

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: November 20, 2015

In re Happy Hound, LLC

Serial No. 86167663

Filed: 1/16/2014

**Denise M. DelGizzi,  
Chief Clerk of the Board:**

On April 6, 2015, Applicant filed a notice of appeal of the Examining Attorney's October 6, 2014 Office action.

A review of the file shows that the Examining Attorney's October 6, 2014 Office was a final Office action" in which she noted that "Prior pending application 86078553 has matured to registration, U.S. Registration No. 4546980". The Examining Attorney proceeded to issue a final refusal as to that registration, instead of a non-final refusal so as to allow Applicant time to respond.

Applicant's attention is directed to Trademark Rules 2.64(a) and 2.141, which provide in part that on the first or any subsequent re-examination or reconsideration, the refusal of registration or the insistence upon a requirement may be stated to be final, whereupon applicant's response is limited to an appeal or to compliance with a requirement; that every applicant for registration of a mark may, upon final refusal by the Examining Attorney, appeal to the Board upon payment of the prescribed fee; and that a second refusal on the same ground may be considered as final by applicant for purposes of appeal. The Examining Attorney has issued only a prospective refusal; that is, the registration cannot be refused

under Section 2(d) until such time as an earlier-filed application matures into a registration. Inasmuch as no second or final refusal to register has been issued in this case in connection with the above-identified prior pending application, this application is not ripe for appeal and the Board cannot consider applicant's appeal.

Accordingly, this appeal is premature. The Board's order instituting the appeal is vacated and jurisdiction of the application is hereby restored to the Examining Attorney for further appropriate action.

In the event that registration to applicant is ultimately finally refused, applicant may respond by filing a new notice of appeal, and the appeal fee already submitted by applicant will be applied thereto.