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**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**  
OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: Trademark Application of :  
Times Mirror Magazines, Inc. :  
Serial No. 75/536170 :  
Filing Date: August 13, 1998 : On Petition 99-518  
For: FIELD & STREAM :  
Petition Filed: May 10, 1999 :

Times Mirror Magazines, Inc. has petitioned the Commissioner to withdraw Petitioner's express abandonment of the above referenced application. The Petition is denied pursuant to 37 C.F.R. §2.146(a)(3).

## **FACTS**

The above referenced application was filed on August 13, 1998. On March 18, 1998, Petitioner advised the Office that it wished to abandon the application. However, Petitioner subsequently determined that the request to abandon the application had been mailed inadvertently, and on or about March 24, 1999, Petitioner submitted a communication to the Office asking that the request to abandon the application be withdrawn. The Office nevertheless issued a written notice advising Petitioner that the application had been abandoned. In response, Petitioner submitted a request for reinstatement of the application on May 4, 1999.

In a letter dated September 16, 1999, Petitioner was advised that the request for reinstatement would be treated as a Petition to Revive the application, but that the petition could not be considered until Petitioner satisfied various minimum requirements for filing petitions. Moreover, Petitioner was further advised that it was highly unlikely that the petition would be granted, even if the minimum requirements were met.

On October 13, 1999, Petitioner perfected the petition by complying with the outstanding minimum requirements, and put forth arguments as to why the petition should be granted.

## **ANALYSIS**

An application that has been expressly abandoned can be revived on petition, but only upon a showing of extraordinary circumstances. See *In re Glaxo Group, Ltd.* 33 USPQ2d. 1535 (Comm'r. Pats. 1993). Petitioner has not identified any extraordinary circumstances that may have given rise to the abandonment of the application. The inadvertent submission of an express abandonment cannot by itself be viewed as an extraordinary circumstance.

Petitioner argues that extraordinary circumstances are present here, because upon discovery of its inadvertent error, Petitioner promptly contacted the Examining Attorney and immediately filed a request to withdraw the express abandonment. However, even if these measures can be viewed as having created extraordinary circumstances, these circumstances did not bring about the express abandonment of the application: they arose after the fact.

Petitioner notes that it owns various registrations for the mark in this application, and argues that third parties therefore are not entitled to register the mark. Hence, in Petitioner's view, third parties would not be harmed by a withdrawal of the abandonment. This argument is not persuasive. Prejudice to third parties must be presumed, since the question of whether Petitioner is entitled to register the mark cannot be considered on petition: questions of this sort are appropriate only in the examination of the application. See 37 C.F.R. §2.146(b).

## **DECISION**

The Petition is denied, and the application will remain abandoned. Petitioner may wish to file a new application. This Office will not hold the abandonment of this application as being prejudicial to the Applicant in the filing of a new application. Effective January 10, 2000, the application filing fee will be \$325.00 per class.

Robert M. Anderson  
Deputy Assistant Commissioner  
for Trademarks

RMA:AL

Date:

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