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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re American Medical Alert Corp.

Serial No. 76563679

Myron Amer of Myron Amer, P.C. for American Medical Alert Corp.

Michael Tanner, Trademark Examining Attorney, Law Office 102 (Thomas V. Shaw, Managing Attorney).¹

Before Quinn, Bucher and Kuhlke, Administrative Trademark Judges.

Opinion by Kuhlke, Administrative Trademark Judge:

American Medical Alert Corp. has filed an application to register HELPLINK (in standard character form) for "telephone operator services, namely, 24-hour emergency medical response communication services, namely, providing direct communications between individuals and their hospitals, HMO, hospice care facility or home healthcare

¹ During the course of prosecution, this application was reassigned to the above-noted examining attorney.

agency via telephone to ensure patients receive immediate and appropriate medical care" in International Class 35.²

Registration has been refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when used on its identified services, so resembles the registered mark HELPLINK (in standard character form) for "personal emergency response answering and dispatch services featuring the receipt and transfer of electronic and telephonic communications from clients, namely, delivery of emergency messages by telephonic and electric transmissions to the appropriate response persons or agencies designated by clients" in International Class 38,³ as to be likely to cause confusion, mistake or deception.

When the refusal was made final, applicant appealed. Briefs have been filed, but applicant did not request an oral hearing.⁴ We affirm the refusal to register.

² Application Serial No. 76563679, filed November 21, 2003, alleging a date of first use anywhere and date of first use in commerce of October 27, 2003.

³ Registration No. 2845241, issued May 25, 2004.

⁴ The application was remanded to the examining attorney on September 28, 2005 and on November 22, 2005 applicant was allowed time in which to file a supplemental brief which it did on December 12, 2005.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The marks, HELPLINK, are identical, which is a factor that favors a finding of likelihood of confusion. We turn then to a consideration of the services, keeping in mind that use of identical marks is a fact which "weighs heavily against applicant." *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); see also *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687 (Fed. Cir. 1993). See also *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992), cert. denied 506 U.S. 1034 (1992).

It is well settled that goods or services need not be similar or competitive in nature to support a finding of likelihood of confusion. The question is not whether purchasers can differentiate the goods or services themselves, but rather whether purchasers are likely to confuse the source of the goods or services. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989). Further, we must consider registrant's services as they are described in the registration and we cannot read limitations into those services. See *Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783 (Fed. Cir. 1987); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001 (Fed. Cir. 2002). If the cited registration describes goods or services broadly, and there is no limitation as to the nature, type, channels of trade or class of purchasers, it is presumed that the registration encompasses all goods or services of the type described, that they move in all channels of trade normal for these goods or services, and that they are available to all classes of purchasers for the described goods or services. See *In re Linkvest S.A.*, 24 USPQ2d 1716 (TTAB 1992).

Applicant contends that "the parties' services are not competitive arguing that they are classified in different

classes" (br. unnumbered p. 2) and that because applicant's services are classified in International Class 35 "the focus in reading applicant's recitation of its services should be on 'providing direct communications between individuals and their hospitals...to ensure patients receive immediate and appropriate medical care.'" Br. unnumbered p. 3. Continuing, applicant contends, because registrant's services are classified in International Class 38 "the focus or emphasis is on 'electronic and telephonic communications' the object of which is dispatching a hospital ambulance to an individual in a medical emergency situation." Id.

We first note that the classification of goods and services has no bearing on the question of likelihood of confusion. *Jean Patou Inc. v. Theon Inc.*, 9 F.3d 971, 29 USPQ2d 1771 (Fed. Cir. 1993). Further, we are not persuaded by applicant's argument regarding the "manner in which the parties have identified their services," and agree with the examining attorney that "at their respective cores, these services are both emergency medical assistance monitoring services that ensure a user can remotely contact an emergency medical assistance provider in time of need." Br. p. 6.

The examining attorney's position is supported by the record. As noted by the examining attorney, applicant's specimen describes its service as a "medical alert system" provided by "a two-way console unit that connects to your existing phone line and a lightweight, personal activator that stays with you, privately, around your neck or wrist." The specimen also includes the following passage, "If you need assistance or are concerned about your safety, just press the button and the HELPLINK console unit dials our toll-free number and opens a two-way voice conversation between you and our on-call response team." The printout of registrant's website submitted by the examining attorney describes registrant's service as a "medial alarm" provided by a "remote waterproof pendant panic button that can be activated up to 250 feet away. The compact table top unit also allows you to talk with emergency personnel from anywhere in the room if you need help." The examining attorney also submitted Internet printouts in support of his argument that applicant's and registrant's services are marketed to the same class of individuals. These printouts show that registrant provides discounts on its service for senior citizens and applicant's service is "prominently featured on the Alzheimer's Family Care Management and SeniorLink websites." Office Action unnumbered p. 2

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(October 11, 2005). In view of the above, we find that applicant's and registrant's services are closely related.

In addition, because the identification of services in the application and registration does not limit the channels of trade in any way, we must presume they travel in the channels of trade ordinary for these services. Therefore, the applicant's and registrant's channels of trade overlap.

Taking into account the du Pont factors relevant to this case, we find that, given the use of identical marks on these closely related services that are sold in the same channels of trade to the same ultimate consumers, confusion is likely.

Decision: The refusal to register is affirmed.