

54.01

How to Describe a Color Trademark in an Application (how to fill out the trademark representation section)

In the case of a trademark consisting solely of a color/colors (a "color trademark"), when the applicant presents the trademark (a "trademark sample") in the trademark representation section in an application, he/she is required to present an image or a photograph showing the color(s) claimed in the application or present one image or photograph or multiple different images or photographs showing the color(s) claimed in the application by using only said color(s) and drawing any other parts by using dashed lines in order to define the color(s) and the position(s) thereof.¹

An application should be prepared in accordance with the type of a trademark, i.e., a trademark consisting solely of a single color (a "single color trademark"), a trademark consisting of a combination of multiple colors (a "color combination trademark"), and a color trademark to be affixed to a certain area of goods, etc. (a "position-specific color trademark") as follows.

1. Single color trademark

(1) Shape of a trademark sample

To fill out the trademark representation section in an application, the applicant is required to "present an image or a photograph that shows in the entire space therein the color for which trademark registration is sought, if possible."² Thus, it would be desirable to present the color in the entire area of the trademark representation section. However, it would be acceptable if the applicant presents the color in a part of the trademark representation section. However, if the color is presented in such manner that it could be associated with a certain character or figure, it would not be considered to be the representation of only the color and would be considered to be inappropriate as a trademark sample of a color trademark. The applicant is required to present the color as simply as possible in such way that it would not contain any figurative element.

When the color is presented in a part of the trademark representation section, if the overall shape of the color is a square or a rectangle (or any shape similar thereto), the color would be considered to be presented in such manner that does not indicate any character or figure. If the color is presented in any shape other than a square or rectangle (or any shape similar thereto), it should be regarded as a composite trademark consisting of a figure and a color and cannot be considered to be a color trademark. Such composite trademark cannot be registered under the main paragraph of Article 3(1) of the

¹ Please refer to "Article 4-4 of the Ordinance for Enforcement of the Trademark Act"

² Please refer to "Form 2, Note 7, 'Yo' (O) of the Ordinance for Enforcement of the Trademark Act"

Trademark Act.

(2) How to present the color in a trademark sample

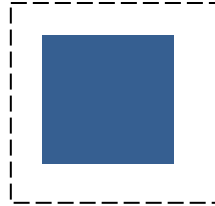
A trademark sample would be acceptable if a single color is presented in the entire area whose shape may be considered to be appropriate as a shape of a trademark sample as described in (1).

(Example 1) Acceptable trademark samples of a single color trademark

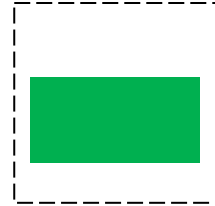
(Example 1-1)



(Example 1-2)



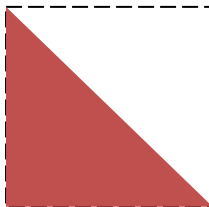
(Example 1-3)



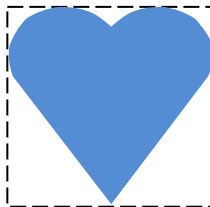
* The dashed lines in Examples 1-2 and 1-3 show the area of the trademark representation section just for the sake of convenience.

(Example 2) Unacceptable trademark samples of a single color trademark

(Example 2-1)



(Example 2-2)



(Example 2-3)



* The dashed lines in Examples 2-1, 2-2, and 2-3 show the area of the trademark representation section just for the sake of convenience.

2. Color combination trademark

(1) Shape of a trademark sample

The same as 1 (1) above.

(2) How to present the colors in a trademark sample

In the case of a color combination trademark, the applicant is required to present multiple colors in the entire area whose shape may be considered to be appropriate as a shape of a trademark sample. Thus, said area is naturally divided into smaller areas

showing those colors respectively. As explained in 1 (1), if the color is presented in such manner that it could be associated with a certain character or figure, it would not be considered to be the representation of only the color and would be considered to be inappropriate as a trademark sample of a color trademark. The applicant is required to present the color as simply as possible in such a way that it would not exhibit any figurative element.

If the two or more colors are presented in the simplest manner, where straight stripes of colors are combined in parallel (or in any manner similar thereto), the colors would be considered to be presented in a manner that does not indicate any character or figure. If the colors are presented in any way other than presenting straight stripes of colors combined in parallel, it should be regarded as a composite trademark consisting of a figure and a color and cannot be considered to be a color trademark. Such composite trademark cannot be registered under the main paragraph of Article 3(1) of the Trademark Act.

As long as straight stripes of colors are combined in parallel, a trademark sample is acceptable regardless of whether the stripes are placed vertically, horizontally, or diagonally. The colors may be presented in gradation.

(Example 3) Acceptable trademark samples of a color combination trademark

(Example 3-1)



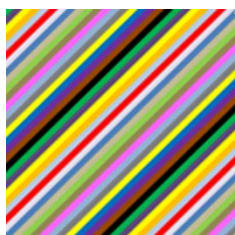
(Example 3-2)



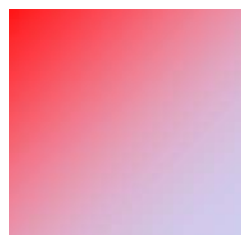
(Example 3-3)



(Example 3-4)



(Example 3-5)



(Example 3-6)



(Example 3-7)



* Example 3-6 presents colors in a manner similar to presenting straight stripes of colors combined in parallel.

* Example 3-7 presents a colors combination including white.

(Example 4) Unacceptable trademark samples of a color combination trademark

(Example 4-1)



(Example 4-2)



(Example 4-3)



3. Position-specific color trademark

In the case of a position-specific color trademark, "the applicants may present the color(s) for which trademark registration is sought and use lines, dots, etc., to define the position to which the trademark will be affixed. In this case, the applicant is required to explain, in the section [Detailed explanation of the trademark], the manner of defining the color(s) and the position(s)."³

(1) Shape of a trademark sample (how to describe the entire shape of the goods, etc.)

