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EFFECTIVE DATE

This chapter, act July 5, 1946, ch. 540, 60 Stat. 427, became effective one year from July 5, 1946, and repealed chapter 3 of this title as of that date. See notes under section 1051 of this title.

PRIOR LAWS


SUBCHAPTER I—THE PRINCIPAL REGISTER

§ 1051. Application for registration; verification

(a) Application for use of trademark

(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2) The application shall include specification of the applicant’s domicile and citizenship, the date of the applicant’s first use of the mark, the date of the applicant’s first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.
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(3) The statement shall be verified by the applicant and specify that—
(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;
(B) to the best of the verifier’s knowledge and belief, the facts recited in the application are accurate;
(C) the mark is in use in commerce; and
(D) to the best of the verifier’s knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 1126 of this title, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(c) Amendment of application under subsection (b) to conform to requirements of subsection (a)

At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this chapter, by amending his or her application to bring it into conformity with the requirements of subsection (a).

(d) Verified statement that trademark is used in commerce

(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 1063(b)(2) of this title to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office an application and a verified statement claiming concurrent use, the applicant shall—

(i) state exceptions to the claim of exclusive use; and

(ii) specify, to the extent of the verifier’s knowledge—

(I) any concurrent use by others;

(II) the goods on or in connection with which and the areas in which each concurrent use exists;

(III) the periods of each use; and

(IV) the goods and area for which the applicant desires registration.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

(b) Application for bona fide intention to use trademark

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

(2) The application shall include specification of the applicant’s domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify—

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant’s bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier’s knowledge and belief, the facts recited in the application are accurate; and

(D) that, to the best of the verifier’s knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

So in original. The word “shall” probably should not appear.
ment that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

(3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

(e) Designation of resident for service of process and notices

If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.


Prior Provisions


Amendments

2002—Subsec. (d)(1). Pub. L. 107-273, § 13207(b)(1), in first sentence, substituted “specifying the date of the applicant’s first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce,” for “specifying the date of the applicant’s first use of the mark in commerce and, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce.”

Subsec. (e). Pub. L. 106-273, § 13207(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) required applicant not domiciled in United States to designate name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark and provided that notices or process be served by leaving with such person or mailing to him a copy, or upon Director if designated person cannot be found.

1999—Subsecs. (a), (b), (d), (e). Pub. L. 106-113 substituted “Director” for “Commissioner” wherever appearing.

1996—Subsec. (a). Pub. L. 105-330, § 103(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to application by owner of a trademark used in commerce to register trademark by filing a Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (b). Pub. L. 105-330, § 103(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to application, by person with bona fide intention, under circumstances showing good faith, to use a trademark in commerce, to register trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (d)(1). Pub. L. 105-330, § 201(a)(1)(A), inserted “and,” after “specifying the date of the applicant’s first use of the mark in commerce”.

Pub. L. 105-330, § 201(a)(1)(B), which directed the striking out of “and, the mode or manner in which the mark is used on or in connection with such goods or services”, was executed by striking out “and, the mode or manner in which the mark is used on or in connection with such goods or services” after “notice of allowance on or in connection with which the mark is used in commerce”, to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 105-330, § 103(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application.”

1988—Subsec. (a). Pub. L. 100-667, § 103(1) to (7), inserted “(a)” preceding introductory provisions and substituted “may apply to register his or her” for “may register his”, redesignated former subsecs. (a) to (c) as parts. (1) to (3), respectively, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (1)(A), substituted “used on or in connection with” for “applied to” and “goods on or in connection” for “goods in connection”. In par. (1)(C), struck out “actually” after “the mark as”, and in par. (2), substituted “prescribed” for “filling”.

Subsecs. (b), (c). Pub. L. 100-667, § 103(3), (9), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as parts. (2) and (3), respectively, of subsec. (a). Subsecs. (d), (e). Pub. L. 100-667, § 103(8), (9), added subsec. (d) and redesignated former subsec. (d) as (e).


1962—Subsec. (a)(1). Pub. L. 87-772 substituted “as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive” for “as might be calculated to deceive”, and struck out “or services” after “use by others, the goods”.

Effective Date of 1999 Amendment

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106-113, set out as a note under section 1 of Title 33, Patents.
Effective Date of 1998 Amendment.

Pub. L. 105–330, title I, §109(b), Oct. 30, 1998, 112 Stat. 3069, provided that: “This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act [probably should be ‘this title’], see section 110 of Pub. L. 105–310, set out as an Effective Date of 1998 Amendment note below.


‘‘(1) on the date that is 1 year after the date of the enactment of this Act [Oct. 30, 1998], or

‘‘(2) upon the entry into force of the Trademark Law Treaty with respect to the United States [Aug. 12, 2000], whichever occurs first.’’

Pub. L. 105–330, title II, §201(b), Oct. 30, 1998, 112 Stat. 3070, provided that: ‘‘The amendments made by this section [amending this section and sections 1052, 1057, 1064, 1091, 1094, 1113 to 1115, 1121, and 1124 of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark.’’

Effective Date of 1988 Amendment.

Pub. L. 100–667, title I, §136, Nov. 16, 1988, 102 Stat. 3948, provided that: ‘‘This title and the amendments made by this title [see Short Title of 1988 Amendment note below] shall become effective on the date which is one year after the date of enactment of this Act [Nov. 16, 1988].’’

Effective Date of 1975 Amendment.


Effective Date.

Section 46(a) of act July 5, 1946, provided that this chapter shall be in force and take effect one year from July 5, 1946.

Short Title of 2010 Amendment.


Short Title of 2006 Amendment.

Pub. L. 109–312, §1(a), Oct. 6, 2006, 120 Stat. 1730, provided that: ‘‘This Act [amending sections 1052, 1063, 1064, 1092, 1125, and 1127 of this title] may be cited as the ‘Trademark Dilution Revision Act of 2006’.‘’

Short Title of 2004 Amendment.

Pub. L. 108–422, §1, Dec. 23, 2004, 118 Stat. 3912, provided that: ‘‘This Act [amending section 1117 of this title, section 504 of Title 17, Copyrights, sections 2318 and 3559 of Title 18, Crimes and Criminal Procedure, and sections 85 and 112 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section, section 1117 of this title, sections 2918 and 2919 of Title 18, and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Fraudulent Online Identity Sanctions Act’.‘’

Short Title of 2002 Amendment.


Short Title of 1999 Amendments.

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3001(a)], Nov. 29, 1999, 113 Stat. 1358, provided that: ‘‘This title [enacting section 1129 of this title, amending sections 1114, 1116, 1117, 1125, and 1127 of this title, section 470a of Title 16, Conservation, and section 1338 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and sections 1117 and 1125 of this title] may be cited as the ‘Anticybersquatting Consumer Protection Act’.‘’

Pub. L. 106–43, §1, Aug. 5, 1999, 113 Stat. 218, provided that: ‘‘This Act [amending sections 1052 to 1054, 1060, 1063, 1064, 1091, 1092, 1114, 1116 to 1118, 1122, and 1124 to 1127 of this title, enacting provisions set out as a note under section 1052 of this title, and amending provisions set out as a note under this section] may be cited as the ‘Trademarks Amendments Act of 1999’.‘’

Short Title of 1998 Amendments.


Short Title of 1996 Amendment.

Pub. L. 100–667, title I, §101, Nov. 16, 1988, 102 Stat. 3955, provided that: ‘‘This Act [amending sections 1125 and 1126 of this title and enacting provisions set out as a note under section 1125 of this title] may be cited as the ‘Federal Trademark Dilution Act of 1988’.‘’

Short Title of 1992 Amendment.

Pub. L. 102–542, §1, Oct. 27, 1992, 106 Stat. 3567, provided that: ‘‘This Act [enacting section 1120 of this title and amending provisions set out as a note under section 1125 of this title] may be cited as the ‘Trademark Remedies Clarification Act’.‘’

Short Title of 1988 Amendment.

Pub. L. 100–667, title I, §101, Nov. 16, 1988, 102 Stat. 3935, provided that: ‘‘This title [amending this section and sections 1052 to 1060, 1062 to 1066, 1068, 1069, 1071, 1091, 1092, 1094, 1095, 1101, 1111, 1112, 1114 to 1118, 1121, and 1125 to 1127 of this title, redesignating section 1122(a) of this title as section 1121(b) of this title, and enacting provisions set out as notes under sections 1051 and 1058 of this title] may be cited as the ‘Trademark Law Revision Act of 1988’.‘’

Short Title of 1984 Amendment.

Pub. L. 98–620, title I, §101, Nov. 8, 1984, 98 Stat. 3335, provided that: ‘‘This title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1064 of this title] may be cited as the ‘Trademark Clarification Act of 1984’.‘’

Short Title.

Act July 5, 1946, ch. 540, 60 Stat. 427, which is classified to this chapter, is popularly known as the ‘Lanham Act’ and also as the ‘Trademark Act of 1946’. REPEAL OF INCONSISTENT PROVISIONS; CERTAIN PROVISIONS NOT AFFECTED.

Stat. 220, provided in part that all acts and parts of acts inconsistent with this chapter are repealed effective one year from July 5, 1946, but that "nothing contained in this Act [this chapter] shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act [July 5, 1947] which does not relate to trademarks, or as re-stating or increasing the authority of any Federal department or regulatory agency except as may be specifically provided in this Act [this chapter]."

Act July 5, 1946, ch. 540, title XI, § 46, 60 Stat. 446, provided that: "The prosecution of such applications so amended and filed after July 5, 1946, in the United States Patent Office shall be proceeded with and such registrations granted in accordance with the provisions of this Act [this chapter]. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this end for this purpose only, notwithstanding the foregoing general repeal thereof."

Nothing in this title [see Short Title of 1999 Amendments note above] shall affect the validity of registrations granted under section 11 of the Act of November 29, 1999, 113 Stat. 1536, 1501A–551, provided that: 'Nothing in this title shall affect the validity of registrations granted under the Trademark Act of 1988 (15 U.S.C. 1115 et seq.) [including any defense under section 43(c)(4) of such Act (15 U.S.C. 1125(c)(4) or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution."

Separability

Act July 5, 1946, ch. 540, title XI, § 50, 60 Stat. 446, provided that: "Nothing in this title [see Short Title of 1999 Amendments note above] shall affect the validity of registrations granted under the Trademark Act of 1988 (15 U.S.C. 1115 et seq.) [including any defense under section 43(c)(4) of such Act (15 U.S.C. 1125(c)(4) or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution."

Transfer of Functions

For transfer of functions of other officers, employees, and agencies of Department of Commerce to Secretary of Commerce, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3171, 64 Stat. 1283, set out in the Appendix to Title 5, Government Organization and Employees.

Pending Proceedings and Existing Registration and Rights Under Prior Acts

Act July 5, 1946, ch. 540, title XI, § 46(a), 60 Stat. 444, provided in part that this chapter, except as otherwise specifically provided therein, shall not affect any suit, proceeding or appeal pending on the effective date of this chapter and that the repeal of all inconsistent acts "shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act [July 5, 1947], or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title and note under this section]."

