

In response to the Office Action issued on May 28, 2019, Applicant respectfully disagrees that the specimen fails to show the applied-for mark in use in commerce for the Class 9 goods in the application.

As stated by the Examining Attorney, “specimens of downloadable software include . . . screen printouts from . . . the actual program that shows the mark in the title bar. . . .” See Office Action p. 1 (citing TMEP § 904.03(e) (“An acceptable specimen might be a photograph or printout of a display screen projecting the identifying trademark for a computer program . . . .”). However, there is “no requirement that the mark be placed in a ‘title bar’ or any other specific location, but only that the mark be displayed in such a manner that customers would view it as serving as an indicator of the source of the software.” *In re Minerva Assocs.*, 125 USPQ2d 1634, 1636 (TTAB 2018) (finding the specimen showed the applied-for mark used in connection with the applicant’s downloadable software).

Applicant submits that the subject specimen is a screenshot of Applicant’s software as seen by the user when initiating the software. *As explained in In re Minerva:*

Because software providers have adopted the practice of applying trademarks that are visible only when the software programs are displayed on a screen, see TMEP § 904.03(e), an acceptable specimen might be a photograph or screenshot of a computer screen displaying the identifying trademark while the computer program is in use.

125 USPQ2d at 1639 (TTAB 2018). Applicant’s screenshot specimen displays the applied-for mark (1) while the software is in use, and (2) in such a manner that a user of the software would view it as an indicator of the source of the software.

In view of the above, Applicant submits that the subject specimen is acceptable, and respectfully requests that the Examining Attorney withdraw the refusal and approve the application for registration.