

This Opinion is Not a  
Precedent of the TTAB

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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 Pet Savers Foundation, Inc.*

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Serial No. 86746413

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Stewart J. Bellus and Sara Dorchak of Collard & Roe PC  
for the Pet Savers Foundation, Inc.

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Andrew Lawrence, Managing Attorney.

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Before Kuhlke, Wellington and Lynch,  
Administrative Trademark Judges.

Opinion by Lynch, Administrative Trademark Judge:

The Pet Savers Foundation, Inc. (“Applicant”) seeks registration on the Principal Register of the mark NO KILL WORLD in standard characters for a variety of services in International Classes 35, 36, 44 and 45, including “charitable fund raising” in International Class 36 and “animal adoption services, namely, arranging for

rescued animals and dogs and cats from shelters to be placed in homes” in International Class 45.<sup>1</sup>

The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) in part, as to International Classes 36 and 45, based on a likelihood of confusion with the registered mark



for “Charitable services, namely, raising money for animal welfare organizations through promotions and/or incentives” in International Class 36 and “Providing a website featuring information on animal rescue services” in International Class 39.<sup>2</sup>

After the Examining Attorney made the partial refusal final, Applicant appealed and requested reconsideration. On remand, the Examining Attorney denied the request for reconsideration. The appeal resumed and has been fully briefed.

As an initial matter, we note that Applicant’s brief does not comply with the relevant Trademark Rules of Practice, in that the brief is not double-spaced, as required by Rules 2.126(a)(1) and 2.142(b)(2), 37 C.F.R. §§ 2.126(a)(1) & 2.142(b)(2). The Examining Attorney lodged no objection, and the Board has exercised its discretion to consider the brief. However, Applicant is advised that in the future, compliance with the rules is expected.

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<sup>1</sup> Application Serial No. 86746413 was filed September 3, 2015 based on intent to use under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

<sup>2</sup> Registration No. 4192653 issued August 21, 2012.

## Likelihood of Confusion

Our determination under Section 2(d) requires an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (setting forth factors to be considered, hereinafter referred to as “*du Pont* factors”); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the relatedness of the services. *See In re Chatam Int’l Inc.*, 380 F.2d 1340, 71 USPQ2d 1944 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). We address these and other relevant *du Pont* factors below.

### A. The Services, Trade Channels, and Classes of Consumers

In comparing the services, we must determine whether their degree of relatedness rises to such a level that consumers would mistakenly believe Applicant’s and Registrant’s services emanate from the same source. We must focus on the services as identified in the application and cited registration, not on any extrinsic evidence of actual use. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990).

Turning first to the services in International Class 36, the subject application identifies “charitable fund raising,” while the cited registration’s services are “Charitable services, namely, raising money for animal welfare organizations through promotions and/or incentives.” When an identification such as Applicant’s describes services broadly, and contains no limitation as to their nature, type, channels of trade, or class of purchasers, it is presumed that it encompasses all services of the type described. See, e.g., *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 107 USPQ2d 1167, 1173 (Fed. Cir. 2013); *In re Jump Designs, LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Applicant’s unrestricted identification therefore is presumed to encompass all types of fund-raising. *Id.*; see also, *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). Thus, it includes fund-raising, or “raising money,” for animal welfare organizations through promotions or incentives, as recited in the cited registration.

Next, we find Applicant’s “animal adoption services, namely, arranging for rescued animals and dogs and cats from shelters to be placed in homes” in International Class 45 related both to the cited registration’s charitable services discussed above and to the cited registration’s services of “Providing a website featuring information on animal rescue services.” The record includes third-party website evidence of animal adoption service providers of the type identified in the subject application also providing services like Registrant’s. Such websites feature

information on animal rescue and typically include a fundraising aspect that offers consumers the option to donate to the animal rescue cause. For example:

- The Priceless Pets Rescue website identifies itself as a pet rescue organization, provides information about animal rescue services, and features a “Donate” button on the webpage;<sup>3</sup>
- The Home ‘Fur’ Good website identifies itself as an animal rescue and placement organization, provides information about its animal rescue services on the site, and includes links to “Donate” and to “Fundraisers;”<sup>4</sup>
- The Companion Animal Placement Program website describes itself as an animal rescue organization, provides information about such services, and includes a button to “Donate” via credit card;<sup>5</sup>
- The Washington Animal Rescue League website features news and information about the services and includes a “Donate Now” button;<sup>6</sup>
- The website for R.A.P. Rescue Animal Placements promotes its rescue services, provides information about them, and includes “How to help” and “Medical Fund” buttons;<sup>7</sup>
- The YAPS Yucaipa Animal Placement Society website describes the organization as a “No-Kill, Non-Profit Animal Shelter,” and it facilitates pet adoptions, provides information about its services, and includes a “Donate” button and fundraising such as shopping through iGive.com and AmazonSmile to generate donations;<sup>8</sup> and
- The Barks of Love website describes the organization as “a private animal rescue,” includes information about the services, and includes “Donate” buttons.<sup>9</sup>

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<sup>3</sup> December 17, 2015 Office Action at 5 (pricelesspetrescue.org).