Act July 5, 1946, ch. 540, title XI, §§ 46(b), 47, 60 Stat. 446, provided: "(b) Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905 [sections 81 to 109 of this title], shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act [section 1059 of this title]. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act [this chapter] to the same extent and with the same force and effect as though registered on the principal register established by this Act [this chapter] except as limited in sections 8, 12, 14, and 15 of this Act [sections 1058, 1062, 1064, and 1065 of this title]. Marks registered under the 'ten-year proviso' of section 5 of the Act of February 20, 1905, as amended [former section 85 of this title], shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of section 2 of this Act [section 1052 of this title] and may be renewed under section 9 of this Act [section 1059 of this title] as marks coming within said paragraph."

"Registration now existing under the Act of March 19, 1920 [former sections 121 to 128 of this title], shall expire six months after the effective date of this Act [July 5, 1947], or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act [this chapter] relating to registrations thereon granted in accordance with the provisions of this Act [this chapter] except as limited in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title]. Marks registered under previous Acts may, if eligible, also be registered under this Act [this chapter]."

"(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act [July 5, 1947], the court, if it be of the opinion that the provisions of this Act [this chapter] are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner [now Director] or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper."

Act July 5, 1946, ch. 540, title XI, § 49, 60 Stat. 446, provided: "Nothing herein [in this chapter] shall adversely affect the rights of the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947]."

Emergency Relief From Postal Situation Affecting Trademark Cases

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

§ 1052. Trademarks registrable on principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin
of the goods and is first used on or in connection
with wines or spirits by the applicant on or after
one year after the date on which the WTO
Agreement (as defined in section 3501(9) of title
19) enters into force with respect to the United
States, or (5) comprises any matter that, as a
whole, is functional.

(b) Consists of or comprises the flag or coat of
arms or other insignia of the United States, or
of any State or municipality, or of any foreign
country, or any simulation thereof.

(c) Consists of or comprises a name, portrait,
or signature identifying a particular living indi-
vidual except by his written consent, or the
name, signature, or portrait of a deceased Presi-
dent of the United States during the life of his
widow, if any, except by the written consent of
the widow.

(d) Consists of or comprises a mark which so
resembles a mark registered in the Patent and
Trademark Office, or a mark or trade name pre-
viously used in the United States by another
and not abandoned, as to be likely, when used on
or in connection with the goods of the applicant,
to cause confusion, or to cause mistake, or to
deceive: Provided, That if the Director deter-
mines that confusion, mistake, or deception is
not likely to result from the continued use by
more than one person of the same or similar
marks under conditions and limitations as to
the mode or place of use of the marks or the
goods on or in connection with which such
marks are used, concurrent registrations may be
issued to such persons when they have become
entitled to use such marks as a result of their
concurrent lawful use in commerce prior to (1)
the earliest of the filing dates of the applica-
tions pending or of any registration issued under
this chapter; (2) July 5, 1947, in the case of reg-
istrations previously issued under the Act of
March 3, 1881, or February 20, 1905, and contin-
ing in full force and effect on that date; or (3)
July 5, 1947, in the case of applications filed
under the Act of February 20, 1905, and reg-
istered after July 5, 1947. Use prior to the filing
date of any pending application or a registration
shall not be required when the owner of such ap-
plication or registration consents to the grant
of a concurrent registration to the applicant.
Concurrent registrations may also be issued by
the Director when a court of competent jurisdic-
tion has finally determined that more than one
person is entitled to use the same or similar
marks in commerce. In issuing concurrent reg-
istrations, the Director shall prescribe condi-
tions and limitations as to the mode or place of
use of the mark or the goods on or in connection
with which such mark is registered to the re-
spective persons.

(e) Consists of a mark which (1) when used on
or in connection with the goods of the applicant
is merely descriptive or deceptively misdescrip-
tive of them, (2) when used on or in connection
with the goods of the applicant is primarily geo-
graphically descriptive of them, except as indi-
cations of regional origin may be registrable
under section 1054 of this title, (3) when used on
or in connection with the goods of the applicant
is primarily geographically deceptively misdes-
criptive of them, (4) is primarily merely a sur-
name, or (5) comprises any matter that, as a
whole, is functional.

(f) Except as expressly excluded in subsections
(a), (b), (c), (d), (e)(3), and (e)(5) of this section,
nothing in this chapter shall prevent the regis-
tration of a mark used by the applicant which
has become distinctive of the applicant's goods
in commerce. The Director may accept as a
facie evidence that the mark has become dis-
tinctive, as used on or in connection with the
applicant's goods in commerce, proof of substan-
tially exclusive and continuous use thereof as a
mark by the applicant in commerce for the five
years before the date on which the claim of dis-
tinctiveness is made. Nothing in this section
shall prevent the registration of a mark which,
when used on or in connection with the goods of
the applicant, is primarily geographically decept-
ively misdescriptive of them, and which became
distinctive of the applicant's goods in commerce
before December 8, 1903.

A mark which would be likely to cause dilution
by blurring or dilution by tarnishment under
section 1125(c) of this title, may be refused reg-
istration only pursuant to a proceeding brought
under section 1063 of this title. A registration
for a mark which would be likely to cause dilu-
tion by blurring or dilution by tarnishment under
section 1125(c) of this title, may be can-
celled pursuant to a proceeding brought under
either section 1064 of this title or section 1092 of
this title.

(Act July 5, 1946, ch. 540, title 1, § 2, 60 Stat. 428; Pub.
Stat. 1732.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to
in subsec. (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502, and
Feb. 20, 1905, ch. 592, 33 Stat. 724, which were re-
pealed insofar as inconsistent with this chapter by act
July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20,
1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 5, 33 Stat. 724; Mar. 2, 1907,
ch. 2573, § 1, 34 Stat. 1521; Feb. 18, 1911, ch. 113, 36 Stat.
918; Jan. 8, 1913, ch. 7, 37 Stat. 649; Mar. 19, 1920, ch. 104,

AMENDMENTS

2006—Pub. L. 109–312, which directed substitution of
"A mark which would be likely to cause dilution by
blurring or dilution by tarnishment under section
1125(c) of this title, may be refused registration only
pursuant to a proceeding brought under section 1063 of
this title. A registration for a mark which would be
likely to cause dilution by blurring or dilution by
tarnishment under section 1125(c) of this title, may be
canceled pursuant to a proceeding brought under
either section 1064 of this title or section 1092 of
this title." for last two sentences in subsec. (f) of this section,
was executed by making the substitution for "A mark
which when used would cause dilution under section
1125(c) of this title may be refused registration only
pursuant to a proceeding brought under section 1063 of
this title. A registration for a mark which would be
likely to cause dilution by blurring or dilution by
tarnishment under section 1125(c) of this title, may be
canceled pursuant to a proceeding brought under either
section 1064 of this title or section 1092 of this title."
pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which when used would cause dilution under section 1129 of this title may be canceled pursuant to a proceeding brought under section 1064 of this title or section 1092 of this title. In concluding provisions of section to reflect the probable intent of Congress.


Subsec. (e). Pub. L. 105–330, § 201(a)(2)(A), struck out “or” before “(4)” and inserted “, or (5) comprises any matter that, as a whole, is functional” before period at end.

Subsec. (f). Pub. L. 105–330, § 201(a)(2)(B), substituted “subsections (a), (b), (c), (d), (e)(3), and (e)(5)” for “paragraphs (a), (b), (c), (d), and (e)(3)”.

1994—Subsec. (a). Pub. L. 103–450 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.”

Subsec. (e). Pub. L. 103–182, § 339(a)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Consists of a mark which, (1) when used on or in connection with the goods of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily merely a surname.”

Subsec. (f). Pub. L. 103–182, § 339(a)(2), substituted “(d), and (e)(3)” for “(d) and (e)(3)” and inserted at end “Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: Provided, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted, and eliminated provisions which limited confusion, mistake, or deception to purchasers, required written notice of applications for concurrent registrations and of hearings thereon, and publication in the Official Gazette upon a decision to grant such a registration and permitted a court to order such a registration under section 4915 of the Revised Statutes.”

Effective Date of 1999 Amendments

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 33, Patents.

Pub. L. 106–43, § 2(e), Aug. 5, 1999, 113 Stat. 218, provided that: “The amendments made by this section [amending this section and sections 1063, 1064, and 1092 of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1999] and shall apply only to any application for registration filed on or after January 16, 1999.”

Effective Date of 1998 Amendment

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Effective Date of 1994 Amendment


Effective Date of 1993 Amendment

Amendment by Pub. L. 103–182, title III, § 335, Dec. 8, 1993, 107 Stat. 2116, provided that: “(a) IN GENERAL.—Subject to subsections (b) and (c), the amendments made by this subtitle [subtitle C (§§331–335) of title III of Pub. L. 103–182, enacting section 104A of Title 17, Copyrights, amending this section, section 109 of this title, and section 109 of Title 35, Patents, and amending provisions set out as a note under section 109 of Title 17] take effect on the date the Agreement [North American Free Trade Agreement]
enters into force with respect to the United States [Jan. 1, 1994].

(b) SECTION 331.—The amendments made by section 331 [amending section 194 of Title 19] shall apply to all patent applications that are filed on or after the date of the enactment of this Act [Dec. 8, 1993]: Provided, That an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a NAFTA country, except as provided in sections 119 and 365 of title 35, United States Code, that is earlier than the date of the enactment of this Act.

(c) SECTION 333.—The amendments made by section 333 [amending this section and section 1091 of this title] shall apply only to trademark applications filed on or after the date of the enactment of this Act.

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

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 to Secretary of Commerce, with certain exceptions, 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.

Uruguay Round Agreements: Entry Into Force
The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 351(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 351 of Title 19.

Marks Registered Under Ten-Year Proviso of Trade-Mark Act of 1905
Marks registered under the “ten-year proviso” of section 5 of the act of Feb. 20, 1905, as amended, deemed to have become distinctive of the registrant’s goods in commerce under par. (f) of this section, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

§ 1053. Service marks registrable
Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(Prior Provisions Acts Feb. 20, 1905, ch. 592, § 1, 33 Stat. 724; May 4, 1906, ch. 2381, § 1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 626; Apr. 11, 1930, ch. 132, § 1, 46 Stat. 158; June 10, 1938, ch. 322, § 1, 52 Stat. 638. Amendments 1999—Pub. L. 106–43 substituted “trademarks” for “trade-marks” wherever appearing. 1988—Pub. L. 100–667 struck out “used in commerce” after “applicable, service marks” and “, except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks” after “case of trade-marks”.

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.

§ 1054. Collective marks and certification marks registrable
Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.


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.
§ 1055. Use by related companies affecting validity and registration

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.


AMENDMENTS

1962—Pub. L. 87–772 inserted at end “If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.”

