

BOT Memorandum Circular No. 3
Series of 2009

**Subject: Guidelines on the Submission
of the Declaration of Actual Use**

Pursuant to Sections 124.2, 145 and 152 of the *Intellectual Property Code* and Rules 204, 205, 801, and 802 of the *Trademark Regulations*, the following guidelines on the submission of the Declaration of Actual Use (DAU) shall be observed:

- 1.0 The DAU must be filed in the prescribed format, signed, and notarized. The declaration should contain the information required under Rule 205.
- 2.0 When to file the DAU
 - 2.1 The first DAU must be filed, without need of notice, within three years from filing of the trademark application.
 - 2.2 A single six-month request for extension of time to file the DAU may be made within the three-year period. The actual use of the mark may commence within the six-month extension period.
 - 2.3 Declarations submitted after the three-year period shall not be accepted, unless a request for a six-month extension was timely filed. A declaration of non-use will not be accepted.
 - 2.4 The second DAU must be filed within one year from the fifth anniversary of the date of the registration of the mark. A declaration of non-use may be accepted as provided for in Rule 802.
- 3.0 Who may file and execute the DAU
 - 3.1 Applicant or registrant
 - 3.2 Authorized representative of applicant or registrant
 - 3.3 Agent of applicant or registrant
- 4.0 What may be accepted as evidence of use
 - 4.1 Labels of the mark as actually used.
 - 4.2 Downloaded pages from the website of the applicant or registrant clearly showing that the goods are being sold or the services are being rendered in the Philippines. If the goods or services are available only by online purchase, the web address must be indicated on the form in lieu of name/address of the establishment or outlet.
 - 4.3 Photographs (including digital photographs printed on ordinary paper) of labels or goods bearing the marks as these are actually used.
 - 4.4 Photocopies of brochures or advertising materials evidencing use of the mark in the Philippines, subject to the submission of the original materials if required by the Bureau of Trademarks, or other similar evidence of use, provided the goods are placed on the market and the services are available in the Philippines.
 - 4.5 One copy of the evidence of use is sufficient and will be accepted
 - 4.6 Computer printouts of the drawing or reproduction of marks will not be accepted as evidence of actual use.

5.0 The DAU may be submitted by facsimile or electronic mail, subject to the submission of the original document within 30 days, without need of notice from the office, provided, however, that the fee is paid within the period to file the DAU. The DAU will be considered filed on the day the payment is received by the IP Philippines.

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