

Trademark 101 Part 4: What Makes a Good Specimen of Use?

A good specimen of use clearly shows (1) use of the trademark (2) in interstate commerce (3) in association with the goods/services claimed in the relevant application or registration.

What is a Specimen of Use?

A specimen of use is “real-life evidence” showing your use of the trademark in interstate commerce (offering your goods/services across state lines) in association with the goods / services claimed in the trademark application or registration. The purpose of the specimen is to prove that you are currently using the mark in commerce with the claimed goods / services.

You must submit a specimen of use (usually a PDF file) to the U.S. Patent and Trademark Office (“PTO”) for each International Class of goods/services claimed in the trademark application or registration at the following times:

- With a use-based application
- With a Statement of Use filed for an intent-to-use application
- With requests for renewal filed every 10 years after registration issues.

What are the requirements for a Specimen of Use?

A specimen of use must:

- Display the trademark exactly as portrayed in the application or registration
 - Including the same spelling, font, color, orientation, design element(s), overall appearance, etc.
- Display the mark as actually used in interstate commerce (offering goods/services across state lines)
 - “Mock ups” / proofs / drafts are not acceptable.
 - Use by third parties or in press releases sent to media outlets are not acceptable.
- And in association with the goods/services claimed in the application or registration

Specimens are not required to depict every item included in an International Class.

Some limited exceptions to the “across state lines” requirement exist for certain services (e.g. restaurant and hotel services); these limitations should be discussed with an attorney.

What are some examples of acceptable specimens?

Acceptable specimens differ depending on the goods or services claimed.

Tangible Goods

For goods, use should be at the “point of sale” – *i.e.*, a point at which consumers can see

- the trademark AND
- the goods themselves AND
- a means of purchasing them

Advertisements are sufficient only if they show an immediate means of purchase, such as a website address or phone number.

Examples of good specimens for tangible goods are:

- Tags or labels affixed to the goods
- Sale displays, *e.g.* display cabinets
- Product packaging or container, *e.g.* the box the item is housed in
- Web pages with a “buy now” or “shopping cart” button

Inquiry information, “contact us,” “more information,” company address or phone numbers, etc. are not sufficient in and of themselves.

Services

For services, advertising or explanations of the services may be sufficient (as well as at a “point of sale” display).

Examples of good specimens for services are:

- Flyer, brochure, promotional material advertising the services
- Screenshots of websites advertising or explaining the services
- Image from trade shows, conventions, or meetings advertising the services

Software

It may not seem logical, but the PTO considers downloadable software to be a tangible good and SAAS (software as a service) / PAAS (platform as a service) to be a service.

For downloadable software, a website displaying the trademark is acceptable only if it displays a means to download or purchase the software from the website. Mere advertisements of the software without a means of downloading, purchasing, or ordering the software is not acceptable.

Specimens for SAAS/PAAS must show relation to the both the mark and the service. For example:

- Questionable specimen: Mark on sign-on screens providing access to the services.
- Good specimen: Mark on sign-on screen AND mark on screenshot of the services being rendered (any personal or proprietary data may be redacted)
- Good specimen: Mark used directly in association with a textual description of the services
- Specimens for PAAS must show relation of the mark with the services provided by the platform, not the software rendering those services.

Software that is in “beta” may or may not be acceptable; discuss this issue with an attorney.

Can a specimen of use be rejected?

The PTO will reject specimens that it deems not to meet the requirements explained above. Some common reasons specimens are rejected include:

