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101 Trademark Statute and Rules

The federal registration of trademarks is governed by the Trademark Act of 1946, 15 U.S.C. §§1051 *et seq.* (also known as the Lanham Act), and the Trademark Rules of Practice, 37 C.F.R. Parts 2 and 7. The text of the Act

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and Rules can be accessed and downloaded from the Office's website at <http://www.uspto.gov>.

102 United States Patent and Trademark Office World Wide Web Page

The United States Patent and Trademark Office ("USPTO") has a website at <http://www.uspto.gov> that provides access to a wide variety of information about patents and trademarks, and offers electronic filing of trademark applications and other trademark documents.

The Trademark Electronic Business Center on the USPTO website contains all the information needed for the entire registration process. A customer may search the trademark database for conflicting marks using the Trademark Electronic Search System ("TESS"), file applications and other trademark documents online using the Trademark Electronic Application System ("TEAS"), check the status of applications and registrations through the Trademark Applications and Registrations Retrieval ("TARR") database, or view and print images of the contents of trademark application and registration files through the Trademark Document Retrieval ("TDR") portal on the USPTO website at <http://www.uspto.gov>. See TMEP §104 regarding TESS, TMEP §108.01 regarding TARR, TMEP §109.01 regarding electronic image files, and TMEP §§103 and 301 for further information about electronic filing.

Trademark information available for downloading from the USPTO website includes the trademark statute and rules, *Trademark Manual of Examining Procedure*, *Trademark Trial and Appeal Board Manual of Procedure*, *Acceptable Identification of Goods and Services Manual*, *Federal Register* notices, *Official Gazette* notices, examination guides, fee schedules, and certain USPTO forms.

Certified or uncertified copies of trademark documents can be purchased over the Internet. See TMEP §111 for further information.

103 Trademark Forms

Trademark documents can be filed electronically through TEAS, on the USPTO website at <http://www.uspto.gov/teas/index.html>. TEAS can be used to file an application for registration of a mark, response to an examining attorney's Office action; amendment to allege use under 15 U.S.C. §1051(c); statement of use under 15 U.S.C. §1051(d); request for extension of time to file a statement of use under 15 U.S.C. §1051(d)(2); affidavit of continued use under 15 U.S.C. §1058; affidavit of incontestability under 15 U.S.C. §1065; combined affidavit under 15 U.S.C. §§1058 and 1065; combined filing under 15 U.S.C. §§1058 and 1059; notice of change of address; petition to revive an abandoned application; appointment or revocation of attorney or domestic

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representative; withdrawal of attorney in pending application; or request for express abandonment of an application. See TMEP §301 for more information about electronic filing. Additional forms may be available online at www.uspto.gov, or through the Trademark Assistance Center (see TMEP §108.02).

Requests for recordation of assignments and other documents affecting title to an application or registration can be filed through the Electronic Trademark Assignment System (“ETAS”) on the USPTO website at <http://etas.uspto.gov>.

The Electronic System for Trademark Trials and Appeals (“ESTTA”), at <http://estta.uspto.gov>, can be used to file requests for extensions of time to oppose, notices of opposition, notices of change of address, motions, briefs, and other papers in opposition and cancellation proceedings.

104 Trademark Searching

X-Search, the USPTO's computerized search system, contains text and images of registered marks, and marks in pending and abandoned applications. X-Search is used by examining attorneys when searching for conflicting marks during examination.

The public may conduct searches free of charge using TESS, on the USPTO website at <http://www.uspto.gov>. Like X-Search, TESS provides access to text and images of registered marks, and marks in pending and abandoned applications. Additional information, including current status, for pending and registered trademarks can be obtained by entering the trademark serial number or registration number in the TARR database. See TMEP §108.01. TESS and TARR are available in Patent and Trademark Depository Libraries (“PTDLs”) (see TMEP §112). X-Search is also available for public use in some of the PTDLs.

The public may also use the X-Search system and the Trademark Reporting and Monitoring (“TRAM”) System without charge in the Trademark Search Library. The Search Library is located on the first floor of the James Madison Building - East Wing, 600 Dulany Street, Alexandria, Virginia, and is open from 8:00 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday, except on holidays. The Trademark Search Library also contains paper copies of registered marks and marks in pending applications, copies of State emblems and official signs and hallmarks of member countries of the Paris Convention for the Protection of Industrial Property, which are protected under Article 6*ter* of the Convention (see TMEP §1205.02), and copies of the official insignia of state and federally recognized Native American tribes.

