

Re: Juan Holguin
Registration No. 1,593,295
Issued: April 24, 1990
For: READY VASE
Petition Filed: May 17, 1996

On Petition

Juan Holguin has petitioned the Commissioner to accept a Section 8 Affidavit filed in connection with the above identified registration. Trademark Rules 2.146(a)(3), 2.146(a)(5) and 2.148 provide authority for the requested review.

FACTS

The above registration issued on April 24, 1990. 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 April 24, 1995 and April 24, 1996.

On April 25, 1996, Petitioner filed a Section 8 Affidavit. In an Office Action dated June 7, 1996, Petitioner was informed that the affidavit could not be accepted because it was filed after the sixth year following registration, and therefore, the registration would be canceled in due course. This petition followed.

Counsel for Petitioner explains that the affidavit was filed one day late because of a problem in receiving the signed affidavit from Petitioner. The affidavit was sent by Federal Express to Petitioner's counsel on April 23, 1996. However, the papers could not be located within Counsel's office until April 25, 1996, one day past the last day for filing the Section 8 Affidavit.

DECISION

The petition is denied.

Pursuant to Section 8 of the Trademark Act, 15 U.S.C. §1058, a registrant must file an affidavit or declaration of continued use or excusable nonuse between the fifth and sixth year after the date of issuance of the registration. The affidavit or declaration required by Section 8 must be both executed and filed within the sixth year after the registration date. Trademark Rule 2.162(a); TMEP §1603.03.

The Commissioner has no authority to extend or waive the statutory period for filing an acceptable affidavit under Section 8 of the Act. *In re Mother Tucker's Food Experience (Canada) Inc.*, 925 F.2d 1402, 17 USPQ2d 1795 (Fed. Cir. 1991). The statute clearly requires the affidavit to be filed between the fifth and sixth year after registration. In this case, an acceptable affidavit had to be filed no later than April 24, 1996.

Petitioner may file a new application. Upon request, the Office will expedite processing of a new application. See TMEP §1102.03. The current application filing fee is \$245 per class.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:JCL

Date:

Attorney for Petitioner:

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