

This Opinion is not a
Precedent of the TTAB

Mailed: January 6, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re MT Enterprises LLC

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Serial No. 86420598

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Cheryl A. Clarkin, Esq. of Adler Pollock & Sheehan P.C.
for MT Enterprises LLC.

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Tamara Hudson, Trademark Examining Attorney, Law Office 104,
Dayna Browne, Managing Attorney.

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Before Zervas, Lykos and Shaw,
Administrative Trademark Judges.

Opinion by Lykos, Administrative Trademark Judge:

MT Enterprises LLC (“Applicant”) seeks to register on the Supplemental Register the mark **The No Pull Harness & Leash in One** in standard characters 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 18.¹ The terms “**Harness & Leash**” have been disclaimed apart from the mark as shown.

¹ Application Serial No. 86420598, filed October 10, 2014, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging January 1, 2012 as the date of first use anywhere and in commerce. The application was originally filed under the Principal Register.

The Trademark Examining Attorney refused registration of Applicant's mark pursuant to Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant's mark so resembles the registered mark **NO-PULL** in typed format² on the Principal Register for "halters for domesticated animals" in International Class 18,³ that, when used on or in connection with Applicant's identified goods, it is likely to cause confusion or mistake or to deceive.

When the refusal was made final, Applicant appealed and requested reconsideration. The Trademark Examining Attorney maintained the refusal to register and denied the request for reconsideration. Thereafter, the appeal was resumed and is now briefed.

For the reasons set forth below, we affirm the Section 2(d) refusal.

I. Applicable Law

We base our determination under Section 2(d) on 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) ("*du Pont*"). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In reaching our determination, the Board has considered and

Following the refusal of the mark as merely descriptive under Section 2(e)(1) of the Trademark Act of 1946, 15 U.S.C. § 1052(e)(1), Applicant amended the application to the Supplemental Register. The descriptiveness refusal was then withdrawn.

² "Prior to November 2, 2003, 'standard character' drawings were known as 'typed' drawings. ... A typed mark is the legal equivalent of a standard character mark." Trademark Manual of Examining Procedure ("TMEP") § 807.03(i) (Oct. 2016).

³ Registration No. 1822770, issued on February 22, 1994; alleging February 11, 1993 as the date of first use anywhere and February 19, 1993 as the date of first use in commerce; Section 8 and 15 affidavit and declaration accepted and acknowledged; renewed.

balanced all relevant *du Pont* factors either argued or for which evidence was made of record. See *M2 Software, Inc. v. M2 Commc'ns, Inc.*, 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (even within *du Pont* list, only factors that are “relevant and of record” need be considered).⁴

A. The Marks

We commence with the first *du Pont* likelihood of confusion factor which involves an analysis of the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. See *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 577). “The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012) (quoting *Leading Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 USPQ2d 1901, 1905 (TTAB 2007)). The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *In re Binion*, 93 USPQ2d 1531, 1534 (TTAB 2009) (citing *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975)). Our analysis cannot be

⁴ The “Board reviews an Examining Attorney’s decision on appeal to determine if the refusal to register was correctly made. In doing so, the Board need not adopt the rationale of the Examining Attorney.” *In re AFG Indus. Inc.*, 17 USPQ2d 1162, 1163 (TTAB 1990) (citing *In re Avocet*, 227 USPQ 566 (TTAB 1985)).

predicated on dissection of the involved marks. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1161 (Fed. Cir. 2014). Rather, we are obliged to consider the marks in their entirety. *Id.* See also *Franklin Mint Corp. v. Master Mfg. Co.*, 667 F.2d 1005, 212 USPQ 233, 234 (CCPA 1981) (“It is axiomatic that a mark should not be dissected and considered piecemeal; rather, it must be considered as a whole in determining likelihood of confusion.”). Nonetheless, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entirety. *Stone Lion*, 110 USPQ2d at 1161.

Applicant argues that overall, the marks are different in sound and appearance, and that the Examining Attorney has discounted the significance of the additional wording **Harness & Leash in One** in Applicant’s mark. As Applicant points out, its mark consists of nine syllables whereas the cited mark consists of only two syllables.

