

Re: Trademark Registration of :
 Capital Mall Company :
 Registration No. 1,646,263 :
 Issued: May 28, 1991 : On Petition
 For: CAPITAL MALL :
 Petition Filed: September 29, 1997 :

Capital Mall Company has petitioned the Commissioner to accept a Section 8 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 May 28, 1991. 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 May 28, 1996 and May 28, 1997.

On September 29, 1997, Petitioner filed a combined declaration under Sections 8 & 15. Petitioner states that due to a calendaring error the Section 8 declaration of use was filed after the expiration of the sixth year following the registration date.

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.

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).

The Petition is denied. The registration will be cancelled in due course. The \$200 fee for the combined Section 8 & 15 declaration will be 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:RJD

Date:

Attorney for Petitioner:

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