

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

*Mailed: March 3, 2004*

In re TUI AG

Serial No. **76368094**

Filed: 02/08/2002

TERRENCE L.B. BROWN  
SHLESINGER, ARKWRIGHT & GARVEY LLP  
3000 SOUTH EADS STREET  
ARLINGTON, VA 22202

***Rochelle Ricks, Paralegal Specialist:***

Applicant filed, on January 13, 2004 a response, which includes an amendment after final and on February 23, 2004, a notice of appeal.

The appeal is hereby instituted. However, the request requires consideration by the Trademark Examining Attorney. Accordingly, action on the appeal is suspended and the file is REMANDED to the Examining Attorney for consideration of the response.

One basis of the final refusal was the unacceptability of the identification of goods, and the request contains a proposed amendment to the identification. If the amendment is accepted and the mark is found registrable on the basis of this paper, the appeal will be moot. If the amendment is

accepted but the refusal to register is maintained, the Examining Attorney should issue an Office Action so indicating, and return the file to the Board. The appeal will then be resumed and applicant allowed time in which to file its appeal brief. If the Examining Attorney determines that the amendment to the identification is not acceptable, the Examining Attorney should indicate in the Office Action the reasons why the proposed amendment is unacceptable, and return the file to the Board for resumption of proceedings in the appeal.<sup>1</sup> However, if the Examining Attorney believes that the problems with the proposed identification can be resolved, the Examining Attorney is encouraged to contact applicant, either by telephone or written Office Action, in an attempt to do so.

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<sup>1</sup> If the Examining Attorney believes that the proposed amendment is unacceptable because it exceeds the scope of the original identification, or the identification as it has subsequently been amended, then the Examining Attorney may not issue a final refusal unless application was previously advised that amendments broadening the identification are prohibited under Trademark Rule 2.71(a).