Applicant’s arguments are unconvincing. With regard to Applicant’s mark **The No Pull Harness & Leash in One**, the initial portion **The No Pull**, is nearly identical to the entirety of the registered mark **NO-PULL**. “[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered.” *Palm Bay*, 73 USPQ2d at 1692. See also *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988). The addition of the definite article **The** preceding **No Pull** in Applicant’s mark fails to obviate the similarities since that word in this context carries little trademark significance, and if anything, serves to

reinforce the significance of the term **No Pull**. See *United States Nat'l Bank of Oregon v. Midwest Savings and Loan Assoc.*, 194 USPQ 232, 236 (TTAB 1977); *Jay-Zee, Inc. v. Hartfield-Zodys, Inc.*, 207 USPQ 269, 271-72 (TTAB 1980). Likewise, the hyphen in Registrant's mark **NO-PULL** is of minimal import in distinguishing it from the **No Pull** portion of Applicant's mark. See *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1470 (TTAB 2016); *Charrette Corp. v. Bowater Comm'n Papers Inc.*, 13 USPQ2d 2040, 2042 (TTAB 1989).

While acknowledging the distinctions noted above by Applicant, we find that Applicant overemphasizes their effect. The generic wording **Harness & Leash** in Applicant's mark is disclaimed.⁵ Disclaimed matter that is descriptive of or generic for an Applicant'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). We therefore find that **No Pull** is the dominant portion of Applicant's mark. When considering **The No Pull Harness & Leash in One** in its entirety, it is highly similar in connotation and commercial impression to Registrant's mark **NO-PULL**. Thus, because Applicant's applied-for mark is similar in appearance, sound, connotation and commercial impression to the registered mark, the first *du Pont* factor weighs in favor of finding a likelihood of confusion.

⁵ From the face of the application, we can determine that **Harness & Leash** is generic because the application seeks registration on the Supplemental Register and this wording has been disclaimed.

B. The Goods

The next step in our analysis is a comparison of the goods identified in Applicant's application vis-à-vis the goods identified in the cited registration, the second *du Pont* factor. See *Stone Lion*, 110 USPQ2d at 1161; *Octocom Sys., Inc. v. Houston Computers Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). See also *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). It is settled that it is not necessary that the respective goods be identical or even competitive in order to find that they are related for purposes of our likelihood of confusion analysis. 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 services] emanate from the same source." *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). See also *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289, 1290 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). Evidence of relatedness may include news articles and/or evidence from computer databases showing that the relevant goods/services are used together or used by the same purchasers; advertisements showing that the relevant goods/services are advertised together or sold by the same manufacturer or dealer; and/or copies of prior use-based registrations of the same mark for both applicant's goods/services and the goods/services listed in the cited registration. See, e.g., *In re Davia*, 110 USPQ2d 1810, 1817 (TTAB 2014) (finding pepper sauce and agave related where evidence showed both were used for the same purpose in the same recipes and

thus consumers were likely to purchase the products at the same time and in the same stores). The issue is not whether purchasers would confuse the goods, but rather whether there is a likelihood of confusion as to the source of these goods. *L’Oreal S.A. v. Marcon*, 102 USPQ2d 1434, 1439 (TTAB 2012); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

Applicant’s goods are identified as “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”; Registrant’s goods are listed as “halters for domesticated animals.” The term “domesticated animals” is sufficiently broad to encompass all types of domesticated animals, including, as identified in the application, “pets” and “dogs.”⁶ Although the goods are not identical, by their very nature, they are highly related inasmuch as harnesses and halters perform the same function of discouraging domesticated animals such as horses and dogs from pulling. As explained by the following excerpt from a veterinary clinic:

Harnesses and Halters. There are several great alternatives to the traditional leash and collar. While these products offer advantages to stop pulling, they must be used properly and in conjunction with training in order to be successful. Without training, dogs can and will still pull, regardless of the product being used; they must be taught to walk with slack

