

**THIS OPINION IS NOT A  
PRECEDENT OF  
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Mailed: February 28, 2008

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re Linholm Corp.

\_\_\_\_\_  
Serial No. 76435325

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John R. Posthumus of Greenberg Traurig LLP for Linholm Corp.

Barbara Rutland, Trademark Examining Attorney, Law Office  
101 (Ronald R. Sussman, Managing Attorney).

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Before Bucher, Grendel and Cataldo,  
Administrative Trademark Judges.

Opinion by Cataldo, Administrative Trademark Judge:

Linholm Corp. filed an application to register on the Principal Register the proposed mark THE PREGNANCY CALENDAR in typed or standard character form for the following goods: "calendar which is a 40-week guide to pregnancy, including prenatal care and fetal development" in International Class 16.<sup>1</sup>

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<sup>1</sup> Serial No. 76435325 was filed on July 29, 2002, alleging first use as of December 1, 1987 and use in commerce as of December 18, 1987, and with a claim of ownership of prior Registration No. 1522590.

The trademark examining attorney refused registration on the ground that the proposed mark is merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1). Applicant amended its application to seek registration under Section 2(f) of the Trademark Act, 15 U.S.C. §1052(f) in order to traverse the refusal. After the examining attorney refused registration on the ground that applicant failed to make a sufficient showing that its proposed mark had acquired distinctiveness under Section 2(f), applicant amended its application to seek registration on the Supplemental Register. The examining attorney then refused registration under Section 23 of the Trademark Act, 15 U.S.C. §1091, on the ground that applicant's mark is incapable of identifying applicant's goods and distinguishing them from those of others. When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs on the issue under appeal.

Applicant contends its proposed mark is not generic for its goods and is appropriate for registration on the Supplemental Register. More specifically, applicant argues that the genus of goods at issue in its application is not pregnancy calendars as argued by the examining attorney, but rather should be more broadly identified as calendars

(brief p. 4-5). Applicant further argues that the examining attorney has not shown that the relevant public uses "pregnancy calendar" to refer to the genus of goods under its proposed mark (*Id.* at 5-7). Applicant argues in addition that the evidence of record does not support the refusal to register, but rather demonstrates that THE PREGNANCY CALENDAR is capable of functioning as a source identifier for its recited goods (*Id.* at 7-8).

In support of its position, applicant has made of record third-party advertisements for its goods retrieved from Internet web pages. Applicant submits these materials to support its contention that THE PREGNANCY CALENDAR points uniquely to applicant as the source thereof.

Excerpts from these web pages follow:

#### Pregnancy Calendars

Pregnancy calendars are designed to help expecting mothers have peace of mind over their 40 weeks. It's a place where they can keep up with how their baby is developing and what conditions and feelings are normal.

A pregnancy calendar is a calendar based on the pregnancy term - not on the calendar year. It's your guide to pregnancy from conception to the birth of your baby. Along the way you'll learn about the many exciting changes taking place in your body, the month to month development of your unborn baby...

Your pregnancy calendar can also be used as a diary of your thoughts and experiences, to record your prenatal appointments and other information, as a sourcebook to answer questions about

pregnancy and a keepsake to compare with future pregnancies.

[www.pregnancy--calendars.com](http://www.pregnancy--calendars.com)

The Pregnancy Calendar #11413

More than a calendar, it's packed with week-by-week information about pregnancy and fetal development. A calendar is a must for keeping track of prenatal appointments, but this one also provides a wealth of information and tips, such as what to pack for the hospital. Use it to record pregnancy milestones – such as the day you feel that first little kick – and it will become a keepsake diary to look back on.

[www.babyproofingplus.com/item 1204.htm](http://www.babyproofingplus.com/item 1204.htm)

Russ Berrie The Pregnancy Calendar

This popular best-selling calendar lets mothers-to-be know what to expect when they're expecting. Featuring a 40-week guide to prenatal care, it also follows the baby's fetal development month-by-month with useful information pertaining to pregnancy. Includes 96 colorful stickers to mark things like baby showers, doctor appointments, last day of work, and so on.

The Pregnancy Calendar is a calendar based on the pregnancy term--not on the calendar year. It's your guide to pregnancy from conception to the birth of your baby. Along the way you'll learn about: The many exciting changes taking place in your body; the month-to-month development of your unborn baby; the importance of prenatal care and what the experts say; warning signs during pregnancy and true versus false labor; how to calculate your expected due date.

You'll also be able to use this calendar as a: Diary of your personal thoughts and experiences; Record of your prenatal appointments and other information; Sourcebook to answer your questions about pregnancy; Keepsake to compare with future pregnancies.