<sup>4</sup> *Id.* at 6-7 (homefurgood.org).

<sup>5</sup> *Id.* at 8 (capp-petplacement.org).

<sup>6</sup> *Id.* at 9, 11 (warl.org).

<sup>7</sup> *Id.* at 10 (rescueanimalplacements.com).

<sup>8</sup> *Id.* at 12-13 (yaps.org).

<sup>9</sup> *Id.* at 14 (barksoflove.org).

The record amply demonstrates that entities often provide, under the same mark, animal rescue services, information about such services, and charitable fundraising. Therefore, we find Applicant's animal adoption services and Registrant's services closely related. *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).

Given that Applicant's and Registrant's charitable fundraising services are legally identical, we presume that these services move in the same channels of trade and are offered to the same classes of consumers. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) (affirming Board finding that where an identification is unrestricted, "we must deem the goods to travel in all appropriate trade channels to all potential purchasers of such goods"); *In re Viterro*, 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (finding Board entitled to rely on this legal presumption in determining likelihood of confusion); *American Lebanese Syrian Assoc. Charities Inc. v. Child Health Research Inst.*, 101 USPQ2d 1022, 1028 (TTAB 2011). As to the remaining services, the evidence discussed above clearly shows that such services are promoted together on the same websites, and therefore move in the same trade channels and are offered to the same classes of consumers.

## B. Similarity of the Marks

To evaluate the similarity of Applicant's NO KILL WORLD and the cited mark



, we consider them “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005) (quoting *du Pont*, 177 USPQ at 567). The test assesses not whether the marks can be distinguished in a side-by-side comparison, but rather whether their overall commercial impressions are so similar that confusion as to the source of the services offered under the respective marks is likely to result. *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); *see also Edom Laboratories Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012).

Applicant argues that the marks differ considerably, because NKN and the design element dominate the cited mark. Applicant also contends that consumers would not attribute source-indicating significance to the only common element of both marks, “no kill,” because the wording is descriptive.

The Examining Attorney maintains that the two marks create similar commercial impressions because of the shared wording “no kill” and the allegedly similar meaning of “nation” and “world.” Although acknowledging the additional different elements in the cited mark, according to the Examining Attorney, the wording in the cited registration dominates over the design, and consumers would view the large initialism portion of the cited mark merely as shorthand for “no kill nation.” Thus,

the Examining Attorney concludes that the marks create the same overall commercial impression.

We find the appearance of the marks quite different, in large part because the NKN portion of the cited mark stands out as by far the biggest and most prominent element. NKN appears on top of the other wording, forming the first part of the mark and therefore reinforcing its dominance. *See Presto Products Inc. v. Nice-Pak Products, 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”). *See also Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). The design elements of silhouetted animals in the cited mark further contribute to the difference in overall appearance. Finally, while both marks contain the same wording NO KILL, in the cited mark it is followed by NATION, whereas in Applicant’s mark it is followed by WORLD, and the words do not have a similar appearance.

We also find that the marks differ in sound, again because the cited mark begins with NKN and the spoken parts of the two marks end with the different words NATION and WORLD, which do not sound alike. Although the marks share some similarity in sound because of the common wording NO KILL, the sound of the marks in their entireties is dissimilar.

Turning to meaning and commercial impression, we find significant contrasts between the two marks because the more dominant differing elements of the marks, such as Registrant’s NKN and design, and NATION versus WORLD, far outweigh



the less significant similarity of the phrase NO KILL. Nothing in the record indicates that NKN (or NK) has a particular meaning or is a recognized abbreviation, or otherwise detracts from the likelihood that consumers would focus on this prominent portion of Registrant's mark as source-indicating. On the other hand, we agree that consumers would view NO KILL as highly descriptive of the relevant services, therefore diminishing the likelihood they would rely on this component of the marks as source-indicating. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1846 (Fed. Cir. 2000) ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.'") (*quoting In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 752 (Fed. Cir. 1985)). Consistent with the Examining Attorney's requirement that Applicant disclaim NO KILL because it is merely descriptive of Applicant's services,<sup>10</sup> the record shows that "no kill" has a well-recognized meaning in the context of the relevant services. Examples of such evidence include:

- The Priceless Pet Rescue website identifies the organization as "A no-kill pet rescue;"<sup>11</sup>
- The Home 'Fur' Good website identifies the organization as "a 501(c)(3) no-kill animal rescue organization;"<sup>12</sup>

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<sup>10</sup> December 17, 2015 Office Action ("...this wording is commonly used in connection with similar services to refer to animal rescue services, adoption, shelter and treatment services, and fundraising services related thereto....").

<sup>11</sup> December 17, 2015 Office Action at 5 ([pricelesspetrescue.org](http://pricelesspetrescue.org)).

