§ 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 mark, whether advertised or publicized by the owner or third parties.

(ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.

(iii) The extent of actual recognition of the mark.

(iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

(B) For purposes of paragraph (1), “dilution by blurring” is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

(i) The degree of similarity between the mark or trade name and the famous mark.

(ii) The degree of inherent or acquired distinctiveness of the famous mark.

(iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.

(iv) The degree of recognition of the famous mark.

(v) Whether the user of the mark or trade name intended to create an association with the famous mark.

(vi) Any actual association between the mark or trade name and the famous mark.

(C) For purposes of paragraph (1), “dilution by tarnishment” is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

(3) Exclusions

The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

(A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person’s own goods or services, including use in connection with—

(i) advertising or promotion that permits consumers to compare goods or services; or
(d) Cyberpiracy prevention

(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that—

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of section 706 of title 18 or section 220506 of title 36.

(B)(i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that is otherwise commonly used to identify that person;

(III) the person’s prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person’s bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person’s intent to divert consumers from the mark owner’s online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person’s offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person’s prior conduct indicating a pattern of such conduct;

(VII) the person’s provision of material and misleading false contact information when applying for the registration of the domain name, the person’s intentional failure to maintain accurate contact information, or the person’s prior conduct indicating a pattern of such conduct;

(VIII) the person’s registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person’s domain name registra-
tion is or is not distinctive and famous within
the meaning of subsection (c).

(ii) Bad faith intent described under subpara-
graph (A) shall not be found in any case in which
the court determines that the person believed
and had reasonable grounds to believe that the
use of the domain name was a fair use or other-
wise lawful.

(C) In any civil action involving the regis-
tration, trafficking, or use of a domain name under
this paragraph, a court may order the forfeiture
or cancellation of the domain name or the trans-
fer of the domain name to the owner of the
mark.

(D) A person shall be liable for using a domain
name under subparagraph (A) only if that person
is the domain name registrant or that reg-
istrant’s authorized licensee.

(E) As used in this paragraph, the term “traf-
fics in” refers to transactions that include, but
are not limited to, sales, purchases, loans,
pledges, licenses, exchanges of currency, and
any other transfer for consideration or receipt
in exchange for consideration.

(2)(A) The owner of a mark may file an in rem
civil action against a domain name in the judi-
cial district in which the domain name reg-
istrar, domain name registry, or other domain
name authority that registered or assigned the
domain name is located if—

(i) the domain name violates any right of
the owner of a mark registered in the Patent
and Trademark Office, or protected under sub-
section (a) or (c) of this section; and

(ii) the court finds that the owner—

(I) is not able to obtain in personam juris-
diction over a person who would have been a
defendant in a civil action under paragraph
(1); or

(II) through due diligence was not able to
find a person who would have been a defen-
dant in a civil action under paragraph (1) by—

(aa) sending a notice of the alleged viola-
tion and intent to proceed under this para-
graph to the registrant of the domain
name at the postal and e-mail address pro-
vided by the registrant to the registrar;

(bb) publishing notice of the action as
the court may direct promptly after filing
the action.

(B) The actions under subparagraph (A)(ii)
shall constitute service of process.

(C) In an in rem action under this paragraph,
a domain name shall be deemed to have its situs
in the judicial district in which—

(i) the domain name registrar, registry, or
other domain name authority that registered
or assigned the domain name is located; or

(ii) documents sufficient to establish control
and authority regarding the disposition of the
registration and use of the domain name are
deposited with the court.

(D)(1) The remedies in an in rem action under
this paragraph shall be limited to a court order
for the forfeiture or cancellation of the domain
name or the transfer of the domain name to the
owner of the mark. Upon receipt of written noti-
fication of a filed, stamped copy of a complaint
filed by the owner of a mark in a United States
district court under this paragraph, the domain
name registrar, domain name registry, or other
domain name authority shall—

(I) expeditiously deposit with the court doc-
uments sufficient to establish the court’s con-
rol and authority regarding the disposition of
the registration and use of the domain name
to the court; and

(II) not transfer, suspend, or otherwise mod-
ify the domain name during the pendency of
the action, except upon order of the court.

(ii) The domain name registrar or registry or
other domain name authority shall not be liable
for injunctive or monetary relief under this
paragraph except in the case of bad faith or
reckless disregard, which includes a willful fail-
ure to comply with any such court order.

(3) The civil action established under para-
graph (1) and the in rem action established
under paragraph (2), and any remedy available
under either such action, shall be in addition to
any other civil action or remedy otherwise ap-
licable.

