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

RE: TRADEMARK APPLICATION OF FULLER-JEFFREY BROADCASTING CORPORATION OF SANTA
ROSA
Serial No. 74/018,739 [FN1]
June 5, 1990
***1** Petition Filed: March 16, 1990

For: THE HEAT
Filing Date: January 16, 1990 [FN2]

Attorney for Petitioner

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Assistant Commissioner for Trademarks

On Petition

Fuller-Jeffrey Broadcasting Corporation of Santa Rosa has petitioned the Commissioner to waive the drawing requirements of 37 C.F.R. § 2.52 and to reinstate the original filing date for the above-referenced application.

Petitioner filed the subject application on January 16, 1990. By letter dated February 23, 1990, the Supervisor of the Trademark Application Section refused to accept the papers because the drawing exceeded the size limitations of Trademark Rule 2.52. The application papers were returned and the filing fee was scheduled for refund. [FN3] This petition followed.

Petitioner has submitted a copy of the original application papers. A review of the papers reveals that the mark was represented on the drawing page in a 4 7/8 " by 3/4 " rendition.

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.

Trademark Rule 2.21 concerning requirements for receiving a filing date provides:

> (3) A drawing of the mark sought to be registered substantially meeting all the requirements of Section 2.52.

Trademark Rule 2.52(c) permits the size of the drawing "in no case" to be larger than 4 inches by 4 inches. Petitioner argues that

Trademark Rule 2.21(a)(3) requires only "substantial" compliance with Rule 2.52, and "[t]his qualifying language was included in the rules in recognition that overzealous enforcement of the drawing guidelines could result in marks being excluded from the trademark registration system for mere "technicalities.' See 51 FR 29920-02, Dkt. No. 60729-6129 (August 21, 1986)."

The drawing rule was amended, effective September 22, 1986 "to reduce the computer system storage space required for drawings; to insure that all applications which are filed can be searched under the automated search system; [and] to insure that drawings can be faithfully reproduced by photocomposition techniques...." 51 FR 29920. In response to a stated fear of overzealous enforcement of the amended rules, with marks being excluded from the trademark registration system because of technicalities, the Office responded that it "will make every effort to interpret the rule sensibly, and will accord an application a filing date as long as the drawing meets the size restrictions and consists of black lines on white paper, without gray or half tones." 51 FR 29921. (emphasis added)

***2** On May 2, 1989, a notice was published in the Official Gazette which advised that:

> Effective July 3, 1989, the requirement of Trademark Rule 2.52(c) ... that drawings in trademark applications be limited in size to 4 inches by 4 inches will be strictly enforced for the purpose of assigning a filing date....
>
> The drawing size limitation is necessary to permit entry of the drawing in the automated trademark search system (T-Search) as soon as possible after receipt of the application by the Patent and Trademark Office (PTO). Oversized or poor quality drawings require additional processing before they can be digitized (copied) and entered in T-Search. If the PTO must reduce a drawing, not only is there often a loss of detail and overall drawing quality, but drawing reduction processing lengthens the time before the mark and the information about the application are available to the public....

The notice went on to explain that with implementation of the Trademark Law Revision Act of 1988, on November 16, 1989, for "all applications filed on or after [that date], upon the registration of a mark on the Principal Register, the application filing date becomes a constructive date of first use of the mark.... Therefore, expedited processing to permit timely public notification of the filing of an application on the Principal Register will be particularly important."

Petitioner states that the Office did not send notice of the unacceptable drawing until February 23, 1990, and because the notice was improperly addressed, petitioner did not learn of the refusal until seven weeks after the application was filed. While the Office regrets that notification of the deficiency was delayed, the responsibility to file proper documents rests with the petitioner. Although the Patent and Trademark Office attempts to notify parties as to defective papers to permit timely refiling, it has no obligation to do so. In re Holland American Wafer Co., 222 USPQ 273 (Fed.Cir.1984).

The petition is denied.

FN1. This serial number has been declared "misassigned" and will not be reassigned to this application. Another application for this mark was filed on March 9, 1990 and received a serial number of 74/044,704.

FN2. The filing date is the issue on petition.

FN3. Petitioner states that it resubmitted the application papers on March 9, 1990, and substituted a new drawing of the mark in typed form.

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