

From: Lott, Maureen D.

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Subject: U.S. TRADEMARK APPLICATION NO. 77928601 - UNGULATTE - 32286-1001 - REMAND REQUEST TO TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

**U.S. APPLICATION SERIAL NO.** 77928601

**MARK:** UNGULATTE



**CORRESPONDENT ADDRESS:**

JUSTIN R JACKSON

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PO BOX 26927

ALBUQUERQUE, NM 87125-6927

**APPLICANT:** Bar NND Ranches, LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

32286-1001

**CORRESPONDENT E-MAIL ADDRESS:**

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**MOTION TO REMAND**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD ON APPEAL**

**TRADEMARK EXAMINING ATTORNEY'S REQUEST FOR REMAND**

The trademark examining attorney requests that the Trademark Trial and Appeal Board remand this case to the examining attorney under 37 C.F.R. §2.142(d) for the following reason(s): a refusal on the basis that the proposed mark is a phantom mark under Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127, was unintentionally omitted in the last Office action. The examining attorney will also maintain the specimen, drawing and mark description refusals and requirements that were addressed in the Subsequent Final Action dated September 11, 2013.

When a mark comprises a phantom mark, then the mark is unregistrable because applicant seeks registration of more than one mark in its application. Trademark Act Sections 1 and 45, 15 U.S.C. §§1051, 1127; TMEP §1214.01. An application must be limited to only one mark. 37 C.F.R. §2.52; TMEP §807.01; *see* 15 U.S.C. §1051(a)(1). A mark that contains a changeable or “phantom” element is considered to be more than one mark. *See In re Int’l Flavors & Fragrances Inc.*, 183 F.3d 1361, 51 USPQ2d 1513 (Fed. Cir. 1999); *In re Primo Water Corp.*, 87 USPQ2d 1376 (TTAB 2008); TMEP §1214.01.

In this case, the applicant’s proposed changes to the drawing constitute a phantom mark. By applicant’s own admission, the dotted lines comprising the antler portion of applicant’s proposed drawing constitutes a changeable element. In this regard, applicant has stated that its mark, as used in commerce, includes antlers. Moreover, applicant confirms that the antlers will change in size and shape depending on the type of coffee products that the mark is applied to, e.g., caffeinated coffee, decaffeinated coffee, “bold” coffee.

In light of the foregoing, the examining attorney respectfully requests that the application be remanded to the examining attorney.

Respectfully submitted,

/MaureenDallLott/

Maureen Dall Lott

Trademark Examining Attorney

(Susan Hayash, Managing Attorney)

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