

*Trademark Laws and Regulations***15 U.S.C. 1094 General provisions [Section 26]**

The provisions of this Act shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of §§1(b), 2(e), 2(f), 7(b), 7(c), 12(a), 13 to 18, inclusive, 22, 33, and 42 of this Act.

**15 U.S.C. 1095 Principal registration not precluded by supplemental registration
[Section 27]**

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this Act. Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.

**15 U.S.C. 1096 Department of Treasury; supplemental registration not filed
[Section 28]**

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

*Trademark Laws and Regulations***SUBCHAPTER III-GENERAL PROVISIONS**

- 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit.
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- 1121a. Transferred.
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- 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office.
- 1124. Importation of goods bearing infringing marks or names forbidden.
- 1125. False designations of origin and false descriptions forbidden.
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15 U.S.C. 1111 Notice of registration; display with mark; actual notice [Section 29]

Notwithstanding the provisions of §22 hereof, 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 Act by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this Act unless the defendant had actual notice of the registration.

TITLE IV-CLASSIFICATION**15 U.S.C. 1112 Classification of goods and services; registration in plurality of classes [Section 30]**

The Commissioner 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 Commissioner 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 Commissioner may issue a single certificate of registration for such mark.

* Note: The amendment of the wording of this term by Public Law 93-596 became effective on January 2, 1975. However, the amendment provides that any registrant may continue to give notice of his registration in accordance with §29 of the Trademark Act of 1946, as amended Oct. 9, 1962, as an alternative to notice in accordance with §29 of the Trademark Act as amended by Public Law 93-596, regardless of whether his mark was registered before or after January 2, 1975.

TITLE V—FEES AND CHARGES

15 U.S.C. 1113 Fees [Section 31]

(a) 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.

(b) The Commissioner 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.

TITLE VI—REMEDIES

15 U.S.C. 1114 Remedies; infringement; innocent infringers [Section 32]

- (1) Any person who shall, without the consent of the registrant--
 - (a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or
 - (b) reproduce, counterfeit, copy or colorably imitate a registered mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive. As used in this subsection, the term "any person" includes any State, any instrumentality of a State, and any officer 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 Act in the same manner and to the same extent as any nongovernmental entity.
- (2) Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act or to a person bringing an action under §43(a) shall be limited as follows:
 - (a) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed or person bringing the action under §43(a) shall be entitled as against such infringer or violator only to an injunction against future printing.
 - (b) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in §2510(12) of title 18, United States Code, the remedies of the owner of the right infringed or person bringing the action under §43(a) as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this

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subparagraph shall apply only to innocent infringers and innocent violators.

- (c) Injunctive relief shall not be available to the owner of the right infringed or person bringing the action under §43(a) with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter or violating matter where restraining the dissemination of such infringing matter or violating matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication after the regular time for such delivery or transmission, and such delay would be due to the method by which publication and distribution of such periodical or transmission of such electronic communication is customarily conducted in accordance with sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter or violating matter.
- (d) As used in this paragraph--
 - (i) the term "violinator" means a person who violates §43(a); and
 - (ii) the term "violating matter" means matter that is the subject of a violation under §43(a).

15 U.S.C. 1115 Registration as evidence of right to exclusive use; defenses [Section 33]

(a) Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this Act and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in subsection (b), which might have been asserted if such mark had not been registered.

(b) To the extent that the right to use the registered mark has become incontestable under §15, the registration shall be conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of §15, or in the renewal application filed under the provisions of §9 if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in §32, and shall be subject to the following defenses or defects:

- (1) That the registration or the incontestable right to use the mark was obtained fraudulently; or
- (2) That the mark has been abandoned by the registrant; or
- (3) That the registered mark is being used, by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used; or
- (4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin; or
- (5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by

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such party or those in privity with him from a date prior to (A) the date of constructive use of the mark established pursuant to §7(c), (B) the registration of the mark under this Act if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C) publication of the registered mark under subsection (c) of §12 of this Act: Provided, however, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

- (6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this Act or publication under subsection (c) of §12 of this Act of the registered mark of the registrant, and not abandoned: Provided, however, That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or
- (7) That the mark has been or is being used to violate the antitrust laws of the United States; or
- (8) That equitable principles, including laches, estoppel, and acquiescence, are applicable.

15 U.S.C. 1116 Injunctions; enforcement; notice of filing suit given Commissioner [Section 34]

(a) The several courts vested with jurisdiction of civil actions arising under this Act shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under §43(a). Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

(b) The said courts shall have jurisdiction to enforce said injunction, as herein provided, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

(c) It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this Act to give notice thereof in writing to the Commissioner setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Commissioner, and within one month after the judgment is entered or an appeal is taken, the clerk of the court shall give notice thereof to the Commissioner, and it shall be the duty of the Commissioner on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

(d)(1)(A) In the case of a civil action arising under §32(1)(a) of this Act or §110 of the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 380) with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of