



Canadian Intellectual
Property Office

Office de la propriété
intellectuelle du Canada

Canada

Trade-marks

WARES AND SERVICES MANUAL



Canadian Intellectual Property Office
Trade-marks Office

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1.0 User Guide

1.1 General

This Wares and Services Manual (the Manual) is intended to serve as a guide for specifying wares and services in trade-mark applications. The intended users of this Manual are trade-mark examiners, trade-mark agents and trade-mark applicants.

Paragraph 30(a) of the *Trade-marks Act* states that an application for a trade-mark must contain "a statement in ordinary commercial terms of the specific wares or services in association with which the mark has been used or is proposed to be used."

The Manual contains a representative listing of acceptable wares and services pursuant to paragraph 30(a), as well as directions for rendering insufficiently specific wares and services acceptable. The listing of wares and services contained in the Manual is not intended to be exhaustive.

If the wares and services do not appear in the Manual and there are no similar descriptions of wares/services in the Manual, research will be conducted by a Trade-mark examiner to ascertain if the wares and services are described as they normally would be in the trade (e.g. does an Internet search reveal numerous uses of the description of wares and services in question?).

Please note that even though research shows that the wares and services in question are in ordinary commercial terms, they must be "specific." This becomes especially important in cases where a trade term can have two completely different meanings depending on the field. For example, "crimping irons" can be used for the hair or for mending or molding leather or iron.

The following three-part test will be considered in this determination:

1. Are the wares/services sufficiently specific so that it is possible to assess whether paragraph 12(1)(b) of the *Trade-marks Act* applies? A mark that clearly describes a character or quality of the wares or services is not registrable.
2. Are the wares/services sufficiently specific so that it is possible to assess confusion? A mark that is confusingly similar to a registered trade-mark or a pending trade-mark is not registrable.
3. Are the wares/services sufficiently specific so as to ensure that the applicant will not have an unreasonably wide ambit of protection? For example, wares described as computer software, without further specification, would give the applicant an unreasonably wide ambit of protection.

If the answer is "yes" to all three of these questions, the Trade-marks Office will accept the statement of wares/services as being sufficiently specific. If the answer to any one of those questions is 'no,' the wares/services are considered insufficiently specific and the Trade-marks Office will ask for further specification and, where possible, will provide suggestions.

If the applied for wares/services appear in the Manual as acceptable, the Trade-marks Office will accept the statement of wares/services unless a change relating to the wares/services in question has been noted in the Manual. If the wares/services in question do not appear in the Manual but are as specific or more specific than a related or analogous description of wares/services appearing in the Manual, the Office will accept the statement that is not in the Manual.

It is important to note that the identification of wares/services made in the initial application may subsequently be limited or specified; however, no extension of the initial identification of wares/services is permitted.

The Manual is divided into separate listings of wares and services. Generally speaking, wares/services appear only once in the Manual and are not cross-referenced.

Registered Trade-marks

Registered trade-marks cannot be used in statements of wares/services. Applicants must provide generic descriptions of their wares/services in ordinary commercial terms. Clear and concise language should be used when applying for wares/services that do not have common names. Excessively technical or overly lengthy descriptions of the characteristics of the wares/services are not acceptable.

1.2 Wares

Wares are listed in alphabetical order and an explanatory legend appears at the top of the first page of each letter. Wares shown in **bold** are acceptable without further specification. The wares shown in *italics* are not acceptable without further specification. However, a description of wares listed as unacceptable in the Manual, but that can be understood as being sufficiently specific when read in the context of the entire statement of wares/services, may be acceptable (see section 1.2.3).

1.2.1 Acceptable Wares Listed in Bold

Where a general category of wares is listed in bold, the individual wares included in that category are usually not listed in the Manual. For example, the general category "**casual clothing**" is listed in the Manual as acceptable, therefore individual items in this category such as blouses, skirts and pants do not appear in the Manual. Similarly, "**dairy products**" is an acceptable general category, therefore individual wares in this category such as cheese, milk, butter and yogurt, do not appear in the Manual. In other words, even though items within an acceptable category of wares are not individually listed in the manual, each of the items is considered acceptable. As a general rule, wares that are more specifically described than an entry listed in bold, will be considered acceptable.

