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Part 1 of 1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: **Expo Communications, Inc.**
Mark: **VIDEOPINIONS**
Serial No.: **78/654,480**
Examiner: **Steven Foster**
Law Office: **106**

BEFORE THE
TRADEMARK TRIAL
AND
APPEAL BOARD

APPLICANT'S OPENING APPEAL BRIEF

Applicant appeals the trademark Examining Attorney's refusal to register the intent-to-use service mark application for VIDEOPINIONS in International Class 35 on the ground that it is merely descriptive within the meaning of § 2(e)(1) of the Trademark Act, 15 U.S.C.

§1052(e)(1). Not only does the Examining Attorney bear the burden of proof in showing that the Applicant's mark is merely descriptive (see, e.g., In re Merrill, Lynch, Pierce, Fenner, and Smith, Inc., 828 F.2d 1567 (Fed. Cir. 1987), In re Grand Forest Holdings Inc., 78 USPQ2d 1152 (TTAB 2006)), but any factual doubts are resolved in favor of the Applicant. In re The Stroh Brewery, 34 USPQ2d 1796, at *4-5 (TTAB 1995).

The issue presented is whether the United States Patent and Trademark Office ("Office") proffered substantial evidence to show that the Applicant's mark merely describes the Applicant's identified services. But folded into this general issue, the Applicant presents, *inter alia*, several sub-issues for review: (1) whether the Office improperly ignored the identified services claimed by the Applicant in conducting its descriptiveness inquiry; (2) whether the Office improperly defined the Applicant's mark based on two arbitrarily chosen dictionary



definitions from amongst numerous possibilities; (3) whether the Office failed to make out a *prima facie* case of obviousness when it conceded that there is little evidence of descriptive usage of the proposed mark by third parties and where the only instances of usage found have nothing to do with the Applicant's services; and (4) whether the Office erred in ultimately concluding that Applicant's mark describes, more than just suggesting, the identified services.

FACTS

Applicant seeks registration on the Principal Register of the mark VIDEOPINIONS, in typed form, for services identified in the application (as amended) as “[p]roviding information on consumer products and services by way of a global computer network” in class 35 (Serial No. 78/654,480).¹ The Examining Attorney refused registration under § 2(e)(1) based on his contention that Applicant's mark is merely descriptive. When the Examining Attorney made the refusal final, Applicant timely filed this appeal.

ARGUMENT

The Lanham Act § 2(e)(1) holds in pertinent part: “No trademark . . . shall be refused registration . . . unless it . . . consists of a mark which, when used on or in connection with the goods of the applicant is merely descriptive . . . of them” The word “merely” has been interpreted to mean that a mark is not descriptive unless it immediately conveys information with

¹ Applicant originally filed for the mark in two international classes (35 and 38) on June 20, 2005 based on applicant's allegation of bona fide intent to use the mark under Trademark Act § 1(b) and added a third (41) based on the examiner's recommendation. Applicant subsequently requested the division of the application into its respective classes in an effort to have the mark examined for each class separately.

a “degree of particularity” concerning a significant quality, characteristic, function, attribute, or feature of the goods or services in connection with which it is used or is intended to be used. In re Cerner Corp., 2001 TTAB LEXIS 87, at *3 (TTAB Jan. 31, 2001); In re On Technology Corp., 41 USPQ2d 1475, at *7 (TTAB 1996); In re Intelligent Medical Sys., 5 USPQ2d 1674 (TTAB 1987); In re TMS Corp. of the Amer.s, 200 USPQ 57, 59 (TTAB 1978); In re Colonial Stores, Inc., 394 F.2d 549 (CCPA 1968).

With all due respect, Applicant contends that several errors were made during the examination of its mark. First, the Office ignored Applicant’s actual description of services, and instead, focused on extrinsic evidence to completely redefine Applicant’s services as “the provision of opinions by means of video.” Second, the Office proceeded to arbitrarily choose— from amongst numerous possibilities—two particular dictionary definitions of the words “video” and “opinion” purported to support the Office’s interpretation the applicant’s mark as meaning: “the provision of opinions by means of video.” Combining these errors, the Office improperly rewrote both the Applicant’s services and assigned a meaning of VIDEOPINIONS to the point where the two converged into a singularity, namely, “the provision of opinions by means of video.”

Applicant has never claimed use of its mark in connection with a service involving “the provision of opinions by means of video.” Applicant’s class 35 services claim use in connection with “[p]roviding information on consumer products and services by way of a global computer network.” It is legally incorrect to ignore an applicant’s recited services, and instead, to redefine the applicant’s goods and/or services based on extrinsic evidence and third party uses. Furthermore, Applicant’s mark, VIDEOPINIONS, has no known or recognized meaning, and it

was incorrect to arbitrarily choose—from amongst numerous possible meanings—one particular meaning which most supported the Office’s refusal to register the mark.

