

1501A-549; Pub. L. 107-273, div. C, title III, § 13207(a), (b)(11), Nov. 2, 2002, 116 Stat. 1906, 1908; Pub. L. 108-482, title II, § 202, Dec. 23, 2004, 118 Stat. 3916; Pub. L. 110-403, title I, §§ 103, 104, Oct. 13, 2008, 122 Stat. 4259.)

Editorial Notes

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§ 16, 19, 33 Stat. 728, 729; Mar. 19, 1920, ch. 104, § 4, 41 Stat. 534.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-403, § 103, amended subsec. (b) generally. Prior to amendment, text read as follows: “In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney’s fee, in the case of any violation of section 1114(1)(a) of this title or section 220506 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of the service of the claimant’s pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate.”

Subsec. (c)(1). Pub. L. 110-403, § 104(1), substituted “\$1,000” for “\$500” and “\$200,000” for “\$100,000”.

Subsec. (c)(2). Pub. L. 110-403, § 104(2), substituted “\$2,000,000” for “\$1,000,000”.

2004—Subsec. (e). Pub. L. 108-482 added subsec. (e).

2002—Subsec. (a). Pub. L. 107-273, § 13207(a), substituted “a violation under section 1125(a) or (d) of this title,” for “a violation under section 1125(a), (c), or (d) of this title.”

Subsec. (b). Pub. L. 107-273, § 13207(b)(11), substituted “section 220506 of title 36” for “section 110 of the Act entitled ‘An Act to incorporate the United States Olympic Association’, approved September 21, 1950 (36 U.S.C. 380)” and “6621(a)(2) of title 26” for “6621 of title 26”.

1999—Subsec. (a). Pub. L. 106-113, § 1000(a)(9) [title III, § 3003(a)(2)], inserted “, (c), or (d)” after “section 1125(a)” in first sentence.

Pub. L. 106-43 substituted “a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title,” for “or a violation under section 1125(a) of this title,” in first sentence.

Subsec. (d). Pub. L. 106-113, § 1000(a)(9) [title III, § 3003(b)], added subsec. (d).

1996—Subsec. (c). Pub. L. 104-153 added subsec. (c).

1988—Subsec. (a). Pub. L. 100-667 inserted “, or a violation under section 1125(a) of this title,” after “Office” in first sentence.

1986—Subsec. (b). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1984—Pub. L. 98-473 designated existing provisions as subsec. (a) and added subsec. (b).

1975—Pub. L. 93-600 inserted provisions relating to awarding of attorney fees in exceptional cases.

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

1962—Pub. L. 87-772 substituted “1114” for “1113(1)(b)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(9) [title III, § 3010], Nov. 29, 1999, 113 Stat. 1536, 1501A-552, provided that:

“Sections 3002(a), 3003, 3004, 3005, and 3008 of this title [amending this section and sections 1114, 1116, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1051 of this title] shall apply to all domain names registered before, on, or after the date of the enactment of this Act [Nov. 29, 1999], except that damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117), as amended by section 3003 of this title, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act.”

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 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.

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.

CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-482, title II, § 205, Dec. 23, 2004, 118 Stat. 3917, provided that:

“(a) FREE SPEECH AND PRESS.—Nothing in this title [see Short Title of 2004 Amendment note set out under section 1051 of this title] shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

“(b) DISCRETION OF COURTS IN DETERMINING RELIEF.—Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

“(c) DISCRETION OF COURTS IN DETERMINING TERMS OF IMPRISONMENT.—Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law.”

Executive Documents

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.

§ 1118. Destruction of infringing articles

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title, shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or, in the case of a violation of section 1125(a) of this title or a willful violation under section 1125(c) of this title,

the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.

(July 5, 1946, ch. 540, title VI, §36, 60 Stat. 440; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98-473, title II, §1503(3), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 100-667, title I, §130, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 106-43, §3(c), Aug. 5, 1999, 113 Stat. 219.)

Editorial Notes

PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

AMENDMENTS

1999—Pub. L. 106-43, in first sentence, substituted “a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title,” for “or a violation under section 1125(a) of this title,” and inserted “or a willful violation under section 1125(c) of this title” before “, the word,”.

1988—Pub. L. 100-667 inserted in first sentence “, or a violation under section 1125(a) of this title,” after “Office” and “or, in the case of a violation of section 1125(a) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation,” after “registered mark”.

1984—Pub. L. 98-473 inserted “The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.”

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

Statutory Notes and Related Subsidiaries

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.

Executive Documents

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.

§ 1119. Power of court over registration

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

(July 5, 1946, ch. 540, title VI, §37, 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.)

Editorial Notes

PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §22, 33 Stat. 729.

AMENDMENTS

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

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

Statutory Notes and Related Subsidiaries

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.

Executive Documents

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.

§ 1120. Civil liability for false or fraudulent registration

Any person who shall procure registration in the Patent and Trademark Office of a mark by