

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

Mailed: April 17, 2014

In re Foamation Inc.

Serial No. 85690391

Filed: 7/30/2012

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Denise M. DelGizzi, Technical Program Manager:

On April 17, 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.

Specifically, the Trademark Examining Attorney contends that the mark appears to constitute the three dimensional configuration of the goods, and as such, it is not inherently distinctive and therefore, the mark is not registrable on the Principal Register without sufficient proof of acquired distinctiveness.

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 non-final 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 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.