If an applicant describes a color trademark in an application by presenting "one image or photograph or multiple different images or photographs showing the color(s) claimed in the application by using only said color(s) and drawing any other parts by using dashed lines in order to define the color(s) and the position(s) thereof,"⁴ the applicant is required to present a trademark sample that clearly shows the entire shape of the goods, etc. to which the color(s) will be affixed and defines the position of the color(s).

³ Please refer to "Form 2, Note 7, 'Ta' (P) of the Ordinance for Enforcement of the Trademark Act"

⁴ Please refer to "Article 4-4(ii) of the Ordinance for Enforcement of the Trademark Act"

The applicant may use not only dashed lines but also solid lines to draw "any other parts" and may color said parts with a different color. A trademark sample would be acceptable as long as the position of the color(s) for which trademark registration is sought is/are clearly defined.

If a trademark sample cannot be considered to clearly define the position of the color(s) because the entire shape is not presented clearly, the trademark cannot be registered under the main paragraph of Article 3(1) of the Trademark Act. Furthermore, if a trademark sample contains any element not related to the entire shape of the goods to which the color(s) will be affixed, such element would not be considered to be a component necessary to define the position of the color(s). Any trademark containing such element cannot be registered under Article 3(1) of the Trademark Act.

(2) How to present the color(s) in a trademark sample (including how to show the position of a trademark affixed to goods, etc.)

As explained in 1 (1) above, a position-specific color trademark presented in a manner that indicates any character or figure cannot be considered to be the representation of only the color and would be considered to be inappropriate as a trademark sample of a color trademark.

In the case of a position-specific color trademark that covers the entire area of a certain part, etc. the applicant is required to present the color(s) in the entire area of the part, etc. to which the color(s) will be affixed, which is a component of the entire shape of the goods, etc. presented in such a manner as described in 3 (1). In this case, the trademark sample can be considered to be the representation of only the color because there is no element that indicates a certain character or figure other than the elements related to the shape of the part, etc. of the goods, etc. to which the color(s) will be affixed. In the case where the color(s) is/are not affixed to the entire area of a part, etc. but is/are affixed to only a certain area of the part, etc. the trademark sample would be acceptable as long as the trademark sample indicates the area to which the color(s) is/are affixed in a shape naturally determined based on the configuration of the goods, etc. (including the shape of a part, etc.) if the section [Detailed explanation of the trademark] clearly defines the position of the color(s) in such manner that does not exhibit a certain figure. On the other hand, in the case of a trademark sample that does not indicate the position of the color(s) in a shape naturally determined based on the configuration of the goods, etc., the trademark sample would be acceptable only if such indication of the position of the color(s) can be considered to be the simplest representation as long as the section [Detailed explanation of the trademark] clearly defines the position of the color(s) in such manner that does not exhibit a certain figure. In other words, only if the position of the color(s) is indicated by presenting the color(s) in the shape of square, rectangle, or circle (or any other shape similar thereto), such indication can be considered to be the simplest representation of the position of the color(s). If the color(s) is/are presented in

any shape other than the shape mentioned above, such representation would exhibit a certain figure in addition to the color(s) and therefore cannot be considered to be a color trademark. Such trademark cannot be registered under the main paragraph of Article 3(1) of the Trademark Act.

(Example 5) Acceptable trademark samples of a position-specific color trademark

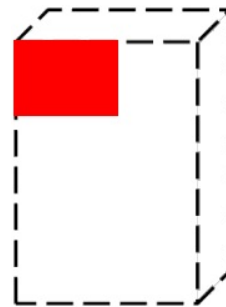
(Example 5-1)

Acceptable trademark sample of a position-specific color trademark affixed to goods, etc. (the internal side of the bottom part of a frying pan is colored red)



(Example 5-2)

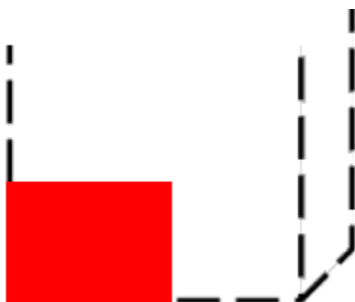
Acceptable trademark sample of a position-specific color trademark affixed to goods, etc. (the upper left area of the front side of a product package is colored red)



(Example 6) Unacceptable trademark samples of a position-specific color trademark

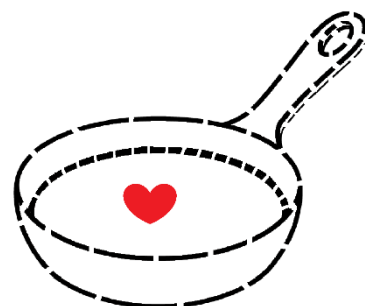
(Example 6-1)

Unacceptable trademark sample of a position-specific color trademark (the lower left part of the front side of a product package is colored red) affixed to goods, etc. (the position is unclear because the entire shape is not presented clearly)



(Example 6-2)

Unacceptable trademark sample of a position-specific color trademark (the internal side of the bottom part of a frying pan is colored red) affixed to goods, etc. (the shape of the color exhibits a certain figure)



4. Others (Cases where the color(s) cannot be defined)

If the color(s) presented in a trademark sample cannot be clearly defined, for example, due to the inconsistency of the color(s) (excluding gradation) shown in the color representation, the trademark cannot be registered under the main paragraph of Article 3(1) of the Trademark Act.

(Example 7) An image unacceptable as a trademark sample of a color trademark because the color(s) cannot be considered to be clearly defined.

