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

RE: TRADEMARK APPLICATION OF CONSERVATION TECHNOLOGY INC.
Serial No. 74/038,919
July 15, 1992
***1** Petition Filed: January 31, 1992

For: FLUSHBUSTER
Filing Date: March 16, 1990

Attorney for Petitioner

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Assistant Commissioner for Trademarks

On Petition

Conservation Technology Inc. has petitioned the Commissioner to revive the above-captioned application which was abandoned for failure to file a statement of use in compliance with 37 C.F.R. § 2.88(e). Trademark Rule 2.146(a)(3) provides authority for review of this petition.

The above-identified application was filed on March 16, 1990, based upon a bona fide intention to use the mark in commerce, pursuant to Section 1(b) of the Trademark Act. After approval by the Examining Attorney, the mark was published for opposition on January 15, 1991. A Notice of Allowance was mailed on April 9, 1991.

Within six months of the mailing of the Notice of Allowance, petitioner filed its Statement of Use, required under Section 1(d)(1) of the Trademark Act. The Statement of Use was rejected by the Application Examiner in the ITU/Divisional Unit as not meeting the minimum requirements for filing a statement of use because "[t]he papers do not include a verification or declaration signed by the applicant stating that the mark is in use in commerce, as required by Trademark Rule 2.88(e)(3), 37 C.F.R. Section 2.88(e)(3)."

Petitioner submitted a substitute Statement of Use within the remaining statutory period, however, this was rejected, on December 4, 1991, because the applicant did "not state that the mark is now being used in commerce as required by Trademark Rule 2.88(e)(3), 37 C.F.R. Section (e)(3). (emphasis in the original) Since there was no time remaining in which to file an acceptable statement of use, petitioner was notified that the application would be processed for abandonment. The application was abandoned on October 10, 1991. This petition followed.

Trademark Rule 2.146(a)(3) permits the Commissioner to invoke

supervisory authority in appropriate circumstances such as this. Section 1(d)(1) of the Trademark Act and Trademark Rule 2.88(b)(1) require applicant to provide "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."

The statement of use, submitted for this application, sets forth the dates- of-use as follows:

As such, these labels have been:

1. In use in commerce at least since:
4/12/1990
2. Have been in interstate commerce at least since:
7/14/1990

Petitioner maintains that use of the word "since" fulfills the requirement of the statute and the rule to state thatthe mark is in use in commerce. Petitioner has furnished definitions of "since" to support this argument.

See e.g., Webster's 7th New Collegiate Dictionary, G. & C. Merriam Company. (Springfield, MA.1969), at page 811. "Since ... 1) From a definite past time until now...."

***2** Petitioner's arguments are persuasive, inasmuch as the word "since," used in this manner, means that the mark is currently in use in commerce. The statement of use has met the minimum filing requirements of Rule 2.88(e).

The petition is granted. The application file will be returned to the ITU/Divisional Unit for revival and action in accordance with this decision. The file will then be forwarded to the Examining Attorney for examination of the statement of use.

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