

This Opinion is Not a
Precedent of the TTAB

Mailed: March 14, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

—
Trademark Trial and Appeal Board
—

In re Brewhound Coffee-Bar Co.
—

Serial No. 88681779
—

Woodrow H. Pollack of Shutts & Bowen LLP,
for Brewhound Coffee-Bar Co.

Stephanie Davis Ali, Trademark Examining Attorney, Law Office 109,
Michael Kazazian, Managing Attorney.

—
Before Lykos, Lebow and Cohen, Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

Brewhound Coffee-Bar Co. (“Applicant”) seeks to register on the Principal Register the service mark RUFFAREE in standard characters for, as amended, “recreational dog park services” in International Class 41.¹

¹ Application Serial No. 88681779, filed November 6, 2019, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging May 11, 2019 as the date of first use anywhere and in commerce.

Citations to the prosecution file refer to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) system in Portable Document Format. Citations to the record throughout the decision include references to TTABVUE, the Board’s online docketing system. The number preceding “TTABVUE” corresponds to the docket entry number; the number(s)

Applicant has appealed the Trademark Examining Attorney’s final refusal to register the mark under Trademark Act Sections 1 and 45, 15 U.S.C. §§ 1051 and 1127, on the ground that Applicant’s original and substitute specimens fail to show the applied-for mark used in connection with the identified services. For the reasons explained below, we reverse the refusal to register.

I. Legal Background – Service Mark Specimen Requirements

Section 1 of the Trademark Act, 15 U.S.C. § 1051, permits application for registration of “a trademark used in commerce.” *See, e.g., In re Siny Corp.*, 920 F.3d 1331, 2019 USPQ2d 11362, at *2 (Fed. Cir. 2019). Section 45 of the Trademark Act, 15 U.S.C. § 1127, defines “commerce” as “all commerce which may lawfully be regulated by Congress,” and “use in commerce” in connection with services as follows:

The term “use in commerce” means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this Act, a mark shall be deemed to be in use in commerce—

...

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

A service mark is “any word, name, symbol, or device, or any combination thereof ... [used] to identify and distinguish the services of one person ... from the services of

following “TTABVUE” refer to the page number(s) of that particular docket entry. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

others and to indicate the source of the services, even if that source is unknown.” 15 U.S.C. § 1127. Section 1(d)(1) of the Trademark Act, 15 U.S.C. § 1051(d)(1), requires that the applicant file a “specimen ... of the mark as used in commerce.” “[B]ecause by its very nature a service mark can be used in a wide variety of ways, the types of specimens which may be submitted as evidence of use are varied.” *In re Metriplex, Inc.*, 23 USPQ2d 1315, 1316 (TTAB 1992). Trademark Rule 2.56(b)(2), 37 C.F.R. § 2.56(b)(2), further clarifies that:

A service mark specimen must show the mark as used in [1] the sale of the services, including use in the performance or rendering of the services, or [2] in the advertising of the services. The specimen must show a direct association between the mark and the services.

Accord On-Line Careline, Inc. v. Am. Online, Inc., 229 F.3d 1080, 56 USPQ2d 1471, 1476-77 (Fed. Cir. 2000).

A specimen that shows only the mark with no reference to, or association with, the services does not show service mark usage. *See, e.g., In re Adair*, 45 USPQ2d 1211, 1215 (TTAB 1997) (tags affixed to decorated Christmas trees that bear the mark “TREE ARTS CO. and design” and the applicant’s location, but make no reference to services, failed to show use for “design services in the nature of designing handcrafted, permanently decorated Christmas and designer trees”). For specimens showing the mark in advertising the services, “[i]n order to create the required ‘direct association,’ the specimen must not only contain a reference to the service, but also the mark must be used on the specimen to identify the service and its source.” *In re Way Media*, 118 USPQ2d 1697, 1698 (TTAB 2016) (quoting *In re Osmotica Holdings Corp.*, 95 USPQ2d 1666, 1668 (TTAB 2010)).

