

Re: Trademark Registration of :
 LaserMaster Corporation :
 Registration No. 1,578,738 :
 Issued: January 23, 1990 : On Petition
 For: LM and Design :
 Petition Filed: April 1, 1996 :

LaserMaster Corporation has petitioned the Commissioner to reverse the Affidavit-Renewal Examiner's refusal to accept a Section 8 affidavit filed in connection with the above identified registration. Trademark Rules 2.146(a)(2) and 2.165(b) provide authority for the requested review.

FACTS

The above registration issued on January 23, 1990. Pursuant to Section 8 of the Trademark Act, 15 U.S.C. §1058, Registrant was required to file an affidavit or declaration of continued use or excusable nonuse between the fifth and sixth year after the registration date, i.e., between January 23, 1995, and January 23, 1996.

Petitioner's combined declaration was received in the Office on January 25, 1996, two days beyond the expiration of the statutory period for filing such declarations. In a letter dated March 8, 1996, the Administrative Clerk in the Post Registration Division advised the Petitioner that the declaration could not be accepted because it was filed after the sixth year following the date of registration. Petitioner was further informed that the registration would be cancelled. This petition followed.¹

In its unverified petition,² Petitioner states that the return postcard submitted with the affidavit was returned with the PTO mailroom date stamp of January 25, 1996, and is attributing that to possible delay in the mailroom due to inclement weather conditions that occurred in the area at that time.

DECISION

Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner to waive any provision of the Rules which is not a provision of the statute, where an extraordinary situation exists, justice requires and no other party is injured thereby. However, petitioner did not comply with the statutory requirement of filing an affidavit or declaration during the sixth year after the registration date, and the Commissioner has no authority to extend or waive the statutory period for filing an acceptable affidavit under Section 8 of the Act. *In re Mother Tucker's Food Experience (Canada) Inc.*, 925 F.2d 1402, 17 USPQ2d 1795 (Fed. Cir. 1991); *In re Precious Diamonds, Inc.*, 635 F.2d 845, 208 USPQ 410 (C.C.P.A. 1980); *In re Kruysman, Inc.*, 199 USPQ 110 (Comm'r Pats. 1977); *Ex parte Buchicchio*, 118 USPQ 40 (Comm'r Pats. 1958).

Accordingly, the petition is denied. The registration file will be forwarded to the Post Registration Division for cancellation of the registration. The filing fee for the combined declaration has already been refunded.

Should Petitioner wish to file a new application for registration of its mark, the Office will, upon request, expedite handling of the application. See TMEP §1102.03.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date:

Attorney for Petitioner:

¹ Trademark Rule 2.165(a)(2) states that a request for reconsideration shall be a condition precedent to a petition to the Commissioner to review a refusal of an affidavit, unless the first action refusing the affidavit directs the registrant to petition the Commissioner for relief. However, since the response period had expired, it was reasonable for Petitioner to conclude that such a request would be ineffective.

² Trademark Rule 2.146(c) requires that proof of facts in petitions to the Commissioner shall be made in the form of affidavits or declarations in accordance with Trademark Rule 2.20.