

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

RULE TYPE: LEGISLATIVE; CITE AUTHORITY §47-2-3 & 47-2-10

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: TRADEMARKS AND SERVICE MARKS

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON AUGUST 30, 1996 AT 10:00 A.M. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

MARY RATLIFF
SECRETARY OF STATE
BLDG. 1, SUITE 157-K
CHARLESTON, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Ken Hechler
by Mary Ratliff, Dep.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

6.00

SUMMARY

This rule details the requirements for application for registration and renewal of a trademark or service mark, the forms and attachments to forms required, the procedures for evaluation of the application and requirements upon rejection or acceptance, and the classification of goods and services in relation to which the trademark or service mark is used. The rule also details the filing fees required, as provided by law.

Statement of Circumstances

The passage of H. B. 4858 in 1996 completely revised the trademark registration system in West Virginia, adding a registration for service marks, establishing a ten-year registration period, and imposing requirements for application and classification, renewal and other procedures which must be detailed by rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: TRADEMARKS AND SERVICE MARKS

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency SECRETARY OF STATE

Address BLDG. 1, SUITE 157-K
CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 5,000	\$	\$ 9,500	\$ 5,500	\$ 5,000
PERSONAL SERVICES	3,000		3,000	3,000	3,000
CURRENT EXPENSE	1,500		1,500	1,500	1,500
REPAIRS & ALTERATIONS					
EQUIPMENT	500		5,000	1,000	500
OTHER					

2. Explanation of above estimates:

FIRST YEAR: IMAGING WORK STATION AND SOFT WARE TO CONNECT TO NEW IMAGING SYSTEM CURRENTLY BUDGETED. ONE EIGHTH FTE AND MAILING AND PHOTO COPY-PRINTING COST.

ONGOING EXPENSE: ONE EIGHT FTE PRINTING AND MAILING COST EQUIPMENT MAINTENANCE AND UPGRADE.

3. Objectives of these rules:

THE RULE IMPLEMENTS THE REGISTRATION REQUIREMENTS OF WEST VIRGINIA CODE CHAPTER 47, ARTICLE 2 AND DETAIL SPECIFIC CLASSIFICATION SYSTEMS REQUIRED TO BE SET OUT IN RULE.

Rule Title: TRADEMARKS AND SERVICE MARKS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

NEW TRADEMARK REGISTRATION SHOULD RESULT IN \$5,000 TO \$10,000 OF NEW REVENUE PER YEAR. FILING AND MAINTENANCE OF RECORDS MUST BE DONE IN IMAGING SYSTEM. FOLLOWING IMPLEMENTATION YEAR COST WILL TOTAL ABOUT \$5,000

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

NONE

C. Economic Impact on Citizens/Public at Large.

NONE

Date: 7/31/96

Signature of Agency Head or Authorized Representative

Ray Traylor
by Mary Kelly, Dep.

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 29
TRADEMARKS AND SERVICE MARKS

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§153-29-1. General.

1.1. Scope. -- This legislative rule establishes the requirements for filing applications with the Secretary of State and approval of registration trademarks and service marks, and for the renewal, assignment, modification and cancellation of registration of those marks.

1.2. Authority. -- W. Va. Code §§47-2-3 and 47-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

§153-29-2. Application for New Registration.

2.1. The application for a new registration of a trademark or service mark not previously registered in the state shall be made on the form issued by the Secretary of State, as provided in Appendix A or as subsequently revised, or a copy of that form.

2.2. The application shall state the following:

2.2.a. That the application is for a new registration of a mark not previously registered;

2.2.b. The name of the applicant;

2.2.c. The business address of the applicant, which shall be an address at which mail can be received;

2.2.d. If the applicant is a corporation or partnership, the state in which the corporation or partnership is organized;

2.2.e. The type of goods or services on or in connection with which the mark is used, including whether the use relates to goods or to services, a description of the goods or services, the mode or manner in which it is used, and the class of those good or services, as defined in section 6 of this rule;

2.2.f. Whether the mark for which the application is made consists of a graphic symbol only, a graphic symbol including words or letters, words or letters in a specific typography, or words or letters only, without regard to typography;

2.2.g. A brief description of the mark;

2.2.h. The date on which the mark was first used in connection with a product or service anywhere;

2.2.i. The date on which the mark was first used in connection with a product or service in West Virginia;

2.2.j. A drawing or representation of the mark, which shall be placed on the standardized Attachment 1 of the application, labeled with the name of the applicant;

2.2.j.1. The representation shall be enlarged or reduced so that the longer dimension of the mark is no less than five inches and no more than six inches; and

2.2.j.2. The representation shall be in black and white, and if the applicant desires to designate specific colors in which the mark will appear, shall supply an additional copy labeled Attachment 1A with the areas of color labeled;

2.2.k. Three specimens showing the mark as actually used, which shall be attached and marked Attachment 2, 3, and 4, respectively.

