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November 2, 2012

VIA EMAIL  
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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451                      Docket No. PTO-T-2012-0031

Attn: Cynthia C. Lynch  
Office of the Deputy Commissioner  
for Trademark Examination Policy

Re: Comments on Amending the First Filing Deadline  
For Affidavits/Declarations of Use or Excusable Nonuse

Dear Ms. Lynch:

We respond to the USPTO's Request for Comments regarding the First Filing Deadline for Affidavits or Declarations of Use or Excusable Nonuse.

Though deadwood on the trademark register causes us some concern, we do not think it significant enough to require the major legislative change the USPTO is exploring ("Proposal"), particularly in the absence of reliable data supporting it. We respectfully oppose the Proposal and submit that the current filing deadline should not be shortened, for the following reasons:

- (1) (a) The Proposal might increase deadwood on the register. To evaluate the Proposal's effect, we need an estimate of (i) not only how many deadwood registrations it would remove sooner than under current law, (ii) but also how many more deadwood registrations it would allow to remain on the register than under current law. No evidence has been submitted that the earlier-removed deadwood would exceed the longer-remaining deadwood.

(b) The research conducted by the Small Business Administration Office of Advocacy ("SBA") does not support the Proposal. A "small business" has from 1 to 499 employees. Hence, thousands of small businesses probably never applied to register a mark. Moreover, the 30% failure rate of new small businesses within two years, referred to by the SBA, does not tell us:

(i) the percentage of those failed small businesses that applied to register a mark, or

(ii) the percentage of registered marks they abandoned compared to the percentage of registered marks that surviving businesses of all sizes abandoned after their third year of registration, that would be cancelled under present law six years after registration, but would remain on the register for an additional four years under the Proposal.

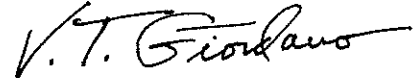
Reliable data is needed to show that the proposed legislative change would significantly reduce, rather than increase, deadwood.

(2) Foreclosing the combined filing of the first Declaration of Use with the Declaration of Incontestability would be disadvantageous. This would increase the administrative burdens and costs of registrants, and could also cause docketing errors and confusion in distinguishing between the filing deadlines for each declaration - particularly since the proposed legislative change presumably would not apply to registrations that issued before it took effect.

(3) The Proposal would create an additional substantive filing difference between the requirements of the USPTO and those of foreign jurisdictions, and would thus further impede the initiatives toward harmonization discussed in recent years.

The proposed legislative amendment would change the current filing deadline in effect for more than 60 years. The Proposal's stated benefits are speculative and its actual effect might increase deadwood on the register. In the absence of reliable data supporting the Proposal, we oppose it.

Very truly yours,

A handwritten signature in black ink, appearing to read "V.T. Giordano". The signature is written in a cursive style with a long horizontal flourish extending to the right.

VTG/tm

V.T. Giordano