

# How to Select the Right Specimens of Use for Your U.S. Trademark



For a mark to be registered in the United States Patent and Trademark Office (“USPTO”), it must be in use. A mark owner is required to submit a Declaration of Use and a Specimen of Use prior to registration, then again 5-6 years after registration and every 10 years after the registration date.

The Declaration of Use is a statement by the owner swearing under penalty of perjury that the mark is in use in United States commerce in connection with each one of the goods and services listed in the application or registration.<sup>1</sup>

While the Declaration of Use should not be taken lightly, the process of preparing and submitting it is relatively straight-forward.

On the other hand, locating an acceptable Specimen of Use is rather involved. In order to demystify this process, we compiled examples of specimens that the USPTO would find acceptable.

Once you have located a specimen, take a second look at this list – if it is not there, chances are, it will not be accepted by the USPTO.

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<sup>1</sup> “Use in commerce” is defined as commerce that may be regulated by congress. This is further defined in US Constitution, Article 1, Section 8, Clause 3, also known as the Commerce Clause, which states that congress can regulate interstate commerce, commerce between nations and commerce with Native American Tribes.

### Specimens for Goods (Classes 1 -34)

Generally, specimens for goods are photographs or digital images that show the mark in use in conjunction with the goods. Specific examples include:

- a label, tag or decal of the mark, affixed to the good
- a label or tag hanging off the product showing the mark
- packaging, boxes or shipping containers with the mark
- a display where the good is shown along with a sign or poster on which the mark is displayed or point of sale display materials
- a packing slip or packaging materials which is shipped with the goods and shows the mark
- a catalog order sheet with an image of the product and the mark, in close association with price and ordering instructions
- a screen shot of a webpage, showing the product, the mark, a price and a “cart” icon
- a photograph of a of a frame of a movie or video tape which shows the mark
- if the product is downloadable software, a screen shot which shows the mark, with purchase instructions and way to download the software
- a truck with the mark displayed that ships the goods
- a instruction manual showing the mark that is included in the packaging sold with the product

### Specimens for Services (Classes 35 – 45)

Generally, specimens for services are advertisements that show the mark and make a clear reference to the services. Specific examples include:

- internet web page advertising
- advertising appearing in a paper publication, such as a magazine, newspaper or journal or telephone directory
- promotional brochures, direct mail advertising, handbills, posters, leaflets, circulars, fliers

- business signage on a store front or vehicle
- Invoices or proposal letters
- If a restaurant, a menu
- business letterhead, stationery or business cards
- trade show demonstration materials
- displays in a showroom
- billboard advertising
- radio/television advertising
- gift items which service as advertisements, such as T-shirts, hats, coffee mugs, calendars, pencils, pens, coasters, button