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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 The Kyjen Company, Inc.

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Serial No. 77571488

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William A. English of Vista IP Law Group LLP, for The Kyjen Company, Inc.

Jessica A. Powers, Trademark Examining Attorney, Law Office 104 (Chris Doninger, Managing Attorney).

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Before Seeherman, Ritchie, and Shaw, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

On September 16, 2008, The Kyjen Company, Inc. ("applicant") filed an application to register DOG GAMES in standard characters on the Principal Register for "pet toys" in International Class 28. Applicant filed the application under Section 1(a) of the Trademark Act, 15 U.S.C. §1051(a), alleging April 1, 2004 as the date of first use and March 7, 2005 as the date of first use in commerce.

Initially, the examining attorney issued a refusal based on mere descriptiveness, and when that was made final, applicant filed an appeal to the Board on that ground. On March 11, 2010, the Board remanded the application to the examining attorney for consideration of a Section 2(f) declaration filed by applicant, which the Board construed as a request for remand. Thereafter, the examining attorney refused registration on the additional ground that the proposed mark is generic for the applied-for services.<sup>1</sup>

The examining attorney has now made final the refusal of the application under Section 2(e)(1) on the grounds that (1) the proposed mark DOG GAMES is generic for the applied-for services, or, in the alternative, (2) the proposed mark DOG GAMES is highly descriptive and applicant's showing of acquired distinctiveness is not sufficient to allow registration under Section 2(f) of the Trademark Act.

#### **GENERICNESS REFUSAL**

Generic terms are terms that the relevant purchasing public understands primarily as the common or class name

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<sup>1</sup> Where an applicant responds to a mere descriptiveness refusal under Section 2(e)(1) by asserting acquired distinctiveness and the examining attorney determines the designation is generic, the examining attorney must issue a new nonfinal action refusing

for the goods and/or services. *H. Marvin Ginn Corp. v. International Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986); *In re Women's Publishing Co. Inc.*, 23 USPQ2d 1876, 1877 (TTAB 1992). Generic terms are by definition incapable of indicating a particular source of the goods and/or services, and cannot be registered as trademarks and/or service marks; doing so "would grant the owner of the mark a monopoly, since a competitor could not describe his goods as what they are." See *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1142 (Fed. Cir. 1987).

When a proposed mark is refused registration as generic, the examining attorney has the burden of proving genericness by "clear evidence." *Merrill Lynch*, 4 USPQ2d at 1143; see also *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1111 (Fed. Cir. 1987); *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019 (TTAB 2010). The critical issue is to determine whether the record shows that members of the relevant public primarily use or understand the term sought to be registered to refer to the category or class of goods or services in question. *Ginn*, 228 USPQ at 530. Making this determination "involves a two-step inquiry: First,

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registration under Section 2(e)(1). TMEP §1209.02(a)(ii) (8<sup>th</sup> ed. 2011).

what is the genus of goods or services at issue? Second, is the term sought to be registered ... understood by the relevant public primarily to refer to that genus of goods or services?" *Id.* Evidence of the public's understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers and other publications. *Merrill Lynch*, 4 USPQ2d at 1143, and *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961, 963 (Fed. Cir. 1985).

Turning to the first inquiry, both the examining attorney and the applicant submit that the genus is properly defined as the identification of goods set forth in the application, "pet toys." (appl's brief at unnumbered 4) (examiner's brief at unnumbered 3). We agree, and find that the genus of goods at issue in this case is adequately defined by applicant's identification of goods, specifically, "pet toys." *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991). *See also In re Country Music Association Inc.*, 100 USPQ2d 1828 (TTAB 2011). This genus includes the "dog agility starter kits" sold by applicant, with the items "high jump," "open tunnel," "pause box," and "weave poles," since they are specifically shown in applicant's specimen of record. The

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specimen also indicates that this game equipment comes complete with "game rules and more":



Turning to the second inquiry, the examining attorney argues that the term "dog games" is understood by the relevant public primarily to refer to "pet toys." The following dictionary definitions are of record:

Dog: A domesticated carnivorous mammal (canis familiaris) related to the foxes and wolves and raised in a wide variety of breeds. The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000); Attached to December 12, 2008 Office Action, p2;

Game : 1. An activity providing entertainment or amusement; a pastime; 4. The equipment needed for playing certain games. The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000); Attached to December 12, 2008 Office Action, p4; and

Toy: 1. an object, often a small representation of something familiar, as an animal or person, for children or others to play with; plaything; 3. something that serves for or as if for diversion , rather than for serious practical use. Dictionary.com (2009); Attached to June 12, 2009 Response to Office Action, p4.

