

Re: Trademark Registration of :  
 Alro Steel Corporation :  
 Registration No. 1,632,138 :  
 Issued: June 22, 1991 :  
 Cancelled: July 28, 1997 : On Petition  
 For: ALRO & Design :  
 Petition Filed: October 14, 1997 :

Alro Steel Corporation has petitioned the Commissioner to reinstate the above identified registration, which was canceled for failure to timely file an affidavit of continued use of the mark, pursuant to Section 8 of the Trademark Act. Trademark Rule 2.146(a)(3) provides authority for the requested review.

### **FACTS**

The above identified registration issued on January 22, 1991. 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 non use between the fifth and sixth year after the registration date, i.e., between January 22, 1996 and January 22, 1997.

No affidavit or declaration was received prior to the expiration of the sixth year following the registration date. The registration was canceled on July 28, 1997.

This Petition was then filed on October 14, 1997. In a verified statement, Counsel for Petitioner asserts that a Section 8 Declaration of Use was submitted to the office on November 27, 1996 by first class mail. A copy of the Declaration of Use and specimens, as well as a check for the fee required for filing Declarations of Use accompanied the Petition. Counsel has not provided any evidence to demonstrate that the Declaration was received at the office, or deposited with the Postal Service within the time allowed.

### **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 non use 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.

Because of the importance of filing dates in patent and trademark cases, the office has established careful procedures for the processing of incoming mail. It is presumed that such procedures were followed unless a party can establish that irregularities occurred in the handling of mail on a particular date. *Legille. v. Dann*, 544 F.2d. 1, 191 USPQ 529 (D.C. Cir. 1976).

Petitioner herein has not rebutted the presumption of procedural regularity in processing the papers in the Patent and Trademark office. While it has submitted a declaration stating that an affidavit of continued use of the mark was mailed to the office on November 27, 1996, it has supplied no evidence that the affidavit was in fact received in the office prior to the expiration of the sixth year following the registration date. Likewise, it has not submitted a copy of a Certificate of Mailing pursuant to Trademark Rule 1.8 that might have accompanied the documents, establishing that the affidavit was mailed on November 27, 1996.

The Petition is denied. The registration will remain canceled.

Should Petitioner wish to file a new application for registration of its mark, the office will, upon request, expedite handling of the application. See TMEP §1102.03.

Philip G. Hampton, II  
Assistant Commissioner for  
Trademarks

PGH:NLO:AL

Date: FEB - 3 1998

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