

## On My Mind Blog

### Service Mark Specimens Must Show a Direct Association With the Services

05.31.2022 By [Emily F. Stein](#)

If you file a U.S. application to register a service mark based on its use in commerce, take care to select an acceptable specimen of use to support that application.



Unacceptable Specimen of use of PVPW for water delivery services

Section 45 of the Trademark Act says that a service mark is used in commerce “when it is used or displayed in the sale or advertising of services.” This has been interpreted as requiring, at a minimum, that there be some direct association between the mark and the services so that purchasers would perceive the mark as identifying the services.

Peak Valley Pure Water, LLC applied to register PVPW as a service mark for the delivery of bottled water. The specimen of use in commerce that it submitted was a water bottle displaying the letters PVPW molded into the bottom of the bottle.

The Examining Attorney refused registration on the ground that the specimen did not show the mark in direct association with the services and also noted that the advertising of the water delivery services did not include the mark.

Peak appealed to the Trademark Trial and Appeal Board (TTAB), arguing that the specimen showed the mark in rendering the water delivery services. The TTAB affirmed the refusal.

The TTAB recognized that industry practices may vary or evolve, and an applicant may supplement its specimen with an explanation or evidence of industry custom. However, in this case, the evidence showed that competitors displayed their water delivery service marks on prominent bottle labels and in their website advertisements—not in lettering molded into the bottom of the bottles. Such a use might be considered to be a trademark use of the mark for the water bottles, but it did not have a direct association with the water delivery services.

[\*In re Peak Valley Pure Water, LLC, Application No. 87686193 \(T.T.A.B. May 10, 2022\).\*](#)

**Author's Note:** The specimen showing use of a **trademark for a product** normally must show the mark affixed to the product or its packaging, or on a label or hangtag affixed to the product or its packaging, or on a point-of-sale sign (such as a website through which the product may be ordered, as we discussed in more detail in our earlier [Trademark Law Alert--How Your Webpage Can Be a Specimen of Trademark Use](#)). Advertising for the product is not acceptable as a specimen for a product's trademark.

On the other hand, the specimen for a **service mark for a service** has a more lenient requirement. A service mark specimen must show the mark either in rendering the service, or alternatively in advertising the service. But normally the service mark must be mentioned in a manner that creates in the minds of potential consumers a direct association between the mark and the services.

This can be accomplished in various ways:

- prominently showing the mark while the service is being rendered, even on the products to which the service applies;
- in online, print or other advertisements mentioning the service; or
- in another manner that comports with industry custom.

For further information, please contact [Emily F. Stein](#) or your CLL attorney.

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Emily represents and advises clients ranging from start-ups and small businesses to Fortune 500 companies on domestic and international trademark, copyright, and licensing issues in a wide variety of industries, including luxury goods, electronics, financial services, professional sports, and food and beverages.