We begin with the premise that the equipment described in applicant's specimen refers to "pet toys," as identified in its identification of goods. Launching off from that, the examining attorney argues that applicant's proposed mark DOG GAMES is simply another way of referring to "pet toys." Noting that the dictionary definition of "game" may be understood to include the equipment used to play a game, the examining attorney argues that the equipment advertised by applicant in its specimen would be called "dog games." This includes the "high jump," "open tunnel," "pause box," and "weave poles" referred to in the "dog agility starter kits" of the specimen. It also includes the "puzzle toys"

referred to in Exhibit B to applicant's Section 2(f) declaration:

Dog Games Puzzle Toy Sell Sheet p.1

**A New Category!**  
**DOG GAMES™**  
PUZZLE TOYS

Interactive Puzzle Toys  
at a price point that will  
**EXPLODE YOUR SALES!**

- ✓ Affordable MSRP
- ✓ Keeps Pets Occupied
- ✓ Eliminates Boredom

**Star Spinner™**

**Paw Hide**

**Treat Wheel**

See reverse for details  
and tech specs.

**Stimulate & Engage...**

**Environmental Enrichment**  
programs have been implemented in zoos throughout the world. Among the methods used to create stimulating environments are food puzzles that encourage animals to investigate and interact with their surroundings. These puzzles allow them to forage for food in ways that come naturally in the wild – this keeps them actively engaged in their zoo-based environments.

Dog Games Puzzle Toys provide a similar enrichment activity for your own pets. As descendants of wolves, most dogs instinctively enjoy the challenge of hunting and seeking out the hidden food in our Puzzle Toys.

**It helps keep your pet healthy, happy and engaged!**

See the complete line  
of Kyjen products at  
[www.kyjen.com](http://www.kyjen.com)

To further illustrate the point, the examining attorney submitted printouts from a variety of third-party websites that refer to "dog games" generally when referring to the genus of "pet toys" that include equipment such as that in applicant's specimen. The primary examples are as follows:

Dog Toys Ideas: "Playing with dogs using dog toys and dog games make dog sports quite enjoyable."  
*Pets.iloveindia.com*. Attached to July 9, 2009 Office Action, p6.

Dog toys and dog games to engage your dog senses and develop his motor skills. Choose from a large selection of pet toys for all dog breed types - plush toys, rubber dog toys, dog balls, tennis ball launchers and more. Keep your dog healthy and active with this fine selection of cheap dog toys and puppy toys.  
*www.terrificpets.com/pet\_supplies/dog/toys*. Attached to July 9, 2009 Office Action, p3.

Why Our Dog Toys Are So Unique: And we are happy to announce that we are now carrying Nina Ottosson's unique and challenging line of wooden and plastic dog puzzles and dog games. Great interactive dog toys that require dogs to use their brain in order to "win" the game and earn treats! *www.activedogtoys.com*. Attached to March 31, 2010 Office Action, p20<sup>2</sup>.

In addition, the Animal World Network website, *www.animalworldnetwork.com*, uses the heading "Dog Toys & Games" as a category descriptor for toys similar to those applicant sells:

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<sup>2</sup> We note that several other websites submitted by the examining attorney refer to the same "Nina Ottosson" company.