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 1 of Title 35, Patents.

§ 1056. Disclaimer of unregistrable matter

(a) Compulsory and voluntary disclaimers

The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) Prejudice of rights

No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant’s or registrant’s rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.


AMENDMENTS


1962—Subsec. (b). Pub. L. 100–667 substituted “subsection (e)” for “paragraph (d)”.
(c) Application to register mark considered constructive use

Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

(1) has used the mark;
(2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or
(3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.

(d) Issuance to assignee

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the United States Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

(e) Surrender, cancellation, or amendment by owner

Upon application of the owner the Director may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the United States Patent and Trademark Office. Upon application of the owner and payment of the prescribed fee, the Director for good cause may permit any registration to be amended or to be disclaimed in part: Provided, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the United States Patent and Trademark Office and upon the certificate of registration.

(f) Copies of United States Patent and Trademark Office records as evidence

Copies of any records, books, papers, or drawings belonging to the United States Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his name by an employee of the Office duly designated by the Director, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefore and paying the prescribed fee shall have such copies.

(g) Correction of United States Patent and Trademark Office mistake

Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction herefore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

(h) Correction of applicant’s mistake

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the prescribed fee: Provided, That the correction does not involve such changes in the registration as to require republication of the mark.

(§ 1057)

PRIOR PROVISIONS

Subsecs. (a) and (c) are from acts Feb. 20, 1905, ch. 592, §11, 33 Stat. 727; Mar. 4, 1920, ch. 535, §3, 43 Stat. 1269.
Subsec. (e) is from act Mar. 19, 1920, ch. 104, §7, 41 Stat. 535.
Subsec. (f) is from act Mar. 4, 1925, ch. 535, §1, 43 Stat. 1288.

AMENDMENTS

Subsec. (b). Pub. L. 111–146, §3(a)(2), substituted “owner’s” for “registrant’s” in two places.
Subsec. (e). Pub. L. 111–146, §3(a)(3), inserted “United States” before “Patent and Trademark Office” in two places, substituted “owner” for “registrant” in two places, and struck out “or, if said certificate is lost or destroyed, upon a certified copy thereof” after “certificate of registration”.
Subsec. (g). Pub. L. 111–146, §3(a)(4), amended subsec. (g) generally. Prior to amendment, text read as follows: “Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All
certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

1999—Subsecs. (a), (d) to (h). Pub. L. 106–113 substituted “Director” for “Commissioner” wherever appearing.


1988—Subsec. (b). Pub. L. 100–667, §109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant’s ownership of the mark, and of registrant’s exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein.”.


Subsec. (d). Pub. L. 100–667, §109(2), (4), redesignated former subsec. (c) as (d) and substituted “prescribed fee” for “fee herein provided”. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–667, §109(2), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100–667, §109(2), (5), redesignated former subsec. (e) as (f) and substituted “prescribed fee” for “fee required by law”. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–667, §109(2), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–667, §109(2), (6), redesignated former subsec. (g) as (h) and substituted “prescribed fee” for “required fee”.

Subsecs. (a), (c) to (f). Pub. L. 93–596 substituted “Patent and Trademark Office” for “Patent Office”.

1962—Subsec. (a). Pub. L. 87–772 substituted “signature placed” for “name printed”, and struck out provisions requiring an attestation by an assistant commissioner or by one of the law examiners designated by the Commissioner, together with printed copies of the drawing and statement of the applicant, to be kept in books for that purpose.

Subsec. (d). Pub. L. 87–772, among other charges, removed the requirement of a fee in connection with the voluntary surrender or cancellation of a registration.

Subsec. (e). Pub. L. 87–772 substituted “an employee of the Office” for “a chief of division”, among other changes.

Subsec. (f). Pub. L. 87–772, among other changes, struck out “signed by the Commissioner and sealed with the seal of the Patent Office” after “nature of such mistake”.

1950—Subsec. (a). Act Aug. 17, 1950, made it unnecessary to include in the certificate a statement of the applicant.

Effective Date of 1999 Amendment

Effective Date of 1998 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 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

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.

§1058. Duration, affidavits and fees

(a) Time periods for required affidavits

Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this chapter or the date of the publication under section 1062(c) of this title.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

(3) The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

(b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the registration or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the registration or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

(c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including
that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

(d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 1062(c) of this title.

(e) Notification of acceptance or refusal

The Director shall notify any owner who files any affidavit required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

(f) Designation of resident for service of process and notices

If the owner is not domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(§ 1058)

Amendment by Pub. L. 104–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1999 Amendment


Pub. L. 106–330, title I, § 109(a), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1068], as amended by section 105 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act [probably should be "this title"], or the sixth anniversary of publication of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946 [15 U.S.C. 1062(c)], for which the affidavit is filed is on or after the effective date of this Act [probably should be "this title"], see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

For provisions relating to applicability of amendment by Pub. L. 106–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, § 109(c), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1068], as amended by section 105 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946 [15 U.S.C. 1062(c)], for which the affidavit is filed is on or after the effective date of this Act [probably should be "this title"], see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

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 1982 Amendment

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.
EFFECTIVE DATE OF 1975 AMENDMENT

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, and saving clause, 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.

REFERENCES TO TRADEMARK ACT OF 1946
Pub. L. 105–330, title I, §102, Oct. 30, 1998, 112 Stat. 3064, provided that: "For purposes of this title [see Short Title of 1998 Amendment note set out under section 1051 of this title], the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the 'Trademark Act of 1946'."

PENDING APPLICATIONS

§ 1059. Renewal of registration
(a) Period of renewal; time for renewal
Subject to the provisions of section 1058 of this title, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Director. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.
(b) Notification of refusal of renewal
If the Director refuses to renew the registration, the Director shall notify the registrant of the Commissioner’s refusal and the reasons therefor.
(c) Designation of resident for service of process and notices
If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.


PRIOR PROVISIONS

AMENDMENTS
2002—Subsec. (c). Pub. L. 107–273 amended subsec. (c) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director.

1998—Pub. L. 105–330 amended section catchline and provisions, added subsec. (c), and among other changes, amended subsec. (a) by substituting provisions requiring a verified application specifying the goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached a specimen showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse the nonuse and that it’s not due to an intention to abandon the mark, for provisions requiring an affidavit by the registrant stating that the mark is still in use in commerce.

1 So in original. Probably should be "Director’s".
§ 1060  Assignment

(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of an amendment under section 1051(c) of this title to bring the application into conformity with section 1051(a) of this title or the filing of the verified statement of use under section 1051(d) of this title, except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted.

(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.

(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.

(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.


Prior Provisions

Amendments
2002—Subsecs. (a), (b). Pub. L. 107–273 amended subsecs. (a) and (b) generally, in subsec. (a) substituting subpars. (1) to (5) for substantially identical undesignated provisions; in subsec. (b) adding provisions relating to service on Director if assignee does not designate name and address of a person resident in the United States on whom may be served notices or process.


Pub. L. 106–43, § 6(a)(1), which directed the amendment of the penultimate sentence of this section by substituting “assignment” for “subsequent purchase”, was executed by making the substitution for “subsequent purchase” in two places in the penultimate sentence of subsec. (a), after “date of the’” and “prior to the”, to reflect the probable intent of Congress.
Effective Date of 1975 Amendment

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, §2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

§1061. Execution of acknowledgments and verifications

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made.


Prior Provisions

Amendments
1982—Pub. L. 97–247 substituted ‘‘is’’ for ‘‘shall be’’ after ‘‘whose authority’’, and inserted ‘‘, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States’’.

Effective Date of 1982 Amendment
Amendment by Pub. L. 97–247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 10 or Title 35, Patents.

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.

§1062. Publication

(a) Examination and publication

Upon the filing of an application for registration and payment of the prescribed fee, the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, or would be entitled to registration upon the acceptance of the
statement of use required by section 1051(d) of this title, the Director shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: Provided, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

(b) Refusal of registration; amendment of application; abandonment

If the applicant is found not entitled to registration, the examiner shall advise the applicant of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend his application, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, whereupon such time may be extended.

(c) Reproduction of marks registered under prior acts

A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Director an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant can furnish the goods of the same description as those stated in the registration. The Director shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title.


References in Text

Acts March 3, 1881 and February 20, 1905, referred to in subsection (b), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

Prior Provisions


Amendments

1988—Subsec. (a). Pub. L. 100–667 substituted “prescribed fee” for “‘fee herein provided’”, and “entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the’” for “entitled to registration, the’”.


1962—Subsec. (a). Pub. L. 87–772 inserted proviso permitting publication of the mark in the case of an applicant claiming concurrent use, or an application to be placed in an interference, if such mark is otherwise registrable, subject to the determination of the rights of the parties.


Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1066(a)(9) (title IV, § 4731) of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1998 Amendment


For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 1063(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

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


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 1063 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, 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.

§ 1063. Opposition to registration

(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered.

Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expira-
tion of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

(b) Unless registration is successfully op-posed—

(1) A mark entitled to registration on the principal register based on an application filed under section 1051(a) of this title or pursuant to section 1126 of this title shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or

(2) A notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1051(b) of this title.


PRIOR PROVISIONS


AMENDMENTS

2006—Subsec. (a). Pub. L. 109–312 substituted “the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment” for “as a result of dilution”: 1999—Subsec. (a). Pub. L. 106–113 substituted “Director” for “Commissioner” wherever appearing.

1988—Pub. L. 100–667 designated existing provisions as subsec. (a), substituted “prescribed fee” for “required fee”, and added subsec. (b).

1962—Pub. L. 97–247 substituted “an” for “a verified” after “required fee, file”, inserted “when requested prior to the expiration of an extension” after “Commissioner for good cause” and struck out provision that an unverified opposition could be filed by a duly authorized attorney, but such opposition would be null and void unless verified by the opposer within a reasonable time after such filing is fixed by the Commissioner.

1975—Pub. L. 93–600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.


1962—Pub. L. 67–772 inserted “An opposition may be amended under such conditions as may be prescribed by the Commissioner”, and struck out “notice of” after “file a verified” and “time for filing”.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

1064. Cancellation of registration

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used, if the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services
may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided. That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.

Par. (3). Pub. L. 105–330, §201(a)(4), inserted “or is functional,” before “or has been abandoned.”

1988—Pub. L. 100–667, §115(1), (7), in introductory provisions, inserted “as follows” and substituted “1905—” for “1905—”, and in concluding proviso substituted “paragraphs (3) and (5)” for “paragraphs (c) and (d)”.

Par. (1). Pub. L. 100–667, §115(2), substituted “1 Within” for “(a) within”, “and” for “or”, “or”, and “Within” for “within”, “and”, “and”, and “1905—” for “1905—”.

Par. (2). Pub. L. 100–667, §115(3), substituted “(2) Within” for “(b) within”, “and” for “or”.

