UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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EJS/dmd

Mailed: September 11, 2015

In re Haht Sahs, LLC

Serial No. 86151111

Filed: 12/23/2013

By the Trademark Trial and Appeal Board:

Upon further review of the file, the Board has determined that this appeal should not have been instituted. In the first Office action, mailed May 19, 2014, the Examining Attorney refused registration on the Principal Register on the bases that the mark was merely descriptive. Thereupon, on June 19, 2014, Applicant amended its application to the Supplemental Register. On August 13, 2014, the Examining Attorney issued a final Office action, refusing registration on the Supplemental Register. However, because the amendment to the Supplemental Register raised a new issue, this action was in error. The Examining Attorney immediately corrected her mistake, issuing a non-final Office action on August 19, 2014 which superseded the August 13 Office action. The application then became abandoned due to Applicant's failure to timely respond, and on May 13, 2015 Applicant filed a petition to revive, which was

granted that day. At the same time Applicant filed a notice of appeal with the Board. It appears that, because the petition to revive had been granted, the Board's electronic system generated an order instituting the appeal.

However, the notice of appeal was premature. Trademark Rule 2.141(a) provides that an appeal may be taken upon final refusal by the trademark examining attorney, and that a second refusal on the same grounds may be considered as final by the applicant for purpose of appeal. Because at the time Applicant filed its notice of appeal on May 13, 2015 there was no final refusal by the Examining Attorney, and registration of the mark on the Supplemental Register had been made only once, on August 19, 2014, since the August 13, 2014 Office action had been vacated (and, in any event, was a premature final). In view thereof, the Board has no jurisdiction over the application, and its orders of May 14, 2015 instituting the appeal and of September 2, 2015 remanding the application to the Examining Attorney are therefore vacated. As a result, the Examining Attorney's September 9, 2015 Office action should have no effect.

Jurisdiction is hereby restored to the Examining Attorney for appropriate action. It is suggested that because of the confusion, the Examining Attorney issue a non-final Office action. If a final refusal of registration ultimately issues, and Applicant wishes to pursue an appeal, it should file a new notice of appeal and request that the previously submitted appeal fee be applied. If no appeal is filed, Applicant may request a refund of the appeal fee.