

**THIS OPINION IS  
NOT A PRECEDENT  
OF THE TTAB**

*Decision mailed:  
September 27, 2007  
GDH/gdh*

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Morcan

Serial No. 78586157

Vidal A. Oaxaca and Maria T. Nass of Peacock Myers, P.C. for  
Dorina M. Morcan.

Travis D. Wheatley, Trademark Examining Attorney, Law Office 115  
(Tomas V. Vlcek, Managing Attorney).

Before Hohein, Hairston and Bergsman, Administrative Trademark  
Judges.

Opinion by Hohein, Administrative Trademark Judge:

Dorina M. Morcan has filed an application to register  
the term "StarDial" on the Principal Register in standard  
character form for "printed paper astrological maps showing the  
Ecliptic constellation boundaries and containing a thirteenth  
constellation Ophiuchus" in International Class 16.<sup>1</sup>

Registration has been finally refused under Section  
2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the  
ground that, when used in connection with applicant's goods, the  
term "StarDial" is merely descriptive of them.

<sup>1</sup> Ser. No. 78586157, filed on March 13, 2005, which alleges a date of  
first use anywhere of November 16, 2004 and a date of first use in  
commerce of January 5, 2005.

Applicant has appealed and briefs have been filed. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys information concerning any significant ingredient, quality, characteristic, feature, function, purpose, subject matter or use of the goods. See, e.g., In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought, the context in which it is being used or is intended to be used on or in connection with those goods and the possible significance that the term would have to the average purchaser of the or goods because of the manner of such use. See In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Thus, "[w]hether consumers could guess what the product is from consideration of the mark alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant, in her brief, contends that "the mark at issue is, at most, suggestive" inasmuch as "STARDIAL for printed astrological tools consisting of celestial body locators known as planispheres is neither descriptive of the astrological tools

sold under the mark nor of planispheres." In particular, with respect to the Examining Attorney's arguments in the final refusal that the words "star" and "dial" are each "descriptive of a characteristic, feature, etc. of the goods sold under the mark STARDIAL," that such goods "are planispheres and that the mark STARDIAL, when viewed as a whole, is descriptive of a planisphere (synonyms for planispheres include 'star dial' and 'sky map, '")[] applicant asserts that:

As a preliminary matter, a typical planisphere is a thumb wheel index chart that allows a user to dial in the date of the year and the time of day to show the constellations that are in the sky at that particular moment. Exhibits B and C (samples of references from the Internet attached to the Trademark Attorney's first office action) show examples of planispheres (and the use of the synonym "star dial"). Exhibit D is a close-up view of a typical planisphere necessarily comprising two disks. A planisphere is defined by Merriam Webster Online ([www.m-w.com/dictionary/planisphere](http://www.m-w.com/dictionary/planisphere)) as "a representation of the circles of the sphere on a plane; especially: a polar projection of the celestial sphere and the stars on a plane with adjustable circles or other appendages for showing celestial phenomena for any given time."

The Trademark Attorney, too, noted that "[a] planisphere is '[a] polar projection of half or more of the celestial sphere on a chart equipped with an adjustable overlay to show the stars visible at a particular time and place.'" In effect, the planisphere is a tool used by those interested in astronomy to locate celestial bodies. Thus, the planisphere may be adjusted to account for changes in the night sky based on date and time to find celestial bodies.

The STARDIAL product, on the other hand, is not a celestial body locator. Therefore, although the product "maps" astrological constellations on its face for relation to a user's birthday, it is not a map for locating

celestial bodies in the sky. Also, unlike the typical planisphere which uses a disc superimposed on another disk, the STARDIAL product uses an arrow to simultaneously point to a birthday and zodiac constellation opposite the birthday on the disk. Consumers would purchase the STARDIAL product for reading the position of the Sun in relation to the thirteen zodiac signs on the product and in relation to the user's birthday.

....

Given that Applicant's goods are not a planisphere, Applicant asserts that the mark STARDIAL is suggestive, rather than descriptive, of goods that do not constitute a "star dial" or planisphere. ....

Citing, in addition, various cases as support for her "assertion that the combination of two words that might be somewhat descriptive is not descriptive when viewed as a whole," applicant maintains that even if the words "star" and "dial" are individually regarded as descriptive of her product, it is still the case that:

[A] combination of the words "star" and "dial", when combined to form STARDIAL, cannot be descriptive of goods not comprising "star dials" or "planispheres" and cannot be descriptive of the astrological tool sold under the mark. As can be seen in the ... [cited] cases, simply combining two words having common meanings does not necessarily make the mark descriptive of the goods ... of the applicant, even when those two commonly-understood [sic] words relate in some way to the goods .... In the present application, STARDIAL is a combination of two words, each having somewhat commonly understood meanings.

