

Simon Leeder
2100 Constitution Blvd.
Sarasota, FL 34231

Re: Petition to Revive Application Serial No. 74/615108
Applicant: Simon Leeder
For: COUNTERACTIVE GEAR

Dear Mr. Leeder:

This will acknowledge receipt of the petition to revive the above-identified application, filed December 19, 1996. This application was abandoned for failure to file a Statement of Use, c. Request for Extension of Time to File a Statement of Use, within 12 months of the Notice of Allowance, i.e., on or before December 5, 1996.

Decision: Petition to Revive is hereby DENIED.

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 31, 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 Hoernann-La Roche Inc.*, 25 USPQ2d 1539 (Comm'r 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. Therefore, the petition is denied. The fee of \$ 100 submitted for the second extension request will be refunded in due course.

Sincerely,

Carol P. Smith
Paralegal Specialist
Office of the Assistant Commissioner
for Trademarks
(703) 308-8900 ext. 49