

entitled to registration under this chapter whether registered or not.”

Pub. L. 100-667, §134(8), substituted par. defining “use in commerce” for former par. which read as follows: “For the purposes of this chapter a mark shall be deemed to be used in commerce (a) on goods when 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 and the goods are sold or transported in commerce and (b) 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 this and a foreign country and the person rendering the services is engaged in commerce in connection therewith.” and par. providing when a mark is deemed abandoned for former par. which read as follows: “A mark shall be deemed to be ‘abandoned’—

“(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

“(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subparagraph.”

1984—Pub. L. 98-620, §103(1), in definition of “trademark” substituted “trademark” for “trade-mark”, and substituted “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” for “identify his goods and distinguish them from those manufactured or sold by others”.

Pub. L. 98-620, §103(2), in definition of “service mark” substituted “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 and to indicate the source of the services, even if that source is unknown” for “The term ‘service mark’ means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others”.

Pub. L. 98-620, §103(3), in subpar. (b) of par. relating to when a mark shall be deemed to be “abandoned”, inserted “Purchaser motivation shall not be a test for determining abandonment under this subparagraph.”

1975—Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office” in two places and “Commissioner of Patents and Trademarks” for “Commissioner of Patents” in definition of “Commissioner”.

1962—Pub. L. 87-772 substituted, “predecessors,” for “and” in definition of “applicant” and “registrant”, “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” for “and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce”, in definition of “service mark”, inserted “or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith” in fifteenth paragraph relating to use in commerce, struck out “purchasers” after “deceive” in definition of “colorable imitation”, and substituted “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. 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)(A)] 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 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 1052 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. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1975 AMENDMENT

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

#### REPEAL AND EFFECT ON EXISTING RIGHTS

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

#### TRANSFER OF FUNCTIONS

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

### § 1128. Repealed. Pub. L. 110-403, title III, § 305(a)(1), Oct. 13, 2008, 122 Stat. 4270

Section, Pub. L. 106-58, title VI, §653, Sept. 29, 1999, 113 Stat. 480; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4741(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-586; Pub. L. 108-447, div. B, title II, §210, Dec. 8, 2004, 118 Stat. 2884, established the National Intellectual Property Law Enforcement Coordination Council.

#### 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 publication 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. 29389 (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 8131 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