“To determine whether a mark is used in connection with the services described in the [application], a key consideration is the perception of the user [of the services].” *In re JobDiva, Inc.*, 843 F.3d 936, 121 USPQ2d 1122, 1126 (Fed. Cir. 2016) (citation omitted). “The question is whether the evidence of Applicant’s use of its mark creates an association between the mark and Applicant’s services.” *Id.* While the exact nature of the services does not need to be specified in the specimen, “there must be something which creates in the mind of the purchaser an association between the mark and the services that have been recited in the application.” *Way Media*, 118 USPQ2d at 1698 (quoting *In re Johnson Controls Inc.*, 33 USPQ2d 1318, 1320 (TTAB 1994)); accord *JobDiva*, 121 USPQ2d at 1126 (“the question is whether the evidence of JobDiva’s use of its marks sufficiently creates in the minds of purchasers an association between the marks and JobDiva’s personnel placement and recruitment services”).

An acceptable specimen need not explicitly refer to the services if it shows use of the mark in the rendering, i.e., sale, of the services. See *Metriplex*, 23 USPQ2d at 1316-17; see also *In re Red Robin Enters.*, 222 USPQ 911, 914 (TTAB 1984) (stating that “rendition” of services is properly viewed as an element of the “sale” of services). In determining whether a specimen is acceptable evidence of service mark use, the examining attorney may consider the applicant’s explanations as to how the specimen is used, along with any other available evidence in the record that shows how the mark is actually used. See *In re Pitney Bowes, Inc.*, 125 USPQ2d 1417, 1420 (TTAB 2018); *In re Int’l Eenvtl. Corp.*, 230 USPQ 688 (TTAB 1986).

With this guidance in mind, we now turn to the question of whether any of Applicant's original or substitute specimens are acceptable.

II. Prosecution History and Specimens of Record

A. Original Specimens

Applicant's original specimens filed with its application consist of (1) a printout from Applicant's website; (2) an advertisement published in the magazine "Unleash Jacksonville"; and (3) a red t-shirt displaying RUFFAREE on the back ("Original Specimens"). Each are reprinted in full below:



Our Letter to You

We **LOVE** our dogs. They're our family and as environmental scientists, we've always loved the great outdoors. We think delicious local brews and darn good coffee is just the stuff that makes life extra sweet. So, we put our loves together: dogs + drinks + the great outdoors and that's pretty much our dream trifecta. BrewHound has been a true labor of love for us and it wouldn't be possible without the inspiration from our pups, Scrambles, Wicket, Willow & Too and the overwhelming support we received from our JAX community.

We have kick-ass plans that are underway, fabulous vendors and partners, and are thrilled to bring you BrewHound to Neptune Beach living with a slew of events in early 2019. We're so thrilled you're visiting our page to find out more about BrewHound and hope you make a real visit to our Dog Park + Bar soon! Please feel free to reach out to us - we can't wait to meet you and your four-legged fam!

Cheers,

Lauren & Jason

Park Layout



The Yard

The Yard is BrewHounds off-leash dog park. We've dedicated the majority of our property for your dog to unleash all their playful energy. The Yard features:

- Pet friendly turf grass
- Separately fenced areas for large and small dogs
- Cool, Shady areas
- The Doggie Splash Pad

Along with all the fun and excitement, BrewHound has brought on trained "Sniff" areas to maintain a friendly and safe environment. Access to The Yard is member-based. BrewHound offers Daily, Monthly and Yearly memberships.

The Porch

The Porch is a covered, cabin-like structure with a concession style bar. This is where people can relax and enjoy conversation, refreshments and the outdoors. The Porch features:

- A beer garden of locally sourced craft beer
- Wine
- Bold Bean specialty coffee
- Delicious local foods

No membership is required to enter The Porch and leashed dogs are welcome! Check out the events page to see upcoming events at BrewHound!



BrewHound • The Environment

Environmental consciousness is extremely important to us at BrewHound. We strive to make as little trash as possible, recycle whatever we can and protect the great outdoors and its resources.

We also utilize the following green business practices:

- Incorporation of renewably and/or sustainably sourced construction materials.
- Installation of solar panels and sky lights.
- Digital communication where feasible to save those trees.
- Use of hand dryers vs. paper towels.
- Use of reusable drink wear.
- Recycling all items possible including coffee grounds for gardeners.
- Installation of low flow toilets.
- & other eco-friendly methods realized along the way.

The footer section of the BrewHound website features a dark background with a dog's face on the left. It includes navigation links for HOME, MEMBERSHIP, and ABOUT. Social media icons for Instagram and Facebook are present, along with contact information: +1.904.372-7266 and 1565 Jones Creek South. A sign-up form for News Letters and Updates is also included, with a placeholder for an email address.