Par. (3). Pub. L. 100–667, §115(4), substituted “(3)” for “(c)” and amended text generally. Prior to amendment, text read as follows: “at any time if the registered mark becomes the common descriptive name of an article of or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used, or.

Par. (4). Pub. L. 100–667, §115(5), substituted “(4) At” for “(d)” and “(4)” for “(d)”. A registered mark shall not be deemed to be the common descriptive name of goods or services in connection with which it has been used.

Par. (5). Pub. L. 100–667, §115(6), substituted “(5) At” for “(e)” and redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively.

1984—Par. (c). Pub. L. 98–620 inserted provision that a registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service, and that the primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used.


1962—Pub. L. 87–772 inserted provisions which require a verified petition to cancel a registration, redesignated par. (d) as (e), added par. (d) which is composed of provisions formerly part of par. (c), and in said par. (c), substituted “registrant” for “assignee”, and struck out “on which the patent has expired” before “or has been abandoned”, and “has been assigned and” before “is being used by”.


effective date of 1999 amendment

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43.
Effective Date of 1998 Amendment
Amendment by section 201(a)(4) of Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1061 of this title.

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 1061 of this title.

Effective Date of 1982 Amendment
Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 194 of Title 35, Patents.

Finality of Judgments Prior to November 8, 1984
Pub. L. 98–420, title I, §104, Nov. 8, 1984, 98 Stat. 3336, provided that: “Nothing in this title (amending this section and section 1127 of this title and enacting provisions set out as a note under section 1061 of this title) shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title [Nov. 8, 1984].”

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 1061 of this title.

Transfer of Functions
For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

Restriction on Use of Funds To Cancel Registration of Trademarks
For provisions restricting the use of funds authorized to be appropriated to carry out section 41 et seq. of this title for fiscal year 1960, 1961, or 1962, for the purpose of taking any action under this section with respect to the cancellation of the registration of any mark on the ground that such mark has become the common descriptive name of an article or substance, see section 18 of Pub. L. 96–256, set out as a note under section 1061 of this title.

§1065. Incontestability of Right to Use Mark Under Certain Conditions
Except on a ground for which application to cancel may be filed at any time under paragraphs (3) and (5) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this chapter of such registered mark, the right of the owner to use such registered mark in commerce for the goods or services stated in the registration on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: Provided, That—

(1) there has been no final decision adverse to the owner’s claim of ownership of such mark for such goods or services, or to the owner’s right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said right pending in the United States Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in paragraphs (1) and (2) hereof; and

(4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.


References in Text

Amendments
2010—Pub. L. 111–146, §3(b)(1), substituted “right of the owner” for “right of the registrant” in introductory provisions. Par. (1). Pub. L. 111–146, §3(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “there has been no final decision adverse to registrant’s claim of ownership of such mark for such goods or services, or to registrant’s right to register the same or to keep the same on the register; and


1999—Pub. L. 106–113 substituted “Director” for “Commissioner” in par. (3) and in two places in concluding provisions.

1988—Pub. L. 100–667, in introductory provisions, substituted “paragraphs (3) and (5)” for “subsections (c) and (e)”, in par. (3) “paragraphs” for “subsections”, and in par. (4) “the generic name for the goods or services or a portion thereof, for which it is registered” for “the common descriptive name of any article or substance, patented or otherwise”.

§ 1066. Interference; declaration by Director

Upon petition showing extraordinary circumstances, the Director may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when used in connection with the goods or services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists.

1962—Pub. L. 97–247 struck out “purchasers” after “or to deceive”.

§ 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board

(a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

(b) The Trademark Trial and Appeal Board shall include the Director, Deputy Director of the United States Patent and Trademark Office, the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Secretary of Commerce, in consultation with the Director.

(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discre-
tion, deem the appointment of an administrative trademark judge who, before August 12, 2008, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative trademark judge.

(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative trademark judge on the basis of the judge’s having been originally appointed by the Director that the administrative trademark judge so appointed was acting as a de facto officer.


PRIOR PROVISIONS

AMENDMENTS

Subsecs. (c), (d). Pub. L. 110–313, § 1(b)(2), added subsecs. (c) and (d).

2002—Subsec. (b). Pub. L. 107–273, which directed amendment of subsec. (b) by inserting “the Deputy Commissioner;” after “Commissioner;”, could not be executed because “Commissioner” does not appear in text.


Prior to amendment, section read as follows:

“In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration, and proceedings for concurrent use registration, and registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be estab-

EFFECTIVE DATE OF 1999 AMENDMENT
Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 33, Patents.

EFFECTIVE DATE OF 1980 AMENDMENT; BOARD MEMBERSHIP AS OF OCTOBER 15, 1980, UNAFFECTED
Pub. L. 96–455, § 2, Oct. 15, 1980, 94 Stat. 2024, provided that: “This amendment (amending this section) shall become effective on the date of its enactment (Oct. 15, 1980). Members of the Trademark Trial and Appeal Board on the date of enactment shall continue to be members under and in accordance with the provisions of section 17 of the Act of July 5, 1946, as amended (this section), in effect immediately preceding the date of enactment.”

EFFECTIVE DATE OF 1975 AMENDMENT

EFFECTIVE DATE OF 1958 AMENDMENT
Pub. L. 85–609, § 3, Aug. 8, 1958, 72 Stat. 541, provided that: “This Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall take effect on approval [Aug. 8, 1958]; it shall apply to ex parte appeals taken to the Commissioner prior to the date of approval which have not been heard but shall apply to any such appeal which has been heard or decided in which event further proceedings may be had as though this Act had not been passed; it shall apply to inter partes cases instituted prior to the date of approval which have not been heard by an examiner of interferences, but shall not apply to any such case which has been heard or decided by an examiner of interferences in which event further proceedings may be had as though this Act had not passed.”

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 1061 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.

REORGANIZATION PLAN NO. 5 OF 1950
Pub. L. 85–609, § 3, Aug. 8, 1958, 72 Stat. 541, provided that: “The provisions of this Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall be subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263).”

§ 1068. Action of Director in interference, opposition, and proceedings for concurrent use registration or for cancellation

In such proceedings the Director may refuse to register the opposed mark, may cancel the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be estab-
lished in the proceedings: Provided, That in the case of the registration of any mark based on concurrent use, the Director shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.


Prior Provisions

Amendments
1966—Pub. L. 100–667 substituted “the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register” for “or restrict”, and “may refuse” for “or may refuse”, and inserted provisions that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

Effective Date of 1999 Amendment
Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 136 of Pub. L. 100–667, set out as a note under section 1051 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 1061 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.

§ 1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners
An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks upon the payment of the prescribed fee.


Prior Provisions

Amendments
1958—Pub. L. 85–609 substituted “Trademark Trial and Appeal Board” for “Commissioner in person” and “fee” for “fees”, and struck out “of interferences or” after “examiner in charge”.

Effective Date of 1958 Amendment
For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 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 1061 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.

Reorganization Plan No. 5 of 1950
Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

§ 1071. Appeal to courts
(a) Persons entitled to appeal; United States Court of Appeals for the Federal Circuit; waiver of civil action; election of civil action by adverse party; procedure
(1) An applicant for registration of a mark, party to an interference proceeding, party to an
opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title or section 1141k of this title, or an applicant for renewal, whose registration application is adversely decided, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: Provided, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, files a notice within thirty days after the appellant has filed notice of appeal according to paragraph (2) of this subsection, files notice with the Director that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under subsection (b) of this section, in default of which the appeal shall be dismissed if any adverse party to the proceeding, other than the Director, files a notice within thirty days after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than sixty days after that date.

(3) The Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the United States Patent and Trademark Office. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal. The United States Court of Appeals for the Federal Circuit shall have jurisdiction and shall govern the further proceedings in the case. However, no final judgment shall be entered of record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the United States Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Director, which shall be entered of record in the United States Patent and Trademark Office and govern the further proceedings in the case. However, no final judgment shall be entered of record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(b) Civil action; persons entitled to; jurisdiction of court; status of Director; procedure

(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: Provided, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, files a notice under subsection (b) of this section (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: Provided, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, files a notice within thirty days after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than sixty days after that date.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the United States Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than sixty days after that date.

(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Director, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not. In suits brought hereunder, the record in the United States Patent and Trademark Office shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the United States Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there are adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the Eastern District of Virginia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

additional papers and evidence specified by the appellant, and inserted provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

Subsec. (a)(4). Pub. L. 98–620 substituted provisions requiring the court to review the decision from which the appeal is taken on the record before the Patent and Trademark Office, and, upon its determination, to issue its mandate and opinion to the Commissioner for provisions which required the court to decide such appeal on the evidence produced before the Patent and Trademark Office and to return to the Commissioner a certificate of its proceedings and decision.


Subsec. (a)(3). Pub. L. 93–600 inserted provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.


Pub. L. 85–609 authorized appeals by persons dissatisfied with the decision of the Trademark Trial and Appeal Board, and substituted “Trademark Trial and Appeal Board” for “Commissioner” in proviso.


Effective Date of 2011 Amendment

Pub. L. 112–29, § 48(b), Sept. 16, 2011, 125 Stat. 316, provided that: “The amendments made by this section [amending this section and sections 32, 145, 146, 154, and 293 of Title 35, Patents] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any civil action commenced on or after that date.”

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–667 effective one year after Nov. 29, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that...
§ 1092. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant’s claim of ownership thereof.

(July 5, 1946, ch. 540, § 22, 60 Stat. 435.)

References in Text

§ 1091. Supplemental register

(a) Marks registerable

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant’s goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant’s goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

(b) Application and proceedings for registration

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

(c) Nature of mark

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant’s goods or services.


References in Text
Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in subsec. (a), is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444, insofar as inconsistent.

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 1067 of this title.

Effective Date of 1975 Amendments
Amendment by Pub. L. 93–609 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–609, set out as a note under section 1072 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. 5174, 64 Stat. 1283, set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan No. 5 of 1950
Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

Effective Date of 1958 Amendment
For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1061 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.

Effective Date of 1894 Amendments
Amendment by Pub. L. 97–164 effective Oct. 1, 1982, which was classified to section 81 to 109 of this title, and repealed by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444, insofar as inconsistent, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 5174, 64 Stat. 1283, set out in the Appendix to Title 5, Government Organization and Employees.

Effective Date of 1946 Amendment
Amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1061 of this title.

Amendment by Act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444, insofar as inconsistent.

References in Text
See references in text for transfers of functions and repeal of inconsistent provisions effect of this chapter on existing registrations and rights under prior acts.
§ 1092. Publication; not subject to opposition; cancellation

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

(1) for which the effective filing date is after the date on which such person’s mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title; or

(2) on grounds other than dilution by blurring or dilution by tarnishment, such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration. The Director shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant is not entitled to registration, or that the mark has been abandoned, the registration shall be canceled by the Director. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.


