

Mr. Mark Alamares
President
Nemicron Corporation
3 Corporate Park, Suite 160
Irvine, CA 92714

Re: Petition to Revive Application Serial No. 75-018845
Applicant: Nemicron Corporation
For: SPEED TRIBE

Dear Mr. Alamares:

This will acknowledge receipt of the petition to revive the above-identified application, filed April 1, 1997.

FACTS

On November 8, 1995, applicant filed for registration of the trademark SPEED TRIBE. An Office Action was mailed to the applicant on June 20, 1996, which required a response within six (6) months of its mailing date, i.e., December 20, 1996. When no response was received in this Office, the application was abandoned on January 31, 1997.

This petition to revive followed.

DECISION AND ANALYSIS

Decision: The Petition to Revive is hereby DENIED.

Due to the importance of filing dates in trademark cases, applicants and their attorneys are expected to keep adequate records to ensure that papers are filed within the time periods prescribed by statute. In connection with errors in docketing or record-keeping, it must be shown that the system normally operates to avoid the error which occurred. A failure to respond due to errors in a docketing system is not considered unavoidable unless it is shown that the system is highly reliable, such that the applicant's reliance on it is reasonable. TMEP §1112.05(b)(v). If the system contained no safeguards or procedures to avoid the type of error that occurred, the delay is not considered unavoidable.

Applicant asserts that human failure caused the unavoidable delay in responding to the Office Action dated June 20, 1996. Applicant declares that a response to the Office Action was prepared and signed. The response was placed in the file by an employee who has since left the company. Since the signature was in black ink, it was believed that the copy in the file was a photocopy of the response that had been mailed to the Trademark Office. In fact, the copy in the file was the

original which had never been mailed. Furthermore, upon departure of the former employee handling trademark matters, her successor, Ms. Jean Chang, was told that there were no outstanding trademark issues or pending deadlines.

Applicant did not have a reliable docketing system during the time in question. Applicant states that Ms. Chang utilized a calendaring software program called "Act" whereby all trademark deadlines are logged to ensure all deadlines are met. It does not appear from the petition that such a logging system was in place when the response at issue here was due.

However, even if such a system was in place during that time, applicant's docketing system would not be considered reliable for purposes of establishing unavoidable delay. Both the absence of any logging system and the Act system utilized by Ms. Chang apparently do not provide a means for logging and determining whether a timely response was actually mailed to the Trademark Office. A docketing system in which applicant simply relies on the contents of a file to determine whether all necessary responses and papers have been filed is not a reliable system such that applicant's reliance on it would be considered reasonable. As such, since applicant did not have any safeguards or procedures in place to avoid the type of error that occurred here, the delay is not considered unavoidable, and the petition to revive is denied.

APPLICANT MAY FILE NEW APPLICATION

Applicant may file a new application. The Office will not hold the abandonment of this application as being prejudicial to the filing of a new application. Currently, the application filing fee is \$245.00 per class.

If you have any questions, please feel free to call **Hae Park at (703) 308-8910, ext. 35.**

Sincerely,

Nancy L. Omelko
Administrator for Petitions
Office of the Assistant Commissioner
for Trademarks
(703) 308-8910, ext. 39

NLO/hsp