[www.tableandhome.com/prodeehfd](http://www.tableandhome.com/prodeehfd)

The examining attorney maintains that applicant's proposed mark is a generic designation for its goods. In particular, the examining attorney argues that applicant's goods are pregnancy calendars and that the relevant consuming public refers to applicant's goods as such (brief unnumbered p. 6-8). The examining attorney argues that, as a result, applicant's proposed mark is incapable of functioning as a source identifier for its goods. In support of the refusal, the examining attorney has made of record dictionary definitions of "pregnancy" and "calendar." According to these definitions, "pregnancy" may be defined as follows:

1. a. the condition of being pregnant: *a test for pregnancy.* b. An instance of being pregnant: *Her second pregnancy was easy.* c. The period during which one is pregnant: *the first trimester of pregnancy.*
2. The quality or condition of being rich in significance, import, or implication.
3. Creativity; inventiveness.<sup>2</sup>

"Calendar may be defined as follows:

1. Any of various systems of reckoning time in which the beginning, length, and divisions of a year are defined.
2. A table showing the months, weeks, and days in at least one specific year.
3. A schedule of events.
4. An ordered list of matters to be considered: *a calendar of courts cases; the bills on a legislative calendar.*

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<sup>2</sup> *The American Heritage Dictionary of the English Language*, (Third Ed. 1992).

5. *Chiefly British*. A catalogue of a university.<sup>3</sup>

The examining attorney further has made of record articles and advertisements retrieved from the Lexis/Nexis computer database as well as Internet web pages. Excerpts from these articles and web pages follow (emphasis added):

Other features include age-specific parenting advice, prenatal testing information, a week-by-week **pregnancy calendar**, pregnancy myths and tales, relationship issues and other helpful tips for new parents.

*Pensacola News Journal (Pensacola, FL)*  
February 23, 2003

The Gerasimchiks try to stock items that cater to all ages and tastes, including a **pregnancy calendar** for expectant mothers, butterfly-shaped suncatchers, outdoor decorative flags, plush animals and picture frames.

*Sun-Sentinel (Fort Lauderdale, FL)*  
May 3, 2002

A **pregnancy calendar** is a chronological depiction of changes in a pregnant woman and the embryo/fetus during the 40-week course of pregnancy.

**Pregnancy calendars** usually describe development and growth of the fetus and changes in the mother's body at weekly intervals. The calendar is calculated based upon the date of the woman's last menstrual period (LMP) and include the predicted date of birth (due date), sometimes referred to as the EDC, or estimated date of confinement.

[www.medterms.com](http://www.medterms.com);

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<sup>3</sup> *Id.*

The Interactive Pregnancy Calendar will build a day-by-day customized calendar detailing the development of a baby from before conception to birth. The **pregnancy calendar** should be seen as a general guide: every pregnancy is unique and some babies develop faster or slower than others...Create your personalized **pregnancy calendar...**

[www.parentsplace.com](http://www.parentsplace.com);

Congratulations! Pregnancy, whether you're planning for it or are already there, is an exciting time and a great opportunity to learn about your child's growth and development. But with so much pregnancy information available in books, in magazines, and on Web sites, how can you hope to cover it all before giving birth? We've made it easy for you to get all the pregnancy info you need in one place. Our illustrated **pregnancy calendar** is a detailed guide to all the changes taking place in your baby - and in you! Each week of pregnancy includes a description of your baby's development, as well as an explanation of the changes taking place in your body. You'll also find important medical info that will help keep you and your baby healthy.

[http://kidshealth.org/parent/pregnancy\\_calendar](http://kidshealth.org/parent/pregnancy_calendar);

Looking for a great interactive **pregnancy calendar**? Try ours! Not only can you track your pregnancy with our informative calendar, but you can also choose how often - daily, weekly, etc.

[www.babymed.com](http://www.babymed.com);

A **pregnancy calendar**...and much more!

Hooray! You are going to have a baby! For the next 40 weeks (three trimesters), something wonderful will be happening to you. A little baby boy or girl will be growing inside your tummy. During your pregnancy, your body will be experiencing many changes. And, so you can anticipate and understand the development of your

baby, While the Stork Waits® Pregnancy Calendar will list just some of the changes that will be occurring each trimester.  
[www.thestorkwaits.com](http://www.thestorkwaits.com);

Create your own personalized **pregnancy calendar** and record milestones daily on our colorful calendar pages. These pages can be used during pregnancy and after. Our blank pages were specially designed with you in mind to record important details and symptoms concerning your blessed event.  
[www.surebaby.com](http://www.surebaby.com);

Use our **pregnancy calendar** to find out how your baby is growing and how to cope with pregnancy symptoms.  
[www.babycenter.com](http://www.babycenter.com);

