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Specimen Requirements: Authorities and Examination Guidance

Applications and Registration Maintenance: Reference to Accompany the Client Guide

This reference collects the statute, rules, TMEP sections and USPTO guidance behind the Client Guide, for applications and for the Section 8 and Section 71 declarations that maintain a registration. TMEP citations are to the **May 2026** edition, the current edition, and were checked against the text on tmep.uspto.gov on November 4, 2026. Quoted rule and statute text was checked against Cornell LII. The TMEP does not have the force of law; it states the procedures examining attorneys follow.

1. Status of the Examination Guides

The USPTO examination guides page states that guides issued before the November 2025 TMEP have generally been incorporated into the TMEP. It now lists only two guides, Exam Guide 1-19 (cannabis) and Exam Guide 1-11 (Section 2(a) deceptiveness for Class 5 goods). Neither concerns specimens.

The specimen guidance that issued as Examination Guide 3-19, *Examination of Specimens for Use in Commerce: Digitally Created/Altered or Mockup Specimens* (July 2019, revised October 2020), is not listed as a current guide; the same subject is now addressed in TMEP §904.04(a) and its subsections, under the same heading. The TMEP is therefore the controlling source, and it states that its policies supersede prior examination guides to the extent of any conflict.

2. Statute

15 U.S.C. §1127, "use in commerce"

> "The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark."

A mark is deemed in use in commerce:

- **On goods** when it is placed in any manner on the goods or their containers or the displays associated with them, or on tags or labels affixed to them (or, if that is impracticable, on documents associated with the goods or their sale), **and** the goods are sold or transported in commerce.
- **On services** when it is used or displayed in the sale or advertising of services **and** the services are rendered in commerce, or are rendered in more than one State or in the United States and a foreign country and the person rendering them is engaged in commerce in connection with the services.

"Commerce" means all commerce which may lawfully be regulated by Congress. 15 U.S.C. §1127.

15 U.S.C. §1055, use by related companies

Legitimate use of a mark by related companies inures to the benefit of the registrant or applicant, and does not affect the validity of the mark or its registration, provided the mark is not used to deceive the public. A "related company" is a person whose use of the mark is controlled by the owner with respect to the nature and quality of the goods or services. 15 U.S.C. §1127.

15 U.S.C. §1058, Section 8 affidavit of use

- **§1058(a):** each registration is cancelled unless the owner files an affidavit within the one-year period before the end of six years after registration, and within the one-year period before the end of each successive ten-year period, with a six-month grace period on payment of a surcharge.
- **§1058(b)(1):** an affidavit of use must state that the mark is in use in commerce, set forth the goods and services recited in the registration on or in connection with which the mark is in use, and be accompanied by specimens showing current use of the mark in commerce.
- **§1058(b)(2):** an affidavit of nonuse must list the goods and services on which the mark is not in use and show that the nonuse is due to special circumstances which excuse it and is not due to any intention to abandon the mark.
- **§1058(c):** a timely affidavit that is deficient may be corrected after notice of the deficiency, with a deficiency surcharge.

15 U.S.C. §1141k, Section 71 affidavit of use (Madrid)

An extension of protection remains in force for the term of the international registration, but is cancelled unless the holder files an affidavit with the USPTO within the one-year period before the sixth anniversary, and before each tenth anniversary, of the date the USPTO issued the certificate of extension of protection, with a six-month grace period on payment of a surcharge. The contents mirror §1058(b): a statement of use with specimens showing current use, or a showing of excusable nonuse. §1141k(c) permits correction of a deficient timely affidavit, with a deficiency surcharge.

3. Rules

37 C.F.R. §2.56, Specimens

- **§2.56(a):** an application under Section 1(a), an amendment to allege use, a statement of use, and a Section 8 or Section 71 declaration must include one specimen per class showing the mark as actually used in commerce on or in connection with the goods or services identified. Additional specimens must be provided when the Office requests them as reasonably necessary to proper examination.
- **§2.56(b)(1), trademarks:** the specimen must show the mark on the goods, on containers or packaging, on labels or tags affixed to the goods, or on a display associated with the goods. A display must show the mark directly associated with the goods and must be of a point-of-

sale nature. Another document related to the goods or their sale may be accepted when it is impracticable to place the mark on the goods, packaging or displays.

