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405687 7000 - EXAMINER BRIEF

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# UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

U.S. APPLICATION SERIAL NO. 86420598

MARK: THE NO PULL HARNESS & LEASH IN ONE



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**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

**TTAB INFORMATION:**

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

APPLICANT: MT Enterprises LLC

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

405687 7000

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## **EXAMINING ATTORNEY'S APPEAL BRIEF**

### Introduction

The applicant has appealed the refusal to register the applied-for mark in Application No. 86420598 pursuant to Trademark Act Section 2(d), 15 U.S.C. §1052(d), because of a likelihood of confusion with the mark for U.S. Registration No. 1822770.

### Procedural History

On October 10, 2014, MT Enterprises LLC, a Rhode Island limited liability company, applied to register the mark THE NO PULL HARNESS & LEASH IN ONE in standard characters on the Principal Register for “Animal harnesses for dogs; Animal leashes; Dog leashes; Leashes for animals; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices” in International Class 018 pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1501(a). In an Office action dated February 02, 2015, registration was refused on the grounds of likelihood of confusion with respect to the mark NO-PULL in Registration No. 1822770. Registration was additionally refused based on the mark being merely descriptive of the goods. Applicant was further advised of two prior-filed applications which, if registered, may present a bar to registration based on a likelihood of confusion based on those registered mark(s). In response, applicant amended its application to the Supplemental Register, and disclaimed the wording HARNESS & LEASH, thus overcoming the descriptiveness refusal. Additionally, the prior-filed applications abandoned and thus no longer presented a potential bar to registration. A final refusal under Section 2(d) was issued on August 28, 2015. The applicant filed a Request for Reconsideration on December 02, 2015. That Request was denied on February 02, 2016, and applicant filed its Brief on April 25, 2016.

#### Issue on Appeal

The sole issue on appeal is whether applicant’s mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 1822770 as to be likely to cause confusion, or to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

#### Argument

Trademark Act Section 2(d) bars registration of an applied-for mark that so resembles a registered mark that it is likely that a potential consumer would be confused or mistaken or deceived as to the source of the goods of the applicant and registrant. See 15 U.S.C. §1052(d). The court in *In re E. I.*

*du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) listed the principal factors to be considered when determining whether there is a likelihood of confusion under Section 2(d). See TMEP §1207.01. However, not all the factors are necessarily relevant or of equal weight, and any one factor may be dominant in a given case, depending upon the evidence of record. *Citigroup Inc. v. Capital City Bank Grp., Inc.*, 637 F.3d 1344, 1355, 98 USPQ2d 1253, 1260 (Fed. Cir. 2011). The following factors are the most relevant here: similarity of the marks, similarity of the goods, and similarity of trade channels of the goods. See *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); TMEP §§1207.01 *et seq.*

A. Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Similarity in any one of these elements may be sufficient to find the marks confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988). TMEP §1207.01(b).

When comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in their entireties that confusion as to the source of the goods offered under applicant's and registrant's marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012); TMEP §1207.01(b). The focus is on the recollection of the average purchaser, who normally retains a general rather than specific impression of trademarks. *L'Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1438 (TTAB 2012).

Applicant's mark is the standard character mark THE NO PULL HARNESS & LEASH IN ONE, with the wording HARNESS & LEASH disclaimed, and the registrant's mark is the typed drawing NO-PULL. Although marks are compared in their entireties, one feature of a mark may be more significant or

dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat'l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Greater weight is often given to this dominant feature when determining whether marks are confusingly similar. See *In re Nat'l Data Corp.*, 753 F.2d at 1058, 224 USPQ at 751.

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat'l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff'd sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMCASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii). In this instance, both of the marks contain the phrase NO PULL, and the only difference in this portion of the mark being the addition of a hyphen in registrant's mark.

Consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). In this instance, THE NO PULL is the first wording, and thus the dominant element, in the applied-for mark.

When comparing similar marks, the Trademark Trial and Appeal Board has found that inclusion of the term "the" at the beginning of one of the marks will generally not affect or otherwise diminish the

overall similarity between the marks. See *In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009) (finding WAVE and THE WAVE “virtually identical” marks; “[t]he addition of the word ‘The’ at the beginning of the registered mark does not have any trademark significance.”); *In re Narwood Prods. Inc.*, 223 USPQ 1034, 1034 (TTAB 1984) (finding THE MUSIC MAKERS and MUSIC-MAKERS “virtually identical” marks; the inclusion of the definite article “the” is “insignificant in determining likelihood of confusion”). Therefore, the addition of the term THE in the beginning of the applied-for mark does not overcome the overall similarity between the two marks.