BECOME A MEMBER

CONTACT

HOME

MEMBERSHIP

ABOUT

Instagram icon

Facebook icon

+1.904.372-7266

1565 Jones Creek South

Sign up to receive News Letters and Updates!

Enter Your Email Address





COME PLAY WITH US!

Barista /person
MAGICAL COFFEE CRAFTERS, BEER SLINGERS, AND ALL THINGS CUSTOMER SERVICE-Y.

The Porch /place
OPEN-AIR GATHERING SPACE. EVERYONE IS WELCOME ON-LEASH. NO FEE OR RECORDS REQUIRED!

Ruffares /person
A HUMAN WHO WATCHES DOGPLAY IN THE YARD CLOSELY & CONVEYS ENERGY TO ENSURE THAT THE RULES ARE ADHERED TO. ALSO ARBITRATES ON MATTERS ARISING FROM 'RUFF' PLAY.



Lauren: Moma dog

FROM: Long Island, NY
AFRAID OF: Fear itself
My heart explodes (in a good way) just being here - soaking in all the joy that surrounds every tail that enters the gates.



Jason: Papa dog

FROM: Clinton, NC
AFRAID OF: our water bill at Brenhownd!
I'm truly enjoying all of the smiles, from dog and human alike. The smiles make Brenhownd glow.



Lindsey D.: Barista & Dogman's Mate

FROM: Jackson, MI
OBSESSED WITH: NYC
I moved to Jax with my high school sweetheart & we're so excited to meet our little girl in September!



Akash: Barista

FROM: Edison, NJ
STATUS: single!
This year I decided to get in shape and do 3 Spartan Races. I've got 1 to go.



Vincent: Ruffaree

FROM: San Diego
WOULD LIKE TO SEE: Alaska
Working here is awesome because... where else can you hang out with dogs all day? Not Pabst!



Robert: Ruffaree

FROM: Jacksonville
FAV DRINK: Left Leg (E6)
I love everything about dogs - their playfulness, companionship, and amazing ability to be trained.



Matt: Barista

FROM: Jacksonville
FAV DRINK: Ethiopian pour over
I love that Brenhownd offers a space where dog people can connect.



Tanya: Ruffaree

FROM: Port Saint Lucie
AFRAID OF: LIZARDS!
I love that it doesn't feel like I'm working - we have such an amazing environment at Brenhownd!



Koryn: Ruffaree

FROM: Charleston
FAV THING ABOUT MYSELF: my quirkiness
I adore seeing all the dogs come into The Yard so super excited to play!



Madeline: Barista

FROM: Nebraska
FAV DRINK: chai latte
I'm super excited to become a mom this year!



Lena: Ruffaree

FROM: The Sunshine State
HAPPY PLACE: the ocean
I'd love to travel to Morocco to volunteer at SFT Animal Sanctuary & then some sightseeing.



Willow: ?

FROM: The London Sanctuary
OBSESSED WITH: cuddles
I don't work at Brenhownd yet, although I keep applying. Mom & dad won't love me for whatever reason.



Madison: Ruffaree

FROM: Jacksonville
HAPPY PLACE: the Forest
I love how forgiving dogs are. I have multiple rescues - despite their pasts, they give nothing but love!



Pa.: Ruffaree

FROM: Oklawaha City
NICKNAMES: P. Pie, Pastaccio
If I could travel anywhere tomorrow - Australia, here I come.



Bianca: Barista

FROM: Dallas
AFRAID OF: spiders!
I signed up to become a certified doula this year!



Merg.: Barista & Ruffaree

FROM: Winter Park
FAV DRINK: tequila ginger
I love that I've been able to create a lifestyle pretty much surrounded by dogs.



Pice: Barista



Lindsey M.: Ruffaree



Chase: Barista



Emily/Em.: Barista



Hayden: Barista



Aly: Ruffaree

FROM: Jacksonville
AFRAID OF: heights
If I could go anywhere tomorrow, I'd love to travel to Alaska to see my sister.



Charlene: Barista

FROM: Scotland
FAV DRINK: soot lavender latte
Trash talking is my love language.



Emily/Em.: Barista

FROM: VA
FAV DRINK: vanilla honey oat latte
During the week, I'm a fitness biologist. Weekends I craft coffee & play w/ dogs!



Hayden: Barista

FROM: VA
HAPPY PLACE: mountains
I love that everyone who visits Brenhownd is happy to be here & smiling as I greet them!

