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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **McDonald's Corporation**

Serial No. 78032951

Kevin G. Smith of Sughrue Mion, PLLC for **McDonald's Corporation**.

Linda E. Blohm, Trademark Examining Attorney, Law Office 110 (**Chris A.F. Pedersen**, Managing Attorney).

Before **Seeherman, Botorff and Holtzman**, Administrative Trademark Judges.

Opinion by **Botorff**, Administrative Trademark Judge:

In the above-captioned application, applicant seeks registration on the Principal Register of the mark depicted below, for "charitable fundraising services" in Class 36.



The application was filed on October 30, 2000 on the basis of intent-to-use. After initial examination and publication of the mark for opposition, a Notice of Allowance was issued. Applicant filed a timely Statement of Use, alleging August 18, 2000 as the date of first use of the mark anywhere and first use of the mark in commerce.

At issue in this appeal is the Trademark Examining Attorney's final refusal to register the mark on the ground that the specimens of record do not show use of the mark as a service mark for the recited services. See Trademark Act Sections 1, 3 and 45, 15 U.S.C. §§1051, 1053 and 1127. Applicant and the Trademark Examining Attorney have filed main appeal briefs. Applicant did not file a reply brief and did not request an oral hearing. We reverse the refusal to register.

The original specimen submitted with the Statement of Use is not at issue, applicant having essentially conceded its unacceptability. Rather, the specimens at issue in this appeal are the substitute specimen submitted with applicant's June 6, 2003 response to a non-final Office action, and the additional substitute specimen submitted with applicant's September 26, 2003 request for

reconsideration of the final refusal.¹ The June 6, 2003 specimen is a printout of a page from applicant's "Ronald McDonald House Charities" website. The September 26, 2003 specimen is a printout of a page from the webpage of one of the Ronald McDonald Care Mobile programs funded by Ronald McDonald House Charities, i.e., the Ronald McDonald Care Mobile of Spokane (Washington).

By way of background, the specimens of record show that the Ronald McDonald Care Mobile is a large truck consisting of a forty-foot long, eight-foot wide "mobile clinic," typically housing two patient examination rooms, a laboratory, a reception and a medical records area, and which is typically staffed by a pediatrician, a pediatric nurse, and other pediatric healthcare providers and social workers from the community. The vehicle is deployed into the community, i.e., to schools and neighborhoods, where its personnel provide primary care to children including diagnosis, treatment, referral and follow-up for serious medical conditions. There currently are Ronald McDonald Care Mobile programs operating in twelve cities nationwide.

¹ Each of these substitute specimens is supported by the requisite declaration that they were in use prior to the deadline for filing the Statement of Use. See Trademark Rule 2.59(b)(2), 37 C.F.R. §2.59(b)(2).

The mark applicant seeks to register is displayed prominently on the side and front panels of the vehicle housing the mobile clinic. Photographs of the vehicle, with the mark clearly visible, are displayed on each of the webpage specimens at issue here. It is the Trademark Examining Attorney's contention that the mark, as it is used in the field and as it is displayed on the specimens, would be understood to refer only to the medical services rendered by means of the vehicle, and not to the recited services, i.e., "charitable fundraising services." We are not persuaded.

As noted above, the June 6, 2003 specimen is a printout from the website of Ronald McDonald House Charities. The words "Ronald McDonald House Charities" appear prominently at the top of the page in the manner of a masthead or heading. Directly below this masthead, there appears the heading or headline "The Ronald McDonald Care Mobile" and a photograph of the Care Mobile vehicle with the applied-for mark depicted on its side and front panels. The text appearing under the headline is devoted to a description of the Ronald McDonald Care Mobile program, including descriptions of the vehicle itself and the healthcare services rendered by means of the vehicle. The text includes the following statements: "RMHC [Ronald

McDonald House Charities] is planning to grant 50 Ronald McDonald Care Mobile programs by the end of 2005"; "The Ronald McDonald Care Mobiles are part of Ronald McDonald House Charities' commitment to finding ways to directly improve the health and well being of children." The left margin of the webpage has a menu of links within the Ronald McDonald House Charities website, including links for "Donate" and "Contact Us," and a link depicting a coin being dropped into a box upon which is written "Donate Now Online Mail/Fax/Phone."

We find that this specimen suffices as evidence of use of the applied-for mark as a service mark for "charitable fundraising services." The mark as used on the specimen (depicted in the photograph of the vehicle) appears directly beneath the heading "Ronald McDonald House Charities." This immediate juxtaposition of the mark and the word "Charities" creates the requisite direct association between the mark and the recited services.² Considering the webpage as it would be viewed by potential donors, as we must,³ we find that they will readily understand that the Ronald McDonald Care Mobile mark and

² See, e.g., *In re Advertising and Marketing Development*, 821 F.2d 614, 2 USPQ2d 2010 (Fed. Cir. 1987).

³ See, e.g., *In re Dell Inc.*, 71 USPQ2d 1725 (TTAB 2004); and *In re Hydron Technologies Inc.*, 51 USPQ2d 1531 (TTAB 1999).

logo identify a particular program for which applicant, through its "Ronald McDonald House Charities" arm, is soliciting charitable donations. The mechanisms for making donations to the Ronald McDonald Care Mobile program, or for obtaining more information about making such donations, are provided on the same page, as links upon which the potential donor can click. Although the mark obviously is used in connection with the rendering of healthcare services as well, that fact is not dispositive; we find that the mark also is used as a service mark for the recited "charitable fundraising services."

The September 26, 2003 substitute specimen likewise is acceptable as evidence of applicant's use of the mark as a service mark for the recited services. A photograph of the vehicle with the mark prominently displayed on its front and side panels appears immediately to the right of links entitled "The Need," "Contributors," "Contact" and "Donate." The specimen also includes a printout of the page which is displayed when the potential donor clicks on the "Contact" link. On that page appears another photograph of the vehicle, and under the heading "Contact Us," there is text which states: "For information about making a financial gift to assist the operations of the Ronald McDonald Care Mobile, contact Debbie Haberman at

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(509) 324-7340. Donations may be mailed to Ronald McDonald House Charities, 1015 W. 5th Ave., Spokane, WA 99204. To make a secure online donation, click here." Viewing this specimen webpage in its entirety as it would be viewed by potential donors, we find that there is the requisite direct association between the mark sought to be registered and the services recited in the application.

In summary, we find that the June 6, 2003 and September 26, 2003 substitute specimens are acceptable evidence of applicant's use of the mark in connection with the recited "charitable fundraising services."

Decision: The refusal to register is reversed.