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

RE: TRADEMARK APPLICATION OF L.R. SPORT, INC.
92-157
September 1, 1992
***1** Petition Filed: March 23, 1992

For: COLLUSION
Serial No. 74/084,223
Filing Date: August 2, 1990

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On Petition

L.R. Sport, Inc. has petitioned the Commissioner to reinstate the above identified application. The petition will be considered pursuant to Trademark Rule 2.146(a)(3).

The subject mark was published for opposition on May 28, 1991. When no opposition was filed, a Notice of Allowance issued on August 20, 1991, for this intent-to-use application. Pursuant to Section 1(d) of the Act, a Statement of Use, or request for an extension of time to file a Statement of Use, was required to be filed within six months of the mailing date of the Notice of Allowance.

On September 4, 1991, petitioner filed a Statement of Use. In an Office action dated March 17, 1992, the Applications Examiner in the ITU/Divisional Unit notified petitioner that the papers submitted September 4, 1991 did not comply with the minimum requirements for filing a Statement of Use, because the prescribed fee, as required by Trademark Rule 2.88(e)(1), had not been submitted. Petitioner was advised that, since the period of time within which to file an acceptable Statement of Use had expired, the application would be abandoned in due course. Subsequently, the application was in fact abandoned, effective February 22, 1992. This petition was filed, March 23, 1992, requesting reinstatement of the application.

Section 1(d)(1) of the Trademark Act, 15 U.S.C. § 1051(d)(1), provides, in part, that:

> Within six months of the issuance of the notice of allowance ... the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Commissioner and payment of the

prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce, and the mode or manner in which the mark is used on or in connection with such goods or services (emphasis added).

Trademark Rule 2.88(e), 37 C.F.R. § 2.88(e), sets forth the minimum requirements that a Statement of Use must meet before it can be referred to an examining attorney for examination. Trademark Rule 2.88(e)(1) requires that the application be accompanied by "[t]he fee prescribed in § 2.6." Trademark Rule 2.6(a)(3) sets the fee for filing a Statement of Use at $100 per class.

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. However, the Commissioner has no authority to waive a requirement of the statute. In re Culligan International Co., 915 F.2d 680, 16 U.S.P.Q.2d 1234 (Fed.Cir.1990); In re Raychem Corp., 20 U.S.P.Q.2d 1355 (Comm'r Pats.1991).

***2** Because the requirement for timely payment of the fee for filing a Statement of Use is set by statute, the Commissioner has no authority to waive it. Furthermore, even if the requirement were not statutory, the circumstances presented here do not justify a waiver of the rules. An oversight or inadvertent omission is not an extraordinary situation, within the meaning of Rules 2.146(a)(5) and 2.148. In re Tetrafluor Inc., 17 U.S.P.Q.2d 1160 (Comm'r Pats.1990); In re Choay S.A., 16 U.S.P.Q.2d 1461 (Comm'r Pats.1990); In re Bird & Son, Inc., 195 USPQ 586 (Comm'r Pats.1977).

Petitioner asserts that abandonment is "unfair" in the instant case, because it was not notified of the statutory deficiency until after expiration of the period for filing the Statement of Use. However, while the 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., 737 F.2d 1015, 222 USPQ 273 (Fed.Cir.1984); In re Fuller-Jeffrey Broadcasting Corp. of Santa Rosa, 16 U.S.P.Q.2d 1456 (Comm'r Pats.1990). The applicant is ultimately responsible for filing proper documents.

The petition is denied. The application is abandoned.

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