2.2.k.1. The specimens of the mark shall be two dimensional (flat), no larger than a standard 8 ½ by 11 inch page, and if smaller, shall be attached to a standard page.

2.2.k.2. The specimens may be actual samples of items in use if those samples are flat and no larger than specified in this subsection, such as letterhead, labels, printed advertising or other similar item.

2.2.k.3. The specimens may be submitted as clear photographs or copies of photographs showing the item as it is used, but any photograph shall show all or substantially all of the item on which the mark is used.

2.2.k.4. If more than one classification of use is listed in the application, at least one specimen should be included for each class, with a minimum total number of three specimens.

2.2.l. Whether an application to register the mark, or portions or a composite of the mark has been filed by the same applicant or a predecessor in interest with the United States Patent and Trademark Office; and if "Yes", the date filed, the serial number, if any, and whether the application is pending, approved and the date approved, or refused and the reason for refusal; and

2.2.m. The date, name, title and signature of the applicant to a statement, acknowledged before a notary public, that the applicant is the owner of the mark for the application is made, that the mark is in use, that to the applicant's knowledge, no other person has registered the mark, either federally or in the state, or has the right to use the mark either in the identical form thereof or in such near resemblance to it as to be likely, when applied to the goods or services of that person, to cause confusion or to cause mistake or to deceive, and that the information contained in the application is true to the best of the applicant's knowledge.

2.3. The complete application with all required attachments shall be submitted to the secretary of state along with the fee prescribed in subdivision 7.1.a. of this rule.

§153-29-3. Review and Approval of New Registration.

3.1. Upon receipt of an application for registration, the secretary shall enter the received date and determine if the application is complete.

3.1.a. The secretary shall cancel the received date stamp if the application is incomplete.

3.1.b. The secretary shall return an incomplete application in its entirety within five days of receipt.

3.1.c. The secretary shall refund the application fee within 60 days if a complete application is not resubmitted within 30 days.

3.2. The secretary shall evaluate the mark in relation to prohibitions enumerated in W. Va. Code §47-2-2; and shall reject the application if the mark:

3.2.a. Consists of or comprises immoral, deceptive or scandalous matter;

3.2.b. Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

3.2.c. Consists of or comprises or contains the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;

3.2.d. Consists of or comprises the name, signature or portrait identifying a particular living individual, except by the individual's specific written consent contained in an attachment to the application;

3.3. Unless the applicant provides, as an attachment to the application, proof that the mark has become distinctive of the applicant's goods or services, and that the mark has been in continuous use

in this state by the applicant for the five years before the date of the application, the secretary shall reject the mark if it:

3.3.a. Is merely descriptive or deceptively misdescriptive of the goods or services on in connection with which the mark is used;

3.3.b. Is primarily geographically descriptive or deceptively misdescriptive of the goods or services; or

3.3.c. Is primarily a surname.

3.4. The secretary of state shall reject the application if the mark consists of or comprises a mark registered in this state or a mark or trade name used by another not abandoned, as to be likely, when used in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.

3.4.a. When the mark consists of or contains words or letters, the secretary shall reject the application if the words or letters are the same as or deceptively similar to the name of a registered domestic corporation, foreign corporation, domestic or foreign limited partnership or limited liability partnership or domestic or foreign limited liability company authorized to do business in this state at the time of the application for registration of the mark, or the reserved or registered name of any of the above businesses, unless the application is made by such business or with the written permission of such business.

3.4.b. When the mark consists primarily of graphic elements, the secretary shall examine currently registered marks for similarity in type, characterization, number and positions of figures, similarity in the use of geometric shapes or lines and the number or relations of those shapes or lines, and similarity in the combination of all element types.

3.4.c. When the mark consists of a combination of words or letters and graphic elements, the secretary shall first examine the similarity of the words or letters, and if the words or letters are found to be registrable, shall then examine the graphic elements. If the graphic elements are found not to be registrable, the secretary shall, depending on the degree of similarity, either reject the application or notify the applicant of the elements of the mark which must be removed or changed in order for the application to be registrable.

