

Re: Trademark Application of :  
 New England Corporate Computer :  
 Commodities, Inc. :  
 Serial No. 75/142301 :  
 Filing Date: July 30, 1996 : On Petition  
 For: MEMORY, ETC. :  
 Petition Filed: May 4, 1998 :

New England Corporate Computer Commodities, Inc has petitioned the Commissioner to accept a Statement of Use filed in connection with the above application. Trademark Rule 2.146(a)(3) provides authority for the requested review.

## **FACTS**

A Notice of Allowance issued for the subject application on August 26, 1997. Pursuant to Section 1(d) of the Trademark 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 December 2, 1997, Petitioner filed a Statement of Use. In an Office Action dated April 7, 1998, the Legal Instruments Examiner in the ITU/Divisional Unit notified Petitioner that the papers submitted December 2, 1997, 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.

This Petition followed. Petitioner states that its corporate counsel changed and Petitioner was not aware of all the requirements necessary for filing a Statement of Use.

## **DECISION**

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. Since the requirement that a Statement of Use be accompanied by a filing fee is statutory, it cannot be waived by the Commissioner. *In re L.R. Sport Inc.*, 25 USPQ2d 1533 (Comm'r Pats. 1992).

The Petition is denied. The application will remain abandoned. The \$100 fee for filing the Statement of Use, submitted with the Petition, will be refunded in due course.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:RJD

Date:

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