Track this week's developments in your pregnancy with personalized **pregnancy calendar** and also get an estimated due date.  
[www.homeandfamilynetwork.com](http://www.homeandfamilynetwork.com);

Learn about this week's developments in your pregnancy with Americanbaby's week-by-week **pregnancy calendar**. The **pregnancy calendar** will guide you through pregnancy right up until it's time to give birth. The **pregnancy calendar** features information about your baby and your body while you are pregnant.  
[www.americanbaby.com](http://www.americanbaby.com);

Now you can discover exactly how your body is adapting and how your baby is growing and developing week by week during your pregnancy with our week by week **pregnancy calendar**. The **pregnancy calendar** will also go through the symptoms your body will be experiencing, how the hormone levels are affecting your body, when sleeping may start to become difficult and so on.  
[www.pregnancy-info.net](http://www.pregnancy-info.net); and

Our Week by week **pregnancy calendar** will take you through the next 9 months of your life as you experience all the changes which are occurring to you, look at how your baby is developing at that stage and what nutritional value you should be getting.  
www.pregnancycalendars.net.

A mark is a generic name if it refers to the class, genus or category of goods and/or services on or in connection with which it is used. See *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807 (Fed. Cir. 2001), citing *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). The test for determining whether a mark is generic is its primary significance to the relevant public. See Section 14(3) of the Act. See also *In re American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *H. Marvin Ginn Corp. v. International Association of Fire Chiefs, Inc.*, *supra*. The examining attorney has the burden of establishing by clear evidence that a mark is generic and thus unregistrable. See *In re Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987). Evidence of the relevant public's

understanding of a term may be obtained from any competent source, including testimony, surveys, dictionaries, trade journals, newspapers, and other publications. See *In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985).

In the case of *In re American Fertility Society*, *supra*, our primary reviewing court stated that if the USPTO can prove "(1) the public understands the individual terms to be generic for a genus of goods and species; and (2) the public understands the joining of the individual terms into one compound word to lend no additional meaning to the term, then the PTO has proven that the general public would understand the compound term to refer primarily to the genus of goods or services described by the individual terms." (*Id.* at 1837.)

In the case of *In re Dial-A-Mattress Operating Corp.*, *supra*, 1-888-M-A-T-R-E-S-S for "telephone shop-at-home retail services in the field of mattresses," the court further clarified the test as follows (*Id.* at 1810):

Where a term is a "compound word" (such as "Screenwipe"), the Director may satisfy his burden of proving it generic by producing evidence that each of the constituent words is generic, and that "the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound." *In re Gould Paper Corp.*, 834 F.2d 1017, 1018, 5 USPQ2d 1110, 1110 (Fed. Cir.

1987). However, where the proposed mark is a phrase (such as "Society for Reproductive Medicine"), the board "cannot simply cite definitions and generic uses of the constituent terms of a mark"; it must conduct an inquiry into "the meaning of the disputed phrase as a whole." *In re The Am. Fertility Soc'y*, 188 F.3d at 1347, 51 USPQ2d at 1836. The *In re Gould* test is applicable only to "compound terms formed by the union of words" where the public understands the individual terms to be generic for a genus of goods or services, and the joining of the individual terms into one compound word lends "no additional meaning to the term." *Id.* at 1348-49, 51 USPQ2d at 1837.

The court concluded that "1-888-M-A-T-R-E-S-S," as a mnemonic formed by the union of a series of numbers and a word, bears closer conceptual resemblance to a phrase than a compound word, and the court reiterated that the PTO must produce evidence of the meaning the relevant purchasing public accords to the proposed mnemonic mark "as a whole." In concluding that there was not substantial evidence that the term is generic, the court added that the term is not literally a genus or class name nor does it "immediately and unequivocally" describe the service at issue.

We find that, in this case, THE PREGNANCY CALENDAR is more analogous to the phrase considered by the court in *American Fertility* than it is to the compound word considered in *Gould*. That is to say, unlike the term SCREENWIPE contemplated by the Federal Circuit in *In re Gould, supra*, THE PREGNANCY CALENDAR appears to be a phrase

comprising its constituent words. Thus, dictionary definitions alone cannot support a refusal to register the proposed mark. However, we need not determine whether definitions of the constituent terms would be sufficient in view of the fact that evidence made of record by the examining attorney establishes that the wording "pregnancy calendar" is the name of a class of goods. Specifically, articles and advertisements made of record by the examining attorney clearly establish that a "pregnancy calendar" is a calendar used to note, track, and record significant events occurring during the 40-weeks of pregnancy. Furthermore, the materials made of record by the examining attorney do not point to applicant, or to any other single entity, as the source of the "pregnancy calendars" discussed therein. Rather, it seems that each "pregnancy calendar" from among a myriad of online websites is as varied as the number of sources.

