

William A. Finkelstein, Esq.
PepsiCo, Inc.
700 Anderson Hill Road
Purchase, NY 10577

Re: Petition to Revive Application Serial No. 74-429834
Applicant: PepsiCo., Inc.
For: LEHAR

Dear Mr. Finkelstein:

This will acknowledge receipt of the petition to revive the above-identified application, filed August 12, 1996.

Decision: The petition to revive is hereby DENIED.

In any petition to revive an abandoned application, the applicant must show that the delay in responding was unavoidable. Delays due to circumstances that could have been avoided with the exercise of care and attention are not considered unavoidable delays.

Applicant contends that the delay in filing the second 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 first extension request filed December 11, 1995. According to the applicant, the notice of approval was late due to the Office's inadvertent abandonment of the application and the later reinstatement.

An applicant's delay in filing an extension request 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. 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."

Although the Office regrets the inadvertent abandonment of the subject application, and the need for reinstatement, that action by the Office did not relieve the applicant of its duty to timely file a second extension request.

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,

Hope E. Slonim
Staff Attorney
Office of the Assistant Commissioner
for Trademarks

(703)308-8910 ext. 38