⁶ We take judicial notice of the following definitions from the online version of the Merriam-Webster Dictionary (www.merriam-webster.com): “domesticated” as “to adapt (an animal or plant) to life in intimate association with and to the advantage of humans”; “pet” as “a domesticated animal kept for pleasure rather than utility” and “dog” as “a highly variable domestic mammal (*Canis familiaris*) closely related to the gray wolf.” The Board may take judicial notice of dictionary definitions, including definitions in online dictionaries which exist in printed format or that have regular fixed editions. *See, e.g., In re White Jasmine LLC*, 106 USPQ2d 1385, 1392 n.23 (TTAB 2013). *See also* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 1208.04 (2016) and cases cited therein.

in the leash. If you are unsure how to fit your harness, we can schedule an appointment for a technician to fit the harness or head halter to your pet. Excerpt from Lincoln Land Animal Clinic, Ltd. web site <http://www.lincolnandac.com/harnesses-and-head-halters.pml> submitted with Final Office action dated August 28, 2015.

See also the web page excerpt from That Pet Place “Picking the Perfect Collar: The right choice makes all the difference!” at <http://www.thatpetplace.com/choosing-dog-collars-harnesses-and-halters> submitted with Final Office action dated August 28, 2015 (“Halter - Also known as a Head Collar, and sometimes confused with a muzzle, a Halter Dog Collar is a specialized anti-pulling training collar.”). In addition, animal leashes and halters are used together, making them by their very nature complementary products. *See id.*

The Examining Attorney has also made of record third-party, used-based registrations showing that the same entity has registered a single mark identifying both Applicant’s and Registrant’s goods or the legal equivalent thereof. By way of illustration, note particularly the following bolded items:

MARK	Reg. No.	IDENTIFICATION OF GOODS
	1457161	Collars, leashes, leads, harnesses, bridles, halters, reins, and tie-outs for domestic pets and other animals; and rawhide chews for pets
	2111073	Animal harnesses; animal leashes; dog restraint devices, namely leashes collars, training collars and halters, harnesses, and seatbelts

<p>SMITTEN BY MY RESCUE KITTEN</p>	<p>4251828</p>	<p>Animal carriers; Animal harnesses; Animal leashes; Animal wraps and covers; Clothing for animals; Clothing for domestic pets; Collars for animals; Collars for pets; Dog clothing; Garments for pets; Harness for horses; Horse blankets; Horse bridles; Horse collars; Horse halters; Horse rugs; Horse tack, namely, bridles, reins, leads, halters; Leads for animals; Leashes for animals; 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; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices; Pet tags specially adapted for attaching to pet leashes or collars; Saddle cloths for horses</p>
<p>M W</p>	<p>4739517</p>	<p>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; harnesses; harnesses for dog sledding; animal leashes; collars for animals; horse blankets; pads for horse saddles; horse halters; reins; headdresses for horses; covers for animals; saddle pads</p>
<p>HYBRID HALTER</p>	<p>4617154</p>	<p>Animal harnesses; Animal leashes; Bits; Bits for animals; Blinders for horses; Clothing for animals; Collars for animals; Harness fittings; Harness fittings not of precious metal; Harness for horses; Harness straps; Harness traces; Harnesses; Harnesses and saddlery; Horse bits; Horse bridles; Horse halters; Horse tack, namely, halters; Leashes for animals; Leather for harnesses; Leather leashes; Leather straps; Leather straps for securing a horse; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices; Pet restraining devices consisting of harnesses and/or restraining straps, for use in pet grooming or veterinary care; Training forks for horses; Training leads for horses</p>

<p>WELLTEX</p>	<p>4621120</p>	<p>Animal harnesses; Animal wraps and covers; Belly bands for dogs, cats, horses,; Bridles; Clothing for animals; Clothing for domestic pets; Collars for animals; Collars for pets; Collars of animals; Costumes for animals; Cushion padding made for saddlery; Dog apparel; Dog bellybands; Dog clothing; Dog coats; Dog collars; Dog collars and leads; Dog leashes; Dog parkas; Dog shoes; Equine boots; Equine leg wraps; Exercise sheets for horses; Garments for pets; Harness for horses; Harnesses and saddlery; Horse blankets; Horse bridles; Horse collars; Horse fly sheets; Horse fly veils for horses; Horse halters; Horse quarter sheets; Horse rugs; Horse tail wraps; Horse wraps; Leashes for animals; 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; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices; Pet restraining devices consisting of harnesses and/or restraining straps, for use in pet grooming or veterinary care; Saddle cloths for horses; Spats and knee bandages for horses</p>
	<p>4781888</p>	<p>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; Harnesses and saddlery; Hiking bags; Horse halters; Horse rugs; Horse tack, namely, bridles, reins, leads, bits, stirrup leathers, girth straps, lunge lines, halters; Pads for horse saddles; Pet products, namely, pet restraining devices consisting of leashes, collars, harnesses, restraining straps, and leashes with locking devices; Saddle covers; Saddlery of leather; Umbrellas; Walking staffs; Wallets; Wheeled bags</p>