Finally, applicant has disclaimed from the mark the terms HARNESS & LEASH, as this wording appears to merely identify applicant’s actual goods. Although marks are compared in their entireties, one feature of a mark may be more significant or dominant in creating a commercial impression. See *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012); *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 751 (Fed. Cir. 1985); TMEP §1207.01(b)(viii), (c)(ii). Disclaimed matter that is descriptive of or generic for a party’s goods is typically less significant or less dominant when comparing marks. See *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1407, 41 USPQ2d 1531, 1533-34 (Fed. Cir. 1997); *In re Nat’l Data Corp.*, 753 F.2d at 1060, 224 USPQ at 752; TMEP §1207.01(b)(viii), (c)(ii). In this instance, because the wording HARNESS & LEASH has been disclaimed from the mark, which renders this wording less significant than the remainder of the mark.

Applicant argues that the marks are overall different in sound and appearance, and the similarity of the term NO PULL is not sufficient to create a likelihood of confusion between the two marks. Applicant cites the *Board in Sports Authority Michigan Inc. v. PC Authority Inc.*, 63 U.S.P.Q.2d 1782 (T.T.A.B. 2002), *appeal dismissed*, (Fed. Cir. Sep. 09, 2002), indicating that although the wording AUTHORITY was the dominant element in each mark, the Board found that ultimately the marks looked different, sounded different, and created different specific commercial impressions. See *Sports Authority* at 1792. However, in *Sports Authority*, the Board noted that the goods and services were different, i.e.,

“[o]pposer is the authority in sports; applicant is the authority in personal computing.” *See id.* Specifically, the Board noted that “opposer’s goods and services, and its myriad sponsorship arrangements and advertisements at public arenas are inextricably associated with sporting activities, while applicant’s goods and advertising are inextricably associated with personal computing and the Internet,” and “[t]hus, the specific commercial impressions created by the parties’ respective marks are very different.” *See id.* As discussed more fully below, the goods of the applicant and registrant are highly similar, and are sold in highly similar channels of trade. Thus, the disparity between the goods and services that existed in the *Sports Authority* decision is not present in this case.

Applicant further argues that the term PULL is weak and thus only afforded a narrow scope of protection. *See* Applicant’s Brief at 11. Thus, applicant argues, the addition of the terms HARNESS & LEASH IN ONE sufficiently differentiates its mark from that of the registrant such that confusion is unlikely. *See id.* at 14. However, the Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have recognized that marks deemed “weak” or merely descriptive are still entitled to protection against the registration by a subsequent user of a similar mark for closely related goods. TMEP §1207.01(b)(ix); *see King Candy Co. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 1401, 182 USPQ 108, 109 (C.C.P.A. 1974) (likelihood of confusion is “to be avoided, as much between ‘weak’ marks as between ‘strong’ marks, or as between a ‘weak’ and ‘strong mark’)); *In re Colonial Stores, Inc.*, 216 USPQ 793, 795 (TTAB 1982) (“even weak marks are entitled to protection against registration of similar marks”). This protection even extends to marks registered on the Supplemental Register, and registrant’s mark exists on the Principal Register. TMEP §1207.01(b)(ix); *see, e.g., In re Clorox Co.*, 578 F.2d 305, 307-08, 198 USPQ 337, 340 (C.C.P.A. 1978); *In re Hunke & Jochheim*, 185 USPQ 188, 189 (TTAB 1975).

Applicant has submitted printed or electronic copies of third-party registrations for marks containing the wording PULL to support the argument that this wording is weak, diluted, or so widely

used that it should not be afforded a broad scope of protection. Applicant's Brief at 12. These registrations appear to be for goods somewhat similar to those identified in applicant's application.

The weakness or dilution of a particular mark is generally determined in the context of the number and nature of similar marks in use in the marketplace in connection with similar goods. See *Nat'l Cable Tel. Ass'n, Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1579-80, 19 USPQ2d 1424, 1430 (Fed. Cir. 1991); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). Evidence of widespread third-party use of similar marks with similar goods "is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection" in that industry or field. *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée en 1772*, 396 F.3d 1369, 1373-74, 73 USPQ2d 1689, 1693 (Fed. Cir. 2005); see *In re Coors Brewing Co.*, 343 F.3d 1340, 1345, 68 USPQ2d 1059, 1062-63 (Fed. Cir. 2003).

However, evidence comprising only a small number of third-party registrations for similar marks with similar goods, as in the present case, is generally entitled to little weight in determining the strength of a mark. See *AMF Inc. v. Am. Leisure Products, Inc.*, 474 F.2d 1403, 1406, 177 USPQ 268, 269 (C.C.P.A. 1973); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ 989, 992 (TTAB 1982). These few registrations are "not evidence of what happens in the market place or that customers are familiar with them." *AMF Inc. v. Am. Leisure Prods., Inc.*, 474 F.2d at 1406, 177 USPQ at 269; see *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 USPQ at 992. In this instance, applicant has submitted only nine such registrations, thus, the few allegedly similar third-party registrations submitted by applicant are insufficient to establish that the wording PULL is weak or diluted. Moreover, it is important to note that the marks must be considered in their entireties and in the context in which they may be used. In this instance, only three of the submitted registrations, U.S. Registration Nos. 4552850 (PULL-EZE), 4172805 (PULL STOP), and 4050074 and (SOFT-PULL) appear to use the term PULL in the same manner and

context as that of applicant and registrant, that is, to prevent an animal from PULLING against its leash and/or harness.

