b) In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 1114(1)(a) of this title or section 380 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621 of title 26, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.

(July 5, 1946, ch. 540, title VI, §35, 60 Stat. 439; Oct. 9, 1962, Pub. L. 87-772, §19, 76 Stat. 774; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Jan. 2, 1975, Pub. L. 93-600, §3, 88 Stat. 1955; Oct. 12, 1984, Pub. L. 98-473, title II, §1503(2), 98 Stat. 2182; Oct. 22, 1986, Pub. L. 99-514, §2, 100 Stat. 2095; Nov. 16, 1988, Pub. L. 100-667, title I, §129, 102 Stat. 3945.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§16, 19, 33 Stat. 728, 729; Mar. 19, 1920, ch. 104, §4, 41 Stat. 534.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-667 inserted “, or a violation under section 1125(a) of this title,” after “Office” in first sentence.

1986—Subsec. (b). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1984—Pub. L. 98-473 designated existing provisions as subsec. (a) and added subsec. (b).

1975—Pub. L. 93-600 inserted provisions relating to awarding of attorney fees in exceptional cases.

Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Pub. L. 87-772 substituted “1114” for “1113(1)(b)”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then

pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

FEDERAL RULES OF CIVIL PROCEDURE

Judgment, costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Damages not recoverable on failure to give notice of registration, see section 1111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1122, 1125 of this title.

§ 1118. Destruction of infringing articles

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, or a violation under section 1125(a) of this title, shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or, in the case of a violation of section 1125(a) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction thereof, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.

(July 5, 1946, ch. 540, title VI, §36, 60 Stat. 440; Jan. 2, 1975, Pub. L. 93-596, §1, 88 Stat. 1949; Oct. 12, 1984, Pub. L. 98-473, title II, §1503(3), 98 Stat. 2182; Nov. 16, 1988, Pub. L. 100-667, title I, §130, 102 Stat. 3945.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1988—Pub. L. 100-667 inserted in first sentence “, or a violation under section 1125(a) of this title,” after “Of-