Applicant consequently concludes that:

Again, the STARDIAL product is not a "star dial", planisphere, or celestial body locator as the Trademark Attorney contends. The product, instead, relates to astrology, not astronomy and "maps" a user's birthday in relation to a zodiac constellation on the

disk itself without reference to the night sky. The Applicant's mark is suggestive but not descriptive in that it requires imagination and thought to connect it to Applicant's product. Therefore, if "star" and "dial" each relates in some way to characteristics of the STARDIAL product, the unitary mark STARDIAL is only suggestive in accordance with applicable case law.

The Examining Attorney, on the other hand, argues that the term "'STARDIAL' is merely descriptive, and not suggestive, of a use or function of the identified goods, namely 'printed paper astrological maps showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus.'" In particular, citing the definitions of record from The American Heritage Dictionary of the English Language (3rd ed. 1992), he contends that:

The proposed mark is a compound word comprised of the terms "STAR" and "DIAL." The definitions provided in the final office action show that STAR means "[a] planet or constellation of the zodiac believed in astrology to influence personal destiny." DIAL means "[a] a graduated surface or face on which a measurement, such as speed, is indicated by a moving needle or pointer." Taken together, the wording "STARDIAL" immediately and logically refers to a graduated surface on which a measurement related to planets or constellations of the zodiac is indicated by a moving needle or pointer.

In addition, the Examining Attorney maintains that other "evidence in the record shows that the public commonly refers to a map of stars and/or constellations placed on a dial as a star dial." Specifically, the Examining Attorney notes the following:

- A screen shot of applicant's web page stating that ... [her] product, "The Star[D]ial shows the thirteen constellations that form the Ecliptic." This product shows, or provides a representation, of thirteen constellations, which are celestial bodies that would be shown on a celestial sphere.
- A "star dial" sold by REI. This product description indicates that this "easy-to-use planisphere helps you locate stars and constellations in the night sky."
- A "star dial" [sold by [www.galileo-telescope.com](http://www.galileo-telescope.com)] that is a "time, star and constellation locator," and provides an example, showing that the star dial is indeed a representation of the celestial sphere.
- A "star dial" designed by "renowned Uranian astrologer, Arlene Kramer," indicating that star dials have astrological uses as well as astronomical uses. ....
- A screenshot of a web page from an Astronomy 102 class at Vanderbilt University describing how a star dial may be used to help "identify stars and constellations in the evening sky [by name]."

In view thereof, the Examining Attorney insists that "applicant's goods are star dials; that is, they are planispheres on which a user can determine the location of the sun with respect to specific stars (or groups of stars in constellations) on a given day." Noting, furthermore, that applicant's goods are identified as "printed paper astrological maps showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus" and that, "[i]n relevant part, a map is defined as 'a representation of the celestial sphere or a part of

it,'"<sup>2</sup> the Examining Attorney asserts that "[w]hen encountering Applicant's mark used on the goods, prospective customers would immediately understand that the goods are printed paper astrological representations of the celestial sphere showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus." Accordingly, the Examining Attorney insists that:

When the word STARDIAL is viewed with the [applicant's] planisphere goods, nothing is left for speculation or conjecture in the alleged trademark. The compound immediately and unequivocally describes the purpose, function and nature of the goods. One who knows what the goods are will immediately understand the mark conveys information about them.

Finally, while acknowledging applicant's argument that a mark which combines descriptive terms may be registrable if the composite creates a unitary mark with a separate, nondescriptive meaning,<sup>3</sup> the Examining Attorney urges that, in this instance, the merely descriptive terms "star" and "dial," when combined to form the compound term "StarDial," "remain as descriptive in the compound as individually, and the compound thus created is itself [merely] descriptive." According to the Examining Attorney, no

