

Re: Trademark Application of  
Visa International Service  
Association

Serial No. 74/556506

On Petition

Filing Date: August 3, 1994

For: IT'S ME

Petition Filed: September 5, 1996

Visa International Service Association, has petitioned the Commissioner to revive the above identified application. Trademark Rules 2.89(g) and 2.146(a)(3) provide authority for the requested review.

### FACTS

A Notice of Allowance issued for the subject application on January 16, 1996. Pursuant to Section 1(d) of the Trademark Act, a Statement of Use, or Request for an Extension of Time to File a Statement of Use, was required to be filed within six months of the mailing date of the Notice of Allowance.

On July 15, 1996, Petitioner filed a Request for Extension of Time to File a Statement of Use. In an Office Action dated August 27, 1996, the Applications Examiner in the ITU/Divisional Unit denied the extension request because it was not accompanied by the prescribed fee, as required by Trademark Act Section 1(d)(2), 15 U.S.C. §1051(d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89. This petition followed.

Petitioner states that "the request was accidentally mailed without instructions for payment of the fee."

### DECISION

Section 1(d)(2) provides: "any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee."

Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner to waive any requirement of the rules, not being a requirement of the statute, in an extraordinary circumstance, when justice requires and no other party is injured. However, the requirement to submit the fee with the extension request is statutory and the Commissioner is without authority to waive it. *In re Statis plc*, USPQ2d 1529 (Comm'r Pats. 1992).

Accordingly, the petition is denied and the application will remain abandoned. The \$100 fee for the second extension request, charged to deposit account number 22-0384, will be refunded in due course.

Philip G Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:CPS

Date:

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<sup>1</sup> Cancellation Proceeding No. 18,304 was instituted by Ching Kee Egg Rolls Co., Ltd. to cancel Registration No.