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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

99-502

Re: Trademark Registration of :
Field & Stream Licenses Company :
Registration No. 1,725,094 :
Issued: October 20, 1992 : On Petition
For: FIELD & STREAM :
Petition Filed: July 9, 1999¹ :

Field & Stream Licenses Company has petitioned the Commissioner to reinstate the above-identified registration that was cancelled for failure to file a timely affidavit of continued use, pursuant to 15 U.S.C. §1058. 37 C.F.R. §2.146(a)(3) provides authority for the requested review. The petition is denied under 15 U.S.C. §1058.

FACTS

The above-identified registration issued on October 20, 1992. Pursuant to 15 U.S.C. §1058, Petitioner 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 October 20, 1997 and October 20, 1998. No affidavit or declaration was received prior to the expiration of the sixth year after the registration date. The registration was cancelled on October 20, 1998. This petition followed.²

Petitioner declares that he put the Section 8 declaration with specimen in an “Express Mail” package; placed the metered postage on the package; and deposited the package in an official U.S. Postal Service (“USPS”) “Express Mail” mailbox on October 16, 1998. According to the petition, the USPS confirmed acceptance of the “Express Mail” package but was unable to verify delivery to the Office.

¹ On October 28, 1999, Petitioner filed supplemental papers in support of the petition.

² Pursuant to 37 C.F.R. §2.146(d), “a petition [to the Commissioner] must be filed within two months of the mailing date of the action from which relief is requested.” Where no written action is generated that can be used as a starting point for measuring the petition’s timeliness, the two month standard is routinely applied, running from the date of the phone call or other communication that prompts the filing of the petition at issue.

In this instance, the Office records were updated to indicate that the registration was cancelled on April 27, 1999. However, Petitioner declares that he became aware of the cancellation of the registration only after checking the Trademark status line on June 8, 1999.

On petition, Petitioner submitted a copy of the Section 8 declaration with specimen; a printout of the USPS product tracking system showing acceptance of Petitioner's "Express Mail" package on November 13, 1998 with a scheduled delivery date of December 18, 1999; and a copy of a letter dated June 17, 1999, from the USPS stating that they could not verify delivery of the package because the delivery receipts prior to November 1998 were destroyed.

ANALYSIS

Pursuant to 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 registration date. The Commissioner has no authority to extend or waive this statutory filing period. However, the Commissioner has the authority to reinstate a registration cancelled under 15 U.S.C. §1058, if the registrant can show that a proper Section 8 declaration was in fact filed before the expiration of the sixth year after the registration date, and subsequently lost or misplaced within the Office.

It is not enough to prove that the Section 8 declaration was mailed to the Office. The registrant must show that the Section 8 declaration was actually received in the Office before the expiration of the statutory filing period. Pursuant to 37 C.F.R. §1.6, papers are stamped with the date of receipt in the Office, unless such papers are filed in accordance with 37 C.F.R. §1.10. 37 C.F.R. §1.10 provides for the filing of papers and fees by "Express Mail" and are considered filed on the date of deposit as "Express Mail" with the USPS rather than the date of actual receipt in the Office.

In order to claim the benefits of 37 C.F.R. §1.10 when correspondence is deposited by "Express Mail" but not received by the Office, the party filing the document must show: (1) the number of the "Express Mail" mailing label on the paper(s); and (2) a copy of the "Express Mail" mailing label showing the "date-in" or a copy of any other official notation by the USPS relied upon to show the date of deposit. 37 C.F.R. §1.10(e).

In this instance, Petitioner did not comply with the specific requirements of 37 C.F.R. §1.10 in that the Section 8 declaration does not include the number of the "Express Mail" mailing label. Further, the only official notation of the USPS shows acceptance of the document deposited in an "Express Mail" mailbox on November 13, 1998, a date subsequent to the statutory period for filing the Section 8 declaration.³

DECISION

The petition is denied. The registration remains cancelled.

³ The Office must rely on the date USPS acknowledged the package despite Petitioner's argument that the date shown on the USPS printout is incorrect and the date appearing on the metered postage that Petitioner placed on the package. 37 C.F.R. §1.10(e)(3). Petitioner should note that "[p]ersons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. 37 C.F.R. §1.10(b).

Should Petitioner wish to file a new application for registration of the same mark for the same goods/services identified, the Office will, upon request, expedite handling of the application. *See* TMEP §1102.03.

Robert M. Anderson
Deputy Assistant Commissioner
for Trademarks

RMA:CLB

Date:

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