PRIOR PROVISIONS


AMENDMENTS

2006—Pub. L. 109–312 amended second sentence generally. Prior to amendment, second sentence read as follows: “Whenever any person believes that he is or will be damaged by the registration of a mark on this register, including as a result of dilution under section 1125(c) of this title, he may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration.” The words following “tarnishment,” in second sentence are shown as a flush provision notwithstanding directory language showing them as part of cl. (2), to reflect the probable intent of Congress.
§ 1093. Registration certificates for marks on principal and supplemental registers to be different

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.

(July 5, 1946, ch. 540, title II, § 25, 60 Stat. 436.)
§ 1096. Registration on supplemental register not used to stop importations

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

(July 5, 1946, ch. 540, § 46(b), 60 Stat. 444.)

§ 1096. Registration on supplemental register not used to stop importations

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

(July 5, 1946, ch. 540, title II, § 28, 60 Stat. 436.)

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.

SUBCHAPTER III—GENERAL PROVISIONS

§ 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration.


PRIOR PROVISIONS


AMENDMENTS

1988—Pub. L. 100-667 struck out "as used" after "with the mark".

1975—Pub. L. 93-596 substituted "Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off."" for "Patent Office, may give notice that his mark is registered by displaying with the mark as used the words "Registered in U.S. Patent Office" or "Reg. U.S. Pat. Off."".

1962—Pub. L. 87-772 substituted "in the Patent Office, may" for "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this chapter, shall", and "to give such notice of registration," for "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this chapter.

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

Pub. L. 93-596, § 4, Jan. 2, 1975, 88 Stat. 1949, provided that: "This Act [amending this section, sections 1051, 1052, 1057, 1068, 1069, 1071, 1082, 1112, 1113, 1116 to 1120, 1123, and 1127 of this title, and sections 2 to 4, 6 to 8, 10, 11, 21 to 26, 31 to 33, 41, 104, 119, 121, 122, 135, 142 to 144, 146, 152, 153, 239 to 255, 261, 288, and 293 of Title 35, Patents, and enacting provisions set out as a note under section 1 of title 35] shall be-[amended by section 2 of this Act, regardless of whether his mark was registered before or after the effective date of this Act.

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.

§ 1112. Classification of goods and services; registration in plurality of classes

The Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant’s or registrant’s rights. The applicant may apply to register a mark for any or all of the goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce: Provided, That if the Director by regulation permits the filing of an application for the registration of a mark for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Director may issue a single certificate of registration for such mark.


PRIOR PROVISIONS


AMENDMENTS

1999—Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

1988—Pub. L. 100-667 inserted "or registrant’s" after "applicant’s" and substituted "may apply" for "may file an application", "goods or services on or in connec-
tion with which he or she is using or has a bona fide intention to use the mark in commerce:" for "goods and services upon or in connection with which he is actually using the mark:"; and "Provided, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall" for "Provided, That when such goods or services fall"


1962—Pub. L. 87–772, among other changes, substituted "may" for "shall".

Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1998 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 1561 of this title.

Effective Date of 1975 Amendment


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 1561 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.

§ 1113. Fees

(a) Applications; services; materials

The Director shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Director once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Charges of less than 1 percent may be ignored. No fee established under this subsection shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(b) Waiver; Indian products

The Director may waive the payment of any fee for any service or material related to trademarks or other marks in connection with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups.
change of ownership of a mark or correction of a registrant’s mistake from $10 to $15; for a certificate of correction of registrant’s mistake from $10 to $15; for filing a disclaimer from $10 to $15; and for recording an assignment, agreement, or other paper relating to the property in a registration or application from $3 for documents not exceeding six pages plus $1 for each additional two pages or less and 50 cents additional for each additional registration or application included in one writing, to a $20 fee for every document plus an additional fee of $3 for each additional item where the document relates to more than one application or registration; eliminated provisions which established fees for the surrender or cancellation of a registration, for an abstract of title, for a title report required for office use, for certificates that marks have not been registered, and for copies of various specified records and documents; added the fees for filing and affidavit under section 108(a) or (b) of this title and for filing a petition for the revival of an abandoned application; empowered the Commissioner to establish charges for copies of records, publications or services furnished by the Patent Office; and made the provisions relating to refunds of sums paid by mistake permissive.

1988—Pub. L. 105–330 struck out “to the Commissioner” after “appeal from an examiner in charge of the registration of marks,” and provisions which required payment of a $25 fee on appeals from an examiner in charge of interferences to the Commissioner.

Effective Date of 1999 Amendment
Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4203] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1998 Amendment
Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1561 of this title.

Effective Date of 1982 Amendment

Effective Date of 1980 Amendment
Amendment by Pub. L. 96–517 effective Dec. 12, 1980, with provision for continuation of fees in effect as of such date until corresponding fees are established under this section, see section 8(a), (d) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

Effective Date of 1975 Amendment

Effective Date of 1965 Amendment
For effective date and applicability of amendment by Pub. L. 89–83, see section 7(a), (d) of Pub. L. 89–83, set out as a note under section 41 of Title 35, Patents.

Effective Date of 1958 Amendment
For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1567 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 1561 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.

Appropriations and Fees Authorized To Be Carried Over
For provisions authorizing fees collected under this chapter, and certain appropriations, to remain available until expended, see section 2 of Pub. L. 89–607, set out as a note under section 12 of Title 35, Patents.

Trademark Fees

Pub. L. 103–178, §4, Dec. 3, 1993, 107 Stat. 2040, provided that “Effective on the date of the enactment of this Act [Dec. 3, 1993], the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for filing an application for the registration of a trademark shall be $35. Any adjustment of such fee under the second sentence of such section may not be effective before Oct. 1, 1994.”

Pub. L. 102–204, §5(f)(2), Dec. 10, 1991, 105 Stat. 1660, provided that fees established by Commissioner of Patents and Trademarks under 15 U.S.C. 1113(a) during fiscal year 1992 could reflect fluctuations during the preceding 3 years in the Consumer Price Index and could take effect on or after 1 day after such fees are published in the Federal Register and that the last sentence of 31 U.S.C. 1(a) and 5 U.S.C. 563 did not apply to the establishment of such fees.

Similar provisions were contained in the following prior appropriation acts:


Reorganization Plan No. 5 of 1950
Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, set out note under section 1067 of this title.

§ 1114. Remedies; infringement; innocent infringement by printers and publishers
(1) Any person who shall, without the consent of the registrant—
(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under
subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

As used in this paragraph, the term “any person” includes the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(2) Notwithstanding any other provision of this chapter, the remedies given to the owner of a right infringed under this chapter or to a person bringing an action under section 1125(a) or (d) of this title shall be limited as follows:

(A) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed or person bringing the action under section 1125(a) of this title shall be entitled as against such infringer or violator only to an injunction against future printing.

(B) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in section 2510(12) of title 18, the remedies of the owner of the right infringed or person bringing the action under section 1125(a) of this title as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers and innocent violators.

(C) Injunctive relief shall not be available to the owner of the right infringed or person bringing the action under section 1125(a) of this title with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter or violating matter where restraining the dissemination of such infringing matter or violating matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication after the regular time for such delivery or transmission, and such delay would be due to the method by which publication and distribution of such periodical or transmission of such electronic communication is customarily conducted in accordance with sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter or violating matter.

(D)(i)(I) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief or, except as provided in subclause (II), for injunctive relief, to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

(ii) A domain name registrar, domain name registry, or other domain name registration authority described in subclause (I) may be subject to injunctive relief only if such registrar, registry, or other registration authority has—

(aa) not expeditiously deposited with a court, in which an action has been filed regarding the disposition of the domain name, documents sufficient for the court to establish the court’s control and authority regarding the disposition of the registration and use of the domain name;

(bb) transferred, suspended, or otherwise modified the domain name during the pendency of the action, except upon order of the court; or

(cc) willfully failed to comply with any such court order.

(ii) An action referred to under clause (i)(I) is any action of refusing to register, removing from registration, transferring, temporarily disabling, or permanently canceling a domain name—

(I) in compliance with a court order under section 1125(d) of this title; or

(II) in the implementation of a reasonable policy by such registrar, registry, or authority prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another’s mark.

(iii) A domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any other person that a domain name is identical to, confusingly similar to, or dilutive of a mark, the person making the knowing and material misrepresentation shall be liable for any damages, including costs and attorney’s fees, incurred by the domain name registrant as a result of such action. The court may also grant injunctive relief to the domain name registrant, including the reactivation of the domain name or the transfer of the domain name to the domain name registrant.
(v) A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.

(E) As used in this paragraph—

(i) the term “violator” means a person who violates section 1125(a) of this title; and

(ii) the term “violating matter” means matter that is the subject of a violation under section 1125(a) of this title.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensor, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance intended by the director or copyee, or licensor ensures that the technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) and this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such failure that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensor, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance intended by the director or copyee, or licensor ensures that the technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) and this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such failure that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensor, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance intended by the director or copyee, or licensor ensures that the technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) and this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such failure that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensor, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance intended by the director or copyee, or licensor ensures that the technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) and this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such failure that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.
§ 1115. Registration on principal register as evidence of exclusive right to use mark; defenses

(a) Evidentiary value; defenses

Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in subsection (b), which might have been asserted if such mark had not been registered.

(b) Incontestability; defenses

To the extent that the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 1065 of this title, or in the renewal application filed under the provisions of section 1059 of this title if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in section 1114 of this title, and shall be subject to the following defenses or defects:

(1) That the registration or the incontestable right to use the mark was obtained fraudulently; or

(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used; or

(4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party’s individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin; or

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant’s prior use and has been continuously used by such party or those in privity with him from a date prior to (A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C) publication of the registered mark under subsection (c) of section 1062 of this title: Provided, however, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: Provided, however, That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant’s mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States; or

(8) That the mark is functional; or

(9) That equitable principles, including laches, estoppel, and acquiescence, are applicable.

References in Text

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (a), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed in so far as inconsistent with this chapter by act July 5, 1946, ch. 540, § 46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

PRIOR PROVISIONS


AMENDMENTS

1988—Subsec. (a). Pub. L. 100–667, §128(a), inserted “the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the” after “facile evidence of”, inserted “or in connection with” after “in commerce on”, substituted “another person” for “an opposing party”, and inserted “, including those set forth in subsection (b),” after “or defect”.

Subsec. (b). Pub. L. 100–667, §128(b)(1), amended introductory provisions read as follows: “If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:”.

Subsec. (b)(3). Pub. L. 100–667, §128(b)(2), inserted “on or after” after “‘goods or services’”.

Subsec. (b)(4). Pub. L. 100–667, §128(b)(3), struck out “‘trade or service’” after “‘than as a’” and “‘to users’” after “‘only to describe’”.

Subsec. (b)(5). Pub. L. 100–667, §128(b)(4), substituted “(A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the ‘Trademark Law Revision Act of 1988, or (C)’” for “‘registration of the mark under this chapter or’”.