- **§2.56(b)(2), service marks:** the specimen must show the mark as used in the sale of the services, including the performance or rendering of the services, or in advertising the services, and must show a direct association between the mark and the services.
- **§2.56(c), reproductions and webpages:** a clear photocopy, photograph, webpage printout or similar reproduction is acceptable. A webpage must include the URL and access or print date. An artist's rendering, printer's proof, computer illustration, digital image or similar mockup of how the mark may be displayed is not a proper specimen.

37 C.F.R. §2.88, Statement of Use

- **§2.88(a)(1):** the statement of use must be filed within six months after the Notice of Allowance issues, or within an extension granted under §2.89.
- **§2.88(a)(2)(i):** a statement of use may be filed only when the mark has been in use in commerce for all the goods or services in the Notice of Allowance for which the applicant will seek registration in that application. Under §2.88(a)(2)(ii), it may be accompanied by a request to divide out the goods, services or classes not yet in use.
- **§2.88(b)(1)(iv):** the goods or services in the statement of use must conform to those in the Notice of Allowance. Items omitted are presumed deleted and may not be reinserted.
- **§2.88(f):** a timely filed statement of use may not be withdrawn to return to the status of awaiting a statement of use.

37 C.F.R. §2.161, Requirements for a Section 8 declaration

- **§2.161(a)(6)(i):** the declaration must state that the registered mark is in use in commerce.
- **§2.161(a)(6)(ii):** if the mark is not in use for all the goods, services or classes, the declaration must set forth the date use stopped and the approximate date use is expected to resume, and recite facts showing that nonuse is due to special circumstances that excuse it and not to an intention to abandon the mark.
- **§2.161(b):** the Office may require such information, exhibits, affidavits or declarations, and additional specimens as may be reasonably necessary to examine the declaration or to assess and promote the accuracy and integrity of the register. This is the basis for the post-registration audit program.
- **§2.161(c):** deletions of goods, services or classes after submission and before acceptance of the declaration must be accompanied by the fee in §2.6(a)(12)(iii) or (iv).

The parallel rules for Section 71 declarations are in 37 C.F.R. Part 7, including §§7.36 and 7.37.

4. TMEP: Specimens for Goods

§904, Specimens

Specimens are required because they show the manner in which the mark is seen by the public, and they provide supporting evidence of facts recited in the application. A Section 1(a)

application must include one specimen per class showing the mark as actually used in commerce.

§904.03(g), Displays Associated with Goods

A display (1) must show use of the mark directly associated with the goods and (2) must be of a point-of-sale nature. It must bear the mark prominently, but need not be in close proximity to the goods. Examples are banners, shelf-talkers, window displays and menus, which must be designed to catch the attention of purchasers as an inducement to make a sale.

§904.03(i), Electronic Displays (webpages)

A webpage that displays a product can constitute a display associated with the goods if it:

> "(1) contains a picture, photograph, or textual description of the identified goods; (2) shows the mark in association with the goods; and (3) provides a means for ordering the identified goods."

Citing *In re Sones*, 590 F.3d 1282, 93 USPQ2d 1118 (Fed. Cir. 2009). The mark must also be displayed on the page so that customers will recognize it as a mark.

§904.04(a), Digitally Created/Altered or Mockup Specimens

- **§904.04(a)(i):** such a specimen is an image created to show how the mark might be used. It does not evidence actual use on goods sold or transported in commerce, or, for services, display in connection with services actually rendered in commerce. A digitally altered specimen includes alteration of an existing image of goods, packaging, a display, an advertisement or a website.
- **§904.04(a)(ii)** lists characteristics that may indicate such a specimen, including: a rendering rather than a real product; a product, label or packaging missing information typically included in the trade; a mark that appears to float over the product; features of the item that disappear near the mark; pixelization around the mark; a mark applied inconsistently with the material of the product; goods known to be marketed under a third-party mark; and website placeholder text.
- **§904.04(a)(iii):** examining attorneys and post registration specialists must evaluate each specimen for these signs. Descriptions of the specimen are considered, but facts in the record that contradict the description are also considered. Where an image appears retouched, the examining attorney may research whether the depicted product exists.

§904.04(b), Advertising Material as Specimens for Goods

Advertising material is generally not acceptable as a specimen for goods. Material whose function is merely to tell the prospective purchaser about the goods, or to promote their sale, does not support trademark use. Citing *In re Siny Corp.*, 920 F.3d 1331 (Fed. Cir. 2019).

§904.07(a), Whether the Specimen Shows the Mark as Actually Used in Commerce

On initial review the examining attorney determines whether (1) the applied-for mark appears on the specimen, (2) the specimen shows use for the specific goods or services identified, and (3) the specimen otherwise shows the mark in actual use in commerce.

