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

98-359

Re: Trademark Application of :
Authentic Fitness Products, Inc. :
Serial No. 74/562331 :
Filing Date: August 18, 1994 : On Petition
For: PLANET SNOW :
Petition Filed: April 23, 1998 :

Authentic Fitness Products, Inc, has petitioned the Commissioner to revive the above identified application. The petition is denied under Section 1(d)(2).

FACTS

A Notice of Allowance issued for the subject application on September 19, 1995. 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 February 13, 1998, Petitioner filed a Request for Extension of Time to File a Statement of Use. The request was not signed by Applicant. In an Office Action dated April 7, 1998, the Legal Instruments Examiner in the ITU/Divisional Unit denied the extension request because the statement of continued bona fide intention to use the mark in commerce had not verified by the applicant. This petition followed.

Counsel for Petitioner states that the page containing the signature of the Applicant was not included with the extension request because of a clerical error.

DECISION

Section 1(d)(2) of the Trademark Act, 15 U.S.C. §1051(d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89, require that a Request for an Extension of Time to File a Statement of Use be verified by the applicant. This is a statutory requirement that must be satisfied before expiration of the time for filing the Statement of Use. TMEP §1105.05(d). See *In re Hoffmann-La Roche Inc.*, 25 USPQ2d 1539 (Comm'r Pats. 1992); *In re Raychem Corp.*, 20 USPQ2d 1355 (Comm'r Pats. 1991).

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, the Commissioner has no authority to waive a requirement of the statute. Since the requirement that the extension request be verified by the applicant is statutory, it cannot be waived by the Commissioner.

Accordingly, the petition is denied. The application will remain abandoned.

Philip G. Hampton, II
Assistant Commissioner
for Trademarks

PGH:NLO:CPS

Date:

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