3.5. If the secretary rejects the application or notifies the applicant of required changes, the secretary shall notify the applicant of the reason for rejection or required changes.

3.5.a. Upon rejection of a mark, the applicant shall have 30 days in which to reply or to amend the application, and upon receipt of a reply or application, the secretary shall reexamine the mark.

3.5.b. If the applicant fails to respond within the time allowed in subsection 3.6., the application shall be deemed to be abandoned.

3.5.c. The secretary may finally refuse the application after two periods of attempted amendment which do not result in an acceptable mark.

3.6. Upon acceptance of the registration, the secretary of state shall enter the effective date of the registration, assign a registration number, and issue a certificate of registration.

§153-29-4. Renewal of Registration.

4.1. The registration of a mark registered prior to July 1, 1996, shall expire on June 30, 2001, as provided in §47-2-6(c).

4.2. The registration of a mark first registered after July 1, 1996, shall expire ten years following the effective date of registration.

4.3. The secretary may attempt to notify current registrants of an impending registration expiration and provide forms for the application for renewal of a mark, but the registrant shall be responsible for obtaining the proper form and submitting a complete application for renewal in a timely manner.

4.4. The application shall be submitted on the forms prescribed by the secretary, as provided in Attachment A or subsequently amended forms.

4.5. The applicant may submit the application for renewal within the six months immediately before the expiration of the current registration.

4.5.a. The secretary shall return an application for renewal submitted more than six months before the expiration of the registration; except that:

4.5.b. A registrant holding a mark registered before July 1, 1996, may apply for renewal under the provisions of the new law at any time before the expiration of the previous registration on June 30, 2001.

4.6. Upon the receipt of a complete application for renewal and the submission of the required fee as provided in subdivision 7.1.2. of this rule, the secretary shall issue a certificate of registration renewal.

§153-29-5. Assignments, Changes and Cancellation.

5.1. A registrant may assign the mark to another, record a change of name, or record other instruments relating to the mark or pending application, providing the filing is made by an instrument in writing signed by the registrant and notarized, either as an original document or a photocopy certified by any of the parties as a true and correct copy of the original, and is accompanied by the required fee as provided in subdivision 7.1.3. of this rule.

5.2. An assignment of the mark to another may be recorded with the secretary of state, and the secretary shall issue in the name of the assignee a new certificate for the remainder of the term of registration or renewal.

5.3. A registrant or applicant whose name is changed during the period of registration or application may record a certificate of change of name with the secretary of state.

5.4. Upon filing the change of name, the secretary shall issue a registrant a certificate for the remainder of the term in the new name, and shall attach the change of name to the application.

5.5. The registrant or successor in interest may voluntarily cancel the registration of a mark upon filing of a request signed by the registrant or authorized representative of the registrant and acknowledged before a notary public, providing the request is accompanied by the required fee as provided in subdivision 7.1.3. of this rule.

§153-29-6. Classification of Goods and Services.

6.1. Goods shall be classified according the system established by the United States Patent and Trademark Office, as follows:

6.1.a. Chemicals products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes. for industrial use; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.

6.1.b. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; coloring matters, dyestuffs; mordants; natural resins; metals in foil and powder form for painters and decorators.

6.1.c. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

6.1.d. Industrial oils and greases (other than oils and fats and essential oils); lubricants; dust laying and absorbing compositions; fuels (including motor spirit) and illuminants; candles, tapers, night lights and wicks.

6.1.e. Pharmaceutical, veterinary, and sanitary substances; infants' and invalids' food; plasters, material for bandaging; material for stopping teeth, dental wash, disinfectants; preparations for killing weeds and destroying vermin.

6.1.f. Unwrought and partly wrought common metals and their alloys; anchors, anvils, bells, rolled and cast building materials; rails and other metallic materials for railway tracks; chains (except driving chains for vehicles); cables and wires (nonelectric); locksmiths' work; metallic pipes and tubes; safes and cash boxes; steel balls; horseshoes; nails and screws; other goods in nonprecious metal not included in other classes; ores.

6.1.g. Machines and machine tools; motors (except for land vehicles); machine couplings and belting (except for land vehicles); large size agricultural implements; incubators.

6.1.h. Hand tools and instruments; cutlery, forks, and spoons; side arms.

