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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Key Holdings, LLC

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Serial No. 78801223

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Jeffrey D. Myers of Peacock Myers, P.C. for Key Holdings, LLC.

Laura A. Hammel, Trademark Examining Attorney, Law Office 116 (Michael W. Baird, Managing Attorney).

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Before Hairston, Grendel and Zervas, Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

Key Holdings, LLC ("applicant") has filed, on January 27, 2006, an application to register on the Principal Register the mark AIRPORT PARK-A-POOCH (in standard character form) for "kennel services" in International Class 43. The application is based on a bona fide intent to use the mark in commerce under Trademark Act Section 1(b), 15 U.S.C. §1051(b). Applicant has disclaimed the word AIRPORT.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used in connection with its services, so resembles the previously registered mark PARK-A-PET (in typed form) for "pet daycare services" in International Class 42 as to be likely to cause confusion, or to cause mistake or to deceive.[1]

Applicant has appealed the final refusal. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

Before considering the merits of the refusal, we address the examining attorney's objection to applicant's submission of evidence with its brief. The record in any application should be complete prior to the filing of an appeal. See Trademark Rule 2.142(d), 37 C.F.R. § 2.142(d). In view thereof, and because the examining attorney has objected to applicant's late submission of this evidence, the examining attorney's objection is sustained and we have not considered such evidence.[2]

Our determination of the examining attorney's refusal to register the mark under Section 2(d) of the Trademark

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[1] Registration No. 2886807, issued September 21, 2004.
[2] Even if we had considered such evidence, our disposition of this appeal would not be any different.

Act is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

We first consider the similarity or dissimilarity of registrant's and applicant's services. Both applicant's and registrant's services involve the care of pets, including dogs. "Kennel" is defined in the definition of record from *Random House Unabridged Dictionary* (2006) (at dictionary.com) as "an establishment where dogs or cats are … trained, or boarded." Based on the definition of "daycare" in the record from *The American Heritage Dictionary of the English Language* (4th ed.) located on dictionary.com,[3] we construe "pet daycare services" as

[3] "Daycare" is defined in *The American Heritage Dictionary of the English Language* (4th ed.) as "provision of daytime training,

providing daytime training, supervision and recreation for pets, including dogs. The Internet evidence in the record specifies that kennel services entail the overnight boarding of dogs, and suggests that service providers distinguish overnight boarding services from daycare services. It also establishes that a single provider offers both overnight boarding and daycare services. See *doggydayout.com,* providing "Doggy Day Out is a dog daycare, kennel (overnight boarding) and dog training facility …"; *bealuckydog.com* ("[w]e provide a one stop shop, offering boarding, daycare …."); *campbowwowusa.com* ("[w]e provide doggy day camp for clients wishing to drop their dogs off in the morning and pick them up in the evening, as well as overnight boarding for travelers. Overnight boarders play in the day camp program during the day and have their own individual cabins at night."). Further, certain providers who identify themselves as kennels provide both overnight boarding and daycare for dogs. See *bearbrookkennel.com* showing links to "Boarding" and "Day Care" and stating "[s]ince 1995 we have operated a Doggy Daycare Monday to Friday from 8am to 5pm"; *seespotrunkennel.com* showing links to "Daycare" and "Overnight Boarding"; and *roverkennels.com*

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supervision, recreation, and often medical services for children of preschool age, for the disabled, or for the elderly."

listing "ROVER Kennels offers cage-free dog daycare, overnight boarding for both dogs …."

The examining attorney has also introduced several use-based third-party registrations which list both kennel services and pet daycare services. Third-party registrations which individually cover a number of different items and which are based on use in commerce may have some probative value to the extent that they serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993). In light of the foregoing, we find that the examining attorney has established that the services are highly related, differing minimally largely due to the temporal nature of the services, and resolve the *du Pont* factor regarding the similarity of the services against applicant.

With respect to the trade channels and the classes of purchasers of the respective services, we presume in the absence of any restrictions in the identifications of services in the application and registration that applicant's and registrant's services are marketed in the same, overlapping trade channels to the same classes of purchasers, namely pet owners and especially members of the general public who own dogs. See *In re Elbaum*, 211 USPQ

639 (TTAB 1981). The *du Pont* factors regarding trade channels and classes of purchasers therefore weigh in favor of a finding of likelihood of confusion.