1962—Subsec. (a). Pub. L. 87–772 substituted “registration subject to” for “certificate subject to”, and struck out “certificate of” before “registration issued”.

Subsec. (b). Pub. L. 87–772 substituted “registration shall” for “certificate shall”, and “affidavit filed under the provisions of said section 1065” for “certificate” in text preceding par. (1), substituted “registrant or a person in privity with the registrant,” for “assignee”, and struck out “has been assigned and” after “registered mark” in par. (3), substituted “registration of the mark under this chapter or” for “the”, and struck out “(a) or” before “(c) of section 1062” in par. (5), inserted “registration under this chapter”, substituted “such registration or such” for “the date of”, and struck out “(a) or” before “(c) of section 1062”.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

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.

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.

§1116. Injunctive relief

(a) Jurisdiction; service

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

(b) Transfer of certified copies of court papers

The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when requested to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

(c) Notice to Director

It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this chapter to give notice thereof in writing to the Director setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Director, and within one month after the judgment is entered or an appeal is taken the clerk of the court shall give notice thereof to the Director, and it shall be the duty of the Director on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations.
and to incorporate the same as a part of the contents of said file wrapper.

(d) Civil actions arising out of use of counterfeit marks

(1)(A) In the case of a civil action arising under section 1114(a) of this title or section 220506 of title 36 with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

(2) As used in this subsection the term "counterfeit mark" means—

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this chapter are made available by reason of section 220506 of title 36; but such term does not include any mark or designation used on or in connection with goods or services of which the manufacture 1 or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.

(3) The court shall not receive an application under this subsection unless the applicant has given such notice of the application as is reasonable under the circumstances to the United States attorney for the judicial district in which such order is sought. Such attorney may participate in the proceedings arising under such application if such proceedings may affect evidence of an offense against the United States. The court may deny such application if the court determines that the public interest in a potential prosecution so requires.

(4) The application for an order under this subsection shall—

(A) be based on an affidavit or the verified complaint establishing facts sufficient to support the findings of fact and conclusions of law required for such order; and

(B) contain the additional information required by paragraph (5) of this subsection to be set forth in such order.

(5) An order under this subsection shall set forth—

(A) the findings of fact and conclusions of law required for the order;

(B) a particular description of the matter to be seized, and a description of each place at which such matter is to be seized;

(C) the time period, which shall end not later than seven days after the date on which such order is issued, during which the seizure is to be made;

(D) the amount of security required to be provided under this subsection; and

(E) a date for the hearing required under paragraph (10) of this subsection.

(6) The court shall take appropriate action to protect the person against whom an order under this subsection is directed from publicity, by or at the behest of the plaintiff, about such order and any seizure under such order.

(7) Any materials seized under this subsection shall be taken into the custody of the court. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

(8) An order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

(9) The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a

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1So in original. Probably should be "manufacturer". 

§ 1116
United States marshal or an officer or agent of
the United States Customs Service, Secret Service,
Federal Bureau of Investigation, or Post Office;
may be made by a State or local law en-
forcement officer, who, upon making service,
shall carry out the seizure under the order. The
court shall issue orders, when appropriate, to
protect the defendant from undue damage from
the disclosure of trade secrets or other confidential
information during the course of the sele-
zation, including, when appropriate, orders re-
stricting the access of the applicant (or any
agent or employee of the applicant) to such se-
crets 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 is-
sued and not later than fifteen days after the
order is issued, unless the applicant for the
order shows good cause for another date or un-
less the party against whom such order is di-
rected consents to another date for such hear-
ing. 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 court shall enter an appropriate protective order with respect to
discovery by the applicant of any records that have
been seized. The protective order shall provide for ap-
propriate procedures to assure that confidential infor-
mation contained in such records is not improperly dis-
closed to the applicant.

generally. Prior to amendment, par. (7) read as follows:
“Any materials seized under this subsection shall be taken
into the custody of the court. The court shall enter an appro-
priate protective order with respect to discovery by the applicant of any records that have
been seized. The protective order shall provide for ap-
propriate procedures to assure that confidential infor-
mation contained in such records is not improperly dis-
closed to the applicant.”

for “section 110 of the Act entitled ‘An Act to incor-
porate the United States Olympic Association’, approved September 21, 1950 (36 U.S.C. 380)”.

Subsec. (d)(11). Pub. L. 107–273, §13207(b)(10), sub-
stituted “6621(a)(2) of title 26” for “6621 of title 26”.

1999—Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title III,
§3000(a)(1)], substituted “(a), (c), or (d)” for “(a) or (c)”
in first sentence.

Pub. L. 106–43 substituted “subsection (a) or (c) of
section 1125 of this title” for “section 1125(a) of this
title” in first sentence.

Subsec. (c). Pub. L. 106–113, §1000(a)(9) [title IV,
§4732(b)(1)(B)], substituted “Director” for “Commis-
sioner” wherever appearing.

1996—Subsec. (d)(9). Pub. L. 104–155 inserted first sen-
tence and struck out former first sentence which read
as follows: “The court shall order that a United States
marshal or other law enforcement officer is to serve a
copy of the order under this subsection and then is to
carry out the seizure under such order.”

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 “pro-
ceeding involving a mark registered” for “proceeding
arising” and “judgment is entered or an appeal is
taken” for “decision is rendered, appeal taken or a de-
cree issued”.

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

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

1975—Pub. L. 93–596 substituted “Patent and Trade-
mark Office” for “Patent Office”.

EFFECTIVE DATE OF 1999 AMENDMENT
Amendment by section 1000(a)(9) [title III, §3003(a)(1)]
of Pub. L. 106–113 applicable to all domain names reg-
istered before, on, or after Nov. 29, 1999, see section
1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as
a note under section 1117 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(b)(1)(B)] of Pub. L. 106–113 effective 4 months after
Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of
Pub. L. 106–113, set out as a note under section 1 of
Title 35, Patents.

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.

References in Text
(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
3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804,
49 Stat. 1921.
§ 1117. Recovery for violation of 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 1511 of this title.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 2031(a), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

§ 1117. Recovery for violation of rights

(a) Profits; damages and costs; attorney fees

When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) 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 direction. 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) Treble damages for use of counterfeit mark

In assessing damages under subsection (a) for any violation of section 1114(c)(1)(a) of this title or section 220506 of title 36, in a case involving use of a counterfeit mark or designation (as defined in section 1116(d) of this title), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—
(1) 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; or
(2) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 622(d)(1) of title 26, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.

(e) Statutory damages for use of counterfeit marks

In a case involving the use of 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, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—
(1) not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or
(2) if the court finds that the use of the counterfeit mark was willful, not more than $2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

In a case involving a violation of section 1125(d)(1) of this title, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than $1,000 and not more than $100,000 per domain name, as the court considers just.

(c) Rebuttable presumption of willful violation

In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.

PRIOR PROVISIONS


AMENDMENTS

2008—Subsec. (b). Pub. L. 110-403, §103, amended subsec. (b) generally. Prior to amendment, text read as follows: "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 the reasonable attorney's fee, and such additional relief as the court deems appropriate." Subsec. (c)(1). Pub. L. 110-403, §104(1), substituted "$1,000" for "$500" and "$200,000" for "$100,000".


2002—Subsec. (a). Pub. L. 107-273, §13207(a), substituted "a violation under section 1125(a) or (d) of this title," for "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title, shall have been established," after "Office" in first sentence.

Subsec. (c). Pub. L. 107-273, §13207(b)(11), substituted "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "a violation under section 1125(a) of this title," for "a violation under section 1125(a), (c), or (d) of this title," for "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "a violation under section 1125(a) or (d) of this title," for "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title, shall have been established," after "Office" in first sentence.


1996—Subsec. (a). Pub. L. 100-467 inserted "or a violation under section 1125(a) of this title, after "Office" in first sentence.

1988—Pub. L. 96-473 substituted "internal revenue Code of 1954", for "internal revenue Code of 1945", which for purposes of codification was translated as "title 26" then requiring no change in text.

1984—Pub. L. 94-195 substituted 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.


1962—Pub. L. 87-772 substituted "1114" for "1113(b)".

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3010], Nov. 29, 1999, 113 Stat. 1356, 1351A-552, provided that: "Sections 3002(a), 3004, 3005, and 3008 of this title [amending this section and sections 1114, 1116, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1061 of this title] shall apply to all domain names registered before, on, or after the date of the enactment of this Act [Nov. 29, 1999], except that damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117), as amended by section 3008 of this title, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act.''

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 1061 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.


REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registration rights under prior acts, see notes set out under section 1061 of this title.

CONSTRUCTION OF 2004 AMENDMENT


(a) Free Speech and Press.—Nothing in this title (see Short Title of 2004 Amendment note set out under section 1061 of this title) shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

(b) discretion of Courts in Determining Relief.—Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

(c) discretion of Courts in Determining Terms of Imprisonment.—Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law.''

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.

§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, a violation under section 1125(a) of this title, or a willful violation under section 1125(c) 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 or a willful violation under section 1125(c) 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, 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.


PRIOR PROVISIONS


AMENDMENTS

1999—Pub. L. 106–43, in first sentence, substituted “a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title,” for “or a violation under section 1125(a) of this title,” and inserted “or a willful violation under section 1125(c) of this title” before “the word,”.

1984—Pub. L. 98–473 inserted “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.”


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


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. 3744, 64 Stat. 1283, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1119. Power of court over registration

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.


PRIOR PROVISIONS


AMENDMENTS

1999—Pub. L. 106–113 substituted “Director” for “Commissioner”.


EFFECTIVE DATE OF 1999 AMENDMENT


EFFECTIVE DATE OF 1975 AMENDMENT


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. 3744, 64 Stat. 1283, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1120. Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.
§ 1121. Jurisdiction of Federal courts; State and local requirements that registered trademarks be altered or displayed differently; prohibition

(a) The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter.

(b) No State or other jurisdiction of the United States or any political subdivision or any agency thereof may require alteration of a registered mark, or require that additional trademarks, service marks, trade names, or corporate names that may be associated with or incorporated into the registered mark be displayed in the manner differing from the display of such additional trademarks, service marks, trade names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office.


Prior Provisions

Amendments

Effective Date of 1975 Amendment

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.

§ 1121a. Transferred

Codification
Section, act July 5, 1946, ch. 540, title VI, § 39a, as added Oct. 12, 1982, Pub. L. 97–296, 96 Stat. 1316, which prohibited State and local requirements that registered trademarks be altered or displayed differently, was transferred to subsec. (b) of section 39 of act July 5, 1946, by section 313(b)(1) of Pub. L. 100–667 and is classified to section 1121(b) of this title.

§ 1122. Liability of United States and States, and instrumentalities and officials thereof

(a) Waiver of sovereign immunity by the United States

The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this chapter.

(b) Waiver of sovereign immunity by States

Any State, instrumentality of a State or any officer or employee of a State or instrumental-
ity of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or non-governmental entity for any violation under this chapter.

