

70-3a-303 Filing of applications.

- (1) The division may examine an application to determine whether the application conforms with this chapter if:
 - (a) the application for registration is filed under Section 70-3a-302; and
 - (b) the fee required by Section 70-3a-203 is paid.
- (2) If reasonably requested by the division or considered by the applicant to be advisable to respond to any rejection or objection, the applicant:
 - (a) shall provide any additional information requested by rule by the division, including a description of a design mark; and
 - (b) may make, or authorize the division to make, amendments to the application.
- (3)
 - (a) The division may require the applicant to disclaim an unregistrable component of a mark otherwise registrable.
 - (b) An applicant may voluntarily disclaim a component of a mark for which the applicant has filed a registration application.
 - (c) A disclaimer under this Subsection (3) may not prejudice or affect the applicant's or registrant's rights:
 - (i) in the disclaimed matter:
 - (A) existing at the time of the disclaimer; or
 - (B) arising after the disclaimer; or
 - (ii) of registration on another application if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.
 - (d) The division may make rules consistent with this Subsection (3) to establish the requirements for an applicant to disclaim an unregistrable component of a mark that is otherwise registrable.
- (4) The division may:
 - (a) amend an application filed by the applicant if the applicant agrees in writing to the amendment; or
 - (b) require the applicant to file a new application.
- (5)
 - (a) If the division determines that the applicant is not qualified to register a mark, the division shall notify the applicant of:
 - (i) the refusal; and
 - (ii) the reasons for the refusal.
 - (b) The applicant shall have a reasonable period of time specified by the division, but not more than 60 days from the date of the notice under this Subsection (5) to:
 - (i) reply to the refusal; or
 - (ii) amend the application for reexamination.
 - (c) The procedure described in Subsections (5)(a) and (b) may be repeated until:
 - (i) the division finally refuses registration of the mark; or
 - (ii) the applicant fails to reply or amend within the time period specified under Subsection (5)(b).
 - (d) If the applicant fails to reply or to amend within the time period specified under Subsection (5)(b), the application is considered abandoned.
- (6) If the division finally refuses registration of the mark, the refusal shall:
 - (a) be in writing; and
 - (b) notify the applicant of the applicant's right to a review of the agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (7)

- (a) An applicant may file an action to compel registration by obtaining judicial review of the final agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) The division is not liable for damages in an action to compel registration.
 - (c) An action to compel registration shall only be granted on proof that:
 - (i) all the statements in the application for registration are true; and
 - (ii) the mark is otherwise entitled to registration.
- (8)
- (a) If more than one application is concurrently being processed by the division seeking registration of the same or confusingly similar marks for the same or related goods or services, the division shall grant priority to the applications in order of filing.
 - (b) If a prior-filed application is granted a registration, the division shall refuse an application filed after the prior-filed application.
 - (c) An applicant refused under this Subsection (8) may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark.

Amended by Chapter 368, 2009 General Session