

Re: Trademark Application of :  
 John B. Brandreth, III :  
 Serial No. 74/655820 :  
 Filing Date: April 4, 1995 : On Petition  
 For: HYDROBLEND :  
 Petition Filed: November 15, 1996 :

John B. Brandreth, III, has petitioned the Commissioner to accept a Statement of Use filed in connection with the above application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

A Notice of Allowance issued for the subject application on January 30, 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 April 29, 1996, Petitioner filed a Statement of Use. In an Office Action dated September 17, 1996, the Applications Examiner in the ITU/Divisional Unit notified Petitioner that the papers submitted April 29, 1996, did not comply with the minimum requirements for filing a Statement of Use, because the prescribed fee, as required by Trademark Rule 2.88(e)(1), had not been submitted. This petition followed.

Counsel for Petitioner declares that the \$100 fee for the Statement of Use was omitted through inadvertence.

## **DECISION**

Section 1(d)(1) of the Trademark Act, 15 U.S.C. §1051(d)(1), provides, in part, that:

Within six months of the issuance of the notice of allowance ... the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Commissioner and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce, and the mode or manner in which the mark is used on or in connection with such goods or services.

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 a Statement of Use be accompanied by a filing fee is statutory, it cannot be waived by the Commissioner. *In re L.R Sport, Inc.*, 25 USPQ2d 1533 (Comm'r Pats. 1992).

Accordingly, the petition is denied. The application will remain abandoned. The fee of \$200 for the Statement of Use submitted with the petition, will be refunded in due course.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:CPS

Date:

Attorney for Petitioner:

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