

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

Mailed: September 27, 2005

In re Fuentis, Daisy

Serial No. 78341970

Filed: 12/17/2003

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Applicant's notice of appeal, filed September 13, 2005, is noted. A review of the file shows that the Examining Attorney refused registration in the first Office action based on a likelihood of confusion with Registration No. 2454071 for a stylized DF design for watches, watch bands and jewelry. The Examining Attorney issued a final refusal based on this registration on December 2, 2004. On March 11, 2005, the Examining Attorney issued a new final refusal based on Registration No. 2827030 for DF for various items of clothing. This is the first time that a refusal based on this registration was raised. Therefore, the final refusal must be treated as premature. See Trademark Rule 2.64.

Accordingly, applicant's notice of appeal cannot be instituted at this time. The file is forwarded to the Examining Attorney for appropriate action. It is noted that in the March 11, 2005 Office action, the Examining Attorney argued that applicant's goods, as well as those in the cited registration, were clothing items, although applicant's application is for goods in Class 14. Therefore, the Examining Attorney may wish to clarify in her next Office action whether Registration No. 2454071 or 2827030, or both, forms the basis for the refusal of registration. Further, if Registration No. 2827030 remains a basis for refusal, the Examining Attorney must issue a non-final Office action because applicant has not yet had an opportunity to respond to this basis for refusal.

If a proper final refusal issues, and applicant wishes to file a notice of appeal, applicant may request that the appeal fee previously submitted be applied to that appeal. If no appeal is filed, applicant may request a refund of the appeal fee.

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