1.2.2 Unacceptable Wares Listed in *Italics*

The wares shown in *italics* are not acceptable without further specification. Directions for specifying these wares in ordinary commercial terminology are provided, after the unacceptable wares.

The directions provide definite and acceptable identification of the wares by differentiating their various **types**, their **function** and/or their **areas of use**. For example, "*clothing*" is an insufficiently specific ware. However, "exercise clothing" and "baby clothing," which are both examples of specifically defined types of "*clothing*," are acceptable. Another example would be the wares "*appliances*," which are insufficiently defined. However, "small electrical kitchen appliances" and "dental appliances," both of which are examples of specifically defined types of "*appliances*," are acceptable. At times, in order to specifically define a ware, the area of use of the ware is required. For example "*stuffing*" is an insufficiently defined ware. However, "for use in food," or "for use in toys" are both specifically defined areas of use for "*stuffing*," and are acceptable.

1.2.3 Context Serves to Specify Otherwise Unacceptable Wares

In some cases, the context may serve to specify an otherwise unacceptable identification of wares. In other words, a description of wares listed as unacceptable in the Manual, but that can be understood as being sufficiently specific when read in the context of the entire statement of

wares, may be acceptable. For example, "cases" alone are not acceptable as they could include any type of "cases" from camera cases to pillowcases. However, in an application for "cameras, tripods and cases," the wares "cases" would be acceptable as it is clear from the context that the "cases" would be restricted to camera cases. Similarly, "carriers" alone are not acceptable as they could include any type of "carriers" from bicycle carriers to pet carriers. However, in an application for "pet beds and carriers," the wares "carriers" would be acceptable, as it is clear from the context that the "carriers" would be restricted to pet carriers.

1.2.4 "Namely," "Consisting of" or "Specifically"

The specification of wares must be specific and avoid indefinite words and phrases. The terms "and the like," "and similar goods" are not acceptable as terms for specifying wares. Wares that require specificity can be described using the definite terms "namely," "consisting of" or "specifically". For example, in the case of "*alarms*" which is not acceptable by itself, specification with the definite term "namely" or "specifically" would be acceptable, e.g., "alarms, namely, fire, car and burglar." Alternatively, wares can be specified by listing each type of ware such as "fire alarms," "car alarms," and "burglar alarms."

Another example would be "*frames*" which alone is not acceptable; "frames" must be described specifically as to type, e.g., "door frames," "eyeglass frames" or, by using a definite term such as "consisting of," e.g., "frames consisting of door frames," "frames consisting of eyeglass frames."

For those wares listed in the Manual that require specificity as to their area of use or function, such as "*catalysts*," for example, the following provides suggested wording; "catalysts for use in oil processing," "catalysts for use in the manufacture of industrial chemicals," "catalysts for use in the manufacture of rubber," etc.

Note that the indefinite terms "such as" and "in particular" are acceptable only when they follow an acceptable statement of wares.

1.2.5 Specific Circumstances

1.2.5.1 Parts and Fittings

In general "parts and fittings" are acceptable **if the item for which the parts and fittings is intended is provided**. For example "automobiles and parts and fittings therefore" and "washers, dryers, dish washers and parts and fittings for the aforementioned goods" would be acceptable.

1.2.5.2 Accessories

As a general rule, wares including the term "accessories" such as "*automobile accessories*," "*fishing accessories*," "*pet accessories*" or "*computers and accessories*" are not considered acceptable without further specification, since "accessories" in this context can encompass different types of wares, with different channels of trade, which are not necessarily sold in close proximity. "*Automobile accessories*," for example could reasonably include everything from air deodorizers to first-aid kits to portable televisions.

Similarly, "*fishing accessories*" could include a broad range of wares such as flashlights, insect repellent, sunscreen and weighing scales. Likewise, the wares "*pet accessories*" could include such wares as heat lamps, thermometers, van cargo liners and vitamins. "*Computers and accessories*" could include such wares as headphones, footrests, screen cleaning wipes and mouse pads.