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If a mark includes a design element, it can be searched by using a design code. To locate the proper design code(s), the public can use the *Design Search Code Manual* on the USPTO website at <http://www.uspto.gov>.

USPTO personnel cannot conduct trademark searches for the public. Private trademark search firms will conduct searches for a fee. The USPTO cannot aid in the selection of a search firm or an attorney. 37 C.F.R. §2.11. Search firms are often listed in the yellow page section of telephone directories under the heading "Trademark Search Services" or "Patent and Trademark Search Services."

The public can search the trademark assignment records of the Assignment Services Division on the USPTO website at <http://assignments.uspto.gov/assignments>. In addition, there is a Trademark Assignment Search Room in the Trademark Search Library that maintains records of transactions affecting the ownership of marks.

105 General Information Booklet Concerning Trademarks

The booklet entitled *Basic Facts About Trademarks* contains information and instructions for registering a trademark or service mark. The booklet can be accessed or downloaded from the USPTO website at <http://www.uspto.gov/>, or may be obtained by calling the Trademark Assistance Center. See TMEP §108.02 regarding the Trademark Assistance Center.

106 The Official Gazette

The *Official Gazette*, issued every Tuesday, is a publication of the USPTO. Since February 2, 1971, the *Official Gazette* has been separated into two parts, one designated the *Patent Official Gazette* and the other the *Trademark Official Gazette*.

The *Trademark Official Gazette* ("TMOG") contains an illustration of each mark published for opposition on the Principal Register, marks registered on the Principal Register under 15 U.S.C. §1051(d), and marks registered on the Supplemental Register on the date of the particular issue in which the marks appear.

The TMOG also includes general information such as notices of changes in rules or Office procedures; notices to parties who cannot be reached by mail; and indices of trademark registrations issued, renewed, cancelled, amended or corrected on the date of the particular issue in which the marks appear, with an index of registrants.

Effective July 15, 2003, the USPTO publishes the TMOG only in electronic format. See notice at 68 Fed. Reg. 37803 (June 25, 2003), at <http://www.uspto.gov/web/offices/com/sol/notices/68fr37803.pdf>. However, annual subscriptions or single copies of the TMOG in hard copy (Stock No.

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703-034-00000-4) may still be purchased from the United States Government Printing Office (“GPO”) at <http://bookstore.gpo.gov>. GPO’s general information telephone numbers are (202) 512-1800 and (866) 512-1800.

107 Trademark Manuals

The following manuals may be downloaded free of charge from the USPTO website at <http://www.uspto.gov>:

- *Trademark Manual of Examining Procedure* (“TMEP”)
- *Trademark Trial and Appeal Board Manual of Procedure* (“TBMP”)
- *Acceptable Identification of Goods and Services Manual*

The TMEP may also be purchased from GPO at <http://bookstore.gpo.gov>. GPO’s general information telephone numbers are (202) 512-1800 and (866) 512-1800.

108 Status Inquiries

108.01 Internet Information

The TARR database on the USPTO website at <http://tarr.uspto.gov> provides detailed, up to the minute information about the status and prosecution history of trademark applications and registrations. The TARR database is available 24 hours a day, 7 days a week.

108.02 Personal Telephone Assistance

If additional information regarding the status of an application or registration is required, callers may telephone the Trademark Assistance Center (“TAC”) at (571) 272-9250 or (800) 786-9199 and request a status check. TAC also provides general information about the trademark registration process. TAC is open from 8:30 a.m. to 5:00 p.m. Eastern Standard Time, Monday through Friday, except on holidays.

The Trademark Assistance Center will gladly answer questions about the application process. However, USPTO employees cannot:

- conduct trademark searches for the public (see TMEP §104);
- comment on the validity of registered marks (see TMEP §1801);
- answer questions on whether a particular mark or type of mark is eligible for trademark registration;

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- offer legal advice or opinions about common law trademark rights, state registrations, or trademark infringement claims; or
- aid in the selection of a private trademark attorney or search firm (37 C.F.R. §2.11).

See TMEP Chapter 1800 regarding public inquiries about applications and registrations.

