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Walnut Creek, CA 94596-3572¹

Re: Petition to Revive
Application Serial No. 74/600899
Applicant: Sim-Business
For: SIMGOLF

Dear Mr. Derber:

This will acknowledge receipt of the petition to revive the above-identified application, filed January 17, 1997.

This application was abandoned for failure to file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within 12 months of the Notice of Allowance, i.e., on or before November 14, 1996.

Pursuant to Section 1(d) of the Trademark Act, 15 U.S.C. §1051(d), an applicant must file a Statement of Use, or Request for Extension of Time to File a Statement of Use, within six months of the mailing date of a Notice of Allowance. If no Statement of Use or extension request is timely filed, the application is abandoned. 15 U.S.C. §1051(d)(4); 37 C.F.R. §§2.65(c) and 2.88(h); TMEP §1105.05(e)(1). Because the time for filing the Statement of Use is set by statute, it cannot be waived.

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. 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)(i).

¹ It is noted that the petition was filed on letterhead showing an address different than the correspondence address of record. If Applicant wishes to change the correspondence address, a written request to do so should be submitted. Trademark Rule 2.18, 37 C.F.R. §2.18; TMEP §603. The mere transmittal of a response or other communication bearing a new address for applicant does not effect a change in a correspondence address. Although this letter is directed to the address appearing on the petition, the correspondence address remains unchanged, and future correspondence will be directed to the address originally designated unless a written request to change the correspondence address is received. It is the responsibility of the Applicant to maintain a current and accurate correspondence address in its application file.

Applicant filed one extension request which was granted. Applicant contends that the delay in filing the Statement of Use, or Request for Extension of Time to File a Statement of Use, was unavoidable due to the Office's failure to provide adequate notice of approval of the extension request filed May 9, 1996. However, Trademark Rule 2.89(g) clearly states that "[f]ailure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under §2.88." Nor does the filing of a petition to revive stay the time for filing these papers. TMEP §1105.05(d)(v). See *In re Hoffmann-La Roche Inc.*, 25 USPQ2d 1539 (Commtr Pats. 1992).

Thus, an applicant's delay in filing an extension request or a Statement of Use because the applicant had not received a notice of approval of an earlier filed extension request is not deemed to be unavoidable, within the meaning of Rule 2.66.

Decision: Petition to Revive is hereby DENIED. The fee paid by Applicant in connection with the Statement of Use filed with the Petition will be refunded in due course.

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.

Jeffrey Look

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