

**(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 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" after "other than".

## EFFECTIVE DATE

Section effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L.

102-542, set out as an Effective Date of 1992 Amendment note under section 1114 of this title.

**§ 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office**

The Director shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter.

(July 5, 1946, ch. 540, title VI, §41, 60 Stat. 440; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; 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 Feb. 20, 1905, ch. 592, §26, 33 Stat. 730.

## AMENDMENTS

1999—Pub. L. 106-113 substituted "Director" for "Commissioner".

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

## 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 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.

**§ 1124. Importation of goods bearing infringing marks or names forbidden**

Except as provided in subsection (d) of section 1526 of title 19, no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, con-

vention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

(July 5, 1946, ch. 540, title VII, § 42, 60 Stat. 440; Pub. L. 95-410, title II, § 211(b), Oct. 3, 1978, 92 Stat. 903; Pub. L. 105-330, title II, § 201(a)(11), (12), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, § 6(b), Aug. 5, 1999, 113 Stat. 220.)

#### PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, § 27, 33 Stat. 730.

#### AMENDMENTS

1999—Pub. L. 106-43 substituted “trademarks” for “trade-marks”.

1998—Pub. L. 105-330, § 201(a)(11), substituted “name of any domestic” for “name of the any domestic”.

Pub. L. 105-330, § 201(a)(12), substituted “trademark” for “trade-mark” wherever appearing.

1978—Pub. L. 95-410 substituted “Except as provided in subsection (d) of section 1526 of title 19, no article” for “No article”.

#### 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.

#### 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

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

### § 1125. False designations of origin, false descriptions, and dilution forbidden

#### (a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for

goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term “any person” includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

#### (b) Importation

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

#### (c) Dilution by blurring; dilution by tarnishment

##### (1) Injunctive relief

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

##### (2) Definitions

(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

(i) The duration, extent, and geographic reach of advertising and publicity of the