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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

99-265

Re: Trademark Application of :
Ray Sturdivant :
Serial No: 75/084317 :
Filing Date: April 5, 1996 : On Petition
For: HIGH TAIL AND DESIGN :
Petition Filed: February 22, 1999 :

Ray Sturdivant has petitioned the Commissioner to reverse the denial of a Request for Extension of Time to File a Statement of Use in connection with the above identified application. 37 C.F.R. §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 September 23, 1997. 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 September 23, 1998, Petitioner filed a Second Request for Extension of Time to File a Statement of Use. In an Office Action dated January 22, 1998, the Applications Examiner in the ITU/Divisional Unit denied the extension request because (1) it was not accompanied by the prescribed fee, as required by 15 U.S.C. §1051(d)(2) and 37 C.F.R. §2.89; and (2) it did not include a showing of good cause, as required by 15 U.S.C. §1051(d)(2), and 37 C.F.R. §2.89(b)(4). Petitioner was advised that, since the period of time within which to file an acceptable extension request or Statement of Use had expired, the application would be abandoned in due course.

DECISION

Under the policy set forth in *El Taurino Restaurant, Inc.* 41 USPQ2d 1220 (Comm'r Pats. 1996), a showing of good cause filed after expiration of the statutory period can be accepted only upon petition to the Commissioner.

However, Section 1(d)(2) of the Trademark Act specifically requires that the extension request be filed within six months of the date of issuance of the notice of allowance, or within a previously approved extension period, and that it "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 Stakis plc*, USPQ2d 1529 (Comm'r Pats. 1992).

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

Robert M. Anderson
Acting Assistant Commissioner
for Trademarks

RMA:NLO:SMW

Date:

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