

Re: Trademark Application of :
 Mary Ellis :
 Serial No. 74/523043 : On Petition
 Filing Date: May 2, 1994 :
 For: BETTER THAN EVER :
 Petition Filed: December 31, 1996 :

Mary Ellis, has petitioned the Commissioner to revive the above identified application. Trademark Rules 2.89(g) and 2.146(a)(3) provide authority for the requested review.

FACTS

A Notice of Allowance issued for the subject application on January 16, 1996. 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 June 19, 1996, Petitioner filed a Request for Extension of Time to File a Statement of Use. In an Office Action dated December 19, 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), 15 U.S.C. §1051 (d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89. This petition followed.

Counsel for Petitioner states that the extension request fee was inadvertently omitted due to a "law office clerical failure."

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).

Accordingly, the petition is denied and the application will remain abandoned. The \$400

submitted for the second extension request and the \$400 submitted with the petition will be refunded in due course.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date:

Attorney for Petitioner:

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