

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 his mark was registered before or after the effective date of this Act.”

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.

§ 1112. Classification of goods and services; registration in plurality of classes

The Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant’s or registrant’s rights. The applicant may apply to register a mark for any or all of the goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce: *Provided*, That if the Director by regulation permits the filing of an application for the registration of a mark for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Director may issue a single certificate of registration for such mark.

(July 5, 1946, ch. 540, title IV, § 30, 60 Stat. 436; Pub. L. 87-772, § 16, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, § 126, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

PRIOR PROVISIONS

Act May 4, 1906, ch. 2081, § 2, 34 Stat. 169.

AMENDMENTS

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

1988—Pub. L. 100-667 inserted “or registrant’s” after “applicant’s” and substituted “may apply” for “may file an application”, “goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce:” for “goods and services upon or in connection with which he is actually using the mark:”, and “*Provided*, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall” for “*Provided*, That when such goods or services fall”.

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

1962—Pub. L. 87-772, among other changes, substituted “may” for “shall”.

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 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 Employment.

§ 1113. Fees

(a) Applications; services; materials

The Director shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Director once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored. No fee established under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(b) Waiver; Indian products

The Director may waive the payment of any fee for any service or material related to trademarks or other marks in connection with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups.

(July 5, 1946, ch. 540, title V, § 31, 60 Stat. 437; Pub. L. 85-609, § 1(e), Aug. 8, 1958, 72 Stat. 540; Pub. L. 89-83, § 3, July 24, 1965, 79 Stat. 260; Pub. L. 93-596, § 1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96-517, § 5, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, § 3(f), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-256, title I, § 103, Sept. 8, 1982, 96 Stat. 816; Pub. L. 102-204, § 5(f)(1), Dec. 10, 1991, 105 Stat. 1640; Pub. L. 105-330, title II, § 201(a)(7), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-113, div. B, § 1000(a)(9) [title IV, § 4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 14, 15, 33 Stat. 728; Mar. 19, 1920, ch. 104, § 8, 41 Stat. 535; Apr. 11, 1930, ch. 132, § 4, 46 Stat. 155.

AMENDMENTS

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

1998—Pub. L. 105-330 made technical amendment relating to section catchline.

1991—Subsec. (a). Pub. L. 102-204 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. No fee established under this section will take effect prior to sixty days following notice in the Federal Register.”

1982—Subsec. (a). Pub. L. 97-256 struck out “of Patents” after “Commissioner”.

Pub. L. 97-247 struck out provisions directing that fees be set and adjusted by the Commissioner to recover in aggregate 50 per centum of the estimated average cost to the Office of processing and that fees for all other services or materials related to trademarks and other marks recover the estimated average cost to the Office of performing the service or furnishing the material.

1980—Subsec. (a). Pub. L. 96-517 in revising fee provisions required the Commissioner to establish fees based on recovery of estimated average cost of processing applications, performing services and providing material; authorized triennial adjustments; and prescribed an effective date for fees; deleted prior provisions containing statutory schedule covering fees for filing; applications for registration and renewals, affidavits, revival petitions for abandoned applications, opposition or application for cancellation, disclaimers, and notice of benefits for a mark to be published; and fees covering: appeals from examiners in charge of registration, certificates of amendment, certifying, printed copies of registered marks, and recordation of documents and papers relating to property in a registration or application.

Subsec. (b). Pub. L. 96-517 added subsec. (b) and struck out former subsec. (b) authorizing Commissioner to establish charges for copies of records, publications, or services of Patent and Trademark Office. See subsec. (a).

Subsec. (c). Pub. L. 96-517 in revising fee provisions struck out subsec. (c) authorizing Commissioner to refund any mistaken or excessive payments.

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

Subsec. (b). Pub. L. 93-596 substituted “Patent and Trademark Office” for “Patent Office”.

1965—Pub. L. 89-83 increased fees for filing an application for registration of a mark from \$25 to \$35; for issuance of a new certificate of registration following a change of ownership of a mark or correction of a registrant’s mistake from \$10 to \$15; for a certificate of correction of registrant’s mistake from \$10 to \$15; for filing a disclaimer from \$10 to \$15; and for recording an assignment, agreement, or other paper relating to the property in a registration or application from \$3 for documents not exceeding six pages plus \$1 for each additional two pages or less and 50 cents additional for each additional registration or application included in one writing, to a \$20 fee for every document plus an additional fee of \$3 for each additional item where the document relates to more than one application or registration; eliminated provisions which established fees for the surrender or cancellation of a registration, for an abstract of title, for a title report required for office use, for certificates that marks have not been registered, and for copies of various specified records and documents; added the fees for filing and affidavit under section 1058(a) or (b) of this title and for filing a petition for the revival of an abandoned application; empowered the Commissioner to establish charges for copies of records, publications or services furnished by the Patent Office; and made the provisions relating to refunds of sums paid by mistake permissive.

1958—Pub. L. 85-609 struck out “to the Commissioner” after “on appeal from an examiner in charge of the registration of marks”, and provisions which required payment of a \$25 fee on appeals from an examiner in charge of interferences to the Commissioner.

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 pro-