Some additional evidence submitted by the examining attorney referenced foreign websites or companies. We have given little weight to these since pet toys do not appear to be the type of goods that American consumers would be inclined to purchase from abroad. See TBMP §1208.03(3rd ed. 2011) ("Evidence from websites located outside the United States may have probative value depending on the circumstances."); *Cf International Business Machines Corp.*, 81 USPQ2d 1677, 1681 n.7 (TTAB 2006); *In re King Koil Licensing Co.*, 79 USPQ2d 1048, 1050 (TTAB 2006); *In re Remacle*, 66 USPQ2d 1222, 1224, n.5 (TTAB 2002):

Dog-games.co.uk: A comprehensive range of mental activity toys to stimulate your dogs [sic] working instincts & senses - see Chewing; Interacting with You; Playing Alone & Preventing Boredom; and Soothing; An interesting selection

of highly recommended books. [www.dog-games.co.uk](http://www.dog-games.co.uk). Attached to July 9, 2009 Office Action, p4.

Pet Product of the Week: Cool Interactive Dog Games: I have the perfect solution for you: the new interactive doggie games from The Company of Animals in the UK.

[www.thoughtsfurpurs.com/dogs/cool-interactive-dog-toys-and-games](http://www.thoughtsfurpurs.com/dogs/cool-interactive-dog-toys-and-games). Attached to June 11, 2010 Office Action, p2.

Other evidence references the term "DOG GAMES" used apparently as a mark, rather than in a generic manner:

This web site is now regularly read by over 1500 dog owners a day from all over the world and we are gratified with all the wonderful feedback we have received - thank you: The Material (both written and pictorial) contained throughout this web site may not be reproduced without the prior written approval of Dog Games Ltd. © 2006-2008 All Rights Reserved. [www.dog-games.co.uk](http://www.dog-games.co.uk). Attached to July 9, 2009 Office Action, p5.

Meanwhile, we note that some of the evidence submitted by the examining attorney clearly distinguishes between certain types of games and toys, such as games played without toy-like equipment:

Dog Games - Top 5 Games That Will Tire Your Dog Out: Playing dog games with canine pet provides your beloved with his much needed physical and mental stimulation. This also gives you the benefit of reinforcing his obedience training in a fun way as you establish a deeper relationship with him. However, not every dog is thrilled with playing ordinary fetch all the time especially if he is very intelligent. Many dog breeders, vets and trainers agree that the best

dog games are those that provide exercise and challenge accompanied with positive reinforcement by giving the animal a reward for accomplishing what you want. [www.ezinearticles.com/?Dog-Games-Top-5-Games-That-Will-Tire-Your-Dog-Out&id=4339225](http://www.ezinearticles.com/?Dog-Games-Top-5-Games-That-Will-Tire-Your-Dog-Out&id=4339225). Attached to June 11, 2010 Office Action, p21.

A party isn't a party without great dog games!: Hot dog Dunk - Water Relay - [www.squidoo.com](http://www.squidoo.com). Attached to June 11, 2010 Office Action, p29.

The examining attorney also submitted evidence in which "dog games" references are to items that would not likely be classified as toys, such as books about playing games with toys ([www.dogshelpline.com](http://www.dogshelpline.com)), shown below:

<http://webcache.googleusercontent.com/search?q=cache:hBZgSRiECgJ:www.dogshelpline.com/Spoilt/+%22dog+games%22+pet+toys&cd=3&hl=en&ct=clink&gl=us> 01/12/2011 08:48:37 PM

### "101 Ways to Spoil Your Dog for Under \$10"



To say that dogs are man's best friend is anything but a cliché. You might be the most miserable person in the world without a friend to your name... but your dog will treat you like royalty every time you walk through the door.

#### Does your dog know just how much you adore him?

Do you do everything you can to show him he's the center of your universe? Do you make up for the hours you leave him alone every day without a bit of company or interaction? Pampering your dog isn't just something people with no kids, extra cash, or spare free time can do. Anyone can do it, and it can actually **help your dog live a longer, happier life!**

*It doesn't just mean buying tons of new toys and gadgets -- in fact, you can do plenty of things that don't cost a cent!*

Get information about low-cost luxuries for your dog **AND** free and fun activities that'll keep both of you entertained for hours. **Plus**, an item-by-item price reference to keep you well within your budget!

**But.....**

**If you think** that this is going to be a bunch of common-sense fluff...



Finally, the examining attorney has made of record evidence that we would categorize as "hybrid," i.e., it is not clear from the submission whether "dog games" is being used in a generic manner for pet toys, or is being used to refer to play activity.