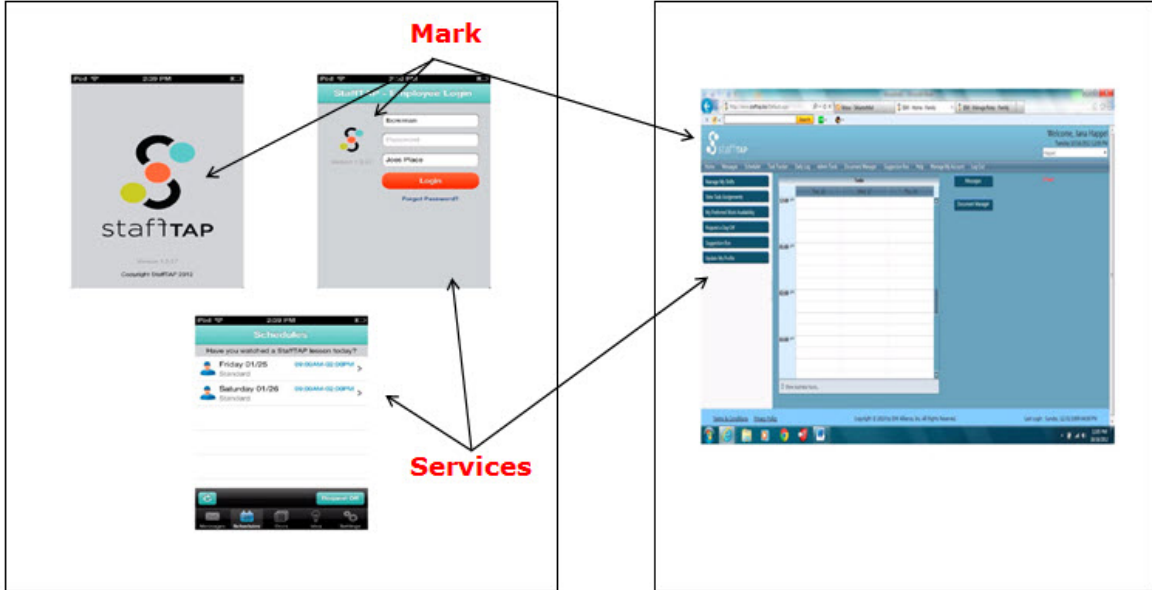
- Specimen displays a mark different than what is depicted in the application or registration
- Specimen displays a mark used with goods/services different than those claimed in the application or registration
- Advertising material as specimen for trademarks tangible goods (Advertisements are acceptable specimens for services)
- Specimen is a “mock-up,” draft, or rendition of an “in-house” use of the mark, something that is not available to the public
- Specimen is from a third party’s use of the mark (e.g. a news article or review)
- Specimen is from a press release sent exclusively to news media rather than published for advertising to the public
- Trademark placement is not clearly associated with the claimed goods / services (e.g., the mark is displayed on the home page of a website but not on a page where the relevant services are discussed).

Additional Examples of Acceptable Specimens

The screenshot shows the Macy's website interface. At the top, there is a navigation bar with the Macy's logo, 'EASY RETURNS' information, and 'Ordering Information' with a right-pointing arrow. Below this is a search bar and a category menu including 'for the home', 'bed & bath', 'women', 'men', 'juniors', 'kids', 'beauty & fragrance', 'shoes', 'handbags & accessories', 'jewelry & watches', and 'sale'. The main content area is titled 'for the home' and 'Lacoste > Bedding Collections'. A prominent 'LACOSTE' banner with a crocodile logo and a 'Mark' label is displayed. Below the banner, there are several product listings for bedding, including 'Lacoste "Brighton" Comforter Set', 'Lacoste "Confetti" Comforter Set', and 'Lacoste "Crescendo" Sheets'. A sidebar on the left lists various home categories like 'SALE AND CLEARANCE', 'FEATURED CATEGORIES', and 'MORE FOR THE HOME'.