108.03 Due Diligence: Duty to Monitor Status

Trademark applicants and registrants should monitor the status of their applications or registrations in cases where a notice or action from the USPTO is expected. Inquiries regarding the status of pending matters should be made during the following time periods:

- (1) During the pendency of an application, an applicant should check the status of the application every six months between the filing date of the application and issuance of a registration; and
- (2) After filing an affidavit of use or excusable nonuse under §8 or §71 of the Trademark Act, or a renewal application under §9 of the Act, a registrant should check the status of the registration every six months until the registrant receives notice that the affidavit or renewal application has been accepted.

Should the status inquiry reveal that a paper is lost, or that some other problem exists, the applicant or registrant must promptly request corrective action. 37 C.F.R. §2.146(i). Failure to act diligently and follow up with appropriate action may result in denial of the requested relief. The USPTO may deny petitions to reactivate abandoned applications and cancelled registrations when a party fails to inquire about the status of a pending matter within a reasonable time. See TMEP §§1705.05 and 1714.01(d).

Written status inquiries are discouraged, because they can delay processing. Whenever possible, status inquiries should be made through the TARR database. If additional information regarding the status of an application or registration is required, callers may telephone the Trademark Assistance Center at (571) 272-9250 or (800) 786-9199.

109 Access to Files

18 U.S.C. §2071. Concealment, removal, or mutilation generally.

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United

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States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

37 C.F.R. §2.27(b). Except as provided in paragraph (e) of this section, access to the file of a particular pending application will be permitted prior to publication under §2.80 upon written request.

37 C.F.R. §2.27(d). Except as provided in paragraph (e) of this section, after a mark has been registered, or published for opposition, the file of the application and all proceedings relating thereto are available for public inspection and copies of the papers may be furnished upon paying the fee therefor.

37 C.F.R. §2.27(e). Anything ordered to be filed under seal pursuant to a protective order issued or made by any court or by the Trademark Trial and Appeal Board in any proceeding involving an application or registration shall be kept confidential and shall not be made available for public inspection or copying unless otherwise ordered by the court or the Board, or unless the party protected by the order voluntarily discloses the matter subject thereto. When possible, only confidential portions of filings with the Board shall be filed under seal.

109.01 Electronic Image Files

The public may view and print images of the contents of trademark application and registration files through the Trademark Document Retrieval ("TDR") portal on the USPTO website at <http://www.uspto.gov>. Electronic images of TTAB proceeding files are also available on the USPTO website at <http://ttabvue.uspto.gov/ttabvue/>. TDR and TTABVUE are available 24 hours a day, seven days a week, free of charge.

The public can also view and print images of the contents of trademark application and registration files through the Trademark Image Capture and Retrieval System ("TICRS"), available in the Trademark Search Library on the USPTO premises. See TMEP §402.

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109.02 Paper Files

In order to inspect the contents of a trademark file, it is not necessary to show good cause or to have a power to inspect from the applicant or registrant.

Procedure for Requesting Files. A member of the public must make a request for access to the file. The request must include the name and phone number of the person requesting the file. USPTO personnel must keep a record of all files being removed, and enter the new location of the file (e.g., charged to non-USPTO personnel) in the TRAM database. The public must inspect the file on the premises of the USPTO, and nothing may be removed from the file without written authorization from the Office of the Commissioner for Trademarks. Requests for files should be made at the following locations:

- *Files Located Within the Trademark Operation or at the Trademark Trial and Appeal Board.* A request for access to a paper file that is located within the Trademark Operation or at the Trademark Trial and Appeal Board should be directed to TAC, located at the James Madison Building - East Wing, Concourse Level, 600 Dulany Street, Alexandria, VA, between 8:30 a.m. and 5:00 p.m. This includes files located in the law offices, Publication and Issue Section, Pre-Examination Section, ITU Unit, and Post Registration Section. These files will normally be available within approximately two hours from the time the files are requested. However, there may be instances when a file is not immediately available. See *Official Gazette* noticed dated April 6, 2004, posted at http://www.uspto.gov/web/trademarks/notice_paperfiles.htm.
- *Files Located at the Warehouse.* Requests for access to paper files located at the warehouse should be directed to the Trademark Search Library, located on the first floor of the James Madison Building - East Wing, 600 Dulany Street, Alexandria, Virginia, between 8:30 a.m. and 5:00 p.m. This includes files for abandoned applications, cancelled and expired registrations, and terminated Trademark Trial and Appeal Board proceedings. The file will usually be available to the requester within a few days.

