

Re: Trademark Application of  
Stella Jewelry Co.

Serial No. 74/448898

On Petition

Filing Date: October 20, 1993

For: STELLA

Petition Filed: September 10, 1996

Stella Jewelry Co., has petitioned the Commissioner to revive the above identified application. Trademark Rules 2.89(g) and 2.146(a)(3) provide authority for the requested review.

## FACTS

A Notice of Allowance issued for the subject application on December 6, 1994. Pursuant to Section 1(d) of the Trademark Act, a Statement of Use, or Request for an Extension of Time to File a Statement of Use, was required to be filed within six months of the mailing date of the Notice of Allowance.

Petitioner filed first and second Requests for Extension of Time to File a Statement of Use.<sup>1</sup> The third Extension Request was filed on June 6, 1996. In an Office Action dated August 21, 1996, the Applications Examiner in the ITU/Divisional Unit denied the extension request because it was not accompanied by the prescribed fee, as required by Trademark Act Section 1(d)(2), 15 U.S.C. §1051(d)(2), and Trademark Rule 2.89, 37 C.F.R. §2.89. This petition followed.

Counsel for Petitioner states that the fee for the third extension request was omitted due to inadvertence.

## DECISION

Section 1(d)(2) provides: "any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee."

Trademark Rules 2.146(a)(5) and 2.148 permit the Commissioner to waive any requirement of the rules, not being a requirement of the statute, in an extraordinary circumstance, when justice requires and no other party is injured. However, the requirement to submit the fee with the extension request is statutory and the Commissioner is without authority to waive it. *In re Stakis plc*, USPQ2d 1529 (Comm'r Pats. 1992).

Accordingly, the petition is denied and the application will remain abandoned. The \$100 fees for the third and fourth extension requests submitted with the petition will be refunded in due course.

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<sup>1</sup> The first and second extension requests did not include the required fees, and were erroneously approved by the ITU/Divisional Unit.

Philip G. Hampton, II  
Assistant Commissioner  
for Trademarks

PGH:NLO:CPS

Date:

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