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

RE: TRADEMARK APPLICATION OF SUMMIT WORLD TRADE CORPORATION
93-10
March 1, 1993
***1** Petition Filed: October 21, 1992

For: SUMMIT and Design
Serial No. 74-136863
Filing Date: February 6, 1991

Robert M. Anderson

Acting Assistant Commissioner for Trademarks

On Petition

Summit World Trade Corporation 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 identified application. Trademark Rules 2.89(g) and 2.146(a)(3) provide authority for the requested review.

On August 26, 1992, petitioner timely filed its first Request for Extension of Time to File a Statement of Use. The request was signed by Mr. Phillip Contreras, General Counsel. In a telephone conversation on September 15, 1992, the petitioner was notified by the Applications Examiner in the ITU/Divisional Unit that the request for extension would be denied since it was not signed by an officer of the applicant corporation. On September 18, 1992, the petitioner submitted, by facsimile transmission, a Certificate of Incumbency stating that Mr. Contreras is a duly elected Officer. However, in an Office action dated September 25, 1992, the Applications Examiner in the ITU/Divisional Unit formally 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 of the corporate applicant. Petitioner was advised that, since the period of time within which to file an acceptable extension request had expired, the application would be abandoned in due course. Subsequently, the application was in fact abandoned, effective September 4, 1992.

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 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.

Pursuant to Trademark Rule 2.89(a)(3), 37 C.F.R. § 2.89(a)(3), any request for extension of time in which to file a Statement of Use must be verified by the applicant. Because the 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 extension request. The request is denied if it is signed by anyone without statutory authority to sign. In the case of a corporation, the extension request must be signed by an officer.

In this case, the Applications Examiner correctly noted that the extension request must be signed by a corporate officer, and that the title General Counsel is unacceptable on its face. Moreover, rather than simply denying the extension request without sufficient information, the Applications Examiner properly telephoned the applicant and asked whether the signer was an officer. The affirmative answer could have been noted to the file, and could have been a sufficient basis for granting the extension request. Only if the signer was not an officer should there have been a written denial of the extension request. The Applications Examiner improperly required that the only acceptable signatories are those with the title "president", vice-president", Secretary" or "treasurer".

***2** The Applications Examiner further erred by rejecting the Certificate of Incumbency without inquiry. The Certificate of Incumbency, submitted via facsimile transmission on September 18, 1992, stated that the individual who signed the extension request "is a duly elected officer of the corporation...." By phoning counsel, the Applications Examiner could have determined if the signer was, in fact, an officer at the time the extension request was executed. Again, an affirmative response could have been noted in the file and would have been a sufficient basis for granting the extension request. In this case, the signer of the extension request was an officer of the corporate applicant since April 4, 1991 and, therefore, the request was in compliance with Rule 2.89(a)(3).

The petition is granted. The application will be revived and the file will be forwarded to the ITU Division for processing. Because the petition was necessitated by an Office error, the petition fee required by Trademark Rule 2.6(a)(15) is waived and will be refunded in due course.

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