I. IN DETERMINING WHETHER A MARK IS DESCRIPTIVE, THE OFFICE ERRED BY IGNORING THE APPLICANT’S IDENTIFIED SERVICES

The Examining Attorney in this case held that the Office need not look at the Applicant’s identified services in making the descriptiveness refusal, *i.e.*, the Examining Attorney held that the mark VIDEOPINIONS does not have to describe any aspect of the Applicant’s identified services to be descriptive. Instead, the Examining Attorney simply characterized Applicant’s services (indeed, all three pending classes of services, 35, 38, and 41) as the “provision of opinions by means of video.”² The Examining Attorney ultimately based his characterization of the Applicant’s services on third-party uses of the words “videos” and “opinion,” a misrepresentation of the Applicant’s responses to the Examining Attorney’s information requests, and apparently, based on the mark itself.

A. The Office Erred By Ignoring the Recited Services in Applicant’s Complaint

Whether a particular mark is “merely descriptive” must be determined in relation to the goods or services for which registration is sought. Cerner, 2001 TTAB LEXIS 87, at *3 (“[w]hether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought”); TMS, 200 USPQ 57, 59 (“It is well settled

² The examiner wrote: “It appears that applicant’s services will involve the provision of opinions by means of video.” Office Action, 1/11/06 (Ex. D at 2); see also Final Office Action, 8/17/07 (“Applicant seeks registration . . . for services wherein consumers offers opinions about products and services on videotape.”) (Ex. A at 3). It was because the classes were not being examined separately that Applicant decided to divide its application into its respective classes.

that the question of whether a particular term is merely descriptive within the meaning of Section 2(e)(1) of the Act must be determined not in the abstract, but in relation to the goods or services for which registration is sought. . . .”); Stroh Brewery, 34 USPQ2d 1796, at *4-5 (“[I]n determining whether a mark is descriptive, the mark must not be considered in the abstract, but instead, it must be considered as ‘applied to the goods or services involved.’”).

Contradicting this proposition of law, the Examining Attorney in this case expressly stated that the Office need not consider the actual recited services in an analysis of descriptiveness, writing:

Applicant is correct that whether a mark is merely descriptive is determined in relation to the identified goods or services, not in the abstract. . . . However, this does not mean that the descriptive feature of the services has to exist in the recitation of services in order for a mark to be merely descriptive.

Ex. A at 4 (citations omitted; emphasis added); see also Ex. B at 3 (“[T]he fact that the feature described by the mark is not evident in the recitation itself does not mean that it does not exist . . .”). Although binding law holds that a mark need not describe the entirety of the recited goods or services to be descriptive, the law has never held that the mark need not describe any element of an applicant’s recited goods or services.³ And there are sound policy reasons for this.

³ The examiner cited a number of cases for the proposition that a mark may be “descriptive of features of goods or services not reflected in the identification of goods or services themselves.” (Ex. B at 2-3). For example, in the case of In re Gyulay, 820 F.2d 1216 (Fed. Cir. 1987)—relied upon by the Examiner—the Board refused to register APPLE PIE for use in connection with apple pie scented potpourri. In affirming the decision, the Federal Circuit did not suggest that one may ignore the recitation of goods in the application, it simply held that the apple pie scent was a key characteristic of the applicant’s product even though potpourri is not technically apple pie and is not technically used to make (continued...)

Any descriptiveness refusal must be tied to the actual identified goods or services for which an applicant seeks registration and not based on whether the mark could describe any aspect of the applicant's business. For example, a computer company selling both computer equipment and apples may still be able to obtain a registration for the mark APPLE in connection with use for "computer equipment." However, on the Examining Attorney's statement of the law, if the applicant computer company sold apples or had anything to do with apples whatsoever, the applicant would be barred from a registration of the mark APPLE in any class of goods or services. This is not the law. The Trademark Trial and Appeal Board ("Board") routinely allows for registration of a mark for certain classes (e.g., class 38) while not others (e.g., 9), which again illustrates that the recited goods and services control the inquiry as to whether a mark is descriptive. See, e.g., In re Epigenomics AG, 2006 TTAB LEXIS 85 (TTAB Mar. 14, 2006) (reversing Section 2(e) refusal regarding class 38 services, while affirming refusal regarding *inter alia* services in class 42) (Ex. C). Virtually any recognizable word will be descriptive for something in the universe; but that cannot be the test under Section 2(e).

