

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 24, 2014

In re Bar NND Ranches, LLC

Serial No. 77928601

Filed: 2/4/2010

JUSTIN R JACKSON
PEACOCK MYERS PC
PO BOX 26927,
ALBUQUERQUE, NM 87125-6927

Denise M. DelGizzi,
Technical Program Manager:

On April 8, 2014, the Trademark Examining Attorney requested, pursuant to Trademark Rule 2.142(f)(6), 37 C.F.R. §2.142(f)(6), that the application be remanded to her for further examination to allow her to issue a new non-final Office action.

Specifically, the Trademark Examining Attorney contends that a refusal on the basis that the proposed mark is a phantom mark under Trademark Act Sections 1 and 45, U.S.C. §§1051, 1127, was unintentionally omitted in the last Office action. In addition, the Examining Attorney will maintain the specimen, drawing and mark description refusal and requirements that were addressed in the subsequent final Office action dated September 11, 2013.

Trademark Rule 2.142(f)(6) provides, in pertinent part:

If, during an appeal from a refusal of registration, it appears to the examiner that an issue not involved in the appeal may render the mark of the appellant unregistrable, the examiner may, by written request, ask the Board to suspend the appeal and to remand the application to the examiner for further examination.

TBMP §1209.02 provides, in pertinent part: “Because the mandate of the USPTO is to register only eligible marks, an examining attorney’s request for remand will generally be granted unless there is no valid basis for the request....”

In view thereof, we grant the Trademark Examining Attorney’s request for remand in order to issue a new nonfinal Office action.

Accordingly, proceedings in the appeal are suspended and the application is remanded to the Trademark Examining Attorney for further appropriate examination.

In the event that a new final Office action ultimately is issued, the final Office action should also re-state the final refusal. The new final Office action should omit the usual six-month response clause. The application then should be returned to the Board for resumption of the appeal. *See* Trademark Rule 2.142(f)(3).

At that point, the Board will issue an order allowing applicant 60 days from the date of the order in which to file a supplemental brief.