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Appealing Refusals to Register Marks

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In this article, Intellectual Property national co-chair Karen Artz Ash and partner Bret Danow discuss *Shammas v. Focarino*, a case in which the US Court of Appeals for the Fourth Circuit issued a decision raising significant issues that trade mark applicants must consider when determining whether to appeal a refusal by a US Patent Trademark Office (PTO) examiner. Shammas appealed the refusal of its federal trade mark application to the Trademark Trial and Appeal Board, which affirmed the refusal to register. Shammas, unhappy with the Board's decision, then elected to commence a *de novo* action in a federal district court to review the refusal, naming the PTO's director as defendant. When the district court upheld the refusal to register, it granted the PTO's motion to direct Shammas to pay all of the PTO's expenses in the proceeding, including attorney fees. Shammas then took appeal to the Fourth Circuit, which affirmed the district court's ruling requiring Shammas to pay the PTO's fees. Karen and Bret note that trade mark applicants should be cognizant of the potential additional costs they may incur when appealing a refusal to register an applied-for mark.

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