For the present case, the Applicant's business provides and/or intends to provide various services in addition to the identified services in Applicant's subject application. The Applicant's services involve "[p]roviding information on consumer products and services by way of a global computer network." The Applicant does not produce opinions by means of video as the Examining Attorney has several times indicated, and the issue is not whether VIDEOPINIONS

apple pie. In the present case, the Applicant intends to use the mark on, *inter alia*, "[p]roviding information on consumer products and services by way of a global computer network.," not on opinions of videos or videos of opinions, neither of which are key characteristics of the recited services.

describes “the provision of opinions by means of video.” The question for the purpose of Section 2(e) is not whether the Applicant provides (or could provide) any service for which the mark VIDEOPINIONS could be descriptive, but rather, whether (on a class-by-class basis) the mark VIDEOPINIONS is descriptive of the identified services set forth in the Applicant’s application. In other words, the question for this analysis is: Does VIDEOPINIONS describe “[p]roviding information on consumer products and services by way of a global computer network”?

The Examining Attorney has gone so far as to suggest that if the law required him to look at the recitation of goods and/or services in determining descriptiveness of a mark, he would simply begin requiring applicants to amend their description of goods and/or services to support his descriptiveness refusals.

To hold otherwise would be to insert a new issue into every application where the Office made a refusal based upon descriptiveness; for every refusal under Section 2(e)(1) of the Trademark Act, the examiner would make a corresponding requirement that the applicant insert into the identification of goods or services clause the feature of the goods or services described by the mark.

(Ex. B at 3) (emphasis added). There appears to be no authority under federal law whereby an examiner can arbitrarily require the amendment of services just to help make the examiner’s descriptiveness refusal. Although 37 C.F.R. § 2.32(a)(6) requires trademark application to set forth “[a] list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark,” the basis for a refusal under this rule rests on the lack of specificity and definiteness of the identified goods or services. See TMEP §§ 805 and 1402.01 (3d ed. Rev. 2, 2003). Thus, although the Examining Attorney could have objected to the recitation of services for indefiniteness, at this time, the Examining Attorney has held that

Applicant's identification of services is acceptable as stated. See, e.g., Ex. D at 2 ("The class 35 recitation is acceptable as stated."). Rewriting an Applicant's specific and definite description of services in order to render them descriptive could constitute an "abuse of discretion" in the classic sense of the term.

The Examining Attorney has also previously indicated that unless the Office is able to look beyond an applicant's recited services, "applicants could easily avoid descriptiveness refusals simply by being careful not to include in the recitation the feature of the goods or services described by the mark." Ex. A at 4. But applicants have no incentive to mis-describe their goods or services in an intent-to-use application because they would never be able to transform an approved application into a registration by submitting a specimen of use coinciding with the recited goods or services: If the goods or services are mis-described, the applicant would not be using its mark in connection with the claimed goods or services. Moreover, it would be counterproductive for an applicant to remove from its recitation of services the very services it wishes to protect. An applicant's rights under the Lanham Act are potentially restricted to the claimed services, and if the applicant left out a description of its true services, the applicant would be potentially surrendering rights for that particular use.

B. Extrinsic Evidence Should Not be Used to Rewrite the Applicant's Identified Services

In this case, instead of considering the Applicant's recited services in class 35, the Applicant believes that the Office attempted to rewrite the Applicant's claimed services based on extrinsic evidence. First, the Examining Attorney pointed to webpages from third party websites purporting to discuss the products and services of the Applicant. Some of the third parties misused and/or characterized the Applicant's services, and the Applicant has written to third parties asking them to correct their use the Applicant's mark. See, e.g., Ex. E at 135 (Ex. 10).

But more importantly, it is incorrect to rely on third party representations about the Applicant's intended services over and above the Applicant's express identification of its intended services.

Respectfully, Applicant also contends that the Office mischaracterized and misinterpreted Applicant's responses to the his 37 C.F.R. § 2.61(b) request for information. Applicant never stated that its intended services for this mark involves the "provision of opinions by means of video," and instead, Applicant explained that "Applicant itself does not provide opinions about the products or services of others *per se*. . . ." In response to one of the Examining Attorney's questions, the Applicant responded: "The Applicant's services include soliciting, collecting, and sharing audiovisual demonstrations and information about consumer products and services." First, this is not a statement of a class 35 advertising service. Second, the Applicant explained that such works "may not" include a consumer opinion about a particular product or service. Although the Applicant stated that a work could conceivably include an "opinion" as well as a demonstration or general information, a work could also conceivably include an elephant, a goat, a rhinoceros, a belief of an individual, and various other subjects. Applicant has never stated that "the provision of opinions by means of video" was a significant quality, characteristic, function, attribute, or feature of the services with which Applicant's mark is intended to be used in class 35.

