

David B. Newman, Esq.
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800 Third Avenue
New York, NY 10022

Re: Petition to Revive Application Serial No. 74/636924
Applicant: Serengeti Eyewear, Inc.
For: PULSE

Dear Mr. Newman:

This will acknowledge receipt of the petition to revive the above-identified application, filed March 14, 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 12 months of the Notice of Allowance, i.e., on or before January 23, 1997.

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.

Under Section 12(b) of the Trademark Act, 15 U.S.C. §1062(b), and Trademark Rule 2.66, 37 C.F.R. §2.66, an abandoned application can be revived only if the applicant can show that the delay in responding to an Office Action was "unavoidable." A showing of unintentional delay is not enough.

The original applicant in this case was Corning Incorporated. Corning announced an intent to sell the portion of the business to which the mark applied to Solar-Mates, Inc., the current owner of the mark. The sale and assignment of the mark was not formally completed until February 7, 1997, which was after the January 23, 1997 deadline for filing either a third extension request or a Statement of Use.

The circumstances recited do not amount to an unavoidable delay, within the meaning of Trademark Rule 2.66. The deadline for filing the response was known well in advance, and the Applicant, which at the time was Corning, was responsible for keeping adequate records and making proper allocations of time to meet the deadline. The Applicant should have taken precautions to ensure that changes in ownership or personnel did not affect its ability to meet the statutory deadline. TMEP §1112.05(b)(v).

¹ Solar-Mates, Inc. later changed its name to Serengeti Eyewear, Inc.

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. The fee paid by Applicant for the second extension request filed with the petition will be refunded in due course.

Sincerely,

Jeffrey J. Look
Staff Attorney
Office of the Assistant Commissioner
for Trademarks
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