

J. John Shimazaki, Esq.  
1539 Lincoln Way, Suite 204  
McLean, VA 22102

Re: Petition to Revive Application Serial No. 74/713131  
Applicant: The Woodworkers Gym, Inc.  
For: WOODEN TRADITIONS

Dear Mr. Shimazaki:

This will acknowledge receipt of the petition to revive the above-referenced application, filed August 29, 1996.

Decision: Petition to Revive is DENIED.

The application was abandoned for failure to respond to the Office Action dated February 20, 1996 within the statutory six month period. Counsel for Applicant declares that while the Office Action was received it was not docketed in accordance with Counsel's standard docketing procedures. As a result, the deadline for response to the Office Action was not recorded on Counsel's docketing sheet, and the response was not filed within the statutory period for response.

Counsel declares that all docketing is handled by him alone. Upon receipt of incoming mail, Counsel reviews the mail and determines which are time sensitive in order to docket the letter for response. This is done almost every day. Due dates are recorded on a docket sheet which is updated frequently. In anticipation of times when an unusual amount of mail is received or when interruptions occur during the sorting and docketing process, Counsel has in place back-up systems for checking. Under one back up system, Counsel checks the docket on a regular basis, such as monthly, and under another, Counsel checks the docket every three to four months depending on whether an Office Action has been issued in connection with a particular file.

However, with respect to the Office Action in question, Counsel received and reviewed it but inserted the Office Action back into the file without recording the response deadline on the docket sheet. A second check of this file was not done until after Counsel returned from a business trip. Prior to that, Counsel, in his discretion, did not believe that it was necessary to review the file containing the Office Action because Applicant's president's father was ill with pancreatic cancer. Counsel delayed consultation with Applicant's president as much as reasonably possible.

Relying on the docket sheet for information only, the period for response lapsed, and the application was abandoned.

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. 37 C.F.R. §2.66. The term "unavoidable" means that reasonable

steps had been taken, or precautionary systems were in operation which were designed to avoid the circumstances which caused the delay, but the delay occurred despite these precautions. If there were reasonable precautions that could have been taken to anticipate and avoid the delay, and those precautions were not taken, then the delay is considered avoidable and the petition to revive the application will not be granted. TMEP §§1112.05(b) and 1112.05(b)(i). Delays due to circumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays.

In this case, it has not been shown that adequate safeguards were in place that would remind Counsel that the statutory deadline was approaching. Since inadequate precautions were taken to avoid the error that occurred, the delay was not unavoidable. While Counsel describes a back-up system, it was not designed to prevent the error that occurred in this instance. Counsel apparently does not review files for purposes of updating the docketing record on a regular basis. However, Counsel may deem it unnecessary to review a file through the back up systems (by consulting with the docket sheet and file) at times when circumstances apparently warrant this discretion. In this case, Counsel misjudged the time period during which to ascertain the status of the file because he did not want to trouble the Applicant while the Applicant's president's father was ill. The docketing back-up system utilized by Counsel is not sufficiently reliable to avoid an accidental failure to docket an Office Action.

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  
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Office of the Assistant Commissioner  
for Trademarks  
(703) 308-8900 ext.35