SURE, I GUESS IF WE'RE GOING to talk about the obvious heart of Brewhound—Neptune Beach's newest play space—it's dogs. Dogs, dogs, and maybe a few more dogs! They absolutely love it here. (Side note: I say "here" because I'm writing this while enjoying a green-tea-chai-oat-milk latte on The Porch at Brewhound. Why work in the office where I don't even have oat milk?) From a dog's perspective, what's not to love here? Sweet fenced-in freedom, a super cool splash pad, homies of all smells, sizes, and fur lengths to roll with, plenty of shade and water, and people you don't even know squealing—*She's sooo cute!!!!*—in your direction every thirty seconds. The fun factor is so high that some dogs find it very hard to leave. I've seen many a tantrum being thrown.

Yes, it's *quite* clear the dogs are having a blast, but I want to step back for a sec to warn you about the feelings you may experience as a two-leggeder at Brewhound. You may find you feel *lighter in the heart area*—and that's not just the oat milk talking. I think some call it ... glee. Look around and you'll see most people smiling ... and *talking!* Very few people are on their phones. You might have to actually work to feel anything but happy while watching the joy that unfolds in The Yard (where the dogs are playing)—*so much joy.*

Meet the Brewhound Family.
WARM-HEARTED,
BRILLIANT, HELPFUL
—AND THEY ALL HAVE
MAGESTIC HAIR FOR
SOME WEIRD REASON.



Brewhound vibes inclusivity—you can feel totally comfortable going all by yourself (with or without a dog). By the time you leave, three things are nearly guaranteed: You've met lovely new people, you've gotten some fresh air in your lungs, and your hands smell dog-ishy.

All that ***** is by meticulous design.

From the moment this big magic idea sparked them, owners Lauren Wyckoff and Jason Underwood had the intention of bringing to life a place of gathering and connection—and the beating heart of this place would be dogs. Details of style, safety, and *goodfeels* are so thoughtful that you almost feel like you're a treasured guest at someone's home. An elegant open-air design and a carefully chosen family of staff helps to create a fantastic communal feeling. I have an inkling many lasting friendships will be made under the trees of Brewhound.

If you find yourself unhappy when you're here, dare I suggest you might be a curmudgeon. And that's okay. No judgements. But, if you're a dog person like me, welcome to your happy place—just try not to throw a tantrum when I tell you it's time to leave. •

/ Gather:
1848 Kings Circle S., Neptune Beach
Tues-Thurs 8a-10p,
Fri-Sat 9a-11p, Sun 9a-10p
Closed Mondays.

/ Grab your membership or learn more:
brew-hound.com

Reprinted with love by Color Fusion Printing and Design House | colorfusionprinting.com
 from Unleash Jacksonville No. 23, FREEDOM | unleashjax.com





The excerpts from Applicant's website do not include any references to the mark RUFFAREE. The advertisement printed in "Unleash Jacksonville" uses RUFFAREE in the following context:

Ruffaree/person

A human who watches dogplay in the yard closely & conveys pack leadership with a calming energy to ensure

that the rules are adhered to. Also arbitrates matters arising from 'RUFF' play.

The third specimen consists of the front and back of a red t-shirt with Applicant's design logo BREW HOUND DOG PARK BAR displayed on the front and Applicant's mark RUFFAREE displayed in white lettering on the back.

In the first Office Action, the Examining Attorney found that none of the specimens were acceptable because each failed to show a direct association between the mark and the services, and failed to show the applied-for mark as actually used in commerce with the identified services.² The Examining Attorney only specifically addressed the specimens consisting of the photographs of the red t-shirts, stating that "the specimen does not show a direct association between the mark and services in that the mark is shown on a t-shirt, International Class 25 goods."³

Applicant was advised that examples of acceptable specimens for services include copies of advertising and marketing material; a photograph of business signage or billboards; or materials showing the mark in the sale, rendering, or advertising of the services so long as such specimens show the mark used in the actual sale, rendering, or advertising of the services, and as well as a direct association between the mark and the services.⁴

² February 15, 2020 Office Action at TSDR 2.

³ February 15, 2020 Office Action at TSDR 2.

⁴ *Id.* Applicant was also advised that it could amend the filing basis to Section 1(b) but declined to do so.

B. First Set of Substitute Specimens

In an effort to traverse the refusal, Applicant submitted on May 1, 2020 the following substitute specimens (“First Substitute Specimens”) consisting of the three photographs reproduced below described as “pictures of employees at the recreational dog park:”⁵



⁵ May 1, 2020 Response to Office Action.





