

Re: Trademark Application of :  
 Joseph B. Krastel :  
 Serial No. 75/169,347 :  
 Filing Date: September 20, 1996 : On Petition  
 For: JUST LAX'N & Design :  
 Petition Filed: March 3, 1998 :

Joseph B. Krastel has petitioned the Commissioner to accept a Statement of Use filed in connection with the above referenced application. The Petition is denied under Trademark Rule 2.146(a)(3).

### FACTS

A Notice of Allowance issued for the subject application on June 24, 1997. Petitioner was required to file a Statement of Use, or a Request for an Extension to File a Statement of Use within six months of that date, and a Statement of Use was filed on December 24, 1997.

In a letter dated February 19, 1998, the Legal Instruments Examiner advised Petitioner that the Statement of Use was unacceptable, because the Statement did not include at least one specimen. This deficiency could not be cured, because the time within which to submit a complete Statement of Use had expired.

This petition followed. Petitioner's counsel asserts that it cannot determine whether it inadvertently neglected to omit the specimens, or whether the specimens were submitted but misplaced at the Office.

### DECISION

The Commissioner may 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. Trademark Rules 2.146(a)(5) and 2.148, 37 C.F.R. §§2.146(a)(5) and 2.148. However, the Commissioner has no authority to waive a requirement of the statute. *In re Culligan International Co.*, 915 F.2d 680, 16 USPQ2d 1234 (Fed. Cir. 1990); *In re Raychem Corp.*, 20 USPQ2d 1355 (Comm'r Pats. 1991). Because the requirement that a Statement of Use be accompanied by at least one specimen is statutory, the requirement cannot be waived by the Commissioner. TMEP §1105.05(e)(iii). *In re Campbell*, 33 USPQ2d 1055 (Comm'r Pats. 1993).

Because Petitioner has not demonstrated that it complied with this requirement, the application will remain abandoned.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks  
PGH:NLO:AL

Date:

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