

Maryam Bani-Jamali, Esq.
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Ste. 2303
Houston, TX 77030

Re: Petition to Revive Application Serial No. 74/670639
Applicant: Tiffany & Broadway, Inc.
For: ROXY

Dear Ms. Bani-Jamali:

This will acknowledge receipt of the petition to revive the above-identified application, filed January 6, 1997.

This application was abandoned for failure to file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the Notice of Allowance, i.e., on or before September 5, 1996.

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.

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.

As grounds for reviving the application Applicant states that it was involved in litigation involving the mark in foreign countries and that the litigation preoccupied Applicant's attention so much that it failed to timely file either a Statement of Use or a Request for Extension of Time to File a Statement of Use.

Petitions are denied when the causes for the delay could have been avoided by the exercise of reasonable care. Merely being busy or preoccupied with other matters is not sufficient justification for an applicant's failure to respond to an Office Action or Notice of Allowance. The due date of a response is known well in advance, and the applicant is responsible for keeping adequate records and making proper allocation of time to meet the deadline. TMEP §11 12.05(b)(v).

Since Applicant has not shown that the delay in responding to the Office Action was unavoidable, the petition to revive is denied.

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. Currently, the application filing fee is \$245.00 per class.

Sincerely,

Jeffrey J. Look
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Office of the Assistant Commissioner
for Trademarks
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