(4) The in rem jurisdiction established under
paragraph (2) shall be in addition to any other
jurisdiction that otherwise exists, whether in
rem or in personam.

(75) Subsection (a) was classified to sections
81 to 109 of this title.

(76) Subsection (a) was applied to the Foreign

(77) Acts March 3, 1881, and February 20, 1905, referred to in
subsec. (c)(2)(A)(iv), (6), are acts Mar. 3, 1881, ch. 138,
were repealed insofar as inconsistent with this chapter
by act July 5, 1946, ch. 540, § 3(a), 60 Stat. 441; Pub.
L. 100–667, title I, § 132, Nov. 16, 1988, 102
Stat. 2946; Pub. L. 102–542, § 3(c), Oct. 27, 1992, 106
Stat. 985; Pub. L. 106–43, §§ 3(a)(2), 5, Aug. 5, 1999,
113 Stat. 219, 220; Pub. L. 106–113, div. B,
§ 1000(a)(9) [title III, § 3002(a)], Nov. 29, 1999, 113
Stat. 1536, 1501A–545; Pub. L. 109–312, § 2, Oct. 6,

REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in
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Stat. 985; Pub. L. 106–43, §§ 3(a)(2), 5, Aug. 5, 1999,
113 Stat. 219, 220; Pub. L. 106–113, div. B,
§ 1000(a)(9) [title III, § 3002(a)], Nov. 29, 1999, 113
Stat. 1536, 1501A–545; Pub. L. 109–312, § 2, Oct. 6,

PRIOR PROVISIONS


AMENDMENTS

(c) and struck out former subsec. (c) which related to
remedies for dilution of famous marks.

stituted “subsection (c)” for “subsection (c)(1)”.


Subsec. (c)(2). Pub. L. 106–43, § 3(a)(2), inserted “as set
forth in section 1116 of this title” after “relief” in first
sentence.


provisions as pars. (1), redesignated former pars. (1) and
(2) as subpars. (A) and (B), respectively, and added par.
(2).

generally. Prior to amendment, subsec. (a) read as fol-
loows: “Any person who shall affix, apply, or annex, or
use in connection with any goods or services, or any
container or containers for goods, a false designation of
origin, or any false description or representation, in-
cluding words or other symbols tending falsely to de-
scribe or represent the same, and shall cause such
goods or services to enter into commerce, and any per-
son who shall with knowledge of the falsity of such des-
ignation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."

**Effective Date of 1999 Amendment**
Amendment by Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 100(a)(9) (title III, §3010) of Pub. L. 106–113, set out as a note under section 1117 of this title.

**Effective Date of 1996 Amendment**
Section 5 of Pub. L. 104–98 provided that: "This Act [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Jan. 16, 1996]."

**Effective Date of 1992 Amendment**
Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 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 1151 of this title.

**Study on Abusive Domain Name Registrations Involving Personal Names**

"(a) In General.—Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, shall conduct a study and report to Congress with recommendations on guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto, including consideration of and recommendations for—

"(1) protecting personal names from registration by another person as a second level domain name for purposes of selling or otherwise transferring such domain name to such other person or any third party for financial gain;

"(2) protecting individuals from bad faith uses of their personal names as second level domain names by others with malicious intent to harm the reputation of the individual or the goodwill associated with that individual's name;

"(3) protecting consumers from the registration and use of domain names that include personal names in the second level domain in manners which are intended or are likely to confuse or deceive the public as to the affiliation, connection, or association of the domain name registrant, or a site accessible under the domain name, with such other person, or as to the origin, sponsorship, or approval of the goods, services, or commercial activities of the domain name registrant;

"(4) protecting the public from registration of domain names that include the personal names of government officials, official candidates, and potential official candidates for Federal, State, or local political office in the United States, and the use of such domain names in a manner that disrupts the electoral process or the public’s ability to access accurate and reliable information regarding such individuals;

"(5) existing remedies, whether under State law or otherwise, and the extent to which such remedies are sufficient to address the considerations described in paragraphs (1) through (4); and

"(6) the guidelines, procedures, and policies of the Internet Corporation for Assigned Names and Numbers and the extent to which they address the considerations described in paragraphs (1) through (4).

"(b) Guidelines and Procedures.—The Secretary of Commerce shall, under its Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers, collaborate to develop guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto."

**§ 1126. International conventions**

**(a) Register of marks communicated by international bureaus**
The Director shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repressing of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees required in this chapter may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the number, date, and place of the first registration; the number, date, and place of the first registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

**(b) Benefits of section to persons whose country of origin is party to convention or treaty**
Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

**(c) Prior registration in country of origin; country of origin defined**
No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.