Dog Games - Fantastic Games to Play With Your Dog - Hide a toy or treat in the house or outside. Ask your dog to find it. You may need to help him a little. [www.articlebase.com/pets-articles-dog-games-fantastic-games-to-play-with-your-dog-1470688.html](http://www.articlebase.com/pets-articles-dog-games-fantastic-games-to-play-with-your-dog-1470688.html). Attached to June 11, 2010 Office Action, p17.

Dog Games and Activities for Mental and Physical Well-Being: Dog Toys Challenge a Pet's Mind: The Ralston Purina Company suggests playing with a dog after you've been away for a while or when you notice he has extra energy to burn. Try tossing a flying disk to your dog. Start by just letting him play with the disk, chewing it or playing tug. Then play toss and return. Even if the dog just runs around with the disk in his mouth, that's okay too - the goal is to get him moving and interacting. [www.suite101.com/content/dog-games-and-activites-for-mental-and-physical-well-being=a312101](http://www.suite101.com/content/dog-games-and-activites-for-mental-and-physical-well-being=a312101). Attached to January 12, 2011 Office Action, p14.

In order to prove a mark to be generic, the examining attorney must satisfy a heavy burden with "clear evidence." *Merrill Lynch*, 4 USPQ2d at 1143; see also *In re Gould Paper Corp.*, 5 USPQ2d at 1111; *In re Wm. B. Coleman Co.*, 93 USPQ2d 2019. Here the examining attorney has put forth only four clear examples of generic use of the term "dog games," to mean "pet toys," as explained above. This is in

contrast to use of the term on foreign websites, use of the term as a mark, the inconclusive uses, *see In re Volvo White Truck Corp.*, 16 USPQ2d 1417, 1421 (TTAB 1990), and overridingly, use of the term "dog games" to mean games played with dogs without using "pet toys" (either with non-toy-like equipment, or without equipment at all; or using, perhaps, equipment such as books to think up games. The four clear examples of generic usage in this country of the term "dog games" as referring to equipment as "pet toys" is insufficient, in light of at least as many counter-examples of record, to convince us that the public "clearly" understands the term "dog games" to refer *primarily* to "pet toys." *H. Marvin Ginn Corp.*, 228 USPQ at 530. In this regard, the evidence points just as easily to the public distinguishing between the concepts of "pet toys" and "dog games," even where equipment may be used. Here we differ from the dissent in finding that not all types of equipment necessarily would be characterized as 'games' even if used in the pursuit thereof. The evidence simply does not bear that out. Doubt on the issue of genericness is resolved in favor of the applicant. *In re DNI Holdings Ltd.*, 77 USPQ2d 1435, 1437 (TTAB 2005). Accordingly, we do not find the applied-for mark to be generic for the goods for which applicant seeks registration.

**MERE DESCRIPTIVENESS**

We turn next to the refusal that DOG GAMES is merely descriptive of "pet toys" and that the showing under Section 2(f) is insufficient to establish acquired distinctiveness. Although applicant has sought registration under Section 2(f), we do not take applicant's assertion as a concession that the mark is not inherently distinctive, since the Section 2(f) claim was asserted in the alternative. See *In re Thomas Nelson, Inc.*, 97 USPQ2d 1712, 1713 (TTAB 2011) ("[a]n applicant can avoid the admission that its mark is not inherently distinctive if it makes the claim of acquired distinctiveness in the alternative and files an appeal of the refusal on the basis that the mark is not inherently distinctive"); TMEP Section 1212.02(c) (8th ed. 2011); Compare *The Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 586 F.3d 1352, 92 USPQ2d 1626, 1629 (Fed. Cir. 2009) ("where an applicant seeks registration on the basis of Section 2(f), the mark's descriptiveness is a nonissue; an applicant's reliance on Section 2(f) during prosecution presumes that the mark is descriptive.") In any event, as discussed in the prior section under "Genericness," we have no doubt that applicant's mark is merely descriptive of "pet toys" in that the term "dog games" would be understood by the

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relevant public to describe a feature or function of the "pet toys" identified in the application, specifically, that the "pet toys" offered by applicant may be used to play games with dogs. *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002). See also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985).