The screenshot shows the Cole Haan website. At the top, there is a navigation bar with the Cole Haan logo, 'MY ACCOUNT', 'SHOPPING BAG 0', and a search bar. Below this is a category menu including 'WOMEN', 'MEN', 'HANDBAGS', 'WHAT'S NEW', 'SALE', and 'GIFT CARDS'. A large orange banner features the text 'Enjoy Free Ground Shipping on Orders Over \$250' and 'SALE UP TO 50% OFF ON SELECT STYLES - SHOP SALE'. Below the banner, there is a grid of sunglasses products. The grid is organized into two rows and four columns. The first row contains four items: 'ACETATE ROUNDED SQUARE \$195.00', 'ACETATE ROUNDED SQUARE \$195.00', 'XLO ACETATE AVIATOR \$175.00', and 'LARGE ACETATE CAT EYE \$175.00'. The second row contains three items: 'LARGE ACETATE SQUARE \$175.00', 'ACETATE OVAL \$150.00', and 'ACETATE RECTANGLE \$125.00'. A 'CATEGORIES' sidebar on the left lists various product categories like 'SHOES', 'BOOTS', 'HANDBAGS', 'ACCESSORIES', 'SUNGLASSES', 'COATS', and 'COLLECTIONS'. At the bottom, there is a footer with copyright information and links for 'PRIVACY / TERMS OF USE', 'SUBSCRIBE | GIFT CARDS | CATALOG | STORES | ASSISTANCE'.

Software/Platform as a Service Specimens:



The athenaCoordinator Advantage

For hospitals:

- Streamlined procedure workflow
- Elimination of duplicate orders
- Reduced delays in payments due to missing clinical documentation or lack of pre-certification
- Elimination of duplicated pre-certification work
- Pre-registration and patient payment collection streamlined for the facility client
- Improved patient satisfaction due to streamlined registration process

For medical practices:

- Reduced time spent managing workflow, orders, obtaining pre-certifications, scheduling patients and interacting with clinical documentation
- Increased revenue from increased orders
- Greater control over order transmission and scheduling

Services

To find out how athenaCoordinator can help, contact us at
 → 866.817.5738 or athenahealth.com

athenaCoordinatorSM

Across the health care system, care coordination remains inefficient due to redundancies, manual inputs, and errors. athenaCoordinator addresses these systemic breakdowns and improves care coordination among hospitals, physicians and other supply chain partners. Through software and service, we deploy critical knowledge to support effective and efficient care coordination. athenaCoordinator facilitates a streamlined order workflow between physicians and their partners, including hospitals, surgical centers, imaging centers and other physicians. Over time we plan to expand to other health care entities like independent labs, pharmacies, durable medical equipment companies, ambulance services, and more.

How is the service delivered?
 athenaCoordinator is comprised of three service components:

Order transmission
 This web-based platform facilitates easy order entry and status for physicians, enables our pre-certification and pre-registration services and delivers a "clean" order to the hospital.

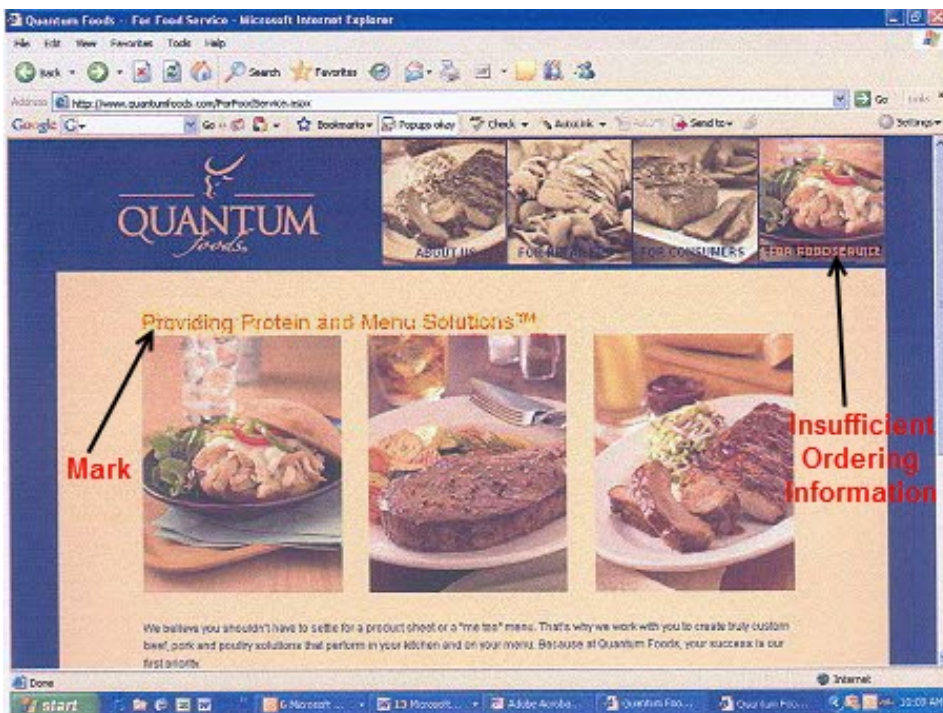
Pre-certification
 A dedicated team of remote specialists with essential clinical and payer knowledge verifies eligibility and benefits. They also obtain required insurance pre-certifications to ensure claims get paid the first time.

