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

RE: TRADEMARK APPLICATION OF MOISTURE SYSTEMS CORPORATION
95-286
September 29, 1995
***1** Petition Filed: November 14, 1994

Trademark: SPECTRAL-SCAN
Serial No.: 74/337601
Filing Date: December 7, 1992

Philip G. Hampton, III

Assistant Commissioner for Trademarks

On Petition

Moisture Systems Corporation has petitioned the Commissioner to revive the above identified application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

Facts

On August 15, 1994, Petitioner filed a Request for Extension of Time to File a Statement of Use. The request was signed by "John E. Toupal, Attorney for Applicant". In an Office Action dated October 21, 1994, the Applications Examiner in the ITU/Divisional Unit denied the extension request because the statement of continued bona fide intention to use the mark in commerce had not been signed by a president, vice-president, secretary or treasurer or other officer of the corporate applicant. Petitioner was given 30 days from the mailing date of the Office Action to show (1) that John E. Toupal had color of authority to sign the extension request on behalf of the applicant within the meaning of 37 C.F.R. Section 2.71(c); and (2) submit an affidavit or declaration signed by someone with statutory authority to sign the paper, verifying the facts stated in the extension request. In re IMI Cornelius, Inc., 33 U.S.P.Q.2d 1062 (Comm'r Pats.1994); Trademark Rule 2.71(c), 37 C.F.R. Section 2.71(c); TMEP section 803.

On November 14, 1994, Petitioner filed a response to the Office Action of October 21, 1994. Petitioner submitted a Substitute First Request for an Extension of Time to file a Statement of Use, signed by the president of the applicant; a Statement of Use, also signed by the president of the applicant corporation; an affidavit from Roger E. Carlson, president of the applicant corporation, wherein he stated that John E. Toupal "received from me firsthand knowledge of the truth of the statements in the Request for Extension of Time filed on August 15, 1994, and had actual authority to act on behalf of the applicant."

On June 12, 1995, the ITU/Divisional Unit Applications Examiner reviewed Petitioner's November 14, 1994, response and determined that Petitioner's response still did not show that John E. Toupal had color

of authority within the meaning of Trademark Rule 2.71(c), 37 C.F.R. Section 2.71(c). Petitioner's application was abandoned.

Decision

Section 1 of the Trademark Act requires that an application by a corporation be signed by a corporate officer. 15 U.S.C. § 1051; 37 C.F.R. § 2.32(a). An officer is a person who holds an office established in the articles of incorporation or the corporate by-laws. In order to decide whether an application or other document, such as an extension request to file a Statement of Use, is acceptable, the Applications Examiner must determine (1) whether the person who signed the extension request is an officer of the corporation, and (2) if the signatory is not an officer, whether he or she had color of authority to sign the extension request. TMEP § 803.

***2** Persons having color of authority are those who have (1) actual or implied authority to act on behalf of applicant, and (2) firsthand knowledge of the truth of the statements in the application, extension request or Statement of Use. Both of these elements must be satisfied in order for the Office to accept applicant's Substitute First Extension Request and the Statement of Use filed on November 14, 1994.

An applicant's private attorney is ordinarily not regarded as possessing color of authority to sign on behalf of the applicant. Private attorneys do not usually have firsthand knowledge of a client's business or the authority to act on behalf of a client, other than as a legal representative. TMEP § 803.

In this case Roger E. Carlson, as president of the applicant corporation, clearly has firsthand knowledge of the daily operations of the corporation as well as the facts stated in the trademark application or extension request. The fact that Mr. Carlson relates his knowledge to his attorney does not make the attorney have firsthand knowledge of the facts. The attorney's knowledge is secondhand, that is, "obtained, borrowed or derived from another." Webster's II New Riverside University Dictionary, 1054 (1984).

The Power of Attorney filed with the application did not give Mr. Toupal express authority to sign documents intended for signature by an officer of the corporation. Secondly, Mr. Toupal did not meet the second element of having the requisite firsthand knowledge of the business of the applicant corporation.

Pursuant to Trademark Rule 2.89, 37 C.F.R. § 2.89, any Request for an Extension of Time to File a Statement of Use must be verified by the applicant. Because the extension request must include a statement of a continued bona fide intention to use the mark in commerce, only those individuals who possess statutory authority to sign the original application are permitted to sign the request unless a sufficient showing of "color of authority" is presented. An extension request signed by any other party must be denied. TMEP § 1105.05(d).

The petition is denied. The application is abandoned.

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