#### **ACQUIRED DISTINCTIVENESS**

It is applicant's burden to prove acquired distinctiveness. *Yamaha Int'l Corp. v. Hoshino Gakki Co. Ltd.*, 840 F.2d 1572, 6 USPQ2d 1001, 1006 (Fed. Cir. 1988); *In re Cabot Corp.*, 15 USPQ2d 1224, 1229 (TTAB 1990); *In re Hollywood Brands, Inc.*, 214 F.2d 139, 102 USPQ 294, 295 (CCPA 1954) ("[T]here is no doubt that Congress intended that the burden of proof [under Section 2(f)] should rest upon the applicant"). Evidence of acquired distinctiveness can include the length of use of the mark, advertising expenditures, sales, survey evidence, and affidavits asserting source-indicating recognition.

It is the examining attorney's position that DOG GAMES is so highly descriptive that applicant's evidence is not sufficient to establish acquired distinctiveness. As

discussed above in relation to the genericness refusal, the evidence submitted by the examining attorney was of a mixed nature. While we are convinced that applicant's mark is merely descriptive of the goods sought to be registered, we do not find the term "dog games" to be highly descriptive of "pet toys." The evidence indicates that while a "toy" may be used to play a "game," the word "game," even when understood as "equipment," is not quite the same as a "toy." Accordingly, we find the term "dog games" to be merely descriptive rather than highly descriptive for "pet toys."

In support of its claim of Section 2(f) acquired distinctiveness, applicant submitted a declaration from its secretary and cofounder, together with exhibits thereto, attesting to just over five years "substantially exclusive and continuous use"; (Hansen Decl. Para. 4); sales in all fifty states; (*Id.* at Para 7); applicant's "DOG GAMES products have generated over a million dollars of revenue" for applicant; (*Id.* at Para. 12); applicant spends "approximately \$48,000 per year in advertising DOG GAMES products"; (*Id.* at Para. 8); applicant "sells its DOG GAMES products to a wide variety of pet stores and pet product vendors, including online vendors and retail companies" including "PETSMART, PetCo, PetStore.com, and Amazon.com";



(*Id.* at Para. 11); and applicant has "promoted DOG GAMES products at industry trade shows around the country"; (*Id.* at Para. 10). The Hansen declaration included customer reviews of products featuring the DOG GAMES mark as Exhibit

F. Samples include the following:

Great Product!: I purchased this for my five month old cockapoo and it was great. He learned the high jump and tunnel in 2 days and 3 days later he learned the weaving poles. The spikes do break easily and that was the only problem. This is great for a starter kit but you will eventually need to get real equipment if you start to get serious about agility.  
[www.petsmart.com](http://www.petsmart.com).

The best course you can get!: When I got this in the mail as soon as I got home I went outside set it up and trained my dog. She showed improvement on attitude and in love and affection! [sic] This product is amazing. It's also really easy to teach her new things now. I love this product better than the higher traing [sic] ones I give this two paws up!! [www.petsmart.com](http://www.petsmart.com).

Neat: This is awesome! I couldn't find agility stuff anywhere! [www.petsmart.com](http://www.petsmart.com).

Big help: I have a 3 year old Golden Retriever. Hes [sic] can jump over 4 ft and was scared to death of tunnels! I bought this home, set it up, let him loose next to it, and within 2 weeks, he has run the tunnels! Also very heavy built! He chewed it a few times and it didn't rip! Now we built him a grass arena w/ a roof and spotlight! We chose this over pro stuff! 2 thumbs up!  
[www.petsmart.com](http://www.petsmart.com).

I loved it: This product was great for my 4 year old Rottweiler mix. He's an energetic dog, but the only thing is that the "pause box" is supposed to be a pause table. Otherwise this was

great! Yes I would recommend this product to my friends. [www.PetStore.com](http://www.PetStore.com).

Affordable fun for your dog: I have a golden retriever as well as a Pembroke welsch corgi. They love their food and tend to inhale it. But they are also very smart and tend to get board [sic]. I bought the Star Spinner as well as the paw print shaped toy by this same company and they had a blast from the moment I filled it and set it on the floor! [www.amazon.com](http://www.amazon.com).

Finally, applicant included a news article in support of its Section 2(f) claim of acquired distinctiveness.

