

KREMBLAS & FOSTER

INTELLECTUAL PROPERTY PROTECTION

Attorneys At Law
7632 Slate Ridge Blvd.
Reynoldsburg, Ohio 43068-8159

Patents, Trademarks & Copyrights

Columbus, Ohio
614/575-2100
www.ohiopatent.com

Specimens of Trademark Use For Filing In the U.S. Patent and Trademark Office

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During the trademark registration procedure, and at periodic intervals during the life of a registration, the trademark owner is required to submit a “specimen” of use of the trademark to the U.S. Patent and Trademark Office [USPTO]. A specimen is a representative example of use of the trademark. This document describes examples of acceptable specimens for the most common situations.

The Purpose of a Specimen

The purpose of filing a trademark specimen is *not* to prove a date on which the trademark was first used. A specimen is an example of the *current* use of the trademark by the trademark owner. From the specimen, the USPTO determines whether the trademark was used in a manner that meets the requirements of U.S. trademark law for having registered status and legal protection. Specimens must be acceptable to the USPTO.

General Requirements for All Trademark Specimens

Goods and services are organized into numeric classes and identified in a trademark application and registration. A specimen is needed for each numeric class unless the class is deleted. However, a single specimen can be used for more than one class if that specimen shows use of the trademark for the goods and services for all the classes for which the specimen is submitted. After submitting a specimen for each class, a trademark examining attorney may ask for additional specimens.

A specimen needs to be a duplicate of something as it is *actually commercially used*; that is, as it is seen by customers or potential customers. For example, preliminary artwork or a printer’s proof is not acceptable. A photo of a product that has a blank white background, because it was prepared for advertising on a website, is often not acceptable. The specimen can be an original, such as an actual paper label or advertising leaflet, or *preferably* a photograph, scanned image or document in a computer file.

The specimen needs to show use of a trademark in a normal *trademark* manner. It must be used in a manner that functions as an indicator of the source or origin of the goods

or services that are identified in the trademark application or registration. The USPTO must be able to see three things from a trademark specimen: (1) the trademark, as shown *in the application or registration*, is displayed to prospective purchasers; (2) the trademark is used for at least one item of the goods or services that is identified in a class in the trademark application or registration; and (3) the manner of use of the mark is acceptable to the USPTO. A specimen must show the mark clearly enough that the USPTO can see that the same trademark as applied for or registered is being used. Generally, the manner of use is acceptable if the mark is used in the manner trademarks are commonly used. Trademarks are commonly separate from and/or more prominent relative to other markings on packages or in advertising. For goods, trademarks are displayed in physical association with the goods themselves, such as on a package for the goods that also identifies the goods, or at a purchase point for ordering or purchasing the goods or services. A specimen for goods that does no more than *advertise* goods is not an acceptable specimen. For services, trademarks are used in advertising that includes an identification of the services, or in connection with performance of the services, such as on uniforms or vehicles that are used while performing the services.

COMMON EXAMPLES FOR GOODS

1. *Trademark is on the goods*

If the trademark is printed directly on the goods, or on a label adhered to the goods or on a hang tag attached to the goods, a desirable specimen is one or more photos of the goods with the trademark clearly legible and some or all of the goods included in the photo. If needed, there can be multiple photos such as one taken from a greater distance that shows the entire goods in which the trademark may be small, and a closer view that shows the entire trademark. Photos should be taken by a digital camera or a smartphone. They should have an actual physical background, *not* a blank background such as is common for preparing photos for display on a website.

2. *Trademark is on a package for the goods*

If the trademark is on the package or container for the goods, a desirable specimen is one or more photos of the package or container with the trademark clearly legible and some or all of the container or package in the photo. Photos should be taken by a digital camera or a smartphone. They should have an actual physical background, not a blank background that is common for preparing photos for use on a website. If needed, there can be multiple photos such as one taken from a greater distance and a closer view. In addition to the trademark, the visible part of the package or container should identify the contents of the package or container so the USPTO can see that the contents of the container or package is one of the goods identified in the class for which the specimen is being submitted. If the goods are visible while in the package, an identification of the goods in text is not necessary.

3. *Catalog or Website with online ordering option or sufficient ordering instructions*

A paper catalog or an electronic display for sale on a webpage is an acceptable specimen if it meets all the requirements. A screen capture of a qualifying webpage can be used as a specimen, but it is necessary to submit its URL and the date it was captured. The specimen must show the trademark. The specimen must prominently display the trademark

in association with a photo or description identifying the goods. There must be an order button, such as an “add to cart” button by which the goods are ordered, **or** instructions telling the customer how to order the goods. The text of the ordering instructions must clearly be ordering instructions and include a phone number, street address or email address for ordering. The inclusion of the company’s street address, email address or phone number *without* ordering instructions is not acceptable. If a website can be an acceptable specimen and is accessible to the public, you can give your attorney the web address (URL) and your attorney can make the specimen by a screen capture.

4. Actual goods displayed for purchase in association with a display of the trademark

If the goods are physically displayed for sale, such as at a tradeshow, and a sign or placard that prominently displays the trademark is positioned in association with the goods, one or more photographs that show both the displayed goods and the displayed trademark is an acceptable specimen. Information indicating the tradeshow date and place should be given to your trademark attorney.

5. Instruction or operating manual packaged with the goods

If printed matter included with the goods functions as a part of the goods, such as a manual that is part of a kit for assembling the product, then placement of the mark on that printed matter shows use on the goods. The manual must show the trademark as in the trademark application or registration and it must be apparent from the manual that the goods are one of the goods identified in the application or registration.

6. Recorded data with trademark displayed on an initial computer screen

For downloadable or recorded computer programs, movies, videos, or audio recordings, it is common for a trademark to be displayed on an initial frame, or less commonly, displayed during all frames. A screen capture of such a frame showing the trademark prominently displayed can be an acceptable specimen.

COMMON EXAMPLES FOR SERVICES

7. Advertising

Advertising is the most common acceptable specimen for services. Advertising includes advertising on a website or in a paper publication. The advertising must prominently display the same trademark as shown in the trademark application or registration. The advertising must also refer to at least one item of services listed in the numeric class for which the specimen will be submitted. It is not necessary that the *same words* be used to refer to the services as used in the application or registration, but it must be clear from the text that the trademark is being used with the same services. For *website* advertising, its URL and date of access *must* be known by your attorney. For that reason, if you have acceptable website advertising which is publicly available, you can give your attorney its URL and your attorney can prepare the specimen.

8. *Display of the trademark during performance of services*

A display of the trademark during performance of the services can be the basis for an acceptable specimen. For example, if persons perform the services in full view of the customer and wear a uniform with the mark displayed on it, or if they use a vehicle that is in full view of the customer during performance of the services, a photo of the uniformed person or the vehicle with the trademark may be acceptable. If a vehicle is a part of rendering the services, such as auto racing, monster truck exhibitions, transportation or trash pickup, a photo of the vehicle showing the trademark prominently displayed on it can be an acceptable specimen.

9. *Exterior or interior store signs*

For services rendered at a physical place of business, such as restaurants or retail store services, store signs can be specimens. A photo of an exterior or interior sign showing the trademark as shown in the trademark application or registration can make an acceptable specimen. Preferably, at least a part of the building exterior or interior would also be visible in any photos.

If one of the above examples of specimens is not available to submit to your attorney, there are other types of acceptable specimens, but they require that your trademark attorney have an opportunity to question you about what is available. The requirements are complicated and many requirements are not apparent from general principles. Misunderstandings about what a specimen must show are not uncommon, and so careful analysis by the attorney will be necessary.

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