Each photograph consists of a person wearing a red shirt displaying the mark RUFFAREE in white lettering on the back while observing dogs and people in a recreational dog park.

Applicant argued that this First Set of Substitute Specimens show “use of the mark [RUFFAREE] being used in commerce at Applicant’s dog park.”⁶ The Examining Attorney rejected Applicant’s First Set of Substitute Specimens in a final

⁶ May 1, 2020 Response to Office Action at TSDR 8.

refusal, stating that “applicant’s clothing item displaying the mark does not create a connection with identified services.”⁷

Applicant then filed a notice of appeal and requested reconsideration of the Examining Attorney’s final refusal.⁸ Applicant provided additional information about the specimens by explaining that the shirts are Applicant’s employees uniforms, and are worn by employees daily while working at Applicant’s recreational dog park.⁹ Unpersuaded, the Examining Attorney denied Applicant’s request for reconsideration.¹⁰

In a subsequent request for reconsideration, Applicant also argued that its previously filed First Set Substitute Specimens, its “rendering specimen[s],” sufficed to show a direct association between the mark RUFFAREE and services identified as “recreational dog park services” because it showed a shirt worn by Applicant’s employee bearing Applicant’s mark while providing the services.¹¹ As support, Applicant pointed to the following guidance from THE TRADEMARK MANUAL OF EXAMINING PROCEDURE (“TMEP”) Section 1301.04(f)(ii) (“Direct Association Between the Mark and the Services”) (Nov. 2024):

Direct association is the minimum the specimen must show, and **it may be established textually, contextually, or logically.** *In re Universal Oil Prods. Co.*, 476 F.2d at 655, 177 USPQ at 457. What is necessary to establish direct association differs depending on the type of

⁷ May 30, 2020 Final Office Action at TSDR 2.

⁸ November 30, 2020 Request for Reconsideration.

⁹ November 30, 2020 Request for Reconsideration at TSDR 5.

¹⁰ December 28, 2020 Denial of Request for Reconsideration.

¹¹ January 12, 2022 Response to Office Action at TSDR 12.

specimen submitted, that is, whether it is a specimen consisting of advertising or a specimen used in the rendering of the services.

(Emphasis added). Applicant also cited case law regarding acceptable specimens showing a mark during the rendering of services, especially when considered in the context of an applicant's explanation. *See Metriplex*, 23 USPQ2d at 1316-17 (for specimens showing the mark used in rendering the identified services, the services need not be explicitly referenced to establish the requisite direct association).

The Examining Attorney denied the second request for reconsideration the grounds that,

[a]s noted in the previous actions, the specimen identified as a t-shirt does not provide a sufficient connection between the mark and referenced services. It is possible that the mark refers to dog walking, contest referring, clothing worn by a patron or an ornamental design. Therefore, the specimen remains unacceptable.¹²

C. Second Substitute Specimen

Upon a remand following the institution of this appeal, Applicant submitted on January 12, 2022 another substitute specimen ("Second Substitute Specimen") consisting of four pages of printouts from Applicant's website <https://www.brewhound.com/> accessed on August 17, 2021:

¹² August 21, 2024 Denial of Request for Reconsideration at TSDR 2.



[ABOUT](#)

[PARK ACCESS](#)

[PARK INFO](#)

[SHOP PRODUCTS](#)

[EVENTS](#)

[BLOG](#)

[CONTACT](#)



Log In 70



NEPTUNE BEACH
DOG PARK + BAR

ADVENTURE
UNLEASHED



ABOUT BREWHOUND

Our Story



Get together with your dogs and their owners to play and mingle outside, enjoy delicious cold (or hot) beverages, and relax in the beautiful sunshine.

Located on the East Coast Greenway recreation trail, which spans from Maine to Key West, Brewhound is your hub for adventures, large and small.

JOIN THE PACK

Become a Member



For the Pups!

For the pups, separately fenced large and small breed dog parks allow unleashed freedom for play. Our Brewhound Ruffarees keep a watchful eye over the pups as they play and break up any rowdiness that may ensue from excitement. For bigger adventures, an outdoor connection area on the Brewhound porch will showcase dog friendly trails, hikes, camps and adventures of all kinds.



For the Humans!

