

the same action, if the court adjudges the design subject to protection under this chapter, enforce the rights in that design under this chapter.

(2) The owner of a design may seek judicial review under this section if—

(A) the owner has previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

(B) the owner causes a copy of the complaint in the action to be delivered to the Administrator within 10 days after the commencement of the action; and

(C) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

(c) ADMINISTRATOR AS PARTY TO ACTION.—The Administrator may, at the Administrator's option, become a party to the action with respect to the issue of registrability of the design claim by entering an appearance within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

(d) USE OF ARBITRATION TO RESOLVE DISPUTE.—The parties to an infringement dispute under this chapter, within such time as may be specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1313(c).

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2913.)

§ 1322. Injunctions

(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney's fees.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2914.)

§ 1323. Recovery for infringement

(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chap-

ter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding \$50,000 or \$1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2914.)

§ 1324. Power of court over registration

In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1325. Liability for action on registration fraudulently obtained

Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of \$10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1326. Penalty for false marking

(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design no-

tice specified in section 1306, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than \$500 for each such offense.

(b) **SUIT BY PRIVATE PERSONS.**—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1327. Penalty for false representation

Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than \$500 and not more than \$1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2915.)

§ 1328. Enforcement by Treasury and Postal Service

(a) **REGULATIONS.**—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1308 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

(b) **SEIZURE AND FORFEITURE.**—Articles imported in violation of the rights set forth in section 1308 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case

may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

REFERENCES IN TEXT

Section 337 of the Tariff Act of 1930, referred to in subsec. (a)(1), is classified to section 1337 of Title 19, Customs Duties.

§ 1329. Relation to design patent law

The issuance of a design patent under title 35, United States Code, for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1330. Common law and other rights unaffected

Nothing in this chapter shall annul or limit—

(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

(2) any right under the trademark laws or any right protected against unfair competition.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1331. Administrator; Office of the Administrator

In this chapter, the “Administrator” is the Register of Copyrights, and the “Office of the Administrator” and the “Office” refer to the Copyright Office of the Library of Congress.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

§ 1332. No retroactive effect

Protection under this chapter shall not be available for any design that has been made public under section 1310(b) before the effective date of this chapter.

(Added Pub. L. 105–304, title V, § 502, Oct. 28, 1998, 112 Stat. 2916.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is Oct. 28, 1998. See Effective Date note set out under section 1301 of this title.