In rare circumstances, wares including the term "accessories" without further specification *may* be acceptable if the following three criteria are met; the accessories are reasonably understood in

the trade to be a recognized set of items, with the same channels of trade and which are typically sold in close proximity. One example would be "**hair accessories**" as the accessories are confined to wares such as barrettes, clips, ponytail holders and side combs, which are understood in the trade as a recognized set of items, with the same channels of trade and which are typically sold in close proximity. Another example would be "**action figures and accessories**" as the accessories are understood in the trade to be a recognized set of items, with the same channels of trade and which are typically sold in close proximity.

1.2.5.3 Equipment

As a general rule, wares including the term "equipment" such as "*fishing equipment*," "*tennis equipment*," "*laboratory equipment*" or "*telecommunications equipment*" are not acceptable without further specification, since "equipment" in this context can encompass different types of wares, with different channels of trade, which are not necessarily sold in close proximity to each other. "*Fishing equipment*," for example, could reasonably include everything from commercial fishing nets to fly fishing tackle to boats, to specialized clothing for fishing such as vests, hats and hip waders. Similarly, "*tennis equipment*" could include a broad range of wares such as tennis racquets and tennis balls, specialized court shoes and clothing, and court equipment such as nets, posts, tennis ball machines, tennis ball retrievers and tennis court paint. "*Laboratory equipment*," for example, could include everything from test tubes to refrigeration units to analytical equipment such as mass spectrometers and electron microscopes and their specialized software. "*Telecommunications equipment*" could include everything from items for the end user such as fax machines, mobile phones and two way radios, to wares that support telecommunications delivery such as communication towers, satellite dishes and fibre optic cable.

In rare circumstances, wares including the term "equipment" without further specification *may* be acceptable, if the function and/or the area of use of the equipment can be reasonably understood to be very narrow. One example would be "**hedge trimming equipment**" as hedge trimming is clearly understood as a singular activity, (that of trimming hedges), and the equipment confines itself to manual or power operated cutting tools for trimming hedges. Another example would be "**hair cutting equipment**" as hair cutting is clearly understood as a singular activity, (that of cutting hair), and the equipment confines itself to manual or power operated tools for cutting hair.

1.2.5.4 Apparatus

As a general rule, wares including the term "apparatus" such as "*teaching apparatus*," "*breathing apparatus*," "*massage apparatus*" or "*measuring apparatus*" will not be acceptable without further specification since "apparatus" in this context can encompass different types of wares, with different channels of trade, and which are not necessarily sold in close proximity to each other. "*Teaching apparatus*," for example, could reasonably include everything from computer software, to teaching toys to notebooks to videotapes. Similarly, "*breathing apparatus*" could include everything from self-contained rebreathers for divers, to airline respirators to disposable bag valve masks. "*Massage apparatus*," for example, could include everything from "massage tables" to "facial massagers" to "gum massagers." "*Measuring apparatus*" could include everything from "blood pressure monitors" to "temperature gauges" to "decibel meters" to "balloon borne cloud condensation nucleus counters."

In rare circumstances, wares including the term "apparatus" without further specification *may* be acceptable if the function and/or area of use of the apparatus can be reasonably understood to be very narrow. One example would be "**blood pressure measuring apparatus**"; these wares are understood in the trade to refer to a limited set of items in the medical field such as electronic digital monitors or a cuff and separate stethoscope. Another example would be "**anesthetic delivery apparatus**"; these wares are understood in the trade to refer to a limited set of items in the medical field such as the anesthetic machine, vaporizers, ventilators and monitors.

1.2.5.5 Intangibles

Intangibles such as “websites,” “electricity” and “domain names” are normally considered services and are listed in the Manual as “designing websites,” “utility services, namely, the transmission of electricity and natural gas and water and sewer management,” “selling domain names.” Where an application lists such intangibles in the statement of wares, and it appears that the applicant may actually be offering a service, the examiner should so advise the applicant.

1.2.5.6 Device

The word “device” should not be used to describe an article that has an ordinary commercial term. However, if the applicant or the applicant’s agent confirms that there is no ordinary commercial term to describe the goods and if the examiner is not certain that there is an ordinary commercial term to describe them, they *may* be acceptable if their field and function is provided. The statement of wares/services must make it possible for the examiner to assess whether the mark is clearly descriptive or deceptively misdescriptive and/or confusing with another mark(s). By way of example, the following would be acceptable, “**a medical device, namely a device for the qualitative detection of antibodies in human specimens collected as plasma or dried blood spots**” and “**an electronic medical device implanted in the eye to help restore vision.**” If it is certain that the wares have an ordinary commercial term, then the examiner is to maintain the paragraph 30(a) objection.