<sup>12</sup> *Id.* at 6-7 ([homefurgood.org](http://homefurgood.org)).

- R.A.P. Rescue Animal Placements’ website identifies the organization as “A no-kill, all volunteer non-profit 501(c)(3) organization;”<sup>13</sup>
- The Yucaipa Animal Placement Society website identifies the organization as “A No-Kill, Non-Profit Animal Shelter;”<sup>14</sup>
- Barks of Love is an event at “Orange County’s 100% NO KILL, Foster-Based, All-Breed Dog Rescue;”<sup>15</sup>
- An article from Slate.com bears the headline “Are No-Kill Shelters Good for Cats and Dogs?;”<sup>16</sup>
- A Wikipedia entry for “No-kill shelter” defines it as “an animal shelter that does not kill healthy or treatable animals even when the shelter is full....;”<sup>17</sup>
- Reg. No. 4408816 for NO KILL ADVOCACY CENTER (“ADVOCACY CENTER” disclaimed; Supplemental Register), for “Public advocacy to promote awareness of animal rights and humane treatment of animals, animal welfare, animal rescue, animal adoption, and animal shelter reform;”<sup>18</sup>
- Reg. No. 4408815 for NO KILL CONFERENCE (Supplemental Register), for “educational and training services, namely, seminars, and conferences in the field of animal rights and humane treatment of animals, animal welfare, animal rescue, animal adoption, and animal shelter reform;”<sup>19</sup>
- Reg. No. 4524245 WAYSIDE WAIFS A NO KILL SHELTER & design (“A NO KILL SHELTER” disclaimed), for services including “Charitable services, namely, raising money for animal welfare through organizing and conducting special events, running and walking events, promotional events and incentives in the community, and fundraising activities to support animal welfare programs” and “educational services, namely, conducting classes, seminars, workshops, and field trips in the field of pet care, pet safety, humane education, violence prevention, and children’s literacy.”<sup>20</sup>

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<sup>13</sup> *Id.* at 10 (rescueanimalplacements.com).

<sup>14</sup> *Id.* at 12-13 (yaps.org).

<sup>15</sup> *Id.* at 14 (barksoflove.org).

<sup>16</sup> *Id.* at 15-18 (slate.com).

<sup>17</sup> *Id.* at 19 (wikipedia.org).

<sup>18</sup> August 29, 2016 Request for Reconsideration at 13-14.

<sup>19</sup> *Id.* at 15-16.

<sup>20</sup> *Id.* at 17-18.

In addition, while NATION and WORLD may both generally refer to geographic locations or to groups of people, we find that they do not have the same meaning, as argued by the Examining Attorney.<sup>21</sup> Applicant also submitted at least 20 use-based third-party registrations for marks including NATION for charitable fundraising services to show this portion of the cited mark also is relatively weak in that context, and therefore less likely to be relied on by consumers for source indication.<sup>22</sup> Such registration evidence may be relevant to show that a segment of a composite mark “has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.” *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675 (Fed. Cir. 2015) (quoting 2 McCarthy on Trademarks and Unfair Competition § 11:90 (4th ed. 2015)).

With these considerations in mind, we find that in their entireties, the marks differ

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<sup>21</sup> We take judicial notice of dictionary definitions of these terms. See *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). “Nation” is defined as “nationality,” “a community of people composed of one or more nationalities and possessing a more or less defined territory and government,” and “a territorial division containing a body of people of one or more nationalities and usually characterized by relatively large size and independent status.” www.merriam-webster.com, entry for “nation,” accessed February 23, 2017. “World” is defined as “the earthly state of human existence,” “life after death —used with a qualifier,” “the earth with its inhabitants and all things upon it,” “individual course of life : career,” “the inhabitants of the earth : the human race,” “the concerns of the earth and its affairs as distinguished from heaven and the life to come,” “secular affairs,” “the system of created things : universe,” “a division or generation of the inhabitants of the earth distinguished by living together at the same place or at the same time,” “a distinctive class of persons or their sphere of interest or activity,” “human society,” “a part or section of the earth that is a separate independent unit,” “the sphere or scene of one's life and action,” “an indefinite multitude or a great quantity or distance,” “the whole body of living persons : public,” “kingdom,” “a celestial body (as a planet).” www.merriam-webster.com, entry for “world,” accessed February 23, 2017.

<sup>22</sup> See, e.g., August 29, 2016 Request for Reconsideration at 27-132.

substantially in connotation and commercial impression. Thus, we find Applicant's mark and the cited mark dissimilar.

### Conclusion

We have considered all of the arguments and evidence of record concerning all relevant *du Pont* factors. The overall lack of similarity between the marks makes confusion unlikely, even in the context of partially overlapping and partially related services that move in the same channels of trade to the same classes of customers.

**Decision:** The partial refusal to register Applicant's mark in International Classes 36 and 45 is reversed.