Pre-registration
 A dedicated team of specialists delivers pre-registration services to ensure order fulfillment, registering patients in the hospital system and collecting self-pay balances. Patients and physicians benefit from an efficient registration process.

The athenaCoordinator workflow

- Physicians enter test or procedure order information into athenaCoordinator.
- athenahealth staff handle scheduling requests, if needed.
- athenahealth staff verify insurance information.
- athenahealth staff contact payers to obtain the required pre-certifications.
- Hospital staff receive a clean order with appropriate clinical information and required pre-certifications.
- athenahealth staff follow-up on self-pay collection.
- athenahealth staff handle patient pre-registration.

Specimens rejected due to insufficient ordering information



Genitope Corporation
 Delivering on the promise of personalized medicine™

Phase 3 Clinical Trial Update:
 Study Closed to Patient Registration

MyVax®
 Personalized Immunotherapy

Insufficient Ordering Information

Mark

Insufficient Ordering Information

Product Overview - MyVax® Personalized Immunotherapy

Our lead product candidate, MyVax® Personalized Immunotherapy (previously referred to as GTOP-99), is an investigational treatment based on the unique genetic makeup of a patient's tumor and is designed to activate a patient's immune system to identify and attack cancer cells. As such, MyVax® Personalized Immunotherapy is commonly referred to as a patient-specific or personalized immunotherapy, an active idiotype immunotherapy, or a patient-specific or personalized cancer vaccine. This type of immunotherapy is intended to stimulate an active and durable immune response specifically against an individual patient's malignant cells. Each therapy is also tumor-specific, so that in theory, cells other than those of the tumor should not be affected. These are important differences compared to passive immunotherapies for non-Hodgkin's lymphoma (NHL), such as monoclonal antibodies that, while in circulation, target cell surface markers present on both malignant and non-malignant cells in every patient.

MyVax® Personalized Immunotherapy combines a protein derived from the patient's own tumor with an immunologic carrier protein and is administered with an immunologic adjuvant. The tumor-derived protein that is unique to each patient is the antibody expressed by the tumor cells. Each antibody has unique portions, collectively known as the idiotype, which can be recognized by the immune system. The antibody that is unique to a given patient's tumor is often referred to as the idiotype protein. Genitope's immunotherapy consists of the idiotype protein and a foreign carrier protein administered with an adjuvant to enhance the immune response.

Immunologic carrier proteins are themselves strong antigens and are used to increase the immunogenicity of the patient-specific idiotype. Adjuvants are molecules that attract and activate immune system cells at the site of immunization, which enhances the immune response. Currently, Genitope uses keyhole limpet hemocyanin, or KLH, as a carrier protein for the idiotype protein and granulocyte macrophage-colony stimulating factor, or GM-CSF, as an adjuvant.

Active immunotherapies, similar to MyVax® Personalized Immunotherapy, for the treatment of NHL have been studied in clinical trials since the late 1980's. Results from these trials suggest that active immunotherapy may induce long-term remission and may improve survival of NHL patients. Despite these results, further development of this immunotherapeutic approach has been limited by manufacturing difficulties. We have developed a proprietary manufacturing process that overcomes many of these historical manufacturing limitations. MyVax® Personalized Immunotherapy is currently in a pivotal Phase 3 trial and additional Phase 2 trials for the treatment of B-cell non-Hodgkin's lymphoma.

For more information on personalized immunotherapy and our product, please see the Patient Background in the Patient Resources section of our website.

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Insufficient Ordering Information