**15.26 Trademark Damages—Actual or Statutory Notice  
(15 U.S.C. § 1111)**

To recover damages, the plaintiff has the burden of proving by a preponderance of the evidence that the defendant had [either statutory or] actual notice that the plaintiff’s trademark was registered.

[Defendant had statutory notice if:]

[(1) plaintiff displayed the trademark with the words “Registered in U.S. Patent and Trademark Office”] [or]

[(2) plaintiff displayed the trademark with the words “Reg. U.S. Pat. & Tm. Off.”] [or]

[(3) plaintiff displayed the trademark with the letter R enclosed within a circle, thus ®.]

**Comment**

For a discussion of the notice requirement, *see* 3 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 19:144 (5th ed. 2019).

*Revised March 2024*