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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 9
Bottorff

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Arrow Visual Design, Inc.

Serial No. 76/099,225

Mark Pohl of Pohl & Assoc. LLP for Arrow Visual Design,
Inc.

Joanna M. Zukovcic, Trademark Examining Attorney, Law
Office 103 (Michael Hamilton, Managing Attorney)

Before Hohein, Bottorff and Drost, Administrative Trademark
Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register of the mark PROMO-CARD (in typed form) for services recited in the application as "preparing advertising for others, namely, preparing multi-media advertising stored on a business-card sized CD-ROM," in Class 35.¹

¹ Serial No. 76/099,225, filed July 31, 2000. The application is based on use in commerce under Trademark Act Section 1(a), and June 2000 is alleged as the date of first use and the date of first use in commerce.

The Trademark Examining Attorney has refused registration pursuant to Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), on the ground that the mark is merely descriptive of the recited services. When the refusal was made final, applicant filed this appeal. The appeal is fully briefed, but no oral hearing was requested.

According to applicant's brief, "[a]pplicant is an advertising agency. It prepares advertising for others. Such advertising includes, for example, scripting, casting and filming multi-media advertising presentations (e.g., infomercials) stored and distributed on CD-ROM."

(Applicant's appeal brief, p. 1.) The following excerpts from applicant's specimens of use provide additional information about the services applicant offers under the PROMO-CARD mark:

Promo-Card is the business card of the future, and it's available now from Arrow Visual Design! Promo-Card is a business card sized CD-ROM that can play in virtually any standard computer CD drive tray. Just pop it in and your advertising message comes to life capturing prospects and converting them into customers.

...

Its convenient size is attractive to busy people (it fits in the palm of your hand or shirt pocket).

...

Promo-Card Features

- Interesting format gets attention.
- High tech look, feel and image. Can autorun on both WIN/PC and MAC.
- Presentation is totally customized for your business and congruent with your marketing approach.
- Can bring consumers directly to your website.
- Can include a catalog of products and services.
- Users can email you from the presentation.
- The "Corporate Card" of the future!
- Include manuals or forms on disc.
- New product or service launch.
- Tradeshow giveaway that won't wind up in the trashcans outside the convention center.
- Direct mail promotion: full color wallets and carriers that mail at standard rates are available.
- Great for MLM's!
- And much more, call now!

The evidence of record includes the following dictionary definition of "promo": "short for *promotional* : a promotional announcement, blurb, or appearance."
(Merriam-Webster's Collegiate Dictionary, Merriam-Webster OnLine (2001).) We take judicial notice that "promotional" is the adjectival form of "promotion," which is defined as, inter alia, "the furtherance of the acceptance and sale of merchandise through advertising, publicity, or discounting." (Webster's Ninth New Collegiate Dictionary

(1990) at 942.)² The record also includes the following relevant dictionary entries for the noun "card":³

³**card** *n* ... **6 a** : a flat stiff usu. small and rectangular piece of material (as paper, paperboard, or plastic) usu. bearing information: as (1) : POSTCARD (2) : VISITING CARD (3) : CREDIT CARD (4) : one bearing a picture (as of a baseball player) on one side and usu. statistical data on the other (5) : one on which computer information is stored (as in the form of punched holes or magnetic encoding) (6) : one bearing electronic circuit components for insertion into a larger electronic device (as a computer)...

(Merriam-Webster's Collegiate Dictionary (10th ed. 1997) at 172.)

The evidence of record also includes excerpts from articles obtained from the NEXIS automated database which show that the term "promotional card" has been used to refer to prepaid telephone calling cards, to various types of printed cards containing advertising or promotional information, to "frequent customer" cards issued by businesses to reward their customers for continued patronage, to printed cards which entitle the bearer to

² The Board may take judicial notice of dictionary definitions. See, e.g., *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co.*, 213 USPQ 594 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983); see also TBMP §712.01.

³ These dictionary definitions of "card" were submitted by the Trademark Examining Attorney along with her appeal brief, and we take judicial notice thereof. See *supra* at footnote 2.

discounts at local businesses, to scratch-off game cards issued in connection with sales promotions, and to other types of cards used for promotional purposes.

Finally, the record includes printouts of third-party registrations of the mark AT&T PREPAID PROMOTIONAL CARD for "prepaid telecommunications calling card services" and for "telecommunications services, namely, prepaid telephone services," in which the words PREPAID PROMOTIONAL CARD have been disclaimed.

