

## 54.02

### **How to Describe a Color Trademark in an Application (how to fill out the section "Detailed explanation of the trademark")**

In the case of a trademark consisting solely of a color/colors (a "color trademark"), the color(s) must be defined in the section "Detailed explanation of the trademark" by providing specific, clear explanation about the name of each color, the RGB values, the registration number of each color in a color sample book, the combination of the colors (the position and ratio of each color in a color combination trademark, etc.), etc.<sup>1</sup> Such information must be provided as follows.

#### 1. How to define a color

##### (1) Name of a color

If the name of a color is defined by using a basic color name, a color name containing a modifier, or a custom color name specified in the JIS standards or a statement that is generally associated with a certain color, such definition would be considered to be acceptable. On the other hand, any statement that cannot be considered to be associated with a certain color (such as a unique color name used by the applicant alone) would be unacceptable. Any color defined by such statement cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act.

When an examination is conducted as to whether the name of a color presented in an application is identical with the color presented in the trademark representation section, if it is clear that they are not identical (for example, in the case where the color presented in the trademark representation section is "blue," while the section "Detailed explanation of the trademark" defines it as "red"), the color cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act.

##### (2) RGB values and the registration number in a color sample book

###### (A) Basic principle

In order to define a color for which trademark registration is sought, the applicant is required to define the color by using the values calculated under a color specification system<sup>2</sup> or the registration number of said color in a color sample book. If the applicant fails to provide such information, the trademark cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act. When an examination is conducted as to whether the color presented in the trademark representation section is

---

<sup>1</sup> Please refer to Part IV (Article 5), 4(3)(A) of the Trademark Examination Guidelines.

<sup>2</sup> A system to specify a color quantitatively in accordance with certain rules and definitions such as RGB, CMYK, and HSB.

identical with the color defined by the values calculated under a color specification system (such as RGB values) or the registration number of said color in a color sample book, if it is clear that they are not identical, the color cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act.


In the case where the applicant states the registration number of the color in a color sample book which has been updated, if the applicant fails to specify the edition by stating "Xth edition," an examination would be conducted as to the identicalness of the colors based on the presumption that the applicant stated the registration number of the color in the latest edition of the color sample book as of the time of the filing of the application.<sup>3</sup>

(B) Cases where a color is defined in more than one way

If a color is defined in more than one way, the color for which trademark registration is sought cannot be considered to be defined unless it is clear that it is the same color that is defined in different ways. Thus, any color defined in more than one way cannot be considered to satisfy Article 5(5) of the Trademark Act. It would be inappropriate for the applicant to state "approximate values" or "referential values" in order to define the scope of trademark right. Thus, such statements would be unacceptable.

(Example 1) Inappropriate statements to define a color

\* Cases where a color is defined in more than one way

<p>[Trademark for which trademark registration is sought]</p>  <p>[Color trademark]</p> <p>[Detailed explanation of the trademark]</p> <p>The trademark for which trademark registration is sought is a color trade mark. The color is blue green (RGB values: R0, G184, B210; Approximate values: C100%, M20%, Y10%, K10%).</p>
---

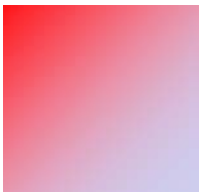
(C) Gradation

If the color is a gradation color, the applicant may fill out the section "Detailed explanation of the trademark" by providing information such as the name of each color and the RGB values in order to define the colors at the beginning, in the middle (in

<sup>3</sup> The failure to specify the edition of a color sample book would not provide sufficient grounds to conclude that the requirement specified in Article 5(5) of the Trademark Act is not satisfied.

particular, if a color different from the colors at the beginning and at the end appears in the middle), and, at the end.

(Example 2) Appropriate statements to define a gradation color

<p>[Trademark for which trademark registration is sought]</p>  <p>[Color trademark] [Detailed explanation of the trademark]</p> <p>The trademark for which trademark registration is sought (the "Trademark") is a color trademark. The color exhibits gradations starting from the red in the upper left (RGB values: R255, G0, B0) to the bluish purple in the lower right (RGB values: R208, G203, B236).</p>
---

## 2. How to define the combination of colors

In the case of a color combination trademark, an increase or a decrease in the ratio of each color comprising the trademark would significantly change the impression given to consumers. Thus, the applicant is required to state the ratio of each color in order to specifically and clearly define the combination of colors.

On the other hand, in some cases, it might be impossible to define how those colors are placed (order, direction) depending on the manner of use of the goods, etc. to which the colors are affixed (for example, in the case of spherically-shaped goods). Thus, an application that does not specify the order and direction of the colors would not be considered to lack a specific, clear explanation about the combination of the colors. However, if a color combination trademark consists of three or more colors, the applicant is required to specify the order of the colors (whereas the provision of information about the direction of the colors is optional) because a change in the order of the colors would change the impression given to consumers.

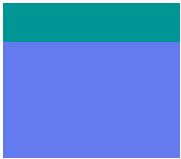
The ratio of each color refers to the percentage of each color relative to the entire trademark in terms of area size.

When an examination is conducted as to whether the ratio and position of each color (order, direction) described in the section "Detailed explanation of the trademark" are identical with the combination of the colors presented in the trademark representation section, if it is clear that they are not identical, the application cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act. If a trademark

sample exhibits stripes of colors combined diagonally, the ratio of the width of each color in the sample would be deemed to indicate the ratio of each color in terms of area size.

(Example 3) Example of appropriate statements

[Trademark for which trademark registration is sought]




[Color trademark]

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought is a color combination trademark. The colors consist of a combination of blue green (RGB values: R0, G150, B150) and purple (RGB values: R100, G123, B240). From top to bottom, the color ratios are 25% for blue green and 75% for purple.