For the humans, an outdoor bar and beer garden serves Bold Bean specialty coffee, local craft beer and wine on tap. Lawn games are set up outside and large screen outdoor TVs will offer sports and special events coverage.

Host to many rad local events, check out our events schedule & don't be shy - join the excitement!

FOLLOW US ON INSTAGRAM

[@brewhounddogparkbar](https://www.instagram.com/brewhounddogparkbar)





Sign up!
to receive newsletters & updates

Name _____ Email* _____

I accept terms & conditions **Subscribe**

8/17/2021

BrewHound Dog Park + Bar | Neptune Beach, FL



[ABOUT](#)

[PARK ACCESS](#)

[PARK INFO](#)

[SHOP PRODUCTS](#)

[EVENTS](#)

[BLOG](#)

[CONTACT](#)



Log In



1848 Kings Circle South
Neptune Beach, Florida 32266
904-372-7266

© 2020 Brewhound Dog Park + Bar
Created by Hungry Wolf Co.

On the second page, the subheading “For the Pups” reads in relevant part as follows:

For the pups, separately fenced large and small breed dog parks allow unleashed freedom for play. Our Brewhound Ruffarees keep a watchful eye over the pups as they play and break up any rowdiness that may ensue.

The Examining Attorney deemed the Second Substitute Specimen unacceptable because it did “not show a direct association between the mark and services in that the specimen of record does not show use of the mark RUFFAREE in connection with the advertised services” because “[t]he heading of the webpage is identified as ‘Brew Hound Dog Park & Bar,’ and the term ‘Ruffaree’ is buried in the body of the webpage under ‘For the Pups.’”¹³

III. Analysis

We agree with the Examining Attorney’s assessment that the Original and Second Substitute Specimens fail to show use of the mark RUFFAREE in commerce for “recreational dog park services.” The Original Specimen comprised of printouts from Applicant’s website is unacceptable because it does not include Applicant’s mark

¹³ May 4, 2023 Subsequent Final Office Action at TSDR 2. Applicant requested reconsideration on August 4, 2023 which the Examining Attorney denied which was denied on August 21, 2024. In this request for reconsideration, Applicant did not present arguments regarding the Examining Attorney’s rejection of the Second Substitute Specimen. Instead, Applicant argued that its previously submitted First Set of Substitute Specimens. See discussion at Section II.B.

RUFFAREE. The Original Specimen comprised of an advertisement printed in “Unleash Jacksonville” includes the mark RUFFAREE, but in the context of describing an employee job title, not Applicant’s services. Likewise, the Second Substitute specimen referencing “Brewhound Ruffarees” does so in a similar context. And finally, the Original Specimen comprised of the photographs of the front and back of a t-shirt displaying RUFFAREE are unacceptable because they do not show use of the mark in connection with the identified services either in the form of an advertisement or the actual rendering of “recreational dog park services.”

However, we find that the Examining Attorney failed to give proper consideration to Applicant’s First Set of Substitute Specimens (i.e. “rendering specimens”), and Applicant’s explanation regarding their nature, context and use. As noted above, an acceptable specimen need not explicitly refer to the services if it “show[s] use of the mark in the rendering, i.e., sale, of the services.” *Metriplex*, 23 USPQ2d at 1316-17. Applicant’s services are identified as “recreational dog park services.” The First Set of Substitute Specimens consist of an employee wearing a shirt displaying the mark RUFFAREE while observing people and their dogs together in Applicant’s recreational dog park. Photographs of costumes or other outfits such as uniforms worn in the performance of services may suffice to show use of mark in commerce. *See Red Robin*, 222 USPQ at 914. Applicant explained during prosecution that the shirts are employee uniforms, and are worn on employees daily while working at Applicant’s recreational dog park. Each photograph supports Applicant’s explanation. Thus, Applicant’s mark is displayed on the uniform of employees in the

course of rendering “recreational dog park services.” Consumers of Applicant’s services will therefore perceive the display of RUFFAREE on the back of Applicant’s employee uniforms as service mark usage. *See JobDiva*, 121 USPQ2d at 1126 (a key consideration is the perception of the consumer). As a result, Applicant’s First Set of Substitute Specimens are acceptable to show the mark RUFFAREE “as used in the sale of the services, including use in the performance or rendering of the services.” Trademark Rule 2.56(b)(2), 37 C.F.R. § 2.56(b)(2).

Decision: The refusal under Trademark Act Sections 1 and 45 is reversed.