

From: Eulin, Ingrid

Sent: 9/15/2008 2:09:45 PM

To: TTAB EFiling

CC:

Subject: 77090694 SIMPLYQUIT.doc

Please note the following remand request for your consideration. Thanks.

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/090694

MARK: SIMPLYQUIT

77090694

CORRESPONDENT ADDRESS:

Christopher M. Bikus

Husch Blackwell Sanders, LLP

1601 Dodge Street Suite 2100

Omaha, NE 68102-1637

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: SIMPLYWELL, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

chris.bikus@huschblackwell.com

OFFICE ACTION

ISSUE/MAILING DATE:

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD ON APPEAL

TRADEMARK EXAMINING ATTORNEY'S REQUEST FOR REMAND

The trademark examining attorney requests that the Trademark Trial and Appeal Board remand this case to the examining attorney under 37 C.F.R. §2.142(d) for the following reasons(s):

The instant application is for the standard character mark, SIMPLYQUIT, for services described as counseling in the field of smoking cessations. The application was filed on January 25, 2007 and approved for publication on the Principal Register on May 14, 2007. However, the application was inadvertently approved in error because a previously filed prior pending application, Application Serial No. 78085086, prevents registration of the instant application.

Filed September 22, 2001 for the stylized mark, SIMPLYQUIT for smoker's articles, namely, cigarettes containing tobacco substitutes not for medical purposes, the filing date of the pending application precedes applicant's filing date. As such, there may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). However, at the time the instant application was approved for publication, the prior pending application was improperly recorded as abandoned due to Office error. The pending application has now been properly revived. Accordingly, pursuant to TMEP §§1504.05 and 1504.05(a), the undersigned examining attorney is requesting that the Board remand the instant application to the examining attorney for further action. Because the prior pending application has not registered, prosecution of the instant application must be withdrawn from publication and a suspension letter issued to advise the applicant that prosecution is suspended pending final disposition of the earlier-filed application. TMEP §§1208 and TMEP §716.02(c).

Respectfully submitted,

/ingrideulin/

Ingrid C. Eulin

Trademark Examining Attorney

Law Office 111

(571) 272-9380

/Craig Taylor/

Craig Taylor

Managing Attorney

Law Office 111

571-272-9395

RESPOND TO THIS ACTION: Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For technical assistance with the form, please e-mail **HYPERLINK** "mailto:TEAS@uspto.gov"TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned examining attorney. Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at **HYPERLINK** "http://tarr.uspto.gov/"http://tarr.uspto.gov. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Attachment Information:

Count: 1

Files: 77090694 SIMPLYQUIT SUSPEND.doc

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/090694

MARK: SIMPLYQUIT



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GENERAL TRADEMARK INFORMATION:
<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: SIMPLYWELL, LLC

CORRESPONDENT'S REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

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NOTICE OF SUSPENSION

ISSUE/MAILING DATE:

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. However, if you wish to respond to this notice, you should use the "Response to Letter of Suspension" form found at <http://teasroa.uspto.gov/rsi/rsi>. The Office will conduct periodic status checks to determine if suspension remains appropriate.

The instant application was approved for publication in error. As such, the Trademark Trial and Appeal Board GRANTED remand of the application and has returned the file for further prosecution.

Action on this application is now suspended pending the disposition of:

- Application Serial No(s). **78085086**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **is attached**. Please note that at the time of approval of the instant application, the prior pending application was erroneously noted

as abandoned. The application has been subsequently revived and now poses a bar to registration in this case. The examining attorney apologizes for the inconvenience cause to the applicant.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

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