

THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

Mailed: June 17, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Banana Republic (Apparel), LLC

Serial Nos. 77375273 and 77375380

J. Allison Strickland of Fross Zelnick Lehrman & Zissu PC for Banana Republic (Apparel), LLC.

Leigh A. Lowry, Trademark Examining Attorney, Law Office 115 (John Lincoski, Managing Attorney).

Before Bucher, Kuhlke and Adlin, Administrative Trademark Judges.

Adlin, Administrative Trademark Judge:

On May 9, 2013, the Board affirmed the refusal to register applicant's mark BR MONOGRAM (Stylized), the subject of application Serial Nos. 77375273 and 77375380, in the absence of a disclaimer of MONOGRAM submitted within 30 days (the "Final Decision"). On June 10, 2013, applicant filed a "motion for clarification" of the Final Decision with a "provisional" disclaimer, explaining that applicant is "concerned" because it has not yet decided whether to appeal the Board's decision, that its time to appeal does not expire for another month, and that applicant should

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not be denied registration if it ultimately files a timely appeal which is unsuccessful but does not enter a timely disclaimer.

The Board retains jurisdiction over the application up until an appeal is filed. If no appeal is filed by the deadline the case is terminated. If an appeal is filed jurisdiction shifts to the appellate court. If, however, applicant files an appeal, and the refusal is affirmed on appeal, once the reviewing court issues its mandate, jurisdiction is restored to the Board to dispose of the case. At that time, applicant may file with the Board a request to amend the application to enter the disclaimer.

In view thereof, the Final Decision is modified in the following manner, applicant is allowed to file a disclaimer with the Board until either: (1) the deadline for filing an appeal, in this case two months from the May 9, 2013 decision, if applicant does not file an appeal;¹ or (2) if applicant does file an appeal, thirty days after the final disposition of the appeal, if it is ultimately unsuccessful. Applicant's "provisional" disclaimers are withdrawn.

¹ If applicant seeks an extension of time to file an appeal under Trademark Rule 2.145(e), applicant should include in its request a concurrent extension of time to file a disclaimer in the event it ultimately decides to enter the disclaimer rather than to file an appeal.