The following legal principles apply in this case. A term is deemed to be merely descriptive of goods or services, within the meaning of Trademark Act Section 2(e)(1), if it immediately conveys information regarding an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. 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). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. See *In re Gyulay, supra*; *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338

(TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Based on the dictionary evidence discussed above, we find that the term PROMO is short for, and is the legal equivalent of, "promotional," and that it is merely descriptive of applicant's advertising services. Applicant does not contend otherwise.

We further find that the term CARD is merely descriptive of applicant's recited advertising services. The key feature of those services (indeed, the method by which the services are rendered to a client) is applicant's production of a promotional CD-ROM for the client, and a key feature of that CD-ROM is that it is "business-card sized." Applicant specifically touts this feature of the CD-ROM in its advertisements, telling potential clients that the CD-ROM is "business card sized," that "[i]ts convenient size is attractive to busy people (it fits in the palm of your hand or shirt pocket)," and that its

"[i]nteresting format gets attention." This merely descriptive significance of CARD is further reinforced by applicant's references in its advertisements to the PROMO-CARD as "the business card of the future" and "the 'Corporate Card' of the future."

Although applicant is correct in noting that a CD-ROM technically is not a "card" or referred to as a "card," we find that CARD nonetheless is merely descriptive in this case because it describes a key feature of applicant's CD-ROM, i.e., its size. See, e.g., *J. Kohnstam, Ltd. v. Louis Marx & Company, Inc., et al.*, 280 F.2d 437, 126 USPQ 362 (CCPA 1960) (MATCHBOX SERIES merely descriptive of toys packaged in a simulated matchbox). Moreover, because the "business-card sized CD-ROM" is a key feature of the advertising services applicant offers under the PROMO-CARD mark, we find that CARD likewise is merely descriptive of those services.

We find that the composite term PROMO-CARD is as merely descriptive of applicant's services as the terms PROMO and CARD are when considered separately. The combination of these two merely descriptive terms does not create an inherently distinctive composite, nor does the composite term present a unique or incongruous commercial impression. PROMO-CARD clearly is short for, and is the

legal equivalent of, "promotional card." The evidence of record shows that "promotional card" is used to refer to any of a variety of cards or card-like items which are used for promotional or advertising purposes. We find that "promotional card" is merely descriptive of advertising services which employ or feature such promotional cards as the means or method by which the advertising services are rendered.

Although applicant's promotional CD-ROMs are not "promotional cards" per se, applicant specifically markets them as a substitute for, or the next generation of, such promotional cards. As noted above, applicant's specimens refer to the PROMO-CARD as "the business card of the future" and "the Corporate Card of the future." Whether applicant's CD-ROMs technically are "promotional cards" or not, applicant may not appropriate to its exclusive use in connection with advertising services the term "promotional card," or its legal equivalent PROMO-CARD. See, e.g., *J. Kohnstam, Ltd. v. Louis Marx & Company, Inc., et al., supra* (MATCHBOX merely descriptive of toys packaged in simulated matchboxes); *In re Gagliardi Bros., Inc.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES merely descriptive of "frozen, formed and thinly sliced beef," even if product is not literally "flakes of beef"); *In re Bright-Crest, Ltd., supra*

(COASTER-CARD merely descriptive of "coasters suitable for mailing"); *In re J & D Brauner, Inc.*, 173 USPQ 441 (TTAB 1972)(BUTCHER BLOCK merely descriptive of tables and kitchen counters which are not literally butcher blocks, but which are designed to simulate butcher blocks); and *National Dairy Products Corporation v. Hughes*, 136 USPQ 318 (TTAB 1962)(HONEY WHIP merely descriptive of honey, even if applicant's honey is not literally whipped).

Finally, we are not persuaded by applicant's argument, under *In re Hutchinson Technology Inc.*, 852 F.2d 552, 7 USPQ2d 1490 (Fed. Cir. 1988) and *Concurrent Technologies Inc. v. Concurrent Technologies Corp.*, 12 USPQ2d 1054 (TTAB 1989), that "card" and "promotional card," like "technology," are terms which have too many meanings, or which could be applied to too many different classes of goods and services, to be merely descriptive of any specific goods or services. Rather, for the reasons discussed above, we find that both of those terms, as well as the term PROMO-CARD, are merely descriptive of applicant's services. The fact that the terms might have other meanings in different contexts is not dispositive. See *In re Bright-Crest, Ltd.*, *supra*.

Decision: The refusal to register is affirmed.