

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §9(b), Sept. 16, 2011, 125 Stat. 316, provided that: “The amendments made by this section [amending this section and sections 32, 145, 146, 154, and 293 of Title 35, Patents] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any civil action commenced on or after that date.”

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 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 1984 AMENDMENT

Amendment by Pub. L. 98-620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98-620, set out as a note under section 142 of Title 35, Patents.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

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.

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.

§ 1072. Registration as constructive notice of claim of ownership

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, §22, 60 Stat. 435.)

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 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.

SUBCHAPTER II—THE SUPPLEMENTAL REGISTER

§ 1091. Supplemental register

(a) Marks registerable

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled “An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes”, to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

(b) Application and proceedings for registration

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

(c) Nature of mark

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such

mark must be capable of distinguishing the applicant's goods or services.

(July 5, 1946, ch. 540, title II, §23, 60 Stat. 435; Pub. L. 87-772, §13, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100-667, title I, §121, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 103-182, title III, §333(b), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 105-330, title II, §201(a)(5), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220; 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. 107-273, div. C, title III, §13207(b)(6), Nov. 2, 2002, 116 Stat. 1908.)

REFERENCES IN TEXT

Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in subsec. (a), is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent.

PRIOR PROVISIONS

Acts Mar. 19, 1920, ch. 104, §1, 41 Stat. 533; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §2, 52 Stat. 638.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-273 struck out second comma after “numeral”.

1999—Subsec. (a). Pub. L. 106-113 substituted “Director” for “Commissioner”.

Pub. L. 106-43 substituted “trademarks” for “trade-marks”.

Subsec. (b). Pub. L. 106-113 substituted “Director” for “Commissioner”.

1998—Subsec. (c). Pub. L. 105-330 substituted “, device, any matter that as a whole is not functional,” for “or device”.

1993—Subsec. (a). Pub. L. 103-182 substituted “(d), and (e)(3)” for “and (d)” and inserted at end “Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.”

1988—Pub. L. 100-667, §121(6), struck out undesignated concluding par. which read as follows: “Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith.”

Subsec. (a). Pub. L. 100-667, §121(1), (4), designated first par. as subsec. (a), made technical amendment to reference in the original act to subsections (a), (b), (c), and (d) of section 1052 of this title resulting in no change in text, substituted “are in lawful use in commerce by the owner thereof, on” for “have been in lawful use in commerce by the proprietor thereof, upon”, struck out “for the year preceding the filing of the application” after “any goods and services”, and inserted “subsections (a) and (e) of” before “section 1051”.

Subsec. (b). Pub. L. 100-667, §121(2), (5), designated second par. as subsec. (b) and substituted “prescribed fee” for “fee herein provided”.

Subsec. (c). Pub. L. 100-667, §121(3), designated third par. as subsec. (c).

1962—Pub. L. 87-772 struck out “has begun the lawful use of his mark in foreign commerce and that he” before “requires domestic registration” in last par.

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 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 1993 AMENDMENT

Amendment by Pub. L. 103-182 applicable only to trademark applications filed on or after Dec. 8, 1993, see section 335(c) of Pub. L. 103-182, set out in 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.

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§ 1092. Publication; not subject to opposition; cancellation

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

(1) for which the effective filing date is after the date on which such person's mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title; or

(2) on grounds other than dilution by blurring or dilution by tarnishment,

such person 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 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.