

Nov. 16, 1988, 102 Stat. 3946; Pub. L. 105-330, title II, § 201(a)(10), Oct. 30, 1998, 112 Stat. 3070.)

CODIFICATION

Pub. L. 100-667, § 131(b)(1), transferred section 39a of act July 5, 1946, which was classified to section 1121a of this title, to subsec. (b) of this section.

In subsec. (a), the words “and the United States Court of Appeals for the District of Columbia” following “the Courts of Appeal of the United States” have been deleted as superfluous in view of section 41 of Title 28, Judiciary and Judicial Procedure, which includes the District of Columbia within the eleven judicial circuits of the United States. The word “and” has been inserted preceding “the courts of appeal of the United States” to preserve the conjunctive sense of the sentence.

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, § 17, 33 Stat. 728; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-330 substituted “courts” for “circuit courts” before “of appeal of the United States”.

1988—Subsec. (a). Pub. L. 100-667, § 131(a), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 100-667, § 131(b), redesignated section 1121a of this title as subsec. (b) of this section and substituted “service marks” for “servicemarks” in two places.

1982—Pub. L. 97-164 inserted “(other than the United States Court of Appeals for the Federal Circuit)”.

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.

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.

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.

§ 1121a. Transferred

CODIFICATION

Section, act July 5, 1946, ch. 540, title VI, § 39a, as added Oct. 12, 1982, Pub. L. 97-296, 96 Stat. 1316, which prohibited State and local requirements that registered trademarks be altered or displayed differently, was transferred to subsec. (b) of section 39 of act July 5, 1946, by section 131(b)(1) of Pub. L. 100-667 and is classified to section 1121(b) of this title.

§ 1122. Liability of United States and States, and instrumentalities and officials thereof

(a) Waiver of sovereign immunity by the United States

The United States, all agencies and instrumentalities thereof, and all individuals, firms,

corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or non-governmental entity, for any violation under this chapter.

(b) Waiver of sovereign immunity by States

Any State, instrumentality of a State or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or non-governmental entity for any violation under this chapter.

(c) Remedies

In a suit described in subsection (a) or (b) for a violation described therein, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any person other than the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or a State, instrumentality of a State, or officer or employee of a State or instrumentality of a State acting in his or her official capacity. Such remedies include injunctive relief under section 1116 of this title, actual damages, profits, costs and attorney’s fees under section 1117 of this title, destruction of infringing articles under section 1118 of this title, the remedies provided for under sections 1114, 1119, 1120, 1124 and 1125 of this title, and for any other remedies provided under this chapter.

(July 5, 1946, ch. 540, title VI, § 40, as added Pub. L. 102-542, § 3(b), Oct. 27, 1992, 106 Stat. 3567; amended Pub. L. 106-43, § 4(b), Aug. 5, 1999, 113 Stat. 219.)

CONSTITUTIONALITY

For information regarding constitutionality of section 40 of act July 5, 1946, as added by section 3(b) of Pub. L. 102-542, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

PRIOR PROVISIONS

A prior section 1122, act July 5, 1946, ch. 540, title VI, § 40, 60 Stat. 440, related to review of cases by the Supreme Court, prior to repeal by act May 24, 1949, ch. 139, § 142, 63 Stat. 109. See section 1254 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106-43, § 4(b)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 106-43, § 4(b)(1), (2), redesignated subsec. (a) as (b) and inserted heading. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106-43, § 4(b)(1), (3), redesignated subsec. (b) as (c) and in first sentence substituted “subsection (a) or (b) for a violation described therein” for “subsection (a) of this section for a violation described in that subsection” and inserted “the United States or