

Timothy D. Pecsénye, Esq.<sup>1</sup>  
Blank Rome Comisky & McCauley  
Four Penn Center Plaza  
Philadelphia, PA 19103

Re: Petition to Revive  
Application Serial No. 74/643230  
Applicant: InterVest Trading Systems, Inc.  
For: NUISSU

Dear Mr. Pecsénye:

This will acknowledge receipt of the petition to revive the above-identified application, filed January 16, 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 six months of the Notice of Allowance, i.e., on or before August 20, 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. 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 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.

The facts show that the original Applicant in this case was CrossCom Trading Systems, Inc. : (CrossCom). CrossCom had listed Kevin J. Kuzas of the law firm of Morgan, Lewis & Bockius,

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<sup>1</sup> 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 must be submitted. Trademark Rule 2.18, 37 C.F.R. §2.18; TMEP §603. The mere transmittal of a communication bearing a new address for applicant's attorney does not effect a change in a correspondence address. A courtesy copy of this letter is being sent to the address shown on the petition, but duplicate correspondence shall not be undertaken in the future. It is the responsibility of the applicant to maintain a current and accurate correspondence address in its application file.

The facts show that the original Applicant in this case was CrossCom Trading Systems, Inc. : (CrossCom). CrossCom had listed Kevin J. Kuzas of the law firm of Morgan, Lewis & Bockius, 1800 M Street NW, Washington, DC 20036 as its attorney of record in the case. On February 20, 1996, a Notice of Allowance was mailed to CrossCom's attorney of record. The petition states that in July 29, 1996, after the issuance of the Notice of Allowance, CrossCom was purchased by InterVest Trading Systems, Inc. InterVest terminated the services of CrossCom's attorney but did not file a change of correspondence address or assignment of the application with the Office. InterVest hired new attorneys who have indicated that the Notice of Allowance was never sent to them from the previous attorney of record.

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. When purchasing rights to a trademark in a pending application, precautionary measures should be put in place to avoid abandonment of the application. It is the assignee's responsibility to apprise itself the status of the application and to see that the transfer of ownership does not affect the meeting of deadlines in legal matters. TMEP §1112.05(b)(ii).

Furthermore, both an applicant and its attorney have a responsibility to keep adequate records and allocate sufficient time to ensure compliance with statutory deadlines. When the services of the attorney were terminated, the Applicant had a duty to ascertain the status of matters which had been entrusted to the former attorney, and to take appropriate precautions to avoid abandonment of the application. Any mail delay in obtaining the file or other papers concerning the application between Petitioner's former attorney and its new attorney are also not considered unavoidable delays.

While the circumstances that caused the delay in responding to the Office Action may have been inadvertent or unintentional, it has not been established that they were unavoidable. Therefore, the petition is denied.

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

Jeffrey J. Look  
Staff Attorney  
Office of the Assistant Commissioner  
for Trademarks  
(703) 308-9108 ext. 178

cc. Kevin J. Kuzas, Esq.  
Morgan, Lewis & Bockius  
1800 M. Street, NW  
Washington, DC 20036