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TTAB's Everwise Decision Highlights Token-Use Pitfalls

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The Trademark Trial and Appeal Board's precedential **decision** in *In re: Everwise Credit Union* should be required reading for every trademark practitioner who has ever filed or challenged a statement of use under deadline pressure.¹

The board canceled Everwise Credit Union's registration for the standard character mark "Everwise Credit Union," after finding that the

registrant's sole specimen amounted to token use designed to reserve rights in the mark, not bona fide use in the ordinary course of trade.

The decision offers a detailed road map for practitioners on both sides of reexamination proceedings, and a blunt warning about what happens when specimen strategy falls short.

Reexamination proceedings, introduced under the Trademark Modernization Act of 2020, allow any person to petition the U.S. Patent and Trademark Office to cancel a registration on the grounds that the mark was not in use in commerce as of the relevant date.

The relevant date depends on the application's basis: For use-based applications, it is the filing date; for intent-to-use applications, it is the deadline for filing a statement of use, including all approved extensions.

Any third party may file a petition, and the USPTO director may also initiate proceedings sua sponte. Once the director determines that a prima facie showing of nonuse has been established, institution is mandatory, and the decision to institute is final and nonreviewable.

The registrant then bears the burden of rebutting that showing with evidence of use or, alternatively, may delete the challenged goods or services from the registration.

Since the TMA took effect in December 2021, third parties have filed 608 petitions for expungement and reexamination combined through May 2025, with the USPTO instituting proceedings in roughly 60% of cases, according to USPTO data.²

Of the petition-based proceedings that have reached a final disposition, registrations were cancelled, in whole or in part, 75% of the time, with 98% of the challenged goods and services ultimately deleted.

The Everwise decision, designated precedential by the board, signals that the TTAB will scrutinize specimen evidence closely in this context, particularly where the record suggests a registrant filed a statement of use before the mark was genuinely in commerce.

Here are five practical lessons from the decision.

Build a reexamination petition around concrete, dated evidence.

The third-party petitioner in Everwise succeeded because it did its homework.

Rather than relying on conclusory assertions of nonuse, the petitioner assembled a specific evidentiary record: Wayback Machine screenshots of the registrant’s website on dates before and including June 16, 2023; Apple Store and Google Play Store evidence showing the registrant’s mobile app operated under the name “TCU Mobile Banking,” not “Everwise Credit Union”; a database search of the TTAB’s online docket system TTABVUE confirming no record of administrative proceedings containing evidence of use; and a USPTO trademark status and document retrieval system search confirming no record of evidence of use.

Practitioners filing reexamination petitions should take note of what worked here: time-stamped internet archive captures, app store listings and public database searches, all tied to specific dates relative to the relevant deadline. The petitioner also characterized the registrant’s own specimen as announcing an intent to rebrand, rather than demonstrating current use, a characterization with which the board later agreed.

The takeaway is that a successful reexamination petition requires dated, verifiable evidence that the mark was not in use as of the relevant date. Wayback Machine captures are particularly effective because

they provide independent, third-party-verified snapshots of a website's content at a specific point in time.

Understand what evidence the board expects, and what falls short.

The board's analysis offers a clear picture of what documentary evidence carries weight in a reexamination, and what does not.

On the losing side of the ledger, the registrant relied on a single webpage specimen and a sworn declaration from its chief marketing and growth officer attesting to use of the mark during the relevant period.

The declaration failed for two reasons.

First, all of the exhibits attached to it — brochures and marketing materials — displayed the marks "TCU" and "Teachers Credit Union," not "Everwise Credit Union." None of the supporting exhibits showed the challenged mark at all.

Second, the declarant's statement that the registrant "has made bona fide use of the mark EVERWISE CREDIT UNION" was a legal conclusion, and the board gave it no weight.

The board made clear what it would have found persuasive: pictures of signage at brick-and-mortar facilities, copies of checks bearing the mark, client communications, business cards, brochures featuring the mark, and debit or credit cards. These are the types of evidence "common to the credit union industry" that would demonstrate ordinary-course-of-trade use.

For registrants defending against reexamination, the lesson is to not rely on a single specimen and a conclusory declaration. Assemble a diverse portfolio of evidence that shows how the mark appears across multiple customer touchpoints. And for petitioners,

the absence of this kind of corroborating evidence is itself a powerful argument.

Avoid procedural missteps that undermine credibility.

