

Re: Trademark Registration of :
 Rheox, Inc. :
 Registration No. 1,621,802 :
 Issued: November 13, 1990 : On Petition
 Mark: REHOLATE :
 Petition Filed: March 19, 1997 :

Rheox, Inc. has petitioned the Commissioner to accept a Section 8 Affidavit filed in connection with the above identified registration. The petition is denied under Section 8 of the Trademark Act, 15 U.S.C. §1058.

FACTS

The above registration issued on November 13, 1990. Pursuant to Section 8 of the Trademark Act, 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 November 13, 1995 and November 13, 1996.

No affidavit or declaration was received prior to the expiration of the sixth year following the registration date. This petition was filed together with a Combined Declaration Under Sections 8 and 15 of the Trademark Act on March 19, 1997.

DECISION

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); *In re Precious Diamonds, Inc.*, 635 F.2d 845, 208 USPQ 410 (C.C.P.A. 1980); *In re Kruysman, Inc.*, 199 USPQ 110 (Comm'r Pats. 1977); *Ex parte Buchicchio*, 118 USPQ 40 (Comm'r Pats. 1958).

The legislative history of Section 8 clearly indicates that a specific cut-off time was contemplated for submission of the Section 8 affidavit, failing which, the registration would be

canceled even though the mark may still be in use. Accordingly, although it is clear that it was the intent of Congress that Section 8 serve to keep live marks on the register, it also mandated a specific cutoff date, whether the mark is still in use or not, for submission of the Section 8 affidavit.

As stated by Petitioner, the Office does support a statutory change to Section 8 that would allow for a six-month grace period to file the affidavit. However, it is not expected that any such statutory change will occur in the near future. Therefore, Petitioners request that the decision be deferred pending such a change can not be accepted.

Petitioner's request for an oral hearing is denied. Since the statute clearly does not provide for the late filing of a Section 8 Affidavit, an oral hearing on this issue is unnecessary. Trademark Rule 2.146(f).

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

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:JCL

Date:

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