

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
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Arlington, Virginia 22202-3513

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PAT. & TM. OFFICE

In re Levlad, Inc.

Serial No. 76/185,349

Filed: December 23, 2000

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A brief review of the relevant chronology of this case is in order.

The Examining Attorney, on March 6, 2002, issued a final refusal stating that the mark is merely descriptive under Section 2(e)(1). Applicant filed on, September 9, 2002, an appeal and a response to the final refusal, wherein applicant disclaimed the word "organic". The Board remanded the case to allow the Examining Attorney to consider applicant's response.

The Examining Attorney, on November 5, 2002, essentially accepted the disclaimer but maintained that the mark, in its entirety, is merely descriptive under Section 2(e)(1). Applicant filed, on May 5, 2003, a second notice of appeal.

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The second notice of appeal is superfluous; therefore, the fee charged for the second notice of appeal will be refunded to applicant's deposit account.

Inasmuch as the disclaimer did not raise any new issue and the Examining Attorney maintained the Section 2(e)(1) refusal, the appeal can go forward. The appeal is resumed and applicant is allowed until sixty days from the date hereof in which to file its brief herein. A request for an oral hearing, if desired, must be made not later than ten days after the due date for applicant's reply brief.