See Final Office Action dated August 28, 2015. As a general proposition, although use-based third-party registrations alone are not evidence that the marks shown therein are in use or that the public is familiar with them, they nonetheless may have

probative value to the extent they may serve to suggest that the goods are of a kind that emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-18 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); and *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d 1467, 1470 n.6 (TTAB 1988).

We further direct our attention to the Examining Attorney's evidence obtained from third-party Internet websites showing that animal leashes, harnesses and halters are either sold by the same entity or sold under the same mark:

Hamilton Premium Pet Products (<http://hamiltonproducts.com>): An online retailer and manufacturer of pet products offering leashes, harnesses and halters for dogs, cats, horses, show animals and livestock under the same mark Hamilton.

Genuine Dog Gear (http://www.genuinedoggear.com/dog_halter.html): An online retailer selling a variety of goods manufactured by others for dogs including leashes and halters.

Wonder Walker Body Halter (<http://www.wonderwalkbodyhalter.com>) an online retailer offering a halters for dogs and various types of leashes.

See Final Office Action dated August 28, 2015. As the aforementioned evidence demonstrates, it is not uncommon for manufacturers to both make and offer for sale domesticated animal halters, harnesses and leashes. This constitutes further evidence that consumers may expect to find both Applicant's and Registrant's goods as identified in the involved application and cited registration as emanating from a common source.

In view of the evidence of record, we find that the goods identified in the application and registration are either closely related, perform the same function or

consist of complementary products. As such, the second *du Pont* factor also weighs in favor of finding a likelihood of confusion.

C. Trade Channels

Next we consider established, likely-to-continue channels of trade, the third *du Pont* factor. Because the identifications in the application and cited registration for the mark have no restrictions on channels of trade, we must presume that the goods travel in all channels of trade appropriate for such goods, which the record shows include direct manufacturer operated web sites specializing in pet and animal products. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 62 USPQ2d at 1005). *See* Final Office Action dated August 28, 2015 (evidence summarized above from third party web sites). In addition, both parties' goods may be encountered by the same prospective consumers, which includes members of the general public who own domesticated animal and are seeking to limit or prevent their domesticated animal or pet from pulling.

As such, the third *du Pont* factor regarding the similarity or dissimilarity of established, likely to continue trade channels also favors a finding of likelihood of confusion.

D. The Number and Nature of Similar Marks in Use on Similar Services

We will now consider the number and nature of similar marks in use on similar goods, the sixth *du Pont* factor. In an *ex parte* appeal, “[t]he purpose of [an applicant] introducing third-party uses is to show that customers have become so conditioned

by a plethora of such similar marks that customers have been educated to distinguish between different such marks on the bases of minute distinctions.” *Palm Bay*, 73 USPQ2d at 1694. *See also Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1675-76 (Fed. Cir. 2015) (internal citations omitted). “[T]he strength of a mark is not a binary factor” and “varies along a spectrum from very strong to very weak.” *Juice Generation*, 115 USPQ2d at 1675-76 (internal citations omitted). “The weaker [the Registrant’s] mark, the closer an applicant’s mark can come without causing a likelihood of confusion and thereby invading what amounts to its comparatively narrower range of protection.” *Id.* at 1676 (internal citations omitted). *See also Palm Bay*, 73 USPQ2d at 1693 (“Evidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection.”). “In determining the strength of a mark, we consider both its inherent strength based on the nature of the mark itself and its commercial strength, based on the marketplace recognition value of the mark.” *American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d 1022, 1028 (TTAB 2011) (citing *Tea Board of India v. Republic of Tea Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006) and *McCarthy on Trademarks and Unfair Competition* § 11:83 (4th ed. 2011) (“The first enquiry focuses on the inherent potential of the term at the time of its first use. The second evaluates the actual

customer recognition value of the mark at the time registration is sought or at the time the mark is asserted in litigation to prevent another's use.”)).