(Example 4) Example of appropriate statements to define a color combination including white

[Trademark for which trademark registration is sought]



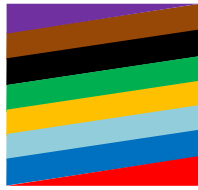
[Color trademark]

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought is a color trademark. The colors consist of a combination of orange (RGB values: R255, G120, B44), white (RGB values: R255, G255, B255), yellow (RGB values: R255, G239, B40), and purple (RGB values: R146, G68, B150). From top to bottom, the color ratios are 29.5% for orange, 14.5% for white, 12% for yellow, 14.5% for white, and 29.5% for purple.

(Example 5) Example of appropriate statements to define a trademark consisting of colors combined diagonally

[Trademark for which trademark registration is sought]



[Color trademark]

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought is a color combination trademark. The colors are placed diagonally and are, from the upper left, purple (RGB values: R167, G87, B168), brown (RGB values: R255, G255, B0), ... The ratio of each color is 12.5%.

### 3. How to define the position of the color(s)

#### (1) Basic principle

In the case of a position-specific color trademark, the applicant is required to define the position of the color(s) in the section "Detailed explanation of the trademark." If the statements presented in the section satisfies all of the requirements specified in [i] to [iii] below, such statements may be considered to be appropriate as a detailed explanation of the color trademark and sufficient to define the position of the color(s):

[i] There is a statement that defines the position of the color(s);

[ii] There is no statement that adds a figurative element to the trademark.

[iii] There is a statement to the effect that the dashed lines, etc. indicate the parts other than the part to which the color(s) is/are affixed and should not be regarded as a component of the trademark.

Regarding a "statement that defines the position of the color(s)" mentioned in [i] above, the applicant is required to provide specific information to clearly define the position of the color(s) by stating the name of the goods, etc. and the name of the part, etc. Based on a comprehensive evaluation of the trademark presented in the trademark representation section and the detailed explanation of the trademark, if the application cannot be considered to provide sufficient information to specifically define the area to which the color(s) is/are affixed, the application cannot be considered to define the area to which the color(s) is/are affixed and cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act.

In the case of a color trademark affixed to a part, etc. of goods, if the applicant is considered to state, as specifically as possible, to which part or which area of the part

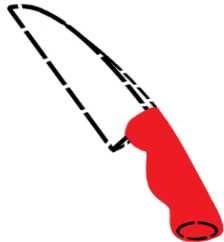
the trademark is affixed in order to provide sufficient information, in addition to presenting a trademark sample, to define the position of the trademark, the application would be considered to state the specific area. In this case, the application can be considered to contain a statement that defines the position of the color(s).

The phrase "a statement that adds a figurative element to the trademark" included in [ii] above means that, if there is a statement that can be associated with a certain character or a figure, such a statement cannot be considered to be a detailed explanation of a color trademark and cannot be considered to satisfy the requirement specified in Article 5(5) of the Trademark Act. At the same time, since such statement would provide grounds to conclude that the trademark presented in the trademark representation section cannot be considered to be a color trademark (it can be considered to be a composite trademark consisting of a color and a figure), the trademark cannot be registered under the main paragraph of Article 3(1).

(2) Specific examples

(A) How to define the area to which the color(s) is/are affixed (in the cases where the color(s) is/are affixed to goods, etc. or to the entire area of a part, etc. thereof)

The following are specific examples of how to fill out the section "Detailed explanation of the trademark" in an application for a position-specific color trademark.

<p>[Trademark for which trademark registration is sought]</p>  <p>[Color trademark]</p> <p>[Detailed explanation of the trademark]</p> <p>.....</p>
--

(Example 6) Case where there is no statement specifying the area in order to define the position of the trademark (the requirement specified in [i] is not satisfied).

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought (the "Trademark") is a color trademark consisting of a red color (RGB values: R255, G0, B0) affixed to a part

of a kitchen knife. The dashed lines show an example of the shape of the goods and should not be regarded as a component of the trademark.

(Example 7) Case where there is a statement adding a figurative element to the trademark (the requirement specified in [ii] is not satisfied).

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought (the "Trademark") is a color trademark consisting of a red color (RGB values: R255, G0, B0) affixed to the wavy handle of a kitchen knife. The dashed lines show an example of the shape of the goods and should not be regarded as a component of the trademark.

(Example 8) Case where there is no statement to the effect that the dashed lines should not be regarded as a component of the trademark (the requirement specified in [iii] is not satisfied).

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought (the "Trademark") is a color trademark consisting of a red color (RGB values: R255, G0, B0) affixed to the handle of a kitchen knife.

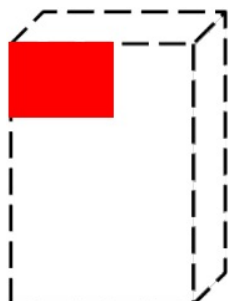
(Example 9) Appropriate statements (the requirements specified in [i] to [iii] are satisfied).

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought (the "Trademark") is a color trademark consisting of a red color (RGB values: R255, G0, B0) affixed to the handle of a kitchen knife. The dashed lines show an example of the shape of the goods and should not be regarded as a component of the trademark.

(B) How to define the area to which the color(s) is/are affixed (in the cases where the color(s) is/are affixed to a certain area of a part, etc. of goods)

[Trademark for which trademark registration is sought]



[Color trademark]

[Detailed explanation of the trademark]

The trademark for which trademark registration is sought (the "Trademark") is a color trademark consisting of a red color (RGB values: R255, G0, B0) affixed to the upper left area of the front side of a product package.

The purpose of the separate representation of only the color is to clearly show the color. The dashed lines show an example of the shape of the goods and should not be regarded as a component of the trademark.