5. TMEP: Specimens for Services

§1301.03(a), Use of Service Mark in Advertising

In examining a Section 1(a) application, an amendment to allege use, or a statement of use, the examining attorney ordinarily must refuse registration if the record shows that the services advertised have not been rendered. Use of a mark in the announcement of a future service, including an advance reservation or purchase, is not use as a service mark. Citing *Aycock Eng'g, Inc. v. Airflite, Inc.*, 560 F.3d 1350 (Fed. Cir. 2009).

§1301.03(b), Rendering of Service in Commerce

The applicant must use the mark in the rendering of the services in commerce before a registration may be granted. Citing *Couture v. Playdom, Inc.*, 778 F.3d 1379 (Fed. Cir. 2015) (webpage advertising readiness to render services, with no services actually provided, was not use in commerce), and *In re Suuberg*, 2021 USPQ2d 1209 (TTAB 2021) (incorporating, registering a domain name and building a website were preparatory measures, not use).

§1301.04(a), Mark Used in the Sale or Advertising of the Services

The specimen must show the mark as actually used by the applicant in the sale or advertising of the services. Acceptable specimens include advertisements, brochures, billboards, handbills, direct-mail leaflets, menus and publicly available press releases. Letterhead and invoices may be acceptable if they show the mark and a direct association between the mark and the services.

§1301.04(f)(ii), Direct Association

The specimen must show the mark used in a manner that creates in the minds of potential consumers a direct association between the mark and the services. Citing *In re JobDiva, Inc.*, 843 F.3d 936 (Fed. Cir. 2016).

§1301.04(g)(i), Failure to Show the Mark Used in Commerce

A specimen that does not show the mark, or shows the mark used for goods rather than the identified services, is refused under Sections 1 and 45. Response options include an acceptable substitute specimen or, where appropriate, amendment to a Section 1(b) basis.

§1301.04(h)(iii), Technology-Related Services

Specimen analysis requires consideration of the nature of the identified services. Because online activity always involves software, it can be difficult to distinguish services provided online from the underlying technology. The TMEP quotes *In re Ancor Holdings, LLC*, 79 USPQ2d 1218, 1221 (TTAB 2006): a company that gives customers access to its software through its website

to conduct business may be rendering a service. The specimen must still show the specific services identified.

6. TMEP: Section 8 and Section 71 Declarations

TMEP §1604 governs the Section 8 declaration. TMEP §1613 governs the Section 71 declaration and follows the same structure.

- **§1604.09(b), deletion of goods/services/classes:** an intention to delete should be expressly stated in the declaration. Once the owner expressly indicates an intention to delete goods, services or classes, they may not be reinserted.
- **§1604.09(d):** goods and services not listed in the registration may not be set forth in the declaration.
- **§1604.10, use in commerce:** the declaration must state that the mark is in use in commerce, unless excusable nonuse is claimed. The requirement is satisfied if the mark has not been abandoned and the use meets the statutory definition of use in commerce.
- **§1604.11, excusable nonuse:** sufficient facts must be set forth to show that nonuse is due to a special circumstance beyond the owner's control. Nonuse related to a business decision does not excuse nonuse. Decreased demand resulting in discontinuance for an indefinite period does not excuse nonuse. If the mark was registered under §44(e) and the owner was unable to commence use due to special circumstances beyond its control, the owner should state that the mark was never in use, give the approximate date use is expected to begin, and specify the reason for nonuse and the steps being taken.
- **§1604.12(a), specimen for each class:** a specimen showing how the mark is in use in commerce is required for each class, unless excusable nonuse is claimed. The specimen must show use within the time period specified in Section 8; a specimen that does not is unacceptable to show current use. Section 8 specimens are examined under the same standards as application specimens, TMEP §§904.03 to 904.04(c) and 1301.04 to 1301.04(j).
- **§1604.12(c), substitute specimens:** an omitted or deficient specimen must be replaced by a substitute specimen with a declaration that it was in use in commerce during the relevant Section 8 period.
- **§1604.13, differences in the mark:** the mark in the declaration must be essentially the same as the registered mark. A material alteration results in refusal of the declaration on the ground that the registered mark is no longer in use.
- **§1604.22, post registration audit:** the USPTO audits Section 8 declarations for registrations covering more than one good or service per class, to promote the accuracy and integrity of the register.

