

Re: Trademark Application of :
 Success Ware, Inc. :
 Serial No. 75/289466 :
 Filing Date: May 9, 1997 : On Petition
 For: SUCCESS WARE INC. :
 SPORTSWEAR and design :
 Petition Filed: April 30, 1998 :

Success Ware, Inc. has petitioned the Commissioner to declare an interference between its above-referenced application and application Serial Nos. 75/283827 and 75/283828, which are owned by Dave L. Hawks. Trademark Rule 2.91, 37 C.F.R. §2.91, provides authority for the petition.

FACTS

On May 9, 1997, Petitioner filed an application based upon use in commerce under Section 1(a) of the Trademark Act. In an Office Action dated March 5, 1998, the Examining Attorney suspended the application pending the disposition of earlier filed Serial Nos. 75/283827 and 75/283828. This Petition followed.

Petitioner states that it has a previously registered word mark¹ and that further prosecution on Serial No. 75/289466 for the word mark and design should not be denied. Petitioner believes the situation shows extraordinary circumstances and warrants an Interference.

DECISION

Trademark Rule 2.91(a), 37 C.F.R. §2.91(a) provides:

An interference will not be declared between two applications or between an application and a registration except upon petition to the Commissioner. Interferences will be declared by the Commissioner only upon a showing of extraordinary circumstances which would result in a party being unduly prejudiced without an interference. In ordinary circumstances, the availability of an opposition or cancellation proceeding to the party will be deemed to remove any undue prejudice.

The fact that examination of Petitioner's mark has been suspended for an indefinite period of time does not constitute an extraordinary circumstance resulting in undue prejudice. Pursuant to Trademark Rule 2.92, 37 C.F.R. §2.92, "[a]n interference which has been declared by the Commissioner will not be instituted by the Trademark Trial and Appeal Board until the Examiner of

¹ Please note that ownership of Petitioner's registered mark has not been made of record in Serial No. 75/289466.

versy are registrable, and all of the marks have been published in the *Official Gazette* for opposi
Trademarks has determined that the marks which are to form the subject matter of the contro
tion.” Thus, even if this Petition were to be granted, no interference could be instituted until all of
the marks had been found to be registrable, but for the existence of the interfering marks.

In addition, interferences are generally limited to situations where a party would otherwise be
required to engage in a series of opposition or cancellation proceedings. An opposition proceed-
ing is the proper forum for determining registerability between two parties.

Petitioner has made no showing of extraordinary circumstances which would result in its being
unduly prejudiced without an interference. Accordingly, the Petition is denied.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:RJD

Date:

Reva Payne, President
Success Ware Inc.
600 S. Cloverdale Ave., #404
Los Angeles, CA 90036