

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: January 7, 2004

In re 1-800 CONTACTS, INC.

Serial No. 78125785

Filed: 05/02/2002

THOMAS M. WILLIAMS
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
Chicago, IL 60610

Vionette Baez, Paralegal

Applicant has filed, on November 28, 2003, a notice of appeal, a request for reconsideration, which includes additional evidence and an amendment. Applicant also, filed on December 19, 2003, a request to suspend and remand.

It appears from the amendment that applicant is claiming that its mark has become distinctive as provided by Section 2(f) of the Trademark Act.

The appeal is instituted, but action on it is suspended. The file is forwarded to the Trademark Examining Attorney for consideration of the amendment. In the event the Examining Attorney finds the claim of distinctiveness persuasive and the refusal of registration is withdrawn,

this appeal will be moot. If, however, another final refusal ultimately issues, the "six-month response" clause should be crossed out; the file of this case should be returned to the Board; action on the appeal will be resumed; and applicant will be allowed time in which to file its appeal brief.