In addition, applicant has failed to introduce evidence sufficient to rebut the examining attorney's evidence of genericness. Instead, applicant merely relies upon screenshots from commercial Internet websites advertising its goods under its proposed THE PREGNANCY CALENDAR mark. Such evidence submitted by applicant in this case is insufficient to rebut the examining attorney's

strong prima facie case of genericness. Cf. *In re American Online, Inc.*, 77 USPQ2d 1618 (TTAB 2006). Accordingly, the record is sufficient to establish that the relevant public would find THE PREGNANCY CALENDAR a generic term denoting applicant's identified 40-week calendars used as a guide to pregnancy.

We are not persuaded by applicant's argument that the examining attorney has too narrowly defined the genus or class of goods at issue herein. Applicant's reliance upon J. Thomas McCarthy, *McCarthy on Trademarks* §12:10 (2007) in support of its position that the genus of goods should be defined as "calendars" because "generic names are nouns and descriptive terms are adjectives" (brief, p. 5) is misplaced. To the contrary, Professor McCarthy states, "this 'part of speech' test does not accurately describe the case law results." J. Thomas McCarthy, *McCarthy on Trademarks* §12:10 (2007), citing to *Convenient Food Mart, Inc. v. 6-Twelve Convenient Mart, Inc.*, 690 F. Supp. 1457, 8 USPQ2d 1353 (D. Md. 1988) *aff'd without op.*, 870 F.2d 654, 10 USPQ2d 2037 (4th Cir. 1989) ("The noun/adjective test, which [plaintiff] advocates, is an oversimplified approximation to the species/genus distinction." Even though "convenience store" is a noun, the adjective "convenient" used with "store" is also a generic name.);

and *Mil-Mar Shoe Co. v. Shonac Corp.*, 75 F.3d 1153, 37 USPQ2d 1633 (7th Cir. 1996) ("An easy 'noun versus adjective' test to signify a mark as either generic or descriptive, respectively, does not, however, adequately characterize the law of this circuit, nor would such a simplistic approach adequately embody fundamental principles of trademark law.").

Professor McCarthy goes on to state, "The Trademark Board has said that a term which does not directly name a product but names the most important purpose of the product is a type of "generic adjective" which is a generic name. Applying this rule, "Perma Press" was held to be a name for a type of garment and as well as a generic name for a stain remover specifically designed for perma press garments." *Id.*, citing to *In re Reckitt & Coleman, Inc.*, 18 USPQ2d 1389 (TTAB 1991) (a generic name of a product is also a generic name of a cleaning preparation designed to clean that product). "Similarly, the Board held that 'attic' was a generic adjective for automatic sprinklers used in attics because 'the term ATTIC directly names the most important or central aspect or purpose of applicant's goods...this term is generic and should be freely available for use by competitors.'" *Id.*, citing to *In re Central Sprinkler Co.*, 49 USPQ2d 1194, (TTAB 1998); and *Micro Motion Inc. v.*

*Danfoss A/S*, 49 USPQ2d 1628 (TTAB 1998) ("massflo" is a generic noun when used as the name of a measurement taken by mass flowmeters and as a generic adjective when used with the mass flowmeters that measure mass flow of liquids). Thus, we find no support for applicant's contention that the examining attorney's definition of the genus or class of goods as "pregnancy calendars" is incorrect.

Nor are we persuaded by applicant's contention that the examining attorney's evidence of genericness is insufficient because such evidence fails to include the proposed mark's constituent term "THE." As noted by the examining attorney, the word "the" is merely a definite article without source indicating significance to the mark. *See In re G.D. Searle & Co.* 143 USPQ 220 (TTAB 1964), *aff'd*, 360 F.2d 650, 149 USPQ 619 (CCPA 1966). Applicant cites to no authority for its position that the presence of "THE" in applicant's proposed mark THE PREGNANCY CALENDAR imbues the term with trademark significance in the face of the examining attorney's strong showing that "pregnancy calendar" is a generic term for its goods. As stated in *In re G.D. Searle & Co.*, *supra*:

If we were to give any weight to applicant's arguments concerning the "unique" effect created by the utilization of the article "THE" in

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association with the mark "PILL" and by the use of quotation marks around the unitary phrase, it would seem to follow that an automobile manufacturer could register the designation "THE AUTOMOBILE" or an appliance manufacturer the phrase "THE REFRIGERATOR."

*Id.* at 222-23. See also *In re The Computer Store*, 211 USPQ 72 (TTAB 1981).

In view of the foregoing, we conclude that the examining attorney has met the substantial burden of establishing that THE PREGNANCY CALENDAR is incapable of identifying and distinguishing the source of the identified goods.

*Decision:* The refusal under Section 23 of the Act on the ground that the proposed mark is generic is affirmed.