

Neal S. Greenfield, Esq.  
Amster, Rothstein, & Ebenstein  
90 Park Avenue  
New York, NY 10016

Re: Petition to Revive Application Serial No. 75-087890  
Applicant: Twin Laboratories, Inc.  
For: TWIN LABORATORIES.COM

Dear Mr. Greenfield:

This will acknowledge receipt of the petition to revive the above-identified application, filed May 29, 1997. The petition to revive is denied.

## **FACTS**

On April 12, 1996, Applicant applied for registration of the above trademark. The Examining Attorney issued an Office Action on November 22, 1996, which required a response within six (6) months of that mailing date, i.e., May 22, 1997. No response was received in this Office by that date, and this application was deemed abandoned on September 16, 1997.

Counsel for Applicant thereafter submitted this petition on May 29, 1997. Counsel declares that a response to this Office Action was prepared by the due date, along with a companion application for the mark TWINLAB.COM. While the response to the companion application was duly filed, this subject application was taken for final processing by a temporary secretary who was then called away on other business. As the temporary secretary was unaware of the pressing deadline, the subject application file was inadvertently misplaced, and the response was never filed with the Trademark Office. This petition followed.

## **ANALYSIS & DECISION**

Decision: The Petition to Revive is hereby DENIED.

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. In connection with errors in docketing or record-keeping, it must be shown that the system normally operates to avoid the error which occurred. A failure to respond due to errors in a docketing system is not considered unavoidable unless it is shown that the system is highly reliable, such that the applicant's reliance on it is reasonable. TMEP § 1112.05(b)(v). If the system contained no safeguards or procedures to avoid the type of error that occurred, the delay is not considered unavoidable.

Counsel argues the delay was unavoidable despite the firm's reliable docketing system. Counsel declares that, upon not seeing this file in its proper place, he believed the response to this Office Action was duly filed along with the response to its companion application.

Counsel's firm did not have a reliable docketing system during the time in question. The docketing system utilized by Counsel apparently does not provide a means for logging and determining whether a timely response was actually mailed to the Trademark Office. A docketing system in which Counsel simply relies on the location of a file to determine whether all necessary responses and papers have been filed is not a reliable system such that applicant's reliance on it would be considered reasonable. As such, since Counsel did not have any safeguards or procedures in place to avoid the type of error that occurred here, the delay is not considered unavoidable, and the petition to revive is denied.

#### **APPLICANT MAY FILE NEW APPLICATION**

Applicant may 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. Currently, the application filing fee is \$245.00 per class.

If you have any questions or need further assistance, please feel free to call **Hae Park, at (703) 308-8910, ext. 55.**

Sincerely,

Nancy L. Omelko  
Administrator for Petitions  
Office of the Assistant Commissioner  
for Trademarks  
(703) 308-8910, ext. 39

NLO/hsp