

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, 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 203(1), 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(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 circum-

stances, 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 6621(a)(2) 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.

(c) 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.

(d) Statutory damages for violation of section 1125(d)(1)

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.

(e) 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.

(July 5, 1946, ch. 540, title VI, §35, 60 Stat. 439; Pub. L. 87-772, §19, Oct. 9, 1962, 76 Stat. 774; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-600, §3, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 98-473, title II, §1503(2), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-667, title I, §129, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 104-153, §7, July 2, 1996, 110 Stat. 1388; Pub. L. 106-43, §3(b), Aug. 5, 1999, 113 Stat. 219; Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3003(a)(2), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-549; Pub. L. 107-273, div. C, title III, §13207(a), (b)(11), Nov. 2, 2002, 116 Stat. 1906, 1908; Pub. L. 108-482, title II, §202, Dec. 23, 2004, 118 Stat. 3916; Pub. L. 110-403, title I, §§103, 104, Oct. 13, 2008, 122 Stat. 4259.)

PRIOR PROVISIONS

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

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 a reasonable attorney’s fee, in the case of any violation of section 1114(1)(a) of this title or section 220506 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of the service of the claimant’s pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.”

Subsec. (c)(1). Pub. L. 110-403, §104(1), substituted “\$1,000” for “\$500” and “\$200,000” for “\$100,000”.

Subsec. (c)(2). Pub. L. 110-403, §104(2), substituted “\$2,000,000” for “\$1,000,000”.

2004—Subsec. (e). Pub. L. 108-482 added subsec. (e).

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), (c), or (d) of this title.”

Subsec. (b). Pub. L. 107-273, §13207(b)(11), substituted “section 220506 of title 36” for “section 110 of the Act entitled ‘An Act to incorporate the United States Olympic Association’, approved September 21, 1950 (36 U.S.C. 380)” and “6621(a)(2) of title 26” for “6621 of title 26”.

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title III, §3003(a)(2)], inserted “, (c), or (d)” after “section 1125(a)” in first sentence.

Pub. L. 106-43 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,” in first sentence.

Subsec. (d). Pub. L. 106-113, §1000(a)(9) [title III, §3003(b)], added subsec. (d).

1996—Subsec. (c). Pub. L. 104-153 added subsec. (c).

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

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

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

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

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

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

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3010], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that: “Sections 3002(a), 3003, 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 1051 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 3003 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 1051 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 93-600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93-600, set out as a note under section 1063 of this title.

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

REPEAL AND EFFECT ON EXISTING RIGHTS

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

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-482, title II, §205, Dec. 23, 2004, 118 Stat. 3917, provided that:

“(a) FREE SPEECH AND PRESS.—Nothing in this title [see Short Title of 2004 Amendment note set out under section 1051 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,