(c) Remedies

In a suit described in subsection (a) or (b) for a violation described therein, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any person other than the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or a State, instrumentality of a State, or other person acting for the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or a State, instrumentality of a State, or other person acting for the United States and with authorization and consent of the United States, or any foreign country to the ad-

§ 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office

The Director shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter.


Prior Provisions


Amendments

1999—Pub. L. 106–113 substituted “Director” for “Commissioner”.


Effective Date of 1999 Amendment

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Effective Date of 1975 Amendment


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, 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.

§ 1124. Importation of goods bearing infringing marks or names forbidden

Except as provided in subsection (d) of section 1526 of title 19, no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the ad-
vantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.


PRIOR PROVISIONS

AMENDMENTS
1999—Pub. L. 106–43 substituted “tradesmks” for “trademarks”.
1998—Pub. L. 105–330, §201(a)(11), substituted “name of any domestic” for “name of the any domestic”.
1978—Pub. L. 95–330 substituted “Except as provided in subsection (d) of section 1526 of title 19, no article” for “No article”.

EFFECTIVE DATE OF 1998 AMENDMENT
Amendment by Pub. L. 106–43 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 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
Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 36 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 1125. False designations of origin, false descriptions, and dilution forbidden
(a) Civil action
(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities,
shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.
(2) As used in this subsection, the term “any person” includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.
(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.
(b) Importation
Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.
(c) Dilution by blurring; dilution by tarnishment
(1) Injunctive relief
Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner’s mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.
(2) Definitions
(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:
(i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

(iii) The extent of actual recognition of the mark.

(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

(B) For purposes of paragraph (1), “dilution by blurring” is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

(i) The degree of similarity between the mark or trade name and the famous mark.

(ii) The degree of inherent or acquired distinctiveness of the famous mark.

(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

(iv) The degree of recognition of the famous mark.

(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

(vi) Any actual association between the mark or trade name and the famous mark.

(C) For purposes of paragraph (1), “dilution by tarnishment” is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

(3) Exclusions

The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person’s own goods or services, including use in connection with—

(i) advertising or promotion that permits consumers to compare goods or services; or

(ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.

(B) All forms of news reporting and news commentary.

(C) Any noncommercial use of a mark.

(4) Burden of proof

In a civil action for trade dress dilution under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that—

(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

(5) Additional remedies

In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 1114 of this title. The owner of the famous mark shall also be entitled to the remedies set forth in sections 1117(a) and 1118 of this title, subject to the discretion of the court and the principles of equity if—

(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after October 6, 2006; and

(B) in a claim arising under this subsection—

(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark;

(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

(6) Ownership of valid registration a complete bar to action

The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this chapter shall be a complete bar to action against that person, with respect to that mark, that—

(A) is brought by another person under the common law or a statute of a State; and

(B)(i) seeks to prevent dilution by blurring or dilution by tarnishment; or

(ii) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

(7) Savings clause

Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.

(d) Cyberpiracy prevention

(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that—

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of section 706 of title 18 or section 220506 of title 36.
(B)(1) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the owner of the mark or to any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c).

(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(D) A person shall be liable for using a domain name under this paragraph only if that person is the domain name registrant or that registrant's authorized licensee.

(E) As used in this paragraph, the term "traffic in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2)(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrant, domain name registry, or other domain name authority that registered or assigned the domain name is located if—

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c); and

(ii) the court finds that the owner—

(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by—

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

(B) The actions under subparagraph (A)(ii) shall constitute service of process.

(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which—

(i) the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(D)(i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall—

(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

(3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available
under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.


REFERENCES IN TEXT

PRIORITY PROVISIONS

AMENDMENTS
2012—Subsec. (c)(6). Pub. L. 112–190 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A)(i) is brought by another person under the common law or a statute of a State, and

“(ii) seeks to prevent dilution by blurring or dilution by tarnishment, or

“(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.”

§ 1126. International conventions

(a) Register of marks communicated by international bureaus

The Director shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees required in this chapter may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 11(a) of the Act of March 19, 1920.

(b) Benefits of section to persons whose country of origin is party to convention or treaty

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

(c) Prior registration in country of origin; country of origin defined

No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

(d) Right of priority

An application for registration of a mark under section 1051, 1053, 1054, or 1091 of this title or under subsection (e) of this section, filed by a person described in subsection (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in subsection (b) shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country:

Provided. That—

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, including a statement that the applicant has a bona fide intention to use the mark in commerce;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this subsection;

(4) nothing in this subsection shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: Provided, That any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any right outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

(e) Registration on principal or supplemental register; copy of foreign registration

A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register in this chapter provided. Such applicant shall submit, within such time period as may be prescribed by the Director, a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant. The application must state the applicant’s bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration.

(f) Domestic registration independent of foreign registration

The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) shall
be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this chapter.

(g) Trade or commercial names of foreign nationals protected without registration

Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

(h) Protection of foreign nationals against unfair competition

Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

(i) Citizens or residents of United States entitled to benefits of section

Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section.


REFERENCES IN TEXT

Section 1(a) of the Act of March 19, 1929, referred to in subsec. (a), is section 1(a) of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(a) of this title, and repealed by act May 4, 1936, ch. 547, §46(a), 50 Stat. 444, insofar as inconsistent with this chapter.

PRIOR PROVISIONS


AMENDMENTS


Pub. L. 106–43 substituted “trademarks” for “trade-marks”.

Subsec. (e). Pub. L. 106–113 substituted “Director” for “Commissioner”.

1998—Subsec. (d). Pub. L. 105–330, §108(1)(A), in introductory provisions, substituted “or 1091 of this title” for “1091 of this title, or subsection (e) of this section”.


Subsec. (e). Pub. L. 105–330, §108(2), substituted “Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant” for “The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant”.

1988—Subsec. (a). Pub. L. 100–667, §133(2), substituted “required in this chapter” for “herein prescribed”.

Subsec. (c). Pub. L. 100–667, §133(1), made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text.

Subsec. (d). Pub. L. 100–667, §133(1), (3), (4), (5), in introductory provisions, made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text.

1962—Subsec. (b). Pub. L. 87–772 inserted “or extends reciprocal rights to nationals of the United States by law,” and substituted provisions requiring the person’s country of origin to be a party to any convention or treaty, for provisions which required such persons to be nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in a foreign country which was a party to the International Convention for the Protection of Industrial Property, or the General Inter-American Convention for Trade Mark and Commercial Protection, or any other convention or treaty relating to trademarks, trade, or commercial names.

Subsec. (e). Pub. L. 87–772 inserted “certification or a” after “accompanied by a” and struck out “application for or” before “registration.”

1961—Subsec. (d). Pub. L. 87–333 inserted par. at end authorizing the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1126(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENT


For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.


**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 1961 Amendment**

Pub. L. 87–333, § 3, Oct. 3, 1961, 75 Stat. 748, provided that: "This Act [amending this section and section 119 of Title 35, Patents] shall take effect on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, October 31, 1958, comes into force with respect to the United States and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing."

**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.

§ 1127. Construction and definitions; intent of chapter

In the construction of this chapter, unless the contrary is plainly apparent from the context—

The United States includes and embraces all territory which is under its jurisdiction and control.

The word "commerce" means all commerce which may lawfully be regulated by Congress.

The term "principal register" refers to the register provided for by sections 1051 to 1072 of this title, and the term "supplemental register" refers to the register provided for by sections 1091 to 1096 of this title.

The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

The term "person" also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The term "person" also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

The term "related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.

The terms "trade name" and "commercial name" mean any name used by a person to identify his or her business or vocation.

The term "trademark" includes any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter, to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term "service mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter, to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown.

Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

The term "certification mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person other than its owner, or

(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter, to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

The term "collective mark" means a trademark or service mark—

(1) used by the members of a cooperative, an association, or other collective group or organization, or

(2) which such cooperative, association, or other collective group or organization has a
bona fide intention to use in commerce and applies to register on the principal register established by this chapter, and includes marks indicating membership in a union, an association, or other organization. The term “mark” includes any trademark, service mark, collective mark, or certification mark.

The term “use in commerce” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be deemed to be in use in commerce—

(1) on goods when—

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and

(B) the goods are sold or transported in commerce, and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

A mark shall be deemed to be “abandoned” if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. “Use” of a mark means the bona fide use of such mark in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

The term “colorable imitation” includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term “registered mark” means a mark registered in the United States Patent and Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905. The phrase “mark registered in the Patent and Trademark Office” means registered marks.


A “counterfeit” is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

The term “Internet” has the meaning given that term in section 230(f)(1) of title 47.

Words used in the singular include the plural and vice versa.

The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.


REFERENCES IN TEXT


PRIOR PROVISIONS


AMENDMENTS


Pub. L. 106–113, § 1000(a)(9) [title III, § 3005], inserted par. defining “domain name” and “Internet” after par. defining “counterfeit.”

Pub. L. 106–43, § 6(b), substituted “trademarks” for “trade-marks” in last undesignated par.

Pub. L. 106–43, § 4(c), between pars. defining “person” inserted: ‘‘The term ‘person’ also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same
manner and to the same extent as any nongovernmental entity.'"

1996—Pub. L. 104–98 inserted par. defining "dilution" after defining "abandoned".

1994—Pub. L. 103–465 amended par. defining "abandoned" generally. Prior to amendment, par. read as follows: "A mark shall be deemed to be 'abandoned' when either of the following occurs:"

"(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

"(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark.

Purchaser motivation shall not be a test for determining abandonment under this paragraph."

1992—Pub. L. 102–542 inserted after fourth undesignated par. "The term 'person' also includes any State, any instrumentality of a State, and any officer or employee of a State or an instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner as a 'person', and to the same extent as a nongovernmental entity.'"

1988—Pub. L. 100–667, §134(1), amended par. defining "trade mark" generally. Prior to amendment, par. read as follows: "The term 'related company' means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used."

Pub. L. 100–667, §134(2), amended par. defining "trade name" and "commercial name" generally. Prior to amendment, par. read as follows: "The terms 'trade name' and 'commercial name' include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of being sued in a court of law."

L. 100–667, §134(3), amended par. defining "trade-mark" generally. Prior to amendment, par. read as follows: "The term 'trademark' includes any word, name, symbol, device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown."

Pub. L. 100–667, §134(4), amended par. defining "service mark" generally. Prior to amendment, par. read as follows: "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others or to indicate the source of the services, even if that source is unknown. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.'"

Pub. L. 100–667, §134(5), amended par. defining "certification mark" generally. Prior to amendment, par. read as follows: "The term 'certification mark' means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or work or labor on the goods or services performed by members of a union or other organization."
stituted “commerce” for “commence” in last par. relating to the intent of the chapter.

**Effective Date of 1999 Amendment**

Amendment by section 1000(a)(9) (title III, §3005) of Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 28, 1999, see section 1000(a)(9) (title III, §3001) of Pub. L. 106–113, set out as a note under section 1117 of this title.

