

Re: Trademark Registration of :
 Chum Limited :
 Registration No. 1,526,138 : On Petition
 Issued: February 21, 1989 :
 For: FT FASHION TELEVISION (stylized) :
 Petition Filed: January 24, 1997 :

Chum Limited has petitioned the Commissioner to reverse the Affidavit-Renewal Examiner's refusal to accept a Section 8 Affidavit filed in connection with the above-referenced registration.¹ The petition is denied under Trademark Rule 2.146(a)(3), 37 C.F.R. §2.146(a)(3).

FACTS

The above-referenced registration issued on February 21, 1989 for the mark FT FASHION TELEVISION (stylized). Pursuant to Section 8 of the Trademark Act, 15 U.S.C. §1058, Registrant was required to file an affidavit or declaration of continued use or excusable nonuse between the fifth and sixth year after the registration date, i.e., between February 21, 1994 and February 21, 1995.

On February 9, 1995, Petitioner filed a declaration of continued use of the mark, together with a specimen of current use of the mark. The registered mark and the marks shown on the specimens are set forth below.



Mark As Registered



Mark Shown on Specimen



Mark Shown on Specimen



Mark Shown on Specimen

¹ The Petitioner's Section 8 Affidavit was filed in conjunction with a Section 15 Affidavit of Incontestability.

2.162(e) require the filing, within the statutory filing period, of a specimen showing current use of “the mark,” a specimen showing use of a different mark is, in effect, an omission of a specimen showing use of the registered mark. Such a specimen is not “deficient,” and therefore, additional time cannot be given to submit new specimens. *In re Darnell*, 33 USPQ2d 1372 (Comm’r Pats. 1993).

In this case, the Petitioner’s mark shown on the specimens filed with the Section 8 Affidavit and the mark as registered are comprised of FT FASHION TELEVISION in stylized lettering. However, the manners in which the respective marks are stylized differ significantly and play substantial source indicating functions. While the letters FT in the registered mark are clearly discernible behind the terms FASHION TELEVISION, the letters FT are not clearly discernible in the marks shown in the specimens submitted with the Section 8 Affidavit and are located either to the side, above or below the terms FASHION TELEVISION. In fact, the letters FT in the Section 8 Affidavit specimens are abstract, while the letters FT in the mark as registered are not. Accordingly, the Affidavit-Renewal Examiner reasonably concluded that the Petitioner had not submitted a specimen of current use of the registered mark prior to the expiration of the sixth year following the registration date.

Having determined that the specimen filed within the sixth year evidenced use of a mark that differed materially from the registered mark, the decision of the Affidavit-Renewal Examiner to refuse to consider the substitute specimens filed after the sixth year had expired is affirmed.

DECISION

The petition is denied. The registration will be canceled in due course.

Philip G. Hampton, II
Assistant Commissioner for
Trademarks

PGH: SLC

Date:

Attorney for Petitioner:

Gary D. Krugman, Esq.
Sughrue, Mion, Zinn, MacPeak & Seas
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3202