Applicant maintains that the common element in both marks – the word “pull” – is conceptually weak and highly descriptive as applied to pet products. In support thereof, Applicant has made of record the following Principal Register third-party registrations purportedly to show that “pull” as a trademark is weak in connection with the goods and therefore deserving of less protection.

MARK	Reg. No.	IDENTIFICATION OF GOODS
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
	2809848	Pet food covers
POOCH PULL	4052865	Dog toys
PULL & BEAR	4381519	Shampoos for pets, cosmetics for animals; beds for household pets

As we have often stated, because third-party registrations of marks are not evidence that the registered marks are in use, they are of limited probative value for demonstrating weakness of the marks. *See In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010). However, active third-party registrations may be relevant to show that a mark or a portion of a mark is descriptive, suggestive, or

so commonly used that the public will look to other elements to distinguish the source of the goods or services. *See, e.g., Jack Wolfskin, supra; Juice Generation*, 115 USPQ2d at 1674-75; *In re Hartz Hotel Servs., Inc.*, 102 USPQ2d 1150, 1153-54 (TTAB 2012); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Dayco Products-Eagle Motive Inc.*, 9 USPQ2d 1910, 1911-12 (TTAB 1988); *Plus Prods. v. Star-Kist Foods, Inc.*, 220 USPQ 541, 544 (TTAB 1983). Properly used in this limited manner, third-party registrations are similar to dictionaries showing how language is generally used. *See, e.g., Tektronix, Inc. v. Daktronics, Inc.*, 534 F.2d 915, 917, 189 USPQ 693, 694-95 (CCPA 1976); *In re J.M. Originals Inc.*, 6 USPQ2d 1393, 1394 (TTAB 1987); *United Foods Inc. v. J.R. Simplot Co.*, 4 USPQ2d 1172, 1174 (TTAB 1987).

The mark **PULL-EZE** is of little relevance here because it projects a different meaning and commercial impression in light of the double entendre with the word “please.” Similarly, the mark PULL STOP engenders a different connotation and commercial impression than the cited mark because it appears to be a play on the phrase “full stop.” Registration Nos. 4581881, 4808919, 4264070, 2809848, 4052865, 4381519 (albeit for pet products) are not for the same or related goods (such as harnesses, halters or leashes) and as such are of minimal probative value. The remaining registration for the mark **SOFT-PULL** is of minimal, if any, probative value because we cannot determine from the face of the registration whether the term “pull” is descriptive or generic of Registrant’s “halters for domesticated animals” since it is on the Principal Register without a claim of acquired distinctiveness and includes

a hyphen between the two terms in the mark, and the assigned Examining Attorney may have consider the mark to be unitary. .

That being said, there is evidence in the record regarding third-party use of the term “no-pull” in our lexicon to identify a type of dog harness designed to discourage pulling. The record also includes evidence showing “no-pull” as a component of third-party trademarks for these goods. The following evidence submitted by the Examining Attorney shows descriptive or perhaps even generic use of the term “no-pull” in connection with dog harnesses (which as explained above are identical in function to Registrant’s “halters for domesticated animals”):

“There are two types of no-pull harnesses. One type has a leash attachment at the ring of the center of the dog’s chest ... The other type works by gently tightening around your dog’s chest or leg area.” Excerpts from Pet Smart web site entitled “FAQs About Dog Harnesses” attached February 2, 2015 Office Action.

“In order to help every dog and person to have an enjoyable walk, we offer a variety of gentle and tested to be effective no-pull solutions. Excerpts from Pet Expertise web site article entitled “Compare Gentle & Effective No-Pull Training Devices from Pet Expertise” attached to February 2, 2015 Office Action.