6.1.i. Scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counter feed apparatus; talking machines; cash registers; calculating machines; fire extinguishing apparatus.

6.1.j. Surgical, medical, dental, and veterinary instruments and apparatus (including artificial limbs, eyes and teeth).

6.1.k. Installations for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

6.1.l. Vehicles; apparatus for locomotion by land, air or water.

6.1.m. Firearms; ammunition and projectiles; explosive substances; fireworks.

6.1.n. Precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons); jewelry, precious stones, horological and other chronometric instruments.

6.1.o. Musical instruments (other than talking machines and wireless apparatus).

6.1.p. Paper and paper articles, cardboard and cardboard articles; printed matter, newspaper and periodicals, books; bookbinding material; photographs; stationery, adhesive materials (stationery); artists' materials; paint brushes; typewriters and office requisites (other than furniture); instructional and teaching material (other than apparatus); playing cards; printers' type and cliches (stereotype).

6.1.q. Gutta percha, india rubber, balata and substitutes, articles made from these substances and not included in other classes; plastics in the form of sheets, blocks and rods, being for use in

manufacture; materials for packing, stopping or insulating; asbestos, mica and their products; hose pipes (nonmetallic).

6.1.r. Leather and imitations of leather, and articles made from these materials and not included in other classes; skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

6.1.s. Building materials, natural and artificial stone, cement, lime, mortar, plaster and gravel; pipes of earthenware or cement; road making materials; asphalt, pitch and bitumen; portable buildings; stone monuments; chimney pots.

6.1.t. Furniture, mirrors, picture frames; articles (not included in other classes) of wood, cork, reeds, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum, celluloid, substitutes for all these materials, or of plastics.

6.1.u. Small domestic utensils and containers (not of precious metals, or coated therewith); combs and sponges; brushes (other than paint brushes); brush making materials; instruments and material for cleaning purposes, steel wool; unworked or semi-worked glass (excluding glass used in building); glassware, porcelain and earthenware, not included in other classes.

6.1.v. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks; padding and stuffing materials (hair, kapok, feathers, seaweed, etc.); raw fibrous textile materials.

6.1.w. Yarns, threads.

6.1.x. Tissues (piece goods); bed and table covers; textile articles not included in other classes.

6.1.y. Clothing, including boots, shoes and slippers.

6.1.z. Lace and embroidery, ribands, and braid; buttons, press buttons, hooks and eyes, pins and needles; artificial flowers.

6.1.aa. Carpets, rugs, mats and matting; linoleums and other materials for covering existing floors; wall hangings (nontextile).

6.1.bb. Games and playthings; gymnastic and sporting articles (except clothing); ornaments and decorations for Christmas trees.

6.1.cc. Meats, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams; eggs, milk and other dairy products; edible oils and fats; preserves, pickles.

6.1.dd. Coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes; flour, and preparations made from cereals; bread, biscuits, cakes, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard, pepper, vinegar, sauces, spices; ice.

6.1.ee. Agricultural, horticultural and forestry products and grains not included in other classes; living animals; fresh fruits and vegetables; seeds; live plants and flowers; foodstuffs for animals, malt.

6.1.ff. Beer, ale and porter; mineral and aerated waters and other nonalcoholic drinks; syrups and other preparations for making beverages.

6.1.gg. Wines, spirits and liqueurs.

6.1.hh. Tobacco, raw or manufactured; smokers' articles; matches.

6.2. Services shall be classified according the system established by the United States Patent and Trademark Office, as follows:

6.2.a. Advertising and business.

6.2.b. Insurance and financial.

6.2.c. Construction and repair.

6.2.d. Communication.

6.2.e. Transportation and storage.

6.2.f. Material treatment.

6.2.g. Education and entertainment.

6.2.h. Miscellaneous.

§153-29-7. Fees.

7.1. The fees for filing documents under this rule as provided by W. Va. Code §47-2-17 shall be:

7.1.1. For registration of a new mark involving not more than two classifications, 50 dollars, and for each additional classification, 50 dollars.

7.1.2. For renewal of a previously registered mark involving not more than two classifications, 50 dollars, and for each additional classification, 50 dollars;

7.1.3. For recording any assignment, change of name, other document, or cancellation as provided in section 5 of this rule, twenty-five dollars.