We next consider the similarity or dissimilarity of the marks. Specifically, we must determine whether applicant's mark, AIRPORT PARK-A-POOCH and registrant's mark PARK-A-PET, are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression. We do not consider whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar that confusion as to the source of the goods offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975).

Applicant's mark is AIRPORT PARK-A-POOCH, and applicant has disclaimed the term AIRPORT. When considering marks for purposes of a likelihood of confusion determination under Section 2(d) of the Trademark Act, disclaimed matter is typically less significant or less dominant when comparing marks. Although a disclaimed portion of a mark certainly cannot be ignored, and the

marks must be compared in their entireties, one feature of a mark may be more significant in creating a commercial impression. *Dixie Restaurants,* 41 USPQ2d at 1533-34; *In re National Data Corporation*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985); and *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553 (TTAB 1987). Here, because applicant has disclaimed the descriptive term AIRPORT that identifies where applicant's services are provided, we find that the dominant portion of applicant's mark which is more significant in creating a commercial impression is PARK-A-POOCH.

The dominant part of applicant's mark, PARK-A-POOCH, and registrant’s mark, i.e., PARK-A-PET, have similar overall meanings, i.e., to “park” or board one’s pet. “Pooch” is defined as “a dog,” which, of course, is a pet. See the *Random House Unabridged Dictionary, supra*, definition of “pooch” in the record, obtained from dictionary.com. Both marks use the expression PARK-A- to refer to boarding of an animal, whether for the day or longer. Because of this similarity in meaning, as well as a similarity in construction with both marks beginning with PARK-A- followed by a term beginning with the letter “P” referring to an animal, we find that the marks are similar in commercial impression. In so finding, we reject

applicant's argument that the "word 'AIRPORT' in Applicant's mark provides a connotation of traveling that is not made in the mark 'PARK-A-PET'." Brief at p. 4. AIRPORT in applicant's mark merely indicates where the services are provided - at or near an airport. Further, even if the mark includes a connotation of travel, this connotation is not so significant in comparison to the other similarities between the marks.

Turning next to the sound of the marks, we find that the marks are similar in sound too. As noted by the examining attorney, PARK-A-POOCH and PARK-A-PET, due to the inclusion of two single syllable terms beginning with the letter "P," have a similar lilting cadence. Because of the shared term PARK-A-, the appearance of the marks is also similar.

Due to these similarities in the marks, we resolve the *du Pont* factor regarding the similarity of the marks against applicant.

Applicant has argued that "dog and pet owners who are likely to use either service tend to be highly selective and particular as to how their animals are treated"; that a "consumer of either service cannot simply purchase the service without making inquiries regarding the services"; and that "the consumer of either service is sophisticated,

or becomes sufficiently sophisticated, [and is] not to be confused regarding the source of the services." Brief at pp. 6 – 7. Applicant has offered no evidentiary support for its arguments and we hence find its arguments unpersuasive. Rather, we are persuaded by that evidence of record which bears on purchaser care, namely the *bealuckydog.com* webpage which advertises pet boarding for $28.00 per night and pet daycare services for $14.50 per day. While we agree with the examining attorney that such services are inexpensive, we disagree that purchases may be made on impulse. Because both services involve the boarding of family pets, we find that purchasers – who are members of the general public who own pets - use ordinary care in selecting their kennel or daycare services. The *du Pont* factor regarding conditions under which purchases are made is hence neutral.

Thus, on the basis of our findings discussed above, we conclude that applicant's mark AIRPORT PARK-A-POOCH for "kennel services" is likely to be confused with registrant's mark PARK-A-PET for "pet daycare services." We have considered all of applicant's arguments to the contrary (including arguments not specifically addressed in this opinion) but are not persuaded by them. To the extent that any of its arguments raise a doubt about likelihood of

confusion, that doubt is required to be resolved in favor of the prior registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

**Decision**: The refusal to register under Section 2(d) of the Trademark Act is affirmed.