

### **365.573 Filing of applications.**

- (1) Upon the filing of an application for registration and payment of the application fee prescribed in KRS 365.571, the Secretary may cause the application to be examined for conformity with KRS 365.561 to 365.613.
- (2) The applicant shall provide any additional pertinent information requested by the Secretary, including a description of the design mark, and may make, or authorize the Secretary to make any amendments to the application as are reasonably requested by the Secretary, or deemed advisable by the applicant to respond to any rejection or objection.
- (3) The Secretary may require the applicant to disclaim exclusive rights in an unregistrable component of a mark otherwise registrable, and an applicant may voluntarily disclaim a component of a mark sought to be registered. No disclaimer shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or the applicant's or registrant's rights of registration under another application if the disclaimed matter has become distinctive of the applicant's or registrant's goods or services.
- (4) The Secretary may amend the application with the applicant's agreement or may require a substitute application to be submitted.
- (5) The Secretary shall advise the applicant if he is not entitled to registration and state the reasons for the decision. The applicant shall have a reasonable period of time as set out in administrative regulations promulgated by the Secretary, in which to reply to or amend the application, in which event the application shall then be reexamined. This procedure may be repeated until:
  - (a) The Secretary finally refuses registration of the mark; or
  - (b) The applicant fails to reply to or amend the application within the specified period, whereupon the application shall be deemed to have been withdrawn.
- (6) If the Secretary finally refuses registration of the mark, the applicant may appeal the decision to the Franklin Circuit Court. The court may summarily order the Secretary to register the mark on proof that all the statements in the application are true and that the mark is otherwise entitled to registration. The Secretary of State shall not be liable for any court costs. The court's final decision may be appealed as in other civil proceedings.
- (7) If two (2) or more applications are concurrently being processed by the Secretary seeking registration of the same or confusingly similar marks for the same or related goods or services, the Secretary shall grant priority to the applications in the order of filing. If a prior-filed application is granted a registration, the other applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration on grounds of prior or superior rights to the mark, in accordance with the provisions of KRS 365.591.

**Effective:** July 15, 1994

**History:** Created 1994 Ky. Acts ch. 468, sec. 4, effective July 15, 1994.