1.2.5.7 Pharmaceutical Preparations

The wares “*pharmaceutical preparations*” are not considered sufficiently specific to meet the requirements of paragraph 30(a) of the *Trade-marks Act*. The fundamental principles for determining the acceptability of wares and services apply equally to pharmaceuticals, and are: the ability (a) to assess whether paragraph 12(1)(b) of the *Trade-marks Act* applies; (b) to assess confusion with another mark; and (c) to assess whether accepting the wares/services as described will grant the applicant an unreasonably wide ambit of protection.

Pursuant to these principles, the Trade-marks Office, for the purposes of paragraph 30(a), requires “*pharmaceutical preparations*” to be specified in greater detail by either (a) naming the disease, **or** (b) specifying the disease group or type of disease, disorder or condition to be treated, **or** (c) by indicating the specific type of medication.

1.2.5.8 Veterinary Pharmaceutical Preparations

The wares “*veterinary pharmaceuticals*” or “*veterinary preparations*” are not considered sufficiently specific to meet the requirements of paragraph 30(a) of the *Trade-marks Act*.

The same principles (as set out above) used in the examination of pharmaceutical preparations, apply to the examination of veterinary pharmaceuticals; however, the differences between veterinary medicine and treatment of conditions, disorders and diseases in humans must be taken into account. It should be noted, much of veterinary medicine is divided into areas relating to specific animals or groups of animals, and often relates to the prevention rather than treatment of disease.

1.2.5.9 Botanicals, Homeopathic Remedies, Herbal Supplements, Nutraceuticals

The wares “*botanicals*,” “*homeopathic remedies*,” “*herbal supplements*” and “*nutraceuticals*” are not considered sufficiently specific to meet the requirements of paragraph 30(a) of the *Trade-marks Act* which requires that an application for the registration of a trade-mark contain a

statement in ordinary commercial terms of the specific wares or services with which the mark has been used or is proposed to be used.

The Trade-marks Office, for the purposes of paragraph 30(a), requires "*botanicals*," "*homeopathic remedies*," "*herbal supplements*," and "*nutraceuticals*" to be specified in greater detail by either (a) naming the disease, **or** (b) specifying the disease group or type of disease, disorder or condition to be treated, **or** (c) by indicating the specific type of botanical, herbal supplement, homeopathic pharmaceutical or nutraceutical. The examination of these types of wares will apply the same principles as the examination of pharmaceutical preparations as set out above.

1.2.6 Locating Wares With Multiple Descriptors in the Manual

Many wares such as "*kits*" and "*panels*" are extremely broad in scope and require multiple words for appropriate description and specification. In such cases, guidelines for their acceptable specification will be found listed under the main descriptor of the wares, such as "*kit*" or "*panel*," and not alphabetically under the first word describing the ware. For example, "Easter egg decorating kit," "first-aid kits" and "axle boot kits" are all listed as acceptable under "*kits*"; similarly, "acoustical insulation barrier panels" and "solar heating panels" can both be found under "*panels*."

1.3 Services

Services are listed in alphabetical order and an explanatory legend appears at the top of the first page in each letter. Services listed in **bold** are acceptable without further specification. The services shown in *italics* are not acceptable without further specification. However, a description of services listed as unacceptable in the Manual, but that can be understood as being sufficiently specific when read in the context of the entire statement of wares/services, may be acceptable (see section 1.3.3).

1.3.1 Acceptable Services Listed in Bold

Where a general category of services is listed in bold, the individual services included in that category are usually not listed in the Manual. For example, the general category "**golf club services**" is listed in the Manual as acceptable, therefore individual services in this category such as locker room services, shower room services, golf club re-gripping and golf club fitting services, do not appear in the Manual. In other words, even though items within an acceptable category of services are not individually listed in the Manual, each of the services is considered acceptable. As a general rule, services that are more specifically described than an entry listed in bold will be considered acceptable.

