

Re: Trademark Applications of :
Harley-Davidson, Inc. :
Filing Dates: December 9, 1993 :
Petitions filed: December 12, 1996 :

Serial No. 74-467938 :
For: MISCELLANEOUS DESIGN: On Petition

Serial No. 74-467941 :
For: MISCELLANEOUS DESIGN:

Serial No. 74-467939 :
For: MISCELLANEOUS DESIGN:

Potential opposer, V-Twin Manufacturing Corporation (V-Twin), has petitioned the Commissioner to direct the Trademark Trial and Appeal Board (Board) to accept its Requests for Extension of Time to File Notices of opposition. The petitions are denied under Section 13 of the Trademark Act.

FACTS

The subject marks published for opposition in the official Gazette on October 8, 1996. V-Twin filed Requests for Extension of Time to File Notices of opposition, which the Board granted through December 7, 1996.

DECISION

On December 12, 1996, V-Twin filed these petitions to accept the accompanying Requests for Extension of Time to File its Notices of opposition.

V-Twin argues that the failure to file the extension requests were due to computer problems and miscommunication between the principal attorney and the associate attorney. Furthermore, VTwin states that the interests of justice are best served by granting the extension requests and waiving the rules.

Section 13 of the Trademark Act, 15 U.S.C. 1063, provides that a Notice of opposition may be filed within thirty days after the date of publication of a mark that upon written request prior to the expiration of the thirty day period, the time for filing an opposition may be extended for- an additional thirty days, and that further Extensions of Time for Filing an opposition may be granted by the Commissioner for good cause *when requested prior to the expiration of an extension.*

However, since the time for filing an opposition or Request for Extension of Time to oppose is a statutory requirement, the Commissioner has no authority to waive the requirement. *In re Kabushik' Kaisha Hitachi Seisakusho*, 33 USPQ2d 1477 (Comm'r Pats. 1994); *In re Cooper*, 209 USPQ 670 (Comm'r Pats. 1980).

Therefore, although the failure to file the extension requests was inadvertent, the time period for filing the extension requests is prescribed by statute and cannot be waived.

Petitioner filed Notices of oppositions against Serial Nos. 74-467941 and 74-467939 on January 10, 1997. Since the Extension Requests were not filed within the thirty day period allowed, the oppositions are not considered timely and the fees associated with them will be refunded.¹

The application file will be returned to the Trademark Trial and Appeal Board for consideration of other pending matters.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CBK

Date:

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¹ The record does not show that a Notice of opposition was filed for Serial No. 74-467938. If Petitioner did file a Notice of opposition for Serial No. 74-467938 the Trademark Trial and Appeal Board, upon proof of filing, will refund the fee.