Registered marks:

<b>MARK</b>	<b>REG NUMBER</b>	<b>IDENTIFICATION OF GOODS</b>
PULL-EZE	4552850	Dog collars; dog collars and leads; dog leashes; pet restraining devices consisting of harnesses
PULL STOP	4172805	Animal harnesses; harnesses; pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices
SOFT PULL	4050074	Leashes and leads for dogs, horses, and animals; training devices in the nature of training leashes
ONEPUL	4581881	Fixed dispensers of metal for pet waste bags
FRISKIES PULL 'N PLAY	4808919	Pet food
PULL-N-GO	4264070	Plastic bag for storing and dispensing pet products, namely, disposable housebreaking absorbent floor pads
EZ PULL	2809848	Pet food covers
POOCH PULL	4052865	Dog toys
PULL & BEAR	4381519	Shampoos for pets, cosmetics for animals; beds for household pets

Applicant's Brief at 12.

B. Similarity of the Goods and Channels of Trade

The applicant seeks to register its mark for "Animal harnesses for dogs; Animal leashes; Dog leashes; Leashes for animals; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices" in International Class 018. The cited mark is registered for "Halters for domesticated animals," also in Class 018. While these goods are not

identical, they are highly related. The goods of the parties need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Significant evidence in the record indicates that the same entity commonly manufactures the relevant goods, namely, leashes, harnesses and halters, and markets the goods under the same mark, and that the goods are similar in terms of purpose or function in that they are both meant to restrain animal movement. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

A sampling of this evidence already of record follows:

(1) Same goods manufactured by same entity:

- <http://hamiltonproducts.com> (see Office action dated August 28, 2015 at 2-3)

- [http://www.genuinedoggear.com/dog\\_leashes.html](http://www.genuinedoggear.com/dog_leashes.html) (see *id* at 4-6)

- [http://www.genuinedoggear.com/dog\\_halter.html](http://www.genuinedoggear.com/dog_halter.html) (see *id* at 7-9)

- <http://www.wonderwalkbodyhalter.com> (see *id* at 10-11)

- <http://www.wonderwalkbodyhalter.com/leashes-and-couplers/> (see id at 12-14)

(2) Similar purpose of applicant's and registrant's goods:

- <http://www.lincolndac.com/harnesses-and-head-halters.pml> (see id at 15-17)

- <http://www.thatpetplace.com/choosing-dog-collars-harnesses-and-halters> (see id at 18-21)

(3) Third-party registrations for applicant's and registrant's goods (see id at 22-64):

MARK	REG NUMBER	IDENTIFICATION OF GOODS
ORRVILLE	1457161	<b>Collars, leashes</b> , leads, <b>harnesses</b> , bridles, <b>halters</b> , reins, and tie-outs for domestic pets and other animals; and rawhide chews for pets
CANINE EQUIPMENT	2111073	<b>Animal harnesses; animal leashes; dog restraint devices, namely leashes collars, training collars and halters, harnesses</b> , and seatbelts
SMITTEN BY MY RESCUE KITTEN	4251828	Animal carriers; <b>Animal harnesses; Animal leashes;</b> Animal wraps and covers; Clothing for animals; Clothing for domestic pets; <b>Collars for animals; Collars for pets;</b> Dog clothing; Garments for pets; <b>Harness for horses;</b> Horse blankets; Horse bridles; <b>Horse collars; Horse halters;</b> Horse rugs; Horse tack, namely, bridles, reins, leads, <b>halters;</b> Leads for animals; <b>Leashes for animals;</b> Pet accessories, namely, specially designed canvas, vinyl or leather bags attached to animal leashes for holding small items such as keys, credit cards, money or disposable bags for disposing of pet waste; Pet clothing; Pet collar accessories, namely, bells, silencers, safety lights and blinkers, pendants and charms; Pet hair ornaments; <b>Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices;</b> Pet tags specially adapted for attaching to pet leashes or collars; Saddle cloths for horses