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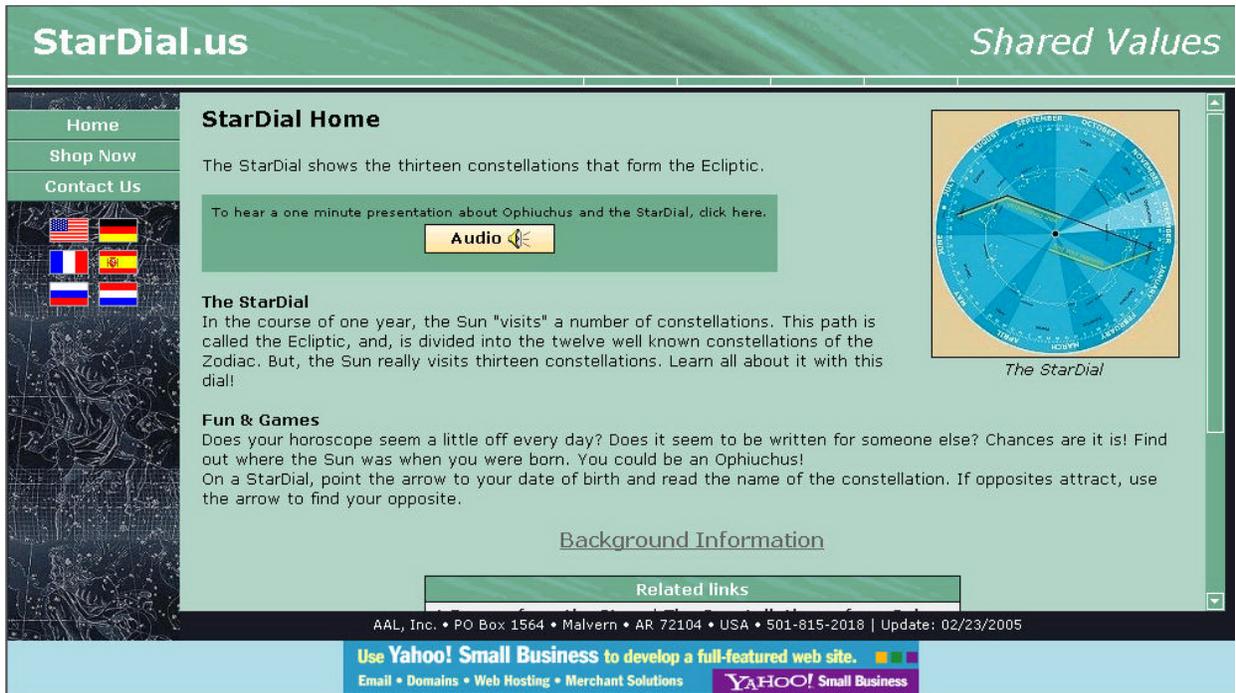
<sup>2</sup> Such definition, the Examining Attorney indicates, is from "the online version of the Merriam Webster Dictionary [which is] also available in print form." Inasmuch as it is settled that the Board may properly take judicial notice of dictionary definitions, the request in the Examining Attorney's brief that we take judicial notice of such definition is granted. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953); *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); and *Marcal Paper Mills, Inc. v. American Can Co.*, 212 USPQ 852, 860 n.7 (TTAB 1981).

<sup>3</sup> See, e.g., *In re Colonial Stores Inc.*, 394 F.2d 549, 157 USPQ 382, 384-85 (CCPA 1968).

new and different commercial impression is created by the combination of such terms.

Upon careful consideration of the arguments presented and evidence of record, we agree with the Examining Attorney that the term "StarDial" is merely descriptive of applicant's "printed paper astrological maps showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus." In particular, the dictionary definitions and the screen shot or print of record from applicant's website, as reproduced below,

<http://www.stardial.us/> 10/05/2005 05:12:44 PM



demonstrate that the term "StarDial" immediately conveys, without the need for speculation or conjecture, that the purpose or function of applicant's goods is that of a type of planisphere in which stars are constellations of the zodiac which are located through the use of a dial. Thus, unlike other kinds of

planispheres which the record shows are for astronomical use in that they utilize a dial for finding the location of stars in the nighttime sky, applicant's goods are for astrological use in that they feature a moving pointer or arrow as part of a dial for indicating the specific constellations of the zodiac associated with one's date of birth.

