

Re: Trademark Application of :
 Organic Recycling, Inc. :
 Filing Date: December 15, 1994 : On Petition
 Serial No. 74/611263 :
 For: HOME-WORKS :
 Petition Filed: September 13, 1996 :

Organic Recycling, Inc, 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 23, 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. Since no request for an extension of time to file a statement of use or statement of use was received by the required due date, the application was abandoned on July 24, 1996.

Petitioner states that an extension of time to file a statement of use was filed on March 11, 1996, and has provided a copy of the paper.

DECISION

Section 1(d)(2) of the Trademark Act, 15 U.S.C. §1051(d)(2), provides:

The Commissioner shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Commissioner may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a

continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by

payment of the prescribed fee. The Commissioner shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

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, as stated in the statute, certain requirements for an extension of time to file a statement of use are statutory and the Commissioner is without authority to waive them. For example, the paper filed by petitioner did not contain a verified statement by the Applicant (an Administrative Assistant cannot sign as the Applicant) that Applicant had a continued bona fide intent to use the mark in commerce, nor did it specify the goods or services on or in connection with which Applicant has such a bona fide intention to use the mark in commerce. Consequently, even if it had been received by the Trademark Office, the extension of time would have been denied.

Accordingly, the petition is denied. The application will remain abandoned. The \$100 fee submitted for the statement of use will be refunded in due course.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date:

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