

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

Mailed: November 29, 2004

In re Knowledge Delivery
Systems, Inc.

Serial No. 78103586

Filed: 01/18/2002

Edward H. Rosenthal
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Vionette Baez, Paralegal Specialist:

In an Office Action mailed on November 25, 2003, the Trademark Examining Attorney refused registration under Section 2(d) of the Act based on likelihood of confusion with Registration No. 2,612,595.

On May 18, 2004 and July 12, 2004, applicant filed a notice of appeal and an appeal brief, respectively.

This appeal is premature. Applicant's attention is directed to Trademark Rules 2.64(a) and 2.141, which provide in part that on the first or any subsequent re-examination or reconsideration, the refusal of registration or the insistence upon a requirement may be stated to be final,

whereupon applicant's response is limited to an appeal or to compliance with a requirement; that every applicant for registration of a mark may, upon final refusal by the Examining Attorney, appeal to the Board upon payment of the prescribed fee; and that a second refusal on the same ground may be considered as final by applicant for purposes of appeal. Inasmuch as no final refusal or second refusal on the same grounds has been issued in this case, it is not ripe for appeal and the Board cannot consider applicant's appeal.

Accordingly, the July 14, 2004 Board's order is hereby set aside and the file of this case is herewith remanded to the Examining Attorney for further action. In the event that registration to applicant is ultimately finally refused, applicant may respond by filing a new notice of appeal, and the appeal fee already submitted by applicant will be applied thereto. At such point, the appeal would be instituted, and applicant would be allowed time in which to file a supplemental appeal brief.
