

Re: Trademark Application of :
 James A. Sebesta :
 Serial No. 74/626921 :
 Filing Date: January 30, 1995 : On Petition
 For: BUY IT HERE - :
 GIVE IT THERE :
 Petition Filed: March 27, 1997 :

James A. Sebesta, 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 August 6, 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.

Petitioner filed a Request for Extension of Time to File a Statement of Use dated January 6, 1997. Petitioner's Extension Request reads in its entirety as follows:

“I respectfully request the maximum extension of time allowed to file a Statement of Use”.

In an Office Action dated March 4, 1997, the Applications Examiner in the ITU/Divisional Unit denied the extension request because: (1) it was not accompanied by the prescribed fee; (2) it did not include a verified statement that the applicant has a continued bona fide intention to use the mark in commerce, 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; (3) and the papers did not include a verification or declaration, 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. The petition was accompanied by a substitute request for extension of time to file a statement of use dated March 17, 1996.

Petitioner is requesting that the extension request submitted with the petition be granted.

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. As is clear from Petitioner's extension request, cited above, none of the required elements of Section 1(d)(2) were included in the extension request. The requirements of Section 1(d)(2) are statutory, and the Commissioner is without authority to waive them.¹

Accordingly, the petition is denied and the application will remain abandoned. The \$100 submitted with the petition will be applied as the petition fee.

Petitioner may wish to file a new application. This Office will not hold the abandonment of the application as being prejudicial to Petitioner in the filing of a new application. Currently, the application filing fee is \$245.00 per class.

¹ Petitioner notes that the date of the "Notice of Abandonment" was March 5, 1997. Our internal automated tracking system is set up to automatically abandon applications exactly one day after the statutory six month period for filing has expired. Therefore, the fact that the abandonment date appeared as the day after discussion is not relevant to the decision on petition.

Petitioner also suggests that, had he been timely notified of the deficiencies, he would have corrected sham. While the Office regrets that Petitioner was not earlier notified of the deficiencies in the extension request it is the Petitioner who is ultimately responsible for filing proper documents. Although the Office attempts to notify parties as to defective papers to permit timely refileing, it has no obligation to do so. *In re Holland American Wafer Co.*, 737 F.2d 1015, 222 USPQ 273 (Fed. Cir. 1984); *In re Fuller-Jeffrey Broadcasting Corp. of Santa Rosa*, 16 USPQ2d 1456 (Comm'r Pats. 1990).

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date:

Petitioner:

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