

12-10-02

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Phoenix Intangibles Holding Company

Serial No. 76/169,888

David V. Radack for Phoenix Intangibles Holding Company.

Wanda Kay Price, Trademark Examining Attorney, Law Office
111 (Kevin Peska, Acting Managing Attorney).

Before Simms, Cissel and Hanak, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge.

Phoenix Intangibles Holding Company (applicant) seeks
to register in typed drawing form CHOCOS for cookies. The
intent-to-use application was filed on November 22, 2000.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney refused registration on the basis that
applicant's mark, as applied to cookies, is likely to cause
confusion with the mark CHOKOS, previously registered in
typed drawing form for "processed cereal to be used as
breakfast food." Registration No. 1,939,810.

When the refusal to register was made final, applicant
appealed to this Board. Applicant and the Examining

Attorney filed briefs. Applicant did not request a hearing.

The appeal is now moot. On September 7, 2002 the cited registration was cancelled because registrant failed to comply with the provisions of Section 8 of the Trademark Act. However, even though the appeal is moot, this Board feels it appropriate to comment upon the actions of the Examining Attorney.

Applicant filed its appeal brief on July 12, 2002. At the top of page 2 of its brief, applicant included the following paragraph:

It is noted that the cited mark was registered on December 5, 1995. As such, a Section 8 Affidavit/Declaration was due to be filed by June 5, 2001, and even with a grace period, no later than December 5, 2001. According to Status Information on the United States Patent and Trademark Office ("USPTO") Website, it appears that no Section 8 Affidavit/Declaration has been filed. It seems as if this registration should have been cancelled by now. Even though Appellant believes there is no likelihood of confusion between the two marks, Appellant requests that the status of the cited registration be monitored and in case the registration is cancelled under Section 8, Appellant requests that this Application be immediately remanded to the Trademark Examining Attorney to withdraw the Section 2(d) refusal, allow the Application and pass the mark to publication.

On September 18, 2002 the Examining Attorney filed her seven page appeal brief arguing the merits of the matter. This was eleven days after the cited registration was cancelled for failure to comply with the provisions of

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Section 8. Nowhere in her brief does the Examining Attorney in any way acknowledge applicant's request "that the status of the cited registration be monitored ... in case the registration is cancelled under Section 8."

The inattention of the Examining Attorney has not only wasted her time and this Board's, but has also needlessly delayed the publication of applicant's mark for purposes of opposition.

Decision: The appeal is moot and this matter is remanded to the Examining Attorney.