

Re: Trademark Application of :
 Mara Lindstrom :
 Serial No. 75/092383 :
 Filing Date: April 22, 1996 : On Petition
 For: HEART BREAK HEELERS & :
 Design :
 Petition Filed: December 22, 1997 :

Mara Lindstrom has petitioned the Commissioner to accept a Statement of Use filed in connection with the above referenced application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

Trademark Rule 2.63(b) provides that an applicant may petition the Commissioner for relief from a formal requirement only if the subject matter is appropriate for petition and the requirement is either repeated or made final by the Examining Attorney. Here, the Examining Attorney's refusal to accept the Statement of Use was an initial, non-final refusal, and the refusal therefore would ordinarily not be ripe for a Petition to the Commissioner. However, because there is no possibility that Petitioner can cure the problem identified by the Examining Attorney in a response to the Office action, the requirements of Rule 2.63(b) are waived, and the Petition will be considered.

FACTS

The above identified application was filed on April 22, 1996 by Mara Lindstrom and Kenneth J. Lassman. An Examiner's Amendment issued on October 11, 1996 noted that Ms. Lindstrom and Mr. Lassman filed the application as joint applicants. A Notice of Allowance issued on March 4, 1997, and a Statement of Use was submitted on August 28, 1997. This Statement identified only Ms. Lindstrom as the applicant, and was signed only by Ms. Lindstrom.

In an Office action issued on October 30, 1997, the Examining Attorney rejected the Statement of Use, because it was not filed by both owners of the application. The Office action further noted that the two owners could not submit a substitute Statement of Use, since the time for filing a Statement of Use had already expired.

This Petition followed.

ANALYSIS

“[T]he party filing the statement of use must be the owner of the mark at the time of filing.” TMEP Section 1105.05(f)(i)(A). Here, the Statement of Use was not filed by the “owner” of the mark: it was filed only by one of the two joint owners. Hence, the rejection of the Statement of Use was appropriate.

DECISION

The Petition is Denied.

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

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:AL

Date:

Petitioner:
Ms. Mara Lindstrom
50 School Street
Northborough, MA. 01532

Joint Applicant:
Mr. Kenneth J. Lassman
50 School Street
Northborough, MA. 01532