The Everwise decision highlights several procedural pitfalls that practitioners should avoid.

First, simply resubmitting the specimen that was already accepted during prosecution will not rebut a prima facie case of nonuse. The board emphasized that because the registration file has already been considered in instituting the reexamination proceeding, “merely resubmitting the same specimen of use previously submitted in support of registration or maintenance thereof, or a verified statement alone, without additional supporting evidence, will likely be insufficient.”³

The registrant’s argument that the specimen should be accepted because the examining attorney originally found it acceptable was equally unavailing because the board is not bound by prior examining attorney decisions.

Second, incomplete responses create unnecessary risk. Here, the registrant’s initial response to the office action failed to include complete URL addresses and access dates for its webpage exhibits, prompting a notice of incomplete response. Although the examiner granted additional time to cure the deficiency, this kind of error wastes procedural goodwill and can signal a lack of rigor.

Third, the registrant could have deleted services from the registration for which it could not demonstrate use, thereby narrowing the scope of the proceeding. It deleted only “long-term care insurance” services early in the proceeding. A more strategic approach would have been to assess, service by service, which services could be substantiated with strong evidence and to voluntarily narrow or delete the rest.

Know what token use looks like, and how to avoid it.

The board's token-use analysis in Everwise is instructive because it turns less on abstract legal standards and more on a practical, visual assessment of the specimen itself.

The mark "Everwise Credit Union" appeared only three times on the submitted webpage. In two instances, the mark was buried in body text, rendered in the same font, size and case as surrounding copy, meaning consumers would have had to search through the text to find it. The board found that these instances would not be perceived as source indicators.

The third instance appeared as part of a tagline, "Why TCU? Because we are an Everwise Credit Union," which was subordinate to the prominently displayed "TCU" mark.

But the decisive factor was the broader evidentiary context. The board looked beyond the specimen itself to evidence of what the registrant did after the statement of use deadline: a name change executed on June 26, 2023, more than two months later; website announcements that "TCU is becoming Everwise" and that branding updates would roll out starting June 26; and a blog post confirming the official rebrand as of that date.

This post-deadline evidence painted a clear picture that the registrant was not using the mark in the ordinary course of trade on the deadline date, but was instead reserving it for future use.

For practitioners advising clients on specimen selection, this decision underscores the critical point that the mark must appear prominently and in direct association with the services, not as a footnote, tagline or aspirational reference. And if the mark is part of a rebranding effort that has not yet launched, filing a statement of use is the wrong move.

The board's footnote, discussed below, drives this home: The registrant could have filed a new intent-to-use application, rather than submitting a premature statement of use.

When the deadline arrives and the mark is not ready, file a new application.

Perhaps the most practical lesson in *Everwise* is one the board itself flagged in a footnote ⁴, which is that when a registrant faces a nonextendable statement of use deadline and is not yet making bona fide use of the mark, the right strategy is to file a new intent-to-use application for the same mark and services rather than filing an invalid statement of use.

The board noted that the registrant appeared to know this option existed because USPTO records showed that *Everwise Credit Union* filed a new application for the identical mark and services on March 22, 2024, claiming a first use date of June 26, 2023.

Filing a premature statement of use exposes the registration to reexamination. And once a reexamination is instituted, the director's decision to institute is final and nonreviewable. The registrant then bears the burden of rebutting a prima facie case of nonuse with evidence that the mark was used in commerce — a burden that, as *Everwise* demonstrates, is difficult to meet when the mark was not genuinely in use.

Conclusion

The *Everwise* decision is a precedential reminder that the TTAB takes the bona fide use requirement seriously, and that reexamination proceedings provide a mechanism for the diligent to enforce it.

For petitioners, the case is a template for building a strong evidentiary record around time-stamped, third-party-verifiable evidence. For registrants, it

highlights that flimsy evidence of use will not survive scrutiny.

And for all practitioners, it reinforces a fundamental principle: The specimen is not a formality. It is the single most important piece of evidence in the registration process, and it must reflect real-world, prominent, ordinary-course-of-trade use of the mark.

¹ Registration No. 7068783, Appeal of Reexamination No. 2023-100533R (TTAB Apr. 29, 2026).

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<https://www.uspto.gov/sites/default/files/documents/tm-tma-expunge-reexam-20250624.pdf>

³ Everwise Credit Union at 6.

⁴ See id. at 41, n. 85