

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 “trade-mark” 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 has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

(2) Basic registration

The term “basic registration” means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

(3) Contracting Party

The term “Contracting Party” means any country or inter-governmental organization that is a party to the Madrid Protocol.

(4) Date of recordal

The term “date of recordal” means the date on which a request for extension of protection, filed after an international registration is granted, is recorded on the International Register.

(5) Declaration of bona fide intention to use the mark in commerce

The term “declaration of bona fide intention to use the mark in commerce” means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

(A) the applicant or holder has a bona fide intention to use the mark in commerce;

(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and

(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.

(6) Extension of protection

The term “extension of protection” means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.

(7) Holder of an international registration

A “holder” of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.

(8) International application

The term “international application” means an application for international registration that is filed under the Madrid Protocol.

(9) International Bureau

The term “International Bureau” means the International Bureau of the World Intellectual Property Organization.

(10) International Register

The term “International Register” means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.

(11) International registration

The term “international registration” means the registration of a mark granted under the Madrid Protocol.

(12) International registration date

The term “international registration date” means the date assigned to the international registration by the International Bureau.

(13) Madrid Protocol

The term “Madrid Protocol” means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

(14) Notification of refusal

The term “notification of refusal” means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.

(15) Office of a Contracting Party

The term “Office of a Contracting Party” means—

(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks; or

(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

(16) Office of origin

The term “office of origin” means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

(17) Opposition period

The term “opposition period” means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 1063 of this title.

(July 5, 1946, ch. 540, title XII, § 60, as added Pub. L. 107-273, div. C, title III, § 13402, Nov. 2, 2002, 116 Stat. 1913.)

EFFECTIVE DATE

Pub. L. 107-273, div. C, title III, § 13403, Nov. 2, 2002, 116 Stat. 1920, provided that: “This subtitle [subtitle D (§§ 13401-13403) of title III of div. C of Pub. L. 107-273, enacting this subchapter and provisions set out as a note under section 1051 of this title] and the amendments made by this subtitle shall take effect on the later of—

“(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946 [this section]) enters into force with respect to the United States [Nov. 2, 2003]; or

“(2) the date occurring 1 year after the date of enactment of this Act [Nov. 2, 2002].”

§ 1141a. International applications based on United States applications or registrations**(a) In general**

The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.

(b) Qualified owners

A qualified owner, under subsection (a), shall—

(1) be a national of the United States;