

«seal»

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3513

98-625

Re: Trademark Registration of :
TSR, Inc. :
Registration No. 1,696,043 : On Petition
Issued: June 23, 1992 :
For: AMAZING :
Petition Filed: August 19, 1998 :

TSR, Inc. has petitioned the Commissioner to accept a Combined Section 8 and 15 Affidavit filed in connection with the above identified registration. Trademark Rules 2.146(a)(3), 2.146(a)(5) and 2.148 provide authority for the requested review.

FACTS

The above registration issued on June 23, 1992. 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 June 23, 1997 and June 23, 1998.

No affidavit or declaration was received prior to expiration of the sixth year following the registration date. Registrant filed this petition on August 19, 1998, along with a Combined Declaration under Sections 8 and 15 of the Trademark Act. Petitioner, as the Assignee of the original Registrant, explains that it was not aware of the existence of the subject registration and therefore missed the deadline for filing the Section 8 and 15 Declaration of continued use.

DECISION

Pursuant to Section 8 of the Trademark Act, 15 U.S.C. §1058, a registrant must file an affidavit or declaration of continued use or excusable nonuse between the fifth and sixth year after the date of issuance of the registration. The affidavit or declaration required by Section 8 must be both executed and filed within the sixth year after the registration date. Trademark Rule 2.162(a); TMEP §1603.03.

Trademark Rules 2.146(a)(5) and 2.148 permit the waiver of any rule that is not a provision of the statute, where an extraordinary situation exists, justice requires and no other party is injured

thereby. With respect to the specific circumstances, 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 Kraysman, 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 will be cancelled in due course. The \$200 fee charged to Counsel's deposit account, will be processed for refund. 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.

Robert M. Anderson
Acting Assistant Commissioner
For Trademarks

RMA:NLO:CPS

Date:

Attorney for Petitioner:

Brian E. Lewis, Esq.
Associate General Counsel
Wizards of the Coast, Inc...USA
P.O. Box 707
Renton, WA 98057-0707