Respectfully, Applicant contends that the Office erred by rewriting Applicant's services based on speculation instead of simply looking at the accepted recitation of services. See, e.g., In re Stahlbush Island Farms, Inc., 2005 TTAB LEXIS 548 (TTAB Dec. 20, 2005) (Ex. F) ("The Examining Attorney. . . has been unable to precisely identify what significant aspect of applicant's goods the term 'FARMERS MARKET' immediately describes, speculating instead only as to such generalities as that 'applicant's goods are, in some manner, like those goods

found at farmer's markets'; that applicant's 'goods may have the look, taste and smell of fresh fruits and vegetables'; and that 'the goods are somehow like those purchased at a farmers market'."); In re Epigenomics GmbH, 2003 TTAB LEXIS 114, at *9-10 (TTAB Mar. 6, 2003) (Ex. G) ("The significance of the mark and specifically what it describes about the goods and/or services, when applied to or used in connection with the goods and/or services, is ambiguous and unclear. The Examining Attorney has left too much for speculation and assumption."); In re Air Control Science, 1997 TTAB LEXIS 185, at *3-4 (TTAB June 18, 1997) (Ex. H) ("[W]e find no support in this record for the Examining Attorney's position that DUST ANALYST is merely descriptive of applicant's services because it conveys to prospective purchasers that applicant's services involve the 'analysis of dust itself.' Applicant has identified its services as 'analysis, design and engineering of dust collection systems for others.' There is nothing in this record which indicates that such services involve the analysis of dust, and in fact, applicant's attorney maintains that applicant's services do not include analysis of dust.").⁴

II. IN DETERMINING THE COMMERCIAL IMPRESSION OF THE APPLICANT'S MARK, THE OFFICE ERRED BY ARBITRARILY CHOOSING TWO DICTIONARY DEFINITIONS MOST CLOSELY MATCHING ITS HIS CHARACTERIZATION OF THE APPLICANT'S SERVICES

Neither the word "video" nor "opinions" is inherently descriptive of class 35 services. There are numerous service marks registered in class 35 which contain both the word "video," e.g., Ex. E at 58-112 (Ex. 6) (VIDEOSPACE, VIDEOSHOPPING, VIDEOSEEKER, VIDEORESUMECREATOR, VIDEOMASTERS, VIDEOMARATHON, VIDEOLOGO, VIDEOFINDER, VIDEOVIEW, VIDEOTRONIC, VIDEOSTITIAL, VIDEO-SCRIPT,

⁴ Because these dispositions are not citable as precedent, Applicant only cites them (and other non-precedential opinions mentioned in this brief) as an instructive examples, not binding precedent.

VIDEOLINK, VIDEOFARM.COM), and the word “opinion,” e.g., Ex. E at 140-161 (Ex. 12) (OPINIONPORT, OPINIONBANK, OPINIONSCOPE, OPINIONSPOT, OPINIONQUEST, OPINIONLAB, OPINIONSITE, VALUEDOPINION, ECHOPINION, QUALITYOPINIONS.COM, INTERNETOPINIONS.COM, WORLDOPINION, OPINION 1).

The Office carefully avoided any explicit statement as to how consumers would interpret the mark VIDEOPINIONS and instead simply concluded that, whatever it means, it must be descriptive of Applicant’s services. And although the Examining Attorney concluded that VIDEOPINIONS creates no impression differing from a combination of “video” and “opinion,” the Office offered no explication, justification, or evidence to support the conclusion. In re Grand Forest Holdings Inc., 78 USPQ2d 1152 (TTAB 2006) (“What we lack in this case is significant evidence that, when prospective purchasers encounter term FREEDOM FRIES used on frozen French fried potatoes, they will immediately understand that it identifies a feature, quality, or characteristic of the applicant’s goods”); Epigenomics GmbH, 2003 TTAB LEXIS 114, at *9 (Ex. G) (“It is not clear how the relevant purchasers would regard the term DIGITAL PHENOTYPE; and there is no evidence that the relevant consumers would readily understand a connection between DIGITAL PHENOTYPE and the various diagnostic kits, laboratory equipment, and research and development and Internet access services.”). Although the Examining Attorney proffered a few select dictionary definitions and several webpages purporting to use the words “video” and “opinion,” the submissions do not show use of the Applicant’s mark for its identified services. Therefore, the Office failed to meet its burden to show that the mark VIDEOPINIONS merely describes some significant aspect of Applicant’s services with a degree of particularity.

A. The Office Concedes That There is a Little Evidence of Descriptive Usage of the Phrase “Video Opinions”

Although the Examining Attorney apparently conducted extensive searches for instances of use of the phrase “video opinions,” the Examining Attorney concluded: “[T]he Office cannot supply a large quantity of evidence of descriptive usage of the phrase ‘video opinions’ by others.” Ex. B at 2. Although