

§ 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 131(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 non-governmental 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 instrumentality 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) of this section 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 officer or employee of a State or instrumentality of a State acting in his or her official capacity. Such remedies include injunctive relief under section 1116 of this title, actual damages, profits, costs and attorney's fees under section 1117 of this title, destruction of infringing articles under section 1118 of this title, the remedies provided for under sections 1114, 1119, 1120, 1124 and 1125 of this title, and for any other remedies provided under this chapter.

(July 5, 1946, ch. 540, title VI, §40, as added Pub. L. 102-542, §3(b), Oct. 27, 1992, 106 Stat. 3567; amended Pub. L. 106-43, §4(b), Aug. 5, 1999, 113 Stat. 219.)

CONSTITUTIONALITY

For information regarding constitutionality of section 40 of act July 5, 1946, as added by section 3(b) of Pub. L. 102-542, see Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

PRIOR PROVISIONS

A prior section 1122, act July 5, 1946, ch. 540, title VI, §40, 60 Stat. 440, related to review of cases by the Supreme Court, prior to repeal by act May 24, 1949, ch. 139, §142, 63 Stat. 109. See section 1254 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-43, §4(b)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 106-43, §4(b)(1), (2), redesignated subsec. (a) as (b) and inserted heading. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-43, §4(b)(1), (3), redesignated subsec. (b) as (c) and in first sentence substituted “subsection (a) or (b) of this section for a violation described therein” for “subsection (a) of this section for a violation described in that subsection” and inserted “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” after “other than”.

EFFECTIVE DATE

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

§ 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.

(July 5, 1946, ch. 540, title VI, §41, 60 Stat. 440; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §26, 33 Stat. 730.

AMENDMENTS

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

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

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

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.