WEST VIRGINIA CODE: §47-2-4

§47-2-4. Filing of applications.

(a) Upon the filing of an application for registration and payment of the application fee, the secretary may cause the application to be examined for conformity with this article.

(b) The applicant shall provide any additional pertinent information requested by the secretary including a description of a design mark and may make, or authorize the secretary to make, such amendments to the application as may be reasonably requested by the secretary or deemed by applicant to be advisable to respond to any rejection or objection.

(c) The secretary may require the applicant to disclaim an unregisterable component of a mark otherwise registerable, 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 on another application if the disclaimed matter be or shall have become distinctive of the applicant's or registrant's goods or services.

(d) Amendments may be made by the secretary upon the application submitted by the applicant upon applicant's agreement, or, the secretary may require that an amended application be filed.

(e) If the applicant is found not to be entitled to registration, the secretary shall advise the applicant thereof and of the reasons therefor. The applicant shall have a reasonable period of time specified by the secretary in which to reply or to amend the application, in which event the application shall then be reexamined. This procedure may be repeated until (1) the secretary finally refuses registration of the mark, or (2) the applicant fails to reply or amend within the specified period, whereupon the application shall be deemed to have been abandoned.

(f) If the secretary finally refuses registration of the mark, the applicant may seek a writ of mandamus to compel such registration. Such writ may be granted, but without costs to the secretary, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration. (g) In the instance of applications 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 order of filing. If a prior-filed application is granted a registration, the other application or applications shall then be rejected. Any rejected applicant may bring an action for cancellation of the registration upon grounds of prior or superior rights to the mark, in accordance with the provisions of section nine of this article.

WV Legislature