1.3.2 Unacceptable Services Listed in Italics

The services shown in *italics* are not acceptable without further specification. Directions for specifying these services in ordinary commercial terminology are provided, after the unacceptable services. These specifications provide definite and acceptable identifications of the services by requesting their specific field. For example, "*inspections*" is an insufficiently defined service. However, "automotive inspections" and "health inspections," which are both examples of specifically defined fields of "inspections," are acceptable. Similarly, "*planning*," is an insufficiently defined service; however, "career planning" and "estate planning," are both examples of specifically defined fields of "planning," and are acceptable. At times, in order to specifically define a service, the specific item to which the service pertains is required. For example, "*custom manufacturing*" is an insufficiently defined service. However, "furniture" or "jewellery," are both specifically defined items that can be "custom manufactured," and are acceptable.

1.3.3 Context Serves to Specify Otherwise Unacceptable Services

In some cases, the context may serve to specify an otherwise unacceptable identification of services. In other words, a description of services listed as unacceptable in the Manual, but that can be understood to be sufficiently specific when read in context of the entire statement of services, may be acceptable. For example, "counselling" applied for alone is unacceptable as the term could include any field of 'counselling' from marriage counselling to nutrition counselling. However, an application for "career planning" including the services "counselling" would be acceptable as logically the 'counselling' would be restricted to "career counselling". Similarly "delivery" alone is not acceptable as the service could include any type of delivery from flower delivery to furniture delivery. However, an application for "restaurant services" including the service "delivery" would be acceptable; "delivery" would be restricted to food delivery.

1.3.4 "Namely," "Consisting of" or "Specifically"

The identification of services must be specific and avoid indefinite words and phrases. For example "agencies" alone is not acceptable; it must be described specifically as to their field, e.g. "advertising agencies" or "employment agencies" or, by using the definite term "namely," "consisting of" or "specifically," e.g., "agencies consisting of advertising agencies," "agencies consisting of employment agencies," "agencies, namely, advertising agencies" or "agencies, namely, employment agencies".

The terms "and the like", "and similar services" are not acceptable when specifying services.

Note that the indefinite terms "such as" and "in particular" are acceptable only when they follow an already acceptable statement of services.

For those services listed in the Manual that require specificity as to the item the services pertain to, the precise language required together with examples should be provided. For example, "cutting of " alone is not acceptable; the specific item the services "cutting of " pertains to must be described, specifically, e.g., "diamonds, keys, textiles," etc.

1.3.5 Specific Circumstances

1.3.5.1 Banking Services

Banking services are acceptable within the meaning of paragraph 30(a) of the *Trade-marks Act*; however, Section 983(2) of the *Bank Act* together with the subsection 30(i) of the *Trade-marks Act* proscribes the Registrar from accepting trade-mark applications wherein the services are described as "banking services" unless the applicant or its licensee is authorized to use this term under the *Bank Act* or any other Act of Parliament. If the application is based on proposed use, the Office will accept a statement from the applicant stating that the entity that will be using this term is or will be authorized to use this term under the *Bank Act* or any other Act of Parliament. The use of "banking services" should not be questioned if the applicant's name is among the authorized banks listed in Schedules I, II or III of the *Bank Act*. There are additional provisions permitting the use of "banking services" under the *Bank Act*; in such circumstances the applicant must advise the Office clearly stating that it or its licensee is authorized to use the term "banking services" or that they comply with subsections of the Act relating to permitted use, or that the applicant or its licensee is authorized by order issued by the Minister of Finance pursuant to the *Bank Act*.

1.3.5.2 Benefit to the Public

Advertising, Promotion and Marketing

In view of the *Ralston Purina Co. v. Effem Foods Ltd.* decision, examiners will question services where it is not clear that a real service is provided to the public; the criteria for assessment is

whether a third party benefits from the service. For example, if the applicant's "advertising" and "marketing" services simply make the public aware of the applicant's own products, there is not considered to be a benefit to the public. In order to determine if the service is being offered to a third party, examiners may ask for further specificity by questioning the means or manner by which the service is provided. For example the following would be considered acceptable: "database marketing services, namely, compiling customer specific databases for marketing purposes and consulting, designing, printing and collecting marketing information," and "promoting the sale of credit card accounts through the administration of incentive award programs."

