

Re: Trademark Application of :  
 R.Z. Manufacturing, Inc. :  
 Serial No. 74/688233 :  
 Filing Date: June 7, 1995 : On Petition  
 For: HONGTASHAN :  
 Petition Filed: April 7, 1997 :

James M. Slattery, Esq. has petitioned the Commissioner to reverse the decision of the Administrator for Trademark Classification and Practice (Administrator) denying a Letter of Protest filed in connection with the above identified application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

## FACTS

The above referenced application was filed on June 7, 1995, and was published for Opposition on December 17, 1996. On February 28, 1997, Petitioner filed a Letter Of Protest which was denied as untimely on March 7, 1997. Petitioner, on behalf of Yu Xi Cigarette Factory, also filed a Request for Extension of Time in which to Oppose on February 28, 1997. This request was denied as untimely on March 26, 1997, by the Trademark Trial and Appeal Board. This petition followed.

## DECISION

The standards for consideration of a Letter of Protest filed after a mark has been published for opposition were enunciated by the Commissioner in the decisions of *In re BPJ Enterprises Ltd.*, 7 USPQ2d 1375 (Comm'r Pats. 1988); *In re Pohn*, 3 USPQ2d 1700 (Comm'r Pats. 1987). A Letter of Protest filed more than 30 days after the date of publication of the subject mark is generally denied as untimely. Even when filed within 30 days of the publication date, a Letter of Protest filed after publication is granted only if supported by evidence which establishes clear error in the examination process. *In re Pohn*, 3 USPQ2d 1700 (Comm'r Pats. 1987).

The Letter of Protest procedure is a creation of neither the Trademark Act nor the Trademark Rules. The Letter of Protest is merely an informal procedure created by and existing at the discretion of the Office. It is not a matter of right.

In determining the timeliness of a Letter of Protest filed after publication, the Office does not consider the merits of the protester's evidence, but looks only to the protester's reasons for the delay in filing the Letter.

Here, Petitioner asserts that the reason it was late in filing the Letter of Protest was because their system for tracking applications published in the Official Gazette did not identify this mark because the translation was incorrect. While it is unfortunate that Petitioner's tracking system did not identify the mark in question, this is an insufficient reason for allowing the delay in filing the

letter of Protest. Furthermore, it appears that Petitioner is prosecuting on behalf of Yu Xi Cigarette Factory, Application Serial Number 74/732,586 filed September 18, 1995, which includes the transliteration of HONGTASHAN. Thus, Petitioner knew or should have known of the significance of the term itself when the mark was published.

The petition is denied. The application file will be forwarded to the Publication and Issue section for issuance of a Notice of Allowance. The petition papers and this decision will not be a part of the application file, but will instead be forwarded to the Administrator to be filed with the Letter of Protest papers.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:JCL

Date:

Petitioner:

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