“In a limited gait analysis study, Dr. Zink observed that dogs wearing no-pull, front clip harnesses bore less weight on their front legs than they normally would ...” The Whole Dog Journal article entitled “The No-Pull Debate” attached to February 2, 2015 Office Action.

(Emphasis added). In addition, the article noted above entitled “Compare Gentle & Effective No-Pull Training Devices from Pet Expertise” includes a chart comparing various types of dog harnesses manufactured by third parties, the following of which include the term “no-pull” as part of their mark: FREEDOM NO-PULL HARNESS, WALK YOUR DOG WITH LOVE NO-PULL HARNESS, EASY WALK NO-PULL HARNESS, KURGO CAR HARNESS WITH NO-PULL FRONT RING, THUNDERLEASH NO-PULL LEASH/HARNESS, HORGAN NO-PULL HARNESS HIND-END HARNESS. *See* February 2, 2015 Office Action. The record also includes an example of the mark POSITIVELY NO-PULL HARNESS used

in connection with a “no-pull” harness for dogs. *See* positively.com web site excerpts attached to February 2, 2015 Office Action.⁷ We find that this evidence shows the cited mark **NO-PULL** is both conceptually and commercially weak. In other words, a mark comprising the term “no-pull” in whole or in part in connection with harnesses, halters, leashes and the like for domesticated animals is entitled only to a “restricted scope of protection,” and as such will only bar the registration of marks “as to which the resemblance to [Registrant’s mark] is striking enough to cause one seeing it to assume that there is some connection, association or sponsorship between the two.” *Anthony’s Pizza & Pasta International Inc. v. Anthony’s Pizza Holding Co.*, 95 USPQ2d 1271, 1278 (TTAB 2009), *aff’d*, 415 Fed. Appx. (Fed. Cir. 2010). This sixth *du Pont* factor therefore weighs against finding a likelihood of confusion.⁸

E. Conditions of Sale

Next we consider the conditions under which the goods are likely to be purchased, e.g., whether on impulse or after careful consideration, as well as the degree, if any, of sophistication of the consumers. Purchaser sophistication or degree of care may tend to minimize likelihood of confusion. Conversely, impulse purchases of inexpensive items may tend to have the opposite effect. *Palm Bay*, 73 USPQ2d at 1695.

⁷ Despite the fact that this evidence was submitted by the Examining Attorney (not Applicant) and was neither discussed by Applicant nor the Examining Attorney in their briefs (or for that matter during ex parte prosecution), we have considered this evidence as it could potentially weigh in Applicant’s favor.

⁸ The cited mark **NO-PULL** is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act. As such, it is entitled to the statutory presumptions of validity as a non-descriptive mark. To find otherwise would amount to an improper collateral attack on the registration. The proper action for attacking the validity of a registration is a cancellation action. *See Fiserv, Inc. v. Elec. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1919 n.7 (TTAB 2015) (stating that absent a counterclaim, an applicant may not pursue an impermissible collateral attack on an opposer’s registration).

Applicant argues that the goods offered under Applicant's mark and the cited mark are not impulse purchases and that purchasers are highly knowledgeable with respect to the pet restraining device industry. Based on the record before us, we are not persuaded by these arguments. It is well established that 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. *See, e.g., Stone Lion*, 110 USPQ2d at 1163-64; *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011). Moreover, Applicant has provided no evidence regarding consumer expertise, and neither the application nor registration are restricted with regard to purchasers. When the relevant consumer includes both knowledgeable consumers and the general public, the standard of care for purchasing the goods is that of the least sophisticated potential purchaser. *Stone Lion*, 110 USPQ2d at 1163; *Alfacell Corp. v. Anticancer, Inc.*, 71 USPQ2d 1301, 1306 (TTAB 2004). In any event, even assuming arguendo that consumers have a high degree of knowledge with respect to domesticated animal restraint devices, they are likely to be confused when encountering the phrase NO-PULL in connection with highly similar goods, as the similarity of the marks and the relatedness of the goods outweigh any presumed sophisticated purchasing decision. *See Stone Lion*, 110 USPQ2d at 1163-64.