7.2. All fees shall be made payable to the secretary of state.

INFORMATION and INSTRUCTIONS WEST VIRGINIA TRADEMARK and SERVICE MARK APPLICATION

The West Virginia Legislature adopted H.B. 4858 in 1996 legislative session, entirely rewriting previous state trademark law and replacing it with most of the provisions of the Model State Trademark Bill. The new law, Chapter 47, Article 2 of W. Va. Code, became effective July 1, 1996. It contains these general provisions:

- Allows for registration of both trademarks (to identify goods) and service marks (to identify services);
- Sets restrictions on marks which can be registered;
- Requires the application to include specific information and specimens of the mark;
- Requires secretary of state to establish classification system conforming to international system;
- Establishes a filing procedure, amendment process, and appeal process;
- Sets registration period for new marks at 10 years; existing marks expire on July 1, 2001;
- Provides for renewal, assignment, changes of name and cancellation;
- Provides for record of marks to be available for public examination; and
- Provides penalties and liability for fraudulent use.

WHAT IS A MARK?

A **trademark** means any word, name, symbol, or device, or any combination of these which is used by a person to identify and distinguish the *goods* of that person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods.

A **service mark** means any word, name, symbol, or device, or any combination of these which is used by a person to identify and distinguish the *services* of one person, including a unique service, from the services of others, and to indicate the source of the services. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks, notwithstanding that they, or the programs, may advertise the goods of the sponsor. [W. Va. Code §47-2-1]

RESTRICTIONS ON REGISTRATION

The secretary of state is obligated by law to refuse marks which violate these restrictions. A mark:

1. May not be immoral, deceptive or scandalous;
2. May not disparage or falsely suggest connection with persons, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
3. May not consist of or comprise the flag or coat of arms or other insignia of the United States, any state or municipality, or any foreign nation, or any simulation of these;
4. May not be the name, signature or portrait of a living individual without written consent of that person;
5. May not be deceptively misdescriptive;
6. May not be merely descriptive or geographically descriptive;
7. May not be merely a surname;
8. May not so resemble a mark registered or a mark or trade name used and not abandoned as to cause confusion.

But: If the applicant can provide proof that a mark restricted under 5, 6 or 7 has become distinctive of the goods or services by continuous use for 5 years, the mark may be registered.

CLASSIFICATION

The classes of the USPTO have been adopted in West Virginia. Choose the class or classes which describe the products or services identified by your mark.

COMPLETING THE APPLICATION

The number of each instruction below corresponds to the number on the application form.

- | | |
|----------------------|--|
| Applicant | <ol style="list-style-type: none">1. If the mark has never been registered before in West Virginia, check "New." If the same mark, or a very similar mark for the same goods registered by the <u>same applicant</u> before July 1, 1996, check "Renewal" and enter the date of the previous registration. If ownership has changed, proof must be provided of transfer.2. The applicant may be a person or organization such as a corporation, firm, partnership, union association or other organization capable of suing and being sued in a court of law.3. In listing the business address of the applicant, be sure to include any address necessary to receive mail.4/5. Enter the state in which the corporation, partnership, or other organization is legally organized, and the names of the partners, if applicable. |
| Use | <ol style="list-style-type: none">6. For each different use of the mark, enter the information for that use. Used extra pages if necessary.
Column 1 -- Enter G if the mark is used to identify a product; S if used to identify a service.
Column 2 -- Describe the good or services generally; do not include products in two or more classifications in one description.
Column 3 -- List how the mark is used; for example, emblems or logos on clothing, labels on packaging, logo on company vehicles, symbols in print and broadcast advertising.
Column 4 -- Refer to the classification chart and select the class which most nearly applies. |
| Mark to be Protected | <ol style="list-style-type: none">7/8. Select the correct box in 7; describe the mark in 8 as clearly and simply as possible.9. The mark must be in use; and the application must include the first date of use <u>anywhere & in W. Va.</u> by the applicant or a previous owner. If the mark has been in use for a long time, be as accurate as possible.10. <u>Attachment 1</u> must be clearly labeled, and must include a clean, clear drawing or photocopied representation of the mark reduced or enlarged to fit vertically (portrait) within the frame, with the longer dimension no more than six inches and no less than five inches. The permanent record on optical disk storage will be made from this image, and poor quality would jeopardize the protection of your mark as searches are performed. If color is an essential attribute of the mark, provide one color copy and one black and white copy with color areas labeled.
<u>Attachment 2, 3 & 4</u> must be three separate specimens of the mark as actually used, in a two dimensional (flat) condition. If more than one classification of use is listed in 6, the specimens should include one for each class. They may be original, such as paper labels or packaging, cards, letterhead, printed advertising, or a photograph of the use, such as signs on a vehicle, billboard, containers or other large or three dimensional use. |
| USPTO | <ol style="list-style-type: none">11. All applications made to the U.S. Patent & Trademark Office relating to this mark, or portions or a composite of this mark, must be fully reported -- date filed, serial number, and status. If an application for the mark has been refused or withdrawn, give a clear explanation of the reason.12. The verification and notarization are required. Be sure the notary uses a seal. |

