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

RE: TRADEMARK APPLICATION OF MICHAEL R. PAULSEN
Serial No. 74/513,487 [FN1]
May 30, 1995
***1** Petition Filed: December 23, 1994

For: SCRAM!

Philip G. Hampton, II

Assistant Commissioner for Trademarks

On Petition

Michael R. Paulsen has petitioned the Commissioner to accord a filing date of April 18, 1994, to the above identified application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

FACTS

On April 18, 1994, Petitioner filed an application for registration of the above identified mark, pursuant to Section 1(b) of the Trademark Act, based upon Petitioner's bona fide intent to use the mark in commerce. In a letter dated May 21, 1994, the Project Manager of the General Accounting Division notified Applicant that the check for the filing fee had been returned by the bank as "unpaid" and that the filing fee should be resubmitted, along with a $50 processing fee for processing the unpaid check. Petitioner declares that this letter was never received, although a copy of the letter was submitted with the Petition.

The papers were initially serialized and accorded a filing date of April 18, 1994. Subsequently, the application serial number was declared "misassigned" and the application materials were returned to Petitioner, along with a Notice of Incomplete Trademark Application dated November 21, 1994, which indicated that the application was defective because the filing fee was deficient. Trademark Rule 2.21. This petition followed.

Petitioner declares that the check for the application filing fee was drawn on a bank account that had been closed for business reasons. According to Petitioner's declaration, the identifying name on the account was "already being used," and thus Petitioner decided to change this name. The bank would not let him change the name without also changing the bank account number, so Petitioner kept the old account open for two weeks so that all outstanding checks could clear. However, the check for the application filing fee was transacted after the old account had closed. Petitioner argues that the Office did not promptly notify him or his attorney of the defect in the application.

DECISION

Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner, in certain circumstances, to waive any provision of the Rules which is not a provision of the statute. However, Section 1 of the Trademark Act and Trademark Rule 2.21(a)(7) require the submission of a filing fee for at least one class of goods before an application can be accorded a filing date; thus, this is a statutory requirement which cannot be waived by the Office. Because the application in question did not include the required fee, it was correctly denied a filing date and returned to Petitioner.

While it is unfortunate that Petitioner was not notified of the fee deficiency earlier in time, it is the Petitioner who is ultimately responsible for filing proper documents. Although the Office attempts to notify parties as to defective papers to permit prompt 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). Furthermore, Petitioner should have known that the check for the application filing fee had not been negotiated by the Office at the time his old account was closed.

***2** Accordingly, the Petition is denied. The application papers will be forwarded to the Mail Room for serialization, and will be accorded a filing date of March 20, 1995, the date the application filing fee was submitted on Petition.

FN1. The serial number has been declared "misassigned" and will not be reassigned to the application.

35 U.S.P.Q.2d 1638

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