

Trademark Application of :  
 Make it Happen Entertainment :  
 Serial No. 74/61010 : On Petition  
 Filing Date: October 6, 1994 :  
 For: THE CELEBRITY SELL-A- :  
 VISION NETWORK :  
 Petition Filed: January 19, 1996 :

Make it Happen Entertainment has petitioned the Commissioner to reverse the decision of the Legal Assistant at the Trademark Trial and Appeal Board denying a request for an extension of time to file a notice of opposition to the registration of the above referenced mark. Trademark Rule 2.146(a)(3) provides authority for the requested review. The petition is denied under Trademark Rule 2.102(c), 37 C.F.R. §2.102.

## FACTS

The above-referenced mark published for opposition in the *Official Gazette* on August 22, 1995. Pursuant to Section 3 of the Trademark Act, Petitioner filed three timely requests for extensions of time to file a Notice of opposition. The requests were all granted, affording Petitioner until December 20, 1995 (120 days from the date of publication of the mark), to file an opposition.

On December 15, 1995, Petitioner filed a fourth request for extension of time to file a Notice of opposition. By letter dated December 21, 1995, the Legal Assistant at the Trademark Trial and Appeal Board informed Petitioner that the extension request filed December 15, 1995, if granted, would result in total extensions of time aggregating more than 120 days from the date of publication of the mark and, therefore, could not be granted, because Petitioner's request neither recited extraordinary circumstances nor indicated that applicant had consented to the extension.

In the petition that followed, Petitioner contends that its use of an allegedly similar mark for services rendered overseas, its pending foreign trademark applications and registrations, and its pending U.S. trademark application filed based on a bona fide intent-to-use the mark clearly demonstrate extraordinary circumstances to allow for a fourth extension of time to oppose Applicant's mark.<sup>1</sup>

## DECISION

Rule 2.102(c) requires that a request for an extension of time aggregating more than 120 days from the date of publication include a showing of extraordinary circumstances, or a showing of good cause together with either (1) a written consent signed by the applicant, or (2) a written request by the potential opposer or its attorney, stating that applicant had consented to the

<sup>1</sup> Applicant for the above-identified application filed papers, January 24, 1996, in response to this petition. Applicant contends that granting the fourth extension request would prejudice Applicant's rights.

request and including proof of service on the applicant. one of these requirements must be included in the extension request and must be filed within the statutory time period for filing such a request. See *In re Su Wung Chong dba Mido Trading Co.*, 20 USPQ2d 1399 (Comm'r Pats. 1991); *In re Software Development Systems Inc.*, 17 USPQ2d 1094 (Comm'r Pats. 1990).

Petitioner did not raise matters of extraordinary circumstances until the petition was filed, consequently, those factors cannot be considered. See *In re Su Wung Chong dba Mido Trading Co.*, 20 USPQ2d 1399 (Comm'r Pats. 1991). Moreover, Applicant did not consent to Petitioner's fourth request for additional time to file an opposition as evidenced by Applicant's objection filed in response to the petition requesting that the extension request be granted. Since Petitioner did not satisfy any of the requirements of Trademark Rule 2.102(c), 37 C.F.R. §2.102(c) for extending the time to file an opposition beyond 120 days, the fourth extension request was properly denied.

The petition is denied. The application file will be returned to the Trademark Trial and Appeal Board and then forwarded to the ITU/Divisional Unit to await the filing of a Statement of Use.<sup>2</sup>

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:CLB

Date:

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<sup>2</sup> The Notice of Allowance was mailed October 15, 1996.