

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **Creative Healthcare Solutions, Inc.**

Serial No. 74/**619,299**

Nicholas E. Westman of **Westman, Champlin & Kelly** for
Creative Healthcare Solutions, Inc.

Wanda Kay Price, Trademark Examining Attorney, Law Office
103 (**Michael Szoke**, Managing Attorney).

Before **Simms**, **Hairston** and **Walters**, Administrative
Trademark Judges.

Opinion by **Hairston**, Administrative Trademark Judge:

Creative Healthcare Solutions, Inc. has filed an
application to register the mark SHORTSTAY SUITES for
"providing medical clinical and personal healthcare
services within an assisted living or other residential
setting."¹

¹ Application Serial No. 74/619,299 filed January 9, 1995, and
based on an allegation of a bona fide intention to use the mark
in commerce.

Registration was refused pursuant to both Sections 2(d) and 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(d) and 1052(e)(1), on the grounds that applicant's mark for the identified services so resembles the mark SHORT STAY METHADONE RESIDENCE for "health services, namely, residential substance abuse treatment services"² as to be likely to cause confusion, mistake, or to deceive; and that SHORTSTAY SUITES is merely descriptive of applicant's identified services. When the refusal was made final, applicant appealed. No oral hearing was requested.

Section 2(e)(1) refusal

We turn first to the refusal to register based on the ground that SHORTSTAY SUITES is merely descriptive of the identified services. It is the Examining Attorney's position that SHORTSTAY SUITES describes a feature of applicant's services. In support of this refusal, the Examining Attorney relies on dictionary definitions of "short"--"lasting only a short period of time," "stay"--"to remain in a given place or condition," and "suites"--"a series of connected rooms functioning as a living unit," as well as excerpts taken from the NEXIS data base which show

² Registration No. 1,853,386 issued September 6, 1994 on the Supplemental Register.

that the term "short-stay" is used to refer to hospitals and medical procedures, e.g.:

Medicare pays **short-stay**, acute-care hospitals a pre-determined rate for care provided to Medicare beneficiaries using a prospective . . .
("Medicare: HHS Proposes FY '97 Hospital Rate Increases;" Health Line; May 31, 1996).

The facility is designed to be a **short-stay** regional hospital that can keep patients closer to their families and homes while easing the burden on the state's two existing . . .
("Regional News;" Modern Healthcare; January 27, 1997);

. . . episodes of persons injured, restricted activity due to illness, health status, and the use of medical services--including physician contacts and **short-stay** hospitalizations.
(Current estimates; Public Health Reports; May 1996); and

Patients were excluded if they were admitted for **short-stay** (24-48) hour elective procedures, or if they were too ill to be interviewed.
("Prevalence and detection of illicit drug disorders;" American Journal of Drug and Alcohol Abuse; August 1996);

Applicant, in urging reversal of the refusal to register, argues that SHORTSTAY SUITES is not merely descriptive of the identified services because the mark does not identify the particular services which applicant intends to offer, and that "suite" is not a word which is usually associated with healthcare services.

The NEXIS excerpts show that the term "short-stay" is used to describe both hospitals and medical procedures. Thus, when the term short-stay is used in connection with healthcare services, the relevant purchasers of such services would readily understand its meaning. The fact that applicant has deleted the hyphen to make it SHORTSTAY is of no consequence. Moreover, the dictionary definition submitted by the Examining Attorney shows that "suite" describes a particular arrangement of rooms, and while "suite" may most often be associated with hotels or motels, it is not limited to these settings. We note in this regard that applicant has not argued that the assisted living or residential setting where the medical clinical and personal healthcare services are to be provided will not contain suites. Thus, when the terms SHORTSTAY and SUITES are combined in the mark SHORTSTAY SUITES, we agree with the Examining Attorney that the mark, as used for the identified services, would immediately convey to purchasers that such services feature suites for persons needing short-stay healthcare. And because a mark, which immediately conveys information about a characteristic, quality or feature of a product or service is considered merely descriptive, applicant's mark is not entitled to

registration. See *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987).

Section 2(d) refusal

This brings us to the refusal to register based on Section 2(d) of the Act (likelihood of confusion). The Examining Attorney contends that the dominant features of the respective marks are essentially identical, namely, SHORT STAY and SHORTSTAY; and that the parties' services are related or identical inasmuch as both are healthcare services and applicant's services are broad enough to encompass registrant's substance abuse services.

Applicant, on the other hand, maintains that purchasers are not likely to assume that applicant's and registrant's services emanate from the same source simply because both use the term SHORT STAY. Rather, according to applicant, purchasers will distinguish the marks and services of registrant, in particular, by the wording METHADONE RESIDENCE. Further, applicant argues that the purchasers of registrant's services are discriminating.

Notwithstanding the relatedness or identity of the services herein, we believe that purchasers are not likely to rely upon the highly descriptive words SHORT STAY and SHORTSTAY in order to distinguish source. Rather, we agree with applicant that purchasers will distinguish these marks

and the sources of these services by the remaining features, namely METHADONE RESIDENCE and SUITES. When the marks are considered in their entirety, the commercial impressions of the marks as a whole are different and these differences in the marks are sufficient to avoid a likelihood of confusion.

An additional factor which is significant to our determination that confusion is not likely, is the nature of the services involved. It is unlikely that purchasers of healthcare services would select a provider without careful consideration. In sum, we think that careful purchasers will readily perceive the different commercial impressions conveyed by applicant and registrant's marks, and because of these differences will regard the marks as indicating separate sources of the services.

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Decision: The refusal to register under Section 2(e)(1) is affirmed; the refusal to register under Section 2(d) is reversed.

R. L. Simms

P. T. Hairston

C. E. Walters
Administrative Trademark
Judges, Trademark Trial
and Appeal Board