

Mr. Donald J. Finn
Sherlock Tools
314 Brown Road
Post Office Box 1200
Jackson, S.C. 29831-1200

Re: Petition to Revive Application Serial No. 74/690267
Applicant: Finn, Donald J.
For: SHERLOCK

Dear Mr. Finn:

This will acknowledge receipt of the petition to revive the above-referenced application, filed August 28, 1996.

Decision: Petition to Revive is DENIED.

FACTS

The above-referenced application was abandoned for failure to respond to the Office Action dated December 12, 1995 within the statutory six month period (i.e. on or before June 12, 1996). The Applicant asserts that the failure to respond was attributed to overlooking the requirement to respond to the request for further clarification of the identification of goods.

DECISION

Pursuant to Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), an applicant must respond to an Examining Attorney's Office Action within six months of the mailing date. If no response is filed, the application is abandoned. 37 C.F.R. §2.65. Because the response period is set by statute, the Office has no authority to extend or waive it.

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. A showing of unintentional delay is not enough. Here, the misunderstanding could have been avoided with a more careful review of the December 12, 1995 Office Action.

Applicant states that it mischaracterized the Office Action as not requiring a response. However, the Office Action clearly stated that a proper response was due within six months of the mailing date to avoid abandonment. Applicant's failure to read the Office Action cannot be said to constitute unavoidable delay.

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,

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