

Seth H. Salinger, Esq.
Attorney at Law
10 Read Court
Newton, MA 02159

Re: Petition to Revive Application
Serial No. 74/630855
Applicant: James J. Derba, Inc.
For: RAGING GRILL

Dear Mr. Salinger:

This will acknowledge receipt of the petition to revive the above-identified application, filed February 28, 1997.

The application was abandoned for failure to respond to an Office Action dated May 31, 1996 within 6 months of the mailing date.

Decision: Petition to Revive is hereby DENIED.

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. Delay executing license agreement not unavoidable.

Counsel was on notice of the deadline for response to the Office Action, and had a responsibility to keep adequate records, allocate sufficient time, and take whatever action was necessary to file a proper response within the time prescribed by statute.

Counsel states that the response was delayed due to difficulty in obtaining a license agreement. However, since counsel had six months in which to obtain the **agreement, or to petition** for the cancellation of the marks registered to Allied Old English, Inc. ("Allied"), the failure to timely respond to the Office Action cannot be deemed unavoidable. The fact that Allied did not respond to Applicant's letter, record the sale or assignment of the marks in question, or have its marks in use in commerce, should have been brought to the attention of the Patent and Trademark Office in the form of a Petition to Cancel. Counsel could then have informed the Examining Attorney by November 31, 1996 that a Petition to Cancel had been filed, which subsequently, would have served as a response to the outstanding requirements of the Office Action dated May 31, 1996, if filed timely.

Applicant may wish to consider the filing of a formal petition for cancellation (for the marks registered to Allied), in addition to the filing of 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. Currently, the application filing fee is \$245.00 per class.

Sincerely,

Janis Long
Office of Assistant Commissioner
For Trademarks
(703) 308-8910 x56