

Rochelle D. Alpert, Esq.  
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345 California Street  
San Francisco, CA 94104-2675

Re: Petition to Revive Application Serial No. 74/480204  
Applicant: The Understanding Business  
For: UNDERSTANDING GUIDES

Dear Ms. Alpert:

This will acknowledge receipt of the petition to revive the above-referenced application, filed September 11, 1996.

Decision: Petition to Revive is DENIED.

### **FACTS**

The application was abandoned for failure to file the Statement of Use or second request for extension of time for filing the Statement of Use within twelve months of the Notice of Allowance issue date (i.e. on or before July 5, 1996).

The Notice of Allowance issued on July 5, 1995 identifying goods in International Classes 9 and 16. The first request for extension of time for filing the Statement of Use was filed on December 11, 1995. On July 3, 1996, a request to divide the application was filed making the goods in International Class 16 the subject of a child application while the goods in International Class 9 remained the subject of the above-referenced application. Also filed with the request to divide was the Statement of Use for the child application.

However, a second Request for Extension of Time for Filing the Statement of Use was not filed for the above-referenced application on or before July 5, 1996. Therefore, the application was abandoned, and this petition to revive followed.

### **ANALYSIS**

Counsel states that the failure to file the second extension request was inadvertent. In a declaration of Counsel's Legal Assistant, Counsel's Legal Assistant declares that she mistakenly failed to include a second extension request for the above-referenced application, was under the erroneous assumption that the subject application had an extended life and that all the necessary steps had been taken to maintain the life of the subject application.

Under Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), and Trademark Rule 2.66, 37 C.F.R. §2.66, an abandoned application can be revived only if the applicant can show that the delay in responding to an Office Action was "unavoidable." A showing of unintentional delay is not enough.

Pursuant to Section 1(d) of the Trademark Act, 15 U.S.C. §1051(d), an applicant must file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the mailing date of a Notice of Allowance. If no Statement of Use or extension request is timely filed, the application is abandoned. 15 U.S.C. §1051(d)(4); 37 C.F.R. §§2.65(c) and 2.88(h); TMEP §1105.05(e)(1). Because the time for filing the Statement of Use is set by statute, it cannot be waived.

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. Delays due to circumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays. While the failure to file the second extension request for the above-referenced application might have been inadvertent and unintentional, it could have been avoided by the exercise of reasonable care. Furthermore, the lack of knowledge or misunderstanding of the Trademark Rules of Practice does not constitute unavoidable delay. *Vincent v. Mossinghoff*, 230 USPQ 621 (D.D.C. 1985); *Potter v. Dann*, 201 USPQ 574 (D.D.C. 1978).

Here, while Counsel's Legal Assistant's omission to file the second extension request was inadvertent and the result of a misunderstanding of the Trademark Rules of Practice, the delay in this case is not unavoidable.

Applicant may wish to consider filing a new application. The Office will not hold the denial of this petition to be prejudicial to the Applicant in the filing of a new application. The application filing fee is \$245.00 per class.

Sincerely,

Sarah Lee Chung  
Staff Attorney  
Office of the Assistant Commissioner  
for Trademarks  
(703) 308-8900 ext. 35