Moreover, because neither Applicant's nor Registrant's identification limits the sale of the goods to a particular price point, we must treat the goods as including both inexpensive as well as high-end products. Indeed, the record shows that, at a

minimum, at least some of the involved goods are sold at a relatively low price point. For example, the EZ brand head halter for dogs retails for \$16.95 - 20.95; the HARNESS LEAD “THE RESCUE LEASH” dog harness sells for \$27.99 - \$32.99; and the STEP, SLIDE, AND GO ALL AND ONE HARNESS AND LEASH for dogs sells for \$18.95 - \$20.95. *See* Final Office Action dated August 28, 2015. At these relatively low prices, prospective consumers are more likely to make impulse purchases. “When products are relatively low-priced and subject to impulse buying, the risk of likelihood of confusion is increased because purchasers of such products are held to a lesser standard of purchasing care.” *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1899 (Fed. Cir. 2000); *Specialty Brands, Inc. v. Coffee Bean Distributors, Inc.*, 748 F.2d 669, 223 USPQ 1281, 1282 (Fed. Cir. 1984). Thus, the *du Pont* factor of the conditions of sale also weighs in favor of a finding of a likelihood of confusion.

II. Conclusion

We have carefully considered all evidence of record and Applicant’s arguments, even if not specifically discussed herein, as they pertain to the relevant *du Pont* factors. We treat as neutral any *du Pont* factors for which there is no evidence or argument of record.

As explained above, the sixth *du Pont* factor does not favor a likelihood of confusion because the term “no-pull” appears to be inherently weak and has been widely used as part of a trademark in connection with dog harnesses designed to limit pulling by the dog. Nonetheless, the remaining factors analyzed above (the similarity of the marks, relatedness of the goods, established, likely-to-continue channels of

trade and purchasing conditions) each weigh in favor of finding a likelihood of confusion. While there are instances where a single *du Pont* factor is dispositive (*see, e.g., Kellogg Co. v. Pack'em Enters. Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991)), we find that the sixth *du Pont* factor does not play such a role here, given the “striking” similarity in the marks when compared as a whole as applied to closely related and complementary goods in overlapping trade channels at a relatively low price point. *See, e.g., Anthony’s Pizza*, 95 USPQ2d at 1283 (“The evidence of third-party registration and use of ANTHONY’S, although one factor (and a significant one under the facts in this case) to be considered, does not persuade us of a different result, because we believe that this factor is outweighed by the other factors.”). *Compare Carefirst of Maryland Inc. v. FirstHealth of the Carolinas Inc.*, 77 USPQ2d 1492, 1513 (TTAB 2005) (“The differences between the highly suggestive marks CAREFIRST and FIRSTCAROLINACARE, the crowded field of marks featuring “care” and/or “first” in the healthcare industry, and the relatively sophisticated decision in purchasing or even using healthcare services, all warrant a finding of no likelihood of confusion.”). In addition, because the cited mark is registered on the Principal Register without a claim of acquired distinctiveness under Section 2(f), it is entitled to the presumptions accorded by Section 7(b) of the Trademark Act, 15 U.S.C. § 1057(b) (*i.e.*, prima facie evidence of the validity of the registered mark and of the registration of the mark, of the ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration). *See American Lebanese Syrian Associated*

Charities Inc. v. Child Health Research Institute, 101 USPQ2d at 1028. Thus, the cited mark may not be considered merely descriptive or generic; at worst the mark **NO-PULL** must be viewed as highly suggestive. *See id.*

Balancing the *du Pont* factors, we find that confusion is likely between Applicant's applied-for mark and the cited registration. We emphasize that we have accorded Registrant's mark a narrow scope of protection as a both a conceptually and commercially weak mark. That being said, "likelihood of confusion is to be avoided, as much between 'weak' marks as between 'strong' marks, or as between a 'weak' and 'strong' mark." *Anthony's Pizza*, 95 USPQ2d at 1283 (quoting *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 109 (CCPA 1974)). *See also American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute*, 101 USPQ2d at 1028.

We therefore find that there is a likelihood of confusion between Applicant's mark **The No Pull Harness & Leash in One** in standard characters 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 18 and Registrant's mark **NO-PULL** in typed format on the Principal Register for "halters for domesticated animals" in International Class 18.

Decision: The Section 2(d) refusal is affirmed.