In circumstances where the public does benefit from promotional services, notwithstanding they relate to the promotion of the applicant's own goods and services, the services will be considered acceptable. For example, "providing coupon programs pertaining to a line of food products" is considered a service within the meaning of Section 4 of the *Trade-marks Act*. Examiners will question "cooperative advertising" as it is generally understood to be a cost sharing arrangement between the retailer and supplier for the advertising and promotion of their product (s). In order to be acceptable, services must be offered to a third party.

1.3.5.3 Services Related to the Electronic Transmission of Data

As a general rule, services including the term "data" such as "data transmission services," "electronic transmission of data," "data and voice telecommunications" or "electronic transmission of data and documents via computer terminals" or services that relate to data such as "delivery of messages by electronic transmission" or "electronic-store-and-forward messaging", are not acceptable without further specification since "data" in this context can encompass any information in numerical form that can be digitally transmitted or processed (including audio, video, voice, or any other form of data).

A - If the essential nature of the services involves *providing data to customers*, the applicant should set out the **specific nature of the data** (e.g. financial advice, client lists, streaming video, music, etc.), **and the general means by which it is communicated** to the customer (e.g. online databases, online stores, websites, email, pager or cellular text messages, etc.).

By way of example, the following would be considered acceptable:

"Dissemination of financial information via an Internet-based database";
"Electronic funds transfer";
"Providing access to a medical database via a global information network."

B - If the essential nature of the services involves providing the *ability to communicate (i.e. transmission services)*, then the applicant should set out the **specific means of communication** (e.g. satellite, wireless, telephone lines, cable network, cellular, wide-area network, fax, etc.), **and the general nature of the data transmitted**. It is understood that the applicant may have limited control over the exact content being transmitted if they only supply the means of transmission.

By way of example, the following would be considered acceptable:

"Carrier services provided by means of fibre optic cables, telephone lines, radio and microwave transmission, satellite transmission";
"Electronic mail services through wired and wireless access, paging services, wireless digital messaging services";
"Recording, storage and subsequent transmission of voice and text messages by telephone";
"Web hosting services";
"Audio and video broadcast transmission over a global computer network";

“Operating a cellular phone network”;
“Operating a wide-area network”;
“Internet service provider (ISP) services”;
“Cellular text messaging”;
“Data transmission over satellite, namely television signals, satellite phones”;
“Streaming of audio and video material on the Internet.”

1.3.5.4 Telecommunication-Related Services

As a general rule, services that include the term “telecommunications” such as “telecommunication services,” or that relate to “telecommunication services” such as “communication services,” are not considered acceptable without further specification, since “telecommunication” in this context can encompass any communication at a distance. Therefore, services that either include the term “telecommunication” or relate to “telecommunication services” should **specify the nature of the services** (i.e. what is the specific type of communication) **and the field of the services** (i.e. in what area of business does the applicant provide these services).

By way of example, the following would be considered acceptable:

“Providing multiple user access to a global computer network”;
“Provision of wireless communication and telecommunication airtime price packaging services”;
“Telecommunications network design, planning, maintenance and management services”;
“Engineering services for telecommunications and data networking.”

In certain circumstances, the services applied for are so specific that the area of business is obvious from the specific type of communication.

By way of example, the following would be considered acceptable:

“Videoconferencing services”;
“Paging services”;
“Wireless digital messaging services”;
“Personal Communications Services (PCS)”;
“Telecommunications gateway services”;
“Local and long distance telephone services”;
“Mobile telephone communications services”;
“Mobile radio communications services”;
“Radio programming services”;
“Radio broadcasting services.”

1.3.6 Locating Services with Multiple Descriptors in the Manual

Many services such as “consultation services” and “health care services” are extremely broad in scope and require multiple words for appropriate description and specification. In such cases, guidelines for their acceptable specification will be found listed under the main descriptor of the services, such as “consultation” or “health care,” and not alphabetically under the first word describing the service. For example, “astrology consulting,” “astronomy consulting” and “consulting in business acquisitions and mergers” are all listed under “consultation”; similarly “providing emergency health information by phone,” can be found under “health care services.”