

application for cancellation, the Administrator shall send to the owner of the design, as shown in the records of the Office of the Administrator, a notice of the application, and the owner shall have a period of 3 months after the date on which such notice is mailed in which to present arguments to the Administrator for support of the validity of the registration. The Administrator shall also have the authority to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under this chapter, the Administrator shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for cancellation shall be sent to the applicant and to the owner of record. Costs of the cancellation procedure under this subsection shall be borne by the nonprevailing party or parties, and the Administrator shall have the authority to assess and collect such costs.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2911; amended Pub. L. 106-113, div. B, § 1000(a)(9) [title V, § 5005(a)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A-594.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-113 inserted at end “Costs of the cancellation procedure under this subsection shall be borne by the nonprevailing party or parties, and the Administrator shall have the authority to assess and collect such costs.”

§ 1314. Certification of registration

Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of the Office. The certificate shall state the name of the useful article, the date of filing of the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain a reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, the description shall also appear in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2912.)

§ 1315. Publication of announcements and indexes

(a) PUBLICATIONS OF THE ADMINISTRATOR.—The Administrator shall publish lists and indexes of registered designs and cancellations of designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

(b) FILE OF REPRESENTATIVES OF REGISTERED DESIGNS.—The Administrator shall establish and maintain a file of the drawings or other pic-

torial representations of registered designs. The file shall be available for use by the public under such conditions as the Administrator may prescribe.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2912.)

§ 1316. Fees

The Administrator shall by regulation set reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter, taking into consideration the cost of providing these services and the benefit of a public record.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2912.)

§ 1317. Regulations

The Administrator may establish regulations for the administration of this chapter.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2912.)

§ 1318. Copies of records

Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to this chapter. That copy shall be admissible in evidence with the same effect as the original.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2913.)

§ 1319. Correction of errors in certificates

The Administrator may, by a certificate of correction under seal, correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature occurring in good faith but not through the fault of the Office. Such registration, together with the certificate, shall thereafter have the same effect as if it had been originally issued in such corrected form.

(Added Pub. L. 105-304, title V, § 502, Oct. 28, 1998, 112 Stat. 2913.)

§ 1320. Ownership and transfer

(a) PROPERTY RIGHT IN DESIGN.—The property right in a design subject to protection under this chapter shall vest in the designer, the legal representatives of a deceased designer or of one under legal incapacity, the employer for whom the designer created the design in the case of a design made within the regular scope of the designer's employment, or a person to whom the rights of the designer or of such employer have been transferred. The person in whom the property right is vested shall be considered the owner of the design.

(b) TRANSFER OF PROPERTY RIGHT.—The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the owner, or may be bequeathed by will.

(c) OATH OR ACKNOWLEDGMENT OF TRANSFER.—An oath or acknowledgment under section 1312 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage under subsection (b).

(d) RECORDATION OF TRANSFER.—An assignment, grant, conveyance, or mortgage under subsection (b) shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, unless it is recorded in the Office of the Administrator within 3 months after its date of execution or before the date of such subsequent purchase or mortgage.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2913; amended Pub. L. 106-44, §1(f)(2), Aug. 5, 1999, 113 Stat. 222.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106-44 substituted “Acknowledgment” for “Acknowledgement” in heading.

§ 1321. Remedy for infringement

(a) IN GENERAL.—The owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

(b) REVIEW OF REFUSAL TO REGISTER.—(1) Subject to paragraph (2), the owner of a design may seek judicial review of a final refusal of the Administrator to register the design under this chapter by bringing a civil action, and may in the same action, if the court adjudges the design subject to protection under this chapter, enforce the rights in that design under this chapter.

(2) The owner of a design may seek judicial review under this section if—

(A) the owner has previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

(B) the owner causes a copy of the complaint in the action to be delivered to the Administrator within 10 days after the commencement of the action; and

(C) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

(c) ADMINISTRATOR AS PARTY TO ACTION.—The Administrator may, at the Administrator’s option, become a party to the action with respect to the issue of registrability of the design claim by entering an appearance within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

(d) USE OF ARBITRATION TO RESOLVE DISPUTE.—The parties to an infringement dispute under this chapter, within such time as may be specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator

from determining whether a design is subject to registration in a cancellation proceeding under section 1313(c).

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2913.)

§ 1322. Injunctions

(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney’s fees.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2914.)

§ 1323. Recovery for infringement

(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding \$50,000 or \$1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

(b) INFRINGER’S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer’s profits resulting from the sale of the copies if the court finds that the infringer’s sales are reasonably related to the use of the claimant’s design. In such a case, the claimant shall be required to prove only the amount of the infringer’s sales and the infringer shall be required to prove its expenses against such sales.

(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

(d) ATTORNEY’S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney’s fees to the prevailing party.

(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

(Added Pub. L. 105-304, title V, §502, Oct. 28, 1998, 112 Stat. 2914.)