MM	4739517	Animal products, namely, t-shirts for dogs, booties for dogs, coats for dogs, jackets for dogs, and boots for horses; bags, namely, backpacks, bags for animal treats, general purpose bags for holding dog trekking equipment, dog treat bags, sled bags, dog trek bags, and chalk bags; <b>harnesses</b> ; harnesses for dog sledding; <b>animal leashes</b> ; <b>collars for animals</b> ; horse blankets; pads for horse saddles; horse halters; reins; headdresses for horses; covers for animals; saddle pads
HYBRID HALTER	4617154	<b>Animal harnesses</b> ; <b>Animal leashes</b> ; Bits; Bits for animals; Blinders for horses; Clothing for animals; <b>Collars for animals</b> ; <b>Harness fittings</b> ; <b>Harness fittings not of precious metal</b> ; <b>Harness for horses</b> ; <b>Harness straps</b> ; <b>Harness traces</b> ; <b>Harnesses</b> ; <b>Harnesses</b> and saddlery; Horse bits; Horse bridles; <b>Horse halters</b> ; <b>Horse tack, namely, halters</b> ; <b>Leashes for animals</b> ; Leather for harnesses; <b>Leather leashes</b> ; Leather straps; Leather straps for securing a horse; <b>Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices</b> ; <b>Pet restraining devices consisting of harnesses and/or restraining straps, for use in pet grooming or veterinary care</b> ; Training forks for horses; Training leads for horses
WELLTEX	4621120	<b>Animal harnesses</b> ; Animal wraps and covers; Belly bands for dogs, cats, horses,; Bridles; Clothing for animals; Clothing for domestic pets; <b>Collars for animals</b> ; <b>Collars for pets</b> ; <b>Collars of animals</b> ; Costumes for animals; Cushion padding made for saddlery; Dog apparel; Dog bellybands; Dog clothing; Dog coats; <b>Dog collars</b> ; <b>Dog collars and leads</b> ; <b>Dog leashes</b> ; Dog parkas; Dog shoes; Equine boots; Equine leg wraps; Exercise sheets for horses; Garments for pets; <b>Harness for horses</b> ; <b>Harnesses</b> and saddlery; Horse blankets; Horse bridles; <b>Horse collars</b> ; Horse fly sheets; Horse fly veils for horses; <b>Horse halters</b> ; Horse quarter sheets; Horse rugs; Horse tail wraps; Horse wraps; <b>Leashes for animals</b> ; Leggings for animals; Neckwear for dogs; Pads for horse saddles; Pet clothing; Pet collar accessories, namely, bells, silencers, safety lights and blinkers, pendants and charms; <b>Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices</b> ; <b>Pet restraining devices consisting of harnesses and/or restraining straps, for use in pet</b>

		<b>grooming or veterinary care</b> ; Saddle cloths for horses; Spats and knee bandages for horses
A-JOHN	4781888	All-purpose carrying bags; Animal training device in the nature of a metal can containing coin-sized pieces of metal; Animal wraps and covers; Clothing for animals; Dog apparel; Equine boots; Fly masks for animals; <b>Harnesses</b> and saddlery; Hiking bags; <b>Horse halters</b> ; Horse rugs; Horse tack, namely, bridles, reins, leads, bits, stirrup leathers, girth straps, lunge lines, halters; Pads for horse saddles; <b>Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices</b> ; Saddle covers; Saddlery of leather; Umbrellas; Walking staffs; Wallets; Wheeled bags

Further, because both applicant’s and registrant’s goods are unrestricted, it should be presumed that the goods will travel through all normal channels of trade and reach all classes of purchasers which are usual for such goods. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-70, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012).

Applicant argues that the goods offered under applicant’s mark and the cited mark are not impulse purchases, and as such, confusion between the two marks is unlikely. Applicant’s Brief at 17. However, the fact that purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl.*

*Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011). Moreover, while applicant argues that purchasers are highly knowledgeable with respect to the pet restraining device industry, applicant has provided no evidence of the expertise of its consumers nor that of registrant. When the relevant consumer includes both knowledgeable consumers and the general public—which is presumably the case here—the standard of care for purchasing the goods is that of the least sophisticated potential purchaser. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014); *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). Even consumers with a high degree of knowledge with respect to pet restraint devices are likely to be confused when encountering the phrase NO PULL in connection with highly similar goods, as the identity of the marks and the relatedness of the goods “outweigh any presumed sophisticated purchasing decision.” *In re i.am.symbolic, Llc*, 116 USPQ2d at 1413 (citing *HRL Assocs., Inc. v. Weiss Assocs., Inc.*, 12 USPQ2d 1819, 1823 (TTAB 1989), *aff’d*, 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990)); *see also Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014).

#### Conclusion

In summation, the marks are very similar and the goods have been shown to be closely related. To the extent that any of applicant’s points raises a doubt about likelihood of confusion, that doubt should be resolved in favor of the prior registrant. TMEP §1207.01(d)(i); *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 464-65, 6 USPQ2d 1025, 1026 (Fed. Cir. 1988).

Therefore, for the foregoing reasons, it is submitted that the refusal of registration under Trademark Act Section 2(d); 15 U.S.C. 1052(d), should be affirmed.

Respectfully submitted,

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