Amendment by section 1000(a)(9) (title IV, §4732(b)(1)(A)) of Pub. L. 106–113 effective 4 months after a note under section 1117 of this title.

**Effective Date of 1994 Amendment**

Amendment by Pub. L. 103–465 effective one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 523 of Pub. L. 103–465, set out as a note under section 1062 of this title.

**Effective Date of 1992 Amendment**

Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 of this title.

**Effective Date of 1988 Amendment**

Amendment by Pub. L. 102–67 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1651 of this title.

**Effective Date of 1975 Amendment**


**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 1651 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.


**Effective Date of Repeal**

Pub. L. 110–403, title III, §305(a)(1), Oct. 13, 2008, 122 Stat. 4270, provided that the repeal of this section is effective upon confirmation of the Intellectual Property Enforcement Coordinator by the Senate and publica tion of such appointment in the Congressional Record. The Senate confirmed the first Intellectual Property Enforcement Coordinator on Dec. 3, 2009, as reflected in that day’s Congressional Record. See 155 Cong. Rec. S9898 (2009).

**§ 1129. Transferred**

**Codification**

Section, Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548, which related to cyberpiracy protections for individuals, was transferred to section 8311 of this title.

**SUBCHAPTER IV—THE MADRID PROTOCOL**

**§ 1141. Definitions**

In this subchapter:

1. **Basic application**

The term “basic application” means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

2. **Basic registration**

The term “basic registration” means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

3. **Contracting Party**

The term “Contracting Party” means any country or inter-governmental organization that is a party to the Madrid Protocol.

4. **Date of recordal**

The term “date of recordal” means the date on which a request for extension of protection, filed after an international registration is granted, is recorded on the International Register.

5. **Declaration of bona fide intention to use the mark in commerce**

The term “declaration of bona fide intention to use the mark in commerce” means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

(A) the applicant or holder has a bona fide intention to use the mark in commerce;

(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and

(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.

6. **Extension of protection**

The term “extension of protection” means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.

7. **Holder of an international registration**

A “holder” of an international registration is the natural or juristic person in whose name...
the international registration is recorded on the International Register.

(8) International application

The term “international application” means an application for international registration that is filed under the Madrid Protocol.

(9) International Bureau


(10) International Register

The term “International Register” means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.

(11) International registration

The term “international registration” means the registration of a mark granted under the Madrid Protocol.

(12) International registration date

The term “international registration date” means the date assigned to the international registration by the International Bureau.

(13) Madrid Protocol

The term “Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

(14) Notification of refusal

The term “notification of refusal” means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.

(15) Office of a Contracting Party

The term “Office of a Contracting Party” means—

(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks; or

(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

(16) Office of origin

The term “office of origin” means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

(17) Opposition period

The term “opposition period” means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 1063 of this title.


§ 1141a. International applications based on United States applications or registrations

(a) In general

The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.

(b) Qualified owners

A qualified owner, under subsection (a), shall—

(1) be a national of the United States;

(2) be domiciled in the United States; or

(3) have a real and effective industrial or commercial establishment in the United States.


§ 1141b. Certification of the international application

(a) Certification procedure

Upon the filing of an application for international registration and payment of the prescribed fees, the Director shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification.

(b) Transmittal

Upon examination and certification of the international application, the Director shall transmit the international application to the International Bureau.


§ 1141c. Restriction, abandonment, cancellation, or expiration of a basic application or basic registration

With respect to an international application transmitted to the International Bureau under section 1141b of this title, the Director shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

[Footnotes]

(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946 (this section)) enters into force with respect to the United States (Nov. 2, 2003); or

(2) the date occurring 1 year after the date of enactment of this Act (Nov. 2, 2002).

Effective Date


(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946 [this section]) enters into force with respect to the United States (Nov. 2, 2003); or

(2) the date occurring 1 year after the date of enactment of this Act (Nov. 2, 2002).”
§ 1141d. Request for extension of protection subsequent to international registration

The holder of an international registration that is based upon a basic application filed with the United States Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of that international registration by filing such a request—

(1) directly with the International Bureau; or

(2) with the United States Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Director.


§ 1141e. Extension of protection of an international registration to the United States under the Madrid Protocol

(a) In general

Subject to the provisions of section 1141h of this title, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

(b) If the United States is office of origin

Where the United States Patent and Trademark Office is the office of origin for a trademark application or registration, any international registration based on such application or registration cannot be used to obtain the benefits of the Madrid Protocol in the United States.


§ 1141f. Effect of filing a request for extension of protection of an international registration to the United States

(a) Requirement for request for extension of protection

A request for extension of protection of an international registration to the United States that the International Bureau transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

(b) Effect of proper filing

Unless extension of protection is refused under section 1141h of this title, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 1057(c) of this title, as of the earliest of the following:

(1) The international registration date, if the request for extension of protection was filed in the international application.

(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.

(3) The date of priority claimed pursuant to section 1141g of this title.


§ 1141g. Right of priority for request for extension of protection to the United States

The holder of an international registration with a request for an extension of protection to the United States shall be entitled to claim a date of priority based on a right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

(1) the request for extension of protection contains a claim of priority; and

(2) the date of international registration or the date of the recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention for the Protection of Industrial Property).


§ 1141h. Examination of and opposition to request for extension of protection; notification of refusal

(a) Examination and opposition

(1) A request for extension of protection described in section 1141f(a) of this title shall be examined as an application for registration on the Principal Register under this chapter, and if on such examination it appears that the applicant is entitled to extension of protection under this subchapter, the Director shall cause the mark to be published in the Official Gazette of the United States Patent and Trademark Office.

(2) Subject to the provisions of subsection (c), a request for extension of protection under this subchapter shall be subject to opposition under section 1063 of this title.

(3) Extension of protection shall not be refused on the ground that the mark has not been used in commerce.
§ 1141i. Effect of extension of protection

(a) Issuance of extension of protection

Unless a request for extension of protection is refused under section 1141h of this title, the Director shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the United States Patent and Trademark Office.

(b) Effect of extension of protection

From the date on which a certificate of extension of protection is issued under subsection (a)—

(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register; and

(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

§ 1141j. Dependence of extension of protection to the United States on the underlying international registration

(a) Effect of cancellation of international registration

If the International Bureau notifies the United States Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Director shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

(b) Effect of failure to renew international registration

If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

(c) Transformation of an extension of protection into a United States application

The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under article 6(4) of the Madrid Protocol, may file an application, under section 1051 or 1126 of this title, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States.
based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 1141g of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this chapter which apply to any application filed pursuant to section 1051 or 1126 of this title.


§1141k. Duration, affidavits and fees

(a) Time periods for required affidavits

Each extension of protection for which a certificate has been issued under section 1141i of this title shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director unless the holder of the international registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of issuance of the certificate of extension of protection.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of issuance of the certificate of extension of protection, and each successive 10-year period following the date of issuance of the certificate of extension of protection.

(3) The holder may file the affidavit required under this section within a grace period of 6 months after the end of the applicable time period established in paragraph (1) or (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

(b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the extension of protection on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the extension of protection on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

(c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the holder of the international registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

(d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

(e) Notification of acceptance or refusal

The Director shall notify the holder of the international registration who files any affidavit required by this section of the Director’s acceptance or refusal thereof, and, in the case of a refusal, the reasons therefor.

(f) Designation of resident for service of process and notices

If the holder of the international registration of the mark is not domiciled in the United States, the holder may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.


Amendments

2010—Pub. L. 111–146 amended section generally. Prior to amendment, section related to required affidavits and fees, contents of affidavit, notification of Director’s acceptance or refusal, and service of notice or process.

§1141l. Assignment of an extension of protection

An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovern-
mental organization that is a Contracting Party.


§ 1141m. Incontestability

The period of continuous use prescribed under section 1065 of this title for a mark covered by an extension of protection issued under this subchapter may begin no earlier than the date on which the Director issues the certificate of the extension of protection under section 1141 of this title, except as provided in section 1141n of this title.


CHAPTER 23—DISSEMINATION OF TECHNICAL, SCIENTIFIC AND ENGINEERING INFORMATION

Sec. 1151. Purpose of chapter.
1152. Clearinghouse for technical information; removal of security classification.
1153. Rules, regulations, and fees.
1153a. Repealed.
1154. Reference of data to armed services and other Government agencies.
1155. General standards and limitations; preservation of security classification.
1156. Use of existing facilities.
1157. Relation to other provisions.

§ 1151. Purpose of chapter

The purpose of this chapter is to make the results of technological research and development more readily available to industry and business, and to the general public, by clarifying and defining the functions and responsibilities of the Department of Commerce as a central clearinghouse for technical information which is useful to American industry and business.


AMENDMENTS
1970—Pub. L. 91–412 struck out proviso of first par. after deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation by Congress, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.

§ 1152. Clearinghouse for technical information; removal of security classification

The Secretary of Commerce (hereinafter referred to as the “Secretary”) is directed to establish and maintain within the Department of Commerce a clearinghouse for the collection and dissemination of scientific, technical, and engineering information, and to this end to take such steps as he may deem necessary and desirable—

(a) To search for, collect, classify, coordinate, integrate, record, and catalog such information from whatever sources, foreign and domestic, that may be available;

(b) To make such information available to industry and business, to State and local governments, to other agencies of the Federal Government, and to the general public, through the preparation of abstracts, digests, translations, bibliographies, indexes, and microfilm and other reproductions, for distribution either directly or by utilization of business, trade, technical, and scientific publications and services;

(c) To effect, within the limits of his authority as now or hereafter defined by law, and with the consent of competent authority, the removal of restrictions on the dissemination of scientific and technical data in cases where consideration of national security permit the release of such data for the benefit of industry and business.

(Sept. 9, 1950, ch. 936, § 2, 64 Stat. 823.)

§ 1153. Rules, regulations, and fees

The Secretary is authorized to make, amend, and rescind such orders, rules, and regulations as he may deem necessary to carry out the provisions of this chapter, and to establish, from time to time, a schedule or schedules of reasonable fees or charges for services performed or for documents or other publications furnished under this chapter.

It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that each of the services and functions provided herein shall be self-sustaining or self-liquidating and that the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals; but nothing herein shall be construed to require the levying of fees or charges for services performed or publications furnished to any agency or instrumentality of the Federal Government, or for publications which are distributed pursuant to reciprocal arrangements for the exchange of information or which are otherwise issued primarily for the general benefit of the public.

(Sept. 9, 1950, ch. 936, § 3, 64 Stat. 823; Pub. L. 91–412, § 3(e), Sept. 25, 1970, 84 Stat. 864.)

AMENDMENTS
1970—Pub. L. 91–412 struck out proviso of first par. after deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation by Congress, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.


Section, act Oct. 22, 1951, ch. 533, title III, § 301, 65 Stat. 586, provided for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.

§ 1154. Reference of data to armed services and other Government agencies

The Secretary is directed to refer to the armed services all scientific or technical information,