Clearly, in the context of "printed paper astrological maps showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus," as applicant's goods are identified in her application, the word "star" is used in the sense of its dictionary meaning of "[a] ... constellation of the zodiac believed in astrology to influence personal destiny" and the word "dial" is used in the sense of its dictionary connotation of "[a] graduated surface or face on which a measurement ... is indicated by a moving ... pointer." Such is plain from both the illustration of applicant's product, as shown in the screen print from her website, and the description thereof contained therein, which among other things instructs that: (i) "[t]he StarDial shows the thirteen constellations that form the Ecliptic"; (ii) "[i]n the course of one year, the Sun 'visits' a number of constellations. This path is called the Ecliptic, and is divided into the twelve well known constellations of the Zodiac. But the Sun really visits thirteen constellations. Learn all about it with this **dial!**" (emphasis added); and (iii) "[o]n a StarDial, point the arrow to your date of birth and read the name of the constellation." Furthermore, although not mentioned by the Examining Attorney, it is noted that the

specimens of use for applicant's goods refer to her "StarDial" as a "Zodiac Finder" and similarly explain the thirteenth constellation, referred to as "*Ophiuchus*," and the manner of operation of applicant's goods as follows:

Zodiac Finder: The Thirteenth Constellation

As viewed from the Earth, the Sun passes through 13 constellations during the course of one year. This path is called the Ecliptic and is divided into 13 not 12 Zodiac constellations. The ancient astronomers were superstitious of the number 13 and simply ignored one constellation, *Ophiuchus*, the Serpent Bearer. Astronomical dates associated with the constellations were calculated over 2600 years ago. Since that time, the constellations have moved westward approximately 30 degrees or the equivalent of one calendar month. The Sun passes in front of the stars of *Ophiuchus* every year in early December. Superstition aside, about one person in twenty is born under *Ophiuchus*.

....

Fun and Games

Where was the Sun? Point the arrow to your date of birth and read the name of the constellation. ....

In the context of applicant's goods, there is nothing in the term "StarDial" which, to those in the market for astrological maps or other information showing Ecliptic constellation boundaries, including a thirteenth constellation *Ophiuchus*, is incongruous, ambiguous or even suggestive, nor is there anything which would require the exercise of imagination, cogitation or mental processing, or necessitate the gathering of further information, in order for the merely descriptive significance thereof to be readily apparent to such customers. Instead, the term "StarDial" conveys forthwith that a significant

purpose or function of applicant's goods is that they serve as a star dial in the sense of indicating constellations of the zodiac associated with persons' dates of birth. Contrary to applicant's assertion, it is plain that the individual terms "star" and "dial" which comprise the term "StarDial" have a meaning when combined which ordinary usage would ascribe to those terms in combination, and the fact that, for instance, the compound term does not appear in any dictionary is simply not controlling on the question of registrability. See *In re Gould Paper Corp.*, 824 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) and *In re Orleans Wines, Ltd.*, 196 USPQ 516, 517 (TTAB 1977). No new and unique commercial impression is created inasmuch as nothing in the combination results in a unitary mark with a unique, bizarre or otherwise nondescriptive meaning as applied to applicant's goods. Rather, the constituent elements retain their descriptive significance and their combination is itself merely descriptive of applicant's goods. See, e.g., *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1317-18 (TTAB 2002) (SMARTTOWER held merely descriptive of commercial and industrial cooling towers and accessories therefor, sold as a unit); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1087-88 (TTAB 2001) (AGENTBEANS found merely descriptive of computer software for use in development and deployment of application programs on global computer network); and *In re Entenmann's Inc.*, 15 USPQ2d 1750, 1751 (TTAB 1990), *aff'd per curiam*, 928 F.2d 411 (Fed. Cir. 1991) (OATNUT held to be merely descriptive of bread containing oats and hazelnuts).

Therefore, even if applicant were and/or still is the sole user of the term "StarDial" in connection with her "printed paper astrological maps showing the Ecliptic constellation boundaries and containing a thirteenth constellation Ophiuchus" rather than with respect to a type of celestial body locator as used in astronomy, it is well settled that such use by applicant does not entitle her to the registration of the term "StarDial" where, as here, the term has been shown by the evidence of record to immediately convey only a merely descriptive significance in the context of applicant's goods. See, e.g., In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, 1020 (TTAB 1983); and In re Mark A. Gould, M.D., 173 USPQ 243, 245 (TTAB 1972). Here, applicant concedes that as to its purpose or function, her product--which her website refers to as "this dial!"--"'maps' astrological constellations on its face for relation to a user's birthday" by using a dial that features "an arrow to simultaneously point to a birthday and zodiac constellation opposite the birthday on the disk." The term "StarDial" is accordingly merely descriptive of applicant's goods.

**Decision:** The refusal under Section 2(e)(1) is affirmed.