Commissioner of Patents and Trademarks
Patent and Trademark Office (P.T.O.)

RE: TRADEMARK REGISTRATION OF ATLANTA BLUE PRINT CO. A/K/A A & E REPROGRAPHIC
AND SUPPLY COMPANY
89-267
September 12, 1990
***1** Petition Filed: December 11, 1989 [FN1]

For: A & E REPROGRAPHIC AND SUPPLY COMPANY
Registration No. 1,237,604
Issued: May 10, 1983

Attorney for Petitioner

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Jeffrey M. Samuels

Assistant Commissioner for Trademarks

On Petition

Atlanta Blue Print Co. a/k/a A & E Reprographic and Supply Company has petitioned the Commissioner, pursuant to 37 C.F.R. § 2.146 for acceptance of its declaration under Sections 8 and 15 of the Trademark Act.

The above registration issued on May 10, 1983. Pursuant to Section 8 of the Trademark Act, registrant was required to file an affidavit or declaration of continued use or excusable nonuse between the fifth and sixth year after the registration date, i.e., between May 10, 1988 and May 10, 1989.

On May 1, 1989, Atlanta Blue Print & Graphics Company timely filed a combined declaration under Sections 8 and 15 of the Act. In a letter mailed August 16, 1989, the Affidavit-Renewal Examiner withheld acceptance of the declaration because the records in the Assignment Branch show that the registration is owned by the original registrant, Atlanta Blue Print Co., rather than the present claimant.

Petitioner responded on September 18, 1989, by advising the Examiner that the name in the declaration is registrant's tradename, and requested the Examiner to amend the declaration to reflect the proper entity, Atlanta Blue Print Co. On October 24, 1989, the Examiner notified petitioner that the declaration could not be amended, and further, a substitute declaration could not be submitted because the statutory period for filing an acceptable Section 8 declaration had expired. This petition followed.

Petitioner has provided a declaration, pursuant to 37 C.F.R. § 2.20, executed by its counsel, in which he declares that the combined Section 8 and 15 declaration inadvertently and mistakenly set forth the trade name of registrant, rather than the corporate name of registrant.

Trademark Rule 2.146(a)(3) permits the Commissioner to invoke supervisory authority in appropriate circumstances. However, the Commissioner will reverse the action of an Examiner in a case such as this only where there has been a clear error or abuse of discretion. In re Richards-Wilcox Manufacturing Co., 181 USPQ 735 (Comm'r Pats.1974); Ex parte Peerless Confection Company, 142 USPQ 278 (Comm'r Pats.1964). For the reasons given below, the present circumstances do demonstrate clear error by the Examiner.

The facts presented in the petition indicate that Atlanta Blue Print & Graphics Company is a trade name for petitioner, and therefore, not a separate legal entity. This situation is analagous to instances where applications are filed in which the name of applicant is incorrectly set out "using its alternative name under which it does business, rather than its legal corporate name." In those cases, the application is considered properly filed by the applicant and Trademark Manual of Examining Procedure, (TMEP), Section 1201.01(b) permits amendment to the correct party in interest. In addition, the policy in the Post Registration Section is to accept an amendment to the name of the registrant in a case where the trade name is inadvertently substituted for the corporate name. In this case the requirement of Section 8 that the affidavit or declaration be filed by the registrant has been met. Counsel's declaration adequately explains the error made and that error is not fatal to the acceptability of the Section 8 declaration.

***2** The petition is granted to the extent that the original declaration is accepted as timely filed by registrant. The registration file will beforwarded to the Affidavit-Renewal Examiner for further action in accordance with this decision. Because the petition was necessitated by an Office error, the fee require under 37 C.F.R. § 2.6(k) is waived and will be refunded.

FN1. The petition was perfected by payment of the fee required under 37 C.F.R. § 2.6(k) on May 8, 1990.

19 U.S.P.Q.2d 1078

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