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PRECEDENT OF THE TTAB

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Royal Consumer Information Products, Inc.

Serial No. 78733128

Richard S. Roberts, Roberts & Roberts LLP for Royal
Consumer Information Products, Inc.

Raul Cordova, Trademark Examining Attorney, Law Office 114
(K. Margaret Le, Managing Attorney).

Before Quinn, Hairston and Walsh, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Royal Consumer Information Products, Inc. has filed an
intent-to-use application to register on the Principal
Register the mark ASSIGNMENT TRACKER for "hand held
electronic instruments having a time and date scheduling
function namely, personal information manager organizers,
calculators, personal digital assistants, spellers,
thesauruses, dictionaries, and language translators."¹

¹ Serial No. 78733128, filed October 14, 2005.

The trademark examining attorney has issued a final refusal to register, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. We affirm the refusal to register.

The examining attorney submitted definitions of "assignment" as "[s]omething, such as a task, that is assigned" and "track" as "to keep track of (as a trend): FOLLOW" - tracker noun." The American Heritage Dictionary of the English Language (4th ed. 2000) and Merriam-Webster Online Dictionary, respectively. The examining attorney also submitted four Internet printouts of articles that discuss personal digital assistants and software programs which feature an "assignment tracker." The following are excerpts from the articles with "assignment tracker" highlighted:

The **Assignment Tracker** function adds even more flexibility to the program as it enables you to check assignments and tasks set, and follow through on what you need to do.
<http://handheld.softpedia.com>

The program includes facts and information in social studies, math, science and English. It also features an **assignment tracker**...
<http://www.sortprice.com>

The Palm Zire 71 Education Limited Edition handheld is the perfect companion for serious students and busy teachers. It comes with all the features you've come to expect from a Palm handheld like an appointment schedule and address list, plus a suite of software to transform the handheld into a powerful study tool with a graphing calculator, **assignment tracker**, word processor, spreadsheet, eBook reader, and more. <http://psed.pdaorder.com>

Palm has a model, the Palm 71 Education Limited Edition, targeted to students and teachers. It includes the standard Palm handheld features, in addition to a suite of software that includes a graphing calculator, **assignment tracker**, spreadsheet program, eBook application, and word processor. <http://www.bluegroup.com>

Based on this evidence, the examining attorney contends that the mark ASSIGNMENT TRACKER merely describes a significant function of the identified goods, that is, to track assignments.

Applicant, in urging reversal of the refusal to register, argues that the examining attorney has improperly dissected its mark and failed to consider the mark as a whole. Further, applicant argues that because the words "assignment" and "tracker" have multiple meanings, there is simply no way of knowing from these words what functions applicant's goods perform. With respect to the uses of the term "assignment tracker" submitted by the examining attorney, applicant argues that such uses occurred subsequent to the filing date of its application, and that

applicant's disclosure of the mark may have prompted others to use the term.

The test for determining whether a mark is merely descriptive is whether it immediately conveys information concerning a quality, characteristic, function, ingredient, attribute or feature of the goods or services in connection with which it is used, or intended to be used. 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 (CCPA 1978). It is not necessary for a term to describe all of the properties or characteristics of the goods or services in order for it be considered merely descriptive of them; rather, it is sufficient if the term describes any significant attribute or idea about them. Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services. In re Bright-Crest, Ltd. 204 USPQ 591 (TTAB 1979); and In re Recovery, 196 USPQ 830 (TTAB 1977).

Applicant's hand held electronic instruments are identified as "having a time and date scheduling function." It is clear, therefore, that such goods may be used to "keep track of an assignment." When the words "assignment" and "tracker" are combined, they would immediately inform purchasers and prospective purchasers of applicant's hand held electronic instruments that a significant function or feature of such goods is that they track assignments. That the words "assignment" and "tracker" may have other meanings in other contexts is irrelevant to our analysis under Section 2(e)(1). In re Bright-Crest, Ltd., supra.

Further, the examining attorney's NEXIS evidence demonstrates that the term "assignment tracker" has been used in a descriptive manner. It is well established that the question of registrability must be determined on the basis of the facts as they exist and are revealed by the evidence in the record at the time the application is acted upon by the Office. See Remington Products Inc. v. North American Phillips Corp., 892 F.2d 1576, 13 USPQ2d 1444 (Fed. Cir. 1990); and In re Thunderbird Products Corp., 406 F.2d 1389, 160 USPQ 730 (CCPA 1969). Thus, it is entirely proper for the Board to consider these descriptive uses of "assignment tracker," even though the printouts in which

they appear were retrieved subsequent to the filing date of the application.

Based on this evidence, we conclude that the terms "assignment" and "tracker" would clearly have descriptive meanings when they are used in connection with hand held electronic instruments that track assignments. Moreover, the combining of these terms to form the mark ASSIGNMENT TRACKER is as descriptive in its entirety as the words are individually.

In sum, applicant's mark ASSIGNMENT TRACKER, when used in connection with applicant's hand held electronic instruments, immediately informs prospective purchasers of a significant function or feature of the goods, i.e., that they track assignments. Therefore, applicant's mark is merely descriptive of the goods.

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