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Demonstrating Use of a Trademark in the United States

Specimen Requirements for Goods and Services

A United States trademark registration requires actual use of the mark in commerce with the United States. At several points the USPTO requires the owner to prove that use by filing a "specimen": a real example of the mark as customers see it when they buy the goods or obtain the services. This summary explains when proof is required, what the USPTO accepts, and the most common reasons a specimen is refused. A companion reference document sets out the governing statute, rules and examination guidance in detail.

1. WHAT "USE IN COMMERCE" MEANS

Use must be **bona fide use of the mark in the ordinary course of trade**, not use made merely to reserve rights in the mark. The test differs for goods and for services:

- **Goods:** the mark is placed on the goods, their containers or packaging, labels or tags, or point-of-sale displays, **and** the goods are actually sold or transported in commerce with the United States.
- **Services:** the mark is used or displayed in the sale or advertising of the services, **and** the services are actually rendered in commerce with the United States. Advertising a service that is not yet available is not use.

Preparations to do business, such as forming a company, registering a domain name, building a website, raising investment or announcing a future launch, are not use of the mark.

2. WHEN PROOF OF USE IS REQUIRED

- **Use-based applications** (Section 1(a)): one specimen per class is filed with the application.
- **Intent to use applications** (Section 1(b)): a specimen is filed with an Amendment to Allege Use or, after the Notice of Allowance issues, with the Statement of Use. The Statement of Use is due within six months of the Notice of Allowance, extendable for five (5) six-month periods.
- **Applications based on a foreign registration** (Section 44(e)) **or a Madrid designation** (Section 66(a)): no specimen is required to register.
- **Every registration:** a specimen is required with the declaration of use between the fifth and sixth years after registration, and again at each ten-year renewal. [Madrid International registrations must also file affidavits of use with the USPTO at each renewal.]

3. WHAT EVERY SPECIMEN MUST SHOW

- **The mark exactly as applied for.** A variation, a partial version, or a different logo is not acceptable.

- **The goods or services named in the identification.** Use for other goods or services does not count, even if closely related.
- **Actual use, by the applicant.** The specimen must be a real item in use, not a mockup, rendering, draft website or digitally altered image.
- **Use as a mark.** The mark must be displayed so that customers perceive it as identifying the source of the goods or services, not merely as a company name or decoration.

One specimen per class is the minimum. The USPTO may ask for more, and it is better practice to provide evidence for each item in the identification.

4. Acceptable and Unacceptable Specimens for Goods

Generally acceptable

- Photographs of the goods bearing the mark (for example, a mark molded into a product or printed on it).
- Labels or tags attached to the goods, or shown with the information that normally appears on a label in trade, such as a UPC code, net weight or contents.
- Packaging or containers bearing the mark.
- Point-of-sale displays: shelf displays, banners or signage at the place where the goods are sold.
- A webpage that (1) shows a picture or description of the goods, (2) shows the mark in association with the goods, and (3) provides a means of ordering them, such as a price and an "Add to Cart" button.
- For downloadable software, a screenshot of the launch or login screen bearing the mark, or a download page with the mark and the means to download or purchase.

Not acceptable for goods

- Advertising, brochures, catalogs without ordering information, press releases and social media posts that only promote the goods.
- Invoices, packing slips, order forms, bills of lading, business cards and letterhead.
- Mockups, renderings, printer's proofs and digitally created or altered images.
- Pre-orders for goods that are not yet available.

5. Acceptable and Unacceptable Specimens for Services

Generally acceptable

- Advertising and marketing material in print or online that shows the mark with a reference to the services.
- Webpages for the business that name or describe the services next to the mark.
- Signage at the place where the services are rendered, and vehicles used to render them.

- Material used in rendering the services, such as a menu, the screen of an online service, or a report delivered to the customer bearing the mark.
- Invoices, letterhead and business cards, but only if they show the mark and a reference to the specific services.

The two tests that most often fail

- **Direct association.** The specimen must connect the mark to the services identified. A page that shows the mark and a list of other brand names, or that does not mention the services at all, fails.
- **Services actually rendered.** A "coming soon" page, a launch announcement, or advertising to United States customers for a service not yet provided to them does not show use in commerce.

Online software services require particular care. The USPTO looks at what the customer actually receives. If the business provides software as a service, the specimen supports software as a service. It does not support other services, such as legal services or licensing, unless the specimen shows those services being offered under the mark.

6. Webpage Specimens

Any webpage specimen must show the **full URL and the date the page was accessed or printed**. Without both, the USPTO rejects the specimen. The simplest approach is to send us the URL; we capture the page so that the URL and date appear on the image.

7. Digitally Altered and Mockup Specimens

The USPTO examines every specimen for signs that it was created or altered rather than photographed in use. Signs it looks for include a mark that appears to float over the product, pixelization around the mark, a label that lacks information normally found in the trade, goods known to be sold under another company's mark, and website placeholder text. "Product shots" prepared for marketing are frequently questioned for these reasons. Simple, unedited photographs of the actual goods, label or sign are the most reliable evidence. A fabricated specimen is refused, and it puts the integrity of the whole filing in question.

8. The Statement of Use Must Match the Allowed Goods and Services

- A Statement of Use may be filed only when the mark is in use for every item that will remain in the application. Items not yet in use must be deleted, or divided out into a separate application, at the time of filing.
- Items deleted cannot be added back. The identification cannot be broadened or moved to another class to fit the evidence.
- **A Statement of Use cannot be withdrawn once filed.** If the evidence is not ready, the right filing is an extension request, not a Statement of Use.

9. After Registration: USPTO Audits

The USPTO audits declarations of use. A registration is selected at random if it has one class with four or more goods or services, or two or more classes each with at least two. In a random audit the USPTO selects two additional items per audited class and requires proof of use for each. Any item that cannot be supported must be deleted, at a government fee of $250 per class, and a further surcharge may apply. Directed audits, triggered by a questionable specimen, may cover the entire registration. The best protection is to claim only what is in use, and to keep dated evidence for every item.

10. What to Send Us

- For each class, at least one photograph, label, package, sign or webpage that shows the mark exactly as filed, used with the goods or services identified.
- For webpages, the URL. We capture the page with its URL and date.
- A short note explaining where and how the item is used, and to whom in the United States the goods were sold or the services rendered.
- The dates of first use anywhere and first use in commerce with the United States.
- JPG or PDF files. Unedited photographs are preferred.

We review every specimen before it is filed. If the evidence is insufficient, we will say so and recommend the filing that preserves the application, rather than file evidence that the USPTO would reject.