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1800 Avenue of the Stars
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Los Angeles, CA 90067

Re: Petition to Revive Application Serial No. 74/496751
Applicant: Agatha Christie Limited
For: AGATHA CHRISTIE

Dear Mr. Miller:

This will acknowledge receipt of the petition to revive the above-referenced application, filed September 16, 1996.

Decision: Petition to Revive is DENIED.

The application was abandoned for failure to respond to the Office Action dated December 7, 1995 within the statutory six month period from the Office Action's mailing date. The Office Action was a letter inquiring the status of the relevant foreign application. Counsel for Applicant and Counsel's docket clerk declare that Counsel's docket clerk, who was charged with the responsibility of docketing Office Actions for response, did not realize that the status inquiry letter contained a response deadline. Instead, the Office Action was understood to be a suspension letter not requiring a response. Therefore, the status inquiry letter was not docketed as an Office Action that required a response. Counsel's docket clerk and paralegal declare that the sentence specifically requiring response to the status inquiry letter within six months was covered up by the mailing label. A copy of the status letter was attached to the petition to show that the file identification label covered a portion of the response deadline advisory.

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.

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.

Furthermore, the status inquiry specifically requested Applicant to specify the status of the relevant foreign application. Because the file identification label is not affixed to the paper, verification of when a response was due could have been ascertained by simply lifting the unaffixed label.

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.

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