FILING WITH THE SECRETARY OF STATE

File the completed original application (or two originals if you want a stamped copy returned), along with a fee of \$50 for a mark used in one or two classifications, and an additional \$50 for each additional classification. Make check payable to "Secretary of State."

KEN HECHLER
 Secretary of State
 State Capitol, W-139
 1900 Kanawha Blvd. East
 Charleston, WV 25305-0770



WEST VIRGINIA APPLICATION FOR TRADEMARK OR SERVICE MARK

Penney Barker, Supervisor
 CORPORATIONS DIVISION
 Tel: (304) 558-8000
 Fax: (304) 558-0900
 Hours: 8:30 a.m. - 4:30 p.m. ET

1. NEW APPLICATION, MARK NOT PREVIOUSLY REGISTERED IN WEST VIRGINIA RENEWAL; MARK REGISTERED LAST ON (DATE) _____

Applicant Information

2. Name of Applicant _____
3. Business Address _____

4. If applicant is corporation or partnership, state of organization: _____
5. If applicant is partnership, names of general partners: _____

Goods or Services

6. The mark is used on or in connection with the following goods or services (*see instructions*):

G=Goods S=Services	Description of Goods or Services	Mode or Manner Used	Class of Goods or Services

Mark to be Protected

- 7. The mark for which the application is made consists of: (check one)
 - a graphic symbol only
 - a graphic symbol including words or letters
 - words or letters in a specific typography
 - words or letters only, without regard to typography

8. Brief description of the mark:

9. This mark was first used anywhere on: ____/____/____; and in West Virginia on: ____/____/____.

10. A drawing or representation of the mark is attached in the size and format shown, marked Attachment 1. and, three specimens showing the mark as actually used are attached, marked Attachment 2, 3 and 4.

Filing with the U. S. P. T. O.

11. An application to register this mark, or portions or a composite of this mark has been filed by this applicant (or a predecessor in interest) with the United States Patent and Trademark Office: (check one, if yes, all detailed information is required, attach sheet if more than one application has been filed).

NO -- an application has not been filed

YES -- the specifics of the application(s) are:
If more than one filing for this mark or portions or near matches of this mark have been made, attach a separate sheet listing the specifics for each application.

Date filed with USPTO: _____ Serial No. _____

Status: PENDING APPROVED (DATE _____) REFUSED/OTHER (REASON _____)

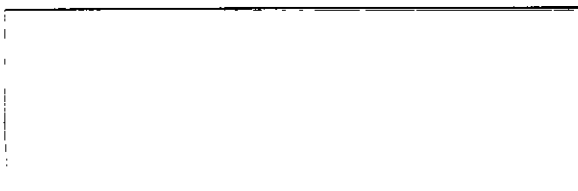
Verification

12. I, as applicant or authorized representative of the applicant, hereby certify that: (1) the applicant is the owner of the mark for which this application is made; (2) the mark is in use; (3) to my knowledge, no other person has registered, either federally or in this state, or has the right to use this mark either in the identical form thereof or in such near resemblance to it as to be likely, when applied to the goods or services of that other person, to cause confusion, or to cause mistake, or to deceive; and (4) the information contained in this application is true, to the best of my knowledge.

DATE SIGNED NAME OF PERSON SIGNING (TYPE OR PRINT) SIGNATURE

TITLE OF MEMBER OR OFFICER SIGNING IF OTHER THAN INDIVIDUAL APPLICANT _____

13. STATE OF _____, COUNTY OF _____:



Acknowledged before me this _____ day of _____, 19____.

NOTARY PUBLIC

My commission expires: _____

Type applicant's name on line provided. Leave effective date and WV Serial Number blank. Place drawing or photocopied representation of mark vertically within the frame. If necessary, enlarge or reduce so that longer dimension is no less than 5" and no more than 6".

Applicant Name: _____

Effective Date: _____ Serial #: _____

