

(b) If the mark is not in fact being used by the applicant but is being used by one or more related companies whose use inures to the benefit of the applicant under section 5 of the Act, such facts must be indicated in the application.

(c) The Office may require such details concerning the nature of the relationship and such proofs as may be necessary and appropriate for the purpose of showing that the use by related companies inures to the benefit of the applicant and does not affect the validity of the mark.

(Sec. 5, 60 Stat. 429; 15 U.S.C. 1055)

[30 FR 13193, Oct. 16, 1965, as amended at 54 FR 37589, Sept. 11, 1989]

§ 2.39 Priority claim based on foreign application.

(a) An application claiming the benefit of a foreign application in accordance with section 44(d) of the Act shall specify the filing date and country of the first regularly filed foreign application or, if the application is based upon a subsequent regularly filed application in the same foreign country, the application shall so state and shall show that any prior filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(b) Before the application can be approved for publication, a basis for registration under section 1(a), 1(b) or 44(e) of the Act must be established.

[54 FR 37589, Sept. 11, 1989]

§ 2.41 Proof of distinctiveness under section 2(f).

(a) When registration is sought of a mark which would be unregistrable by reason of section 2(e) of the Act but which is said by applicant to have become distinctive in commerce of the goods or services set forth in the application, applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, affidavits, or declarations in accordance with § 2.20, depositions, or other appropriate evidence showing duration, extent and

nature of use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and affidavits, or declarations in accordance with § 2.20, letters or statements from the trade or public, or both, or other appropriate evidence tending to show that the mark distinguishes such goods.

(b) In appropriate cases, ownership of one or more prior registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness. Also, if the mark is said to have become distinctive of applicant's goods by reason of substantially exclusive and continuous use in commerce thereof by applicant for the five years before the date on which the claim of distinctiveness is made, a showing by way of statements which are verified or which include declarations in accordance with § 2.20, in the application may, in appropriate cases, be accepted as prima facie evidence of distinctiveness. In each of these situations, however, further evidence may be required.

[54 FR 37590, Sept. 11, 1989]

§ 2.42 Concurrent use.

An application for registration as a lawful concurrent user shall specify and contain all the elements required by the preceding sections. The applicant in addition shall state in the application the area, the goods, and the mode of use for which applicant seeks registration; and also shall state, to the extent of the applicant's knowledge, the concurrent lawful use of the mark by others, setting forth their names and addresses; registrations issued to or applications filed by such others, if any; the areas of such use; the goods on or in connection with which such use is made; the mode of such use; and the periods of such use.

[54 FR 34897, Aug. 22, 1989]

§ 2.43 Service mark.

In an application to register a service mark, the application shall specify and contain all the elements required by the preceding sections for trademarks,