

Ms. Carolyn Rae Cole
President
Honest Entertainment Group
33 Music Square West
Suite 100
Nashville, TN 37203

Re: Petition to Revive Application Serial No. 74/506375
Applicant: Cecca Productions Inc.
For: HONEST ENTERTAINMENT (stylized)

Dear Ms. Cole:

This will acknowledge receipt of the petition to revive the above-referenced application, filed October 4, 1996, and supplementary correspondence, filed March 6, 1997.

Decision: Petition to Revive is DENIED.

The application was abandoned for failure to respond to the Office Action dated December 4, 1995 within the statutory six month period (i.e. on or before June 4, 1996). The Applicant asserts that the failure to respond to the Office Action within the statutory period was attributed to a transfer of the Office Action in a file from the Applicant's California office to the Applicant's Tennessee office. While the response deadline was noted and a sticker reminding the Applicant to respond was affixed to the Office Action prior to being transferred, the sticker evidently became separated from the paper and the file folder containing the Office Action was merely filed away. No response to the Office Action was made.

The Applicant declares that normally, when a legal document is received by the Applicant's office, "the deadline date is posted" in a computerized scheduler and is designated as a priority task. The Office Action was not entered into the computerized scheduler because the Applicant's computer had been transferred to Tennessee at the time the Office Action was received.

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. 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

ircumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays.

Misplacement of a file during an office move is not considered unavoidable. The deadline for filing a response to an Office Action is known six months in advance, and applicants are responsible for keeping adequate records and making proper allocations of time to meet the deadline. While the transfer of files from one address to another may cause some logistical problems, it is reasonable to expect that appropriate precautions will be taken to avoid misplacement of time sensitive documents so that legal deadlines can be met. TMEP §1112.05(b)(v).

The experience of disruptions during an office reorganization is to be expected. There is no indication that the Applicant took sufficient precautionary measures to minimize the impact of the disruptions and attempt to catch oversights that are a result of the disruptions.

In this case, there is no evidence that any steps were taken, other than **the affixation of a sticker** on the file and insertion of the file folder into a box for transfer to the new address, to avoid misplacement of files during the move of Applicant's corporate offices. Therefore, the delay is not considered unavoidable.

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