

Re: Trademark Application of :
 Ada G. O. Egbufor :
 Serial No. 74/500232 : On Petition
 Filing Date: March 14, 1994 :
 For: LOVELY LADY and Design :
 Petition Filed: December 18, 1996 :

Ada G. O. Egbufor, has petitioned¹ the Commissioner to accept her Request for Extension of Time to File a Statement of Use and revive the above-identified application. Trademark Rules 2.146 and 2.148 provide authority for the requested review.

FACTS

A Notice of Allowance issued on February 20, 1996, for the subject application, which is based on a bona fide intention to use the mark in commerce, pursuant to Section 1(b) of the Trademark Act. Pursuant to Section 1(d) of the Trademark Act, a Statement of Use, or Request for an Extension of Time to File a Statement of Use, was required to be filed within six months of the mailing date of the Notice of Allowance.

On August 15, 1996, Petitioner filed a Request for an Extension of Time to File a Statement of Use. In an Office action dated October 18, 1996, the Applications Examiner in the ITU/Divisional Unit denied the Extension Request because it was not accompanied by the prescribed fee, as required by Trademark Act Section 1(d)(2), and Trademark Rule 2.89(a)(2). This petition followed.

Petitioner states she did not include the fee with the extension request because she was not aware that a fee was required.

DECISION

Section 1(d)(2) provides: “any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee.”

Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner to waive any requirement of the rules, not being a requirement of the statute, in an extraordinary circumstance, when justice requires and no other party is injured. However, the requirement to submit the fee with the extension request is statutory and the Commissioner is without authority to waive it. *In re Stakis plc*, USPQ2d 1529 (Comm’r Pats. 1992).

¹ The fee of \$100 for a petition to the Commissioner, which was not included, is waived.

Accordingly, the petition is denied and the application will remain abandoned. The \$100 submitted for the Statement of Use, with the petition, will be refunded in due course.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date