

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.

(July 5, 1946, ch. 540, title II, §24, 60 Stat. 436; Pub. L. 85-609, §1(d), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87-772, §14, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §122, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106-43, §2(d), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 109-312, §3(d), Oct. 6, 2006, 120 Stat. 1732.)

#### PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §2, 41 Stat. 534.

#### 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.

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

Pub. L. 106-43 inserted “, including as a result of dilution under section 1125(c) of this title,” after “register” in second sentence.

1988—Pub. L. 100-667 struck out “verified” after “filing of a”, substituted “is not entitled to registration,” for “was not entitled to register the mark at the time of his application for registration thereof,” struck out “is not used by the registrant or” after “that the mark”, and inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

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

1962—Pub. L. 87-772 provided for payment of the prescribed fee and the filing of a verified petition.

1958—Pub. L. 85-609 substituted provisions requiring the Commissioner to refer applications to the Trademark Trial and Appeal Board for provisions which required referral to the examiner in charge of interferences.

#### 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.

#### 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.

#### 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 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.

#### 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.

### § 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.)

#### 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.

### § 1094. Provisions of chapter applicable to registrations on supplemental register

The provisions of this chapter shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 1051(b), 1052(e), 1052(f), 1057(b), 1057(c), 1062(a), 1063 to 1068, inclusive, 1072, 1115 and 1124 of this title.

(July 5, 1946, ch. 540, title II, §26, 60 Stat. 436; Pub. L. 100-667, title I, §123, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 105-330, title II, §201(a)(6), Oct. 30, 1998, 112 Stat. 3070.)

#### PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §6, 41 Stat. 535.

#### AMENDMENTS

1998—Pub. L. 105-330 substituted “, 1057(c),” for “1057(c),”.

1988—Pub. L. 100-667 inserted reference to sections 1051(b) and 1057(c).

#### 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.

### § 1095. Registration on principal register not precluded

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this chapter. Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.

(July 5, 1946, ch. 540, title II, §27, 60 Stat. 436; Pub. L. 100-667, title I, §124, Nov. 16, 1988, 102 Stat. 3943.)

#### REFERENCES IN TEXT

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1-9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444.

#### AMENDMENTS

1988—Pub. L. 100-667 inserted at end “Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.”

#### 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.

### § 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.)

#### REFERENCES IN TEXT

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1-9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(b), 60 Stat. 444.

#### 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.

(July 5, 1946, ch. 540, title III, §29, 60 Stat. 436; Pub. L. 87-772, §15, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93-596, §§1, 2, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §125, Nov. 16, 1988, 102 Stat. 3943.)

#### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §28, 33 Stat. 730; Mar. 19, 1920, ch. 104, §§5, 6, 41 Stat. 534, 535.

#### 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 as used 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, 1058, 1060, 1062, 1063, 1065, 1067, 1069, 1071, 1092, 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, 253 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 become effective upon enactment [Jan. 2, 1975]. However, any registrant may continue to give notice of his registration in accordance with section 29 of the Trademark Act of 1946 (60 Stat. 427), as amended Oct. 9, 1962 (76 Stat. 769) [this section], as an alternative to notice in accordance with section 29 of the Trademark Act as amended by section 2 of this Act, regardless of whether