7. USPTO Guidance Pages

"Specimens" (uspto.gov, last updated May 22, 2023)

- An acceptable specimen must be a real example of use (not a mockup, printer's proof, digitally altered image, rendering of intended packaging, or draft website); show the mark with the goods or services listed; depict the same mark as the drawing; show the applicant's own use; be the right type for goods or services; directly associate the mark with the goods or services; show the mark functioning as a mark; and, for webpages, include the URL and access or print date.
- File formats: JPG up to 5 megabytes; PDF, WAV, WMV, WMA, MP3, MPG or AVI up to 30 megabytes.
- A specimen is not required to register an application based on a foreign application or registration or a Madrid filing, but all registrants must submit specimens to maintain their registrations.
- A substitute specimen must have been in use in commerce by the application filing date (Section 1(a)), before the amendment to allege use was filed, or before the deadline for the statement of use expired.

"Post-registration audit program" (uspto.gov, last updated September 2, 2026)

- **Random audits:** a timely Section 8 or 71 declaration is eligible if the registration has one class with four or more goods or services, or two or more classes each with at least two. The Office action identifies two additional goods or services per audited class, and proof of use is required for each.
- **Directed audits:** triggered when the file raises doubts about use, such as an apparently altered specimen or printouts from a specimen farm website. The audit may cover some or all of the goods and services.
- **Consequences:** unsupported items must be deleted, with a $250 fee per class for each deletion (37 C.F.R. §§2.161(c), 7.37(c)) and a possible $100 deficiency surcharge (§§2.164, 7.39(c)). Failure to respond cancels the registration. The audit rules are 37 C.F.R. §§2.161(b) and 7.37(b).

"Keeping your registration alive" (uspto.gov)

- Section 8: between the fifth and sixth years after registration; Section 8 and Section 9 together between the ninth and tenth years; then every ten years. Six-month grace period with an additional fee. A registration is cancelled or expires if nothing is filed by the end of the grace period.
- Section 71 (registrations with serial numbers beginning "79"): the same schedule, measured from the United States registration date, not the international registration date.
- The international registration is renewed every ten years from the international registration date directly with the International Bureau; this cannot be done through the USPTO. The USPTO lists it as a separate requirement from the Section 71 declaration.

"Requesting an expungement or reexamination proceeding" (uspto.gov, last updated September 18, 2025)

- **Expungement:** for goods or services on which the mark has never been used in commerce; the petition must be filed between three and ten years after the registration date.
- **Reexamination:** for goods or services on which the mark was not in use as of the relevant date for proof of use; the petition must be filed within the first five years after registration, and applies only to Section 1 registrations.
- Any person may file. The petition must include documentary evidence establishing a prima facie case of nonuse. If the request succeeds, the challenged goods or services are deleted, and in some cases the registration is cancelled.

8. Sources

- TMEP (May 2026): tmep.uspto.gov, §§904, 904.03(g), 904.03(i), 904.04(a)(i) to (iii), 904.04(b), 904.07(a), 1301.03(a), 1301.03(b), 1301.04(a), 1301.04(f)(ii), 1301.04(g)(i), 1301.04(h)(iii), 1604.09(b), 1604.09(d), 1604.10, 1604.11, 1604.12(a), 1604.12(c), 1604.13, 1604.22, 1613.
- 15 U.S.C. §1127: *www.law.cornell.edu/uscode/text/15/1127*
- 15 U.S.C. §1055: *www.law.cornell.edu/uscode/text/15/1055*
- 15 U.S.C. §1058: *www.law.cornell.edu/uscode/text/15/1058*
- 15 U.S.C. §1141k: *www.law.cornell.edu/uscode/text/15/1141k*
- 37 C.F.R. §2.56: *www.law.cornell.edu/cfr/text/37/2.56*
- 37 C.F.R. §2.88: *www.law.cornell.edu/cfr/text/37/2.88*
- 37 C.F.R. §2.161: *www.law.cornell.edu/cfr/text/37/2.161*
- USPTO, Specimens: *www.uspto.gov/trademarks/laws/specimen-refusal-and-how-overcome-refusal*
- USPTO, Post-registration audit program: *www.uspto.gov/trademarks/maintain/post-registration-audit-program*
- USPTO, Trademark examination guides: *www.uspto.gov/trademarks/guides-and-manuals/trademark-examination-guides*
- USPTO, Keeping your registration alive: *www.uspto.gov/trademarks/maintain/keeping-your-registration-alive*
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