The public can check TRAM or TARR to determine where a file is located.

An unsent letter or draft is not part of the file. USPTO personnel should ensure that such material is removed before making the file available to a member of the public.

Paper files for abandoned applications and cancelled and expired registrations are stored in the warehouse for two years after the date of abandonment, and then destroyed. See TMEP §718.07. See notice at 980 TMOG 16, reprinted at 1232 TMOG 625 (March 21, 2000). See TBMP

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§120.03 regarding the retention schedule for the files of terminated Board proceedings.

No file or related document may be removed from the premises occupied by the USPTO, except as required by the issue process or other official process, unless specifically authorized by the Director. 18 U.S.C. §2071(b). If such authorization is given, the employee having custody will be responsible for conforming with the requirements of law.

109.03 Making Copies of Materials in Files

The public may print images of the contents of trademark application, registration, and TTAB proceeding files through TDR or TTABVUE on the USPTO website at <http://www.uspto.gov>. See TMEP §109.01. The public can also print electronic copies of applications or registrations through TESS (see TMEP §104), and prosecution histories through TARR (see TMEP §108.01) on the USPTO website. There is no charge for use of these databases.

The public can also print trademark documents from TICRS, TTABVUE, TARR or X-Search in the Trademark Search Library on the USPTO premises. There is a fee for printing images of documents in the Trademark Search Library. See TMEP §104.

Photocopiers for making copies of paper files are available to the public on the premises of the USPTO for a fee.

See TMEP §111 regarding requests that the USPTO provide copies of trademark documents.

110 Decisions Available to the Public

37 C.F.R. §2.27(c). Decisions of the Director and the Trademark Trial and Appeal Board in applications and proceedings relating thereto are published or available for inspection or publication.

Precedential decisions of the Director and the Trademark Trial and Appeal Board are noted as such and published in the United States Patents Quarterly (cited as USPQ or USPQ2d), which is a periodical reporting service of a non-governmental publishing company. The USPTO does not print these decisions in its own publications. Non-precedential decisions of the Director and the Trademark Trial and Appeal Board are not published.

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A weekly summary of final decisions issued by the Trademark Trial and Appeal Board appears on the USPTO's website at www.uspto.gov and in each issue of the TMOG.

See TMEP §1803 regarding decisions that are available under the Freedom of Information Act.

111 Requests for Copies of Trademark Documents

The public may print images of the contents of trademark application, registration, and TTAB proceeding files through TDR or TTABVUE on the USPTO website at <http://www.uspto.gov>. See TMEP §109.01. The public can also print electronic copies of applications or registrations through TESS (see TMEP §104), and prosecution histories through TARR (see TMEP §108.01) on the USPTO website. There is no charge for use of these databases.

The public may purchase certified or uncertified copies of trademark documents (e.g., application or registration records, trademark title and status reports, etc.). Fee schedules are posted on the USPTO's website. Requests for copies of trademark documents are handled by the Certification Division of the Office of Public Records.

Copies of trademark documents can be ordered through the USPTO's website at www.uspto.gov, for delivery by the United States Postal Service. The fee must be paid by credit card, EFT, or deposit account authorization. Requests for copies of trademark documents may also be e-mailed to dsd@uspto.gov, with an authorization to charge the fee to a credit card or deposit account.

Requests for certified or uncertified copies of trademark documents may be mailed to: Mail Stop Document Services, Director of the United States Patent and Trademark Office, P. O. Box 1450, Alexandria VA 22313-1450. 37 C.F.R. §2.190(d).

112 Patent and Trademark Depository Libraries

There is a network of PTDLs throughout the United States that provides access to many of the same products and services offered at the USPTO. A list of the PTDLs and their telephone numbers appears on the USPTO website at <http://www.uspto.gov> and is printed in each issue of the TMOG.

Information available free of charge at the PTDLs includes the text of the trademark statute and rules (see TMEP §101), the *Trademark Manual of Examining Procedure*; *Trademark Trial and Appeal Board Manual of Procedure*; *Acceptable Identification of Goods and Services Manual*, and the Trademark Electronic Search System. Photocopiers are generally provided for a fee.

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The scope of PTDL collections, hours of operation, services and fees (where applicable) may vary from one library to another.