The Dog Daily: Fetch This: Kyjen Dog Games Dog Agility Starter Kit: Dog agility is fast becoming the most popular sport for canines. Once you try out this Dog Agility Starter Kit, you'll soon see why. *The Dog Daily, August 25, 2008*. Attached as Exhibit G to Hanson Declaration, in December 13, 2010 Response to Office Action, p34.

Given that DOG GAMES is not highly descriptive of pet toys, we are persuaded by the evidence of record that the term DOG GAMES has acquired distinctiveness for "pet toys."

**Decision:** The refusal based on genericness is reversed. The refusal based on mere descriptiveness and applicant's insufficient showing of acquired distinctiveness is reversed. The application will proceed to publication.

\* \* \*

Shaw, Administrative Trademark Judge,  
dissenting:

I respectfully dissent from my colleagues' ruling on the genericness of applicant's mark. I would affirm the Examining Attorney's holding that DOG GAMES is generic for pet toys. The Examining Attorney has provided clear evidence to support finding that DOG GAMES is a generic term.

The definition of "game" submitted by the Examining Attorney includes "[t]he equipment needed for playing certain games."<sup>3</sup> Applicant's goods as described on the specimen of record fall squarely within this definition. The "Dog Agility Starter Kit" identified in applicant's specimen shown above consists of equipment for a "fun obstacle course for dogs" and includes "weave poles," a "start/finish line," an "open tunnel," and even "game rules and more." Applicant's goods are clearly a game for dogs or a "dog game."

The record also contains third-party internet evidence showing that the term "dog games" is commonly used to refer to both equipment and activities intended to keep dogs active and healthy. Further, the Animal World Network

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<sup>3</sup> The American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000).

website uses the heading "Dog Toys and Games" as the heading for an entire page of dog toys and games, such as applicant's, offered for sale. This evidence demonstrates that the public, when seeing the term "dog games" used in connection with pet games and toys, would understand the term to refer to precisely the kinds of goods applicant produces.

The struggle to find this mark generic occurs because applicant has identified its goods as "pet toys" which is so broad that it defies clear definition and disguises the real nature of applicant's goods. The majority correctly identifies the genus from the identification of goods as "pet toys" but this determination does not end the genus inquiry. When faced with such a broadly worded genus it is necessary to define exactly what is included in the genus. Specifically, the central question is whether the genus "pet toys" includes games for dogs or "dog games." The evidence of record shows that it does. Applicant argues that its "dog toy products are not 'games'" (Applicant's Br. at 3) but this statement is contradicted by the specimen which clearly shows DOG GAMES being used on games for dogs. The applicant's specimen submitted in support of this application shows use of applicant's DOG GAMES mark on games for dogs. This specimen has been accepted by the

Office to demonstrate use of the mark on "pet toys." Thus, dog games must be included within the genus "pet toys."

The majority first takes issue with the number of excerpts from websites put forth by the Examining Attorney and notes that the record includes "only four clear examples of generic use of the term 'dog games' to mean 'pet toys.'" But this finding ignores the dictionary definitions in the record and, most importantly, ignores the applicant's own specimen which shows that the goods are games for dogs.

By ignoring the applicant's specimen which shows that the goods are pet toys in the nature of games for dogs, the majority also errs by viewing the mark in the abstract with no consideration given to the actual goods at issue. The majority finds that since the public understands the term DOG GAMES to describe games played by dogs both with and without "equipment," DOG GAMES cannot be generic because the public doesn't understand the term to "refer primarily" to pet toys. This analysis is incorrect because, as the Board has stated many times before, a mark is not to be viewed in the abstract but must be viewed in relation to the specific goods or services in connection with which the mark is encountered by prospective purchasers. Here, applicant's goods are "pet toys" including the agility game

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for dogs shown on the specimen of record. When the mark is viewed by prospective consumers in relation to the applicant's goods, i.e., pet toys in the nature of games for dogs, the consuming public would immediately understand that the term DOG GAMES refers primarily to goods such as applicant's notwithstanding that they have been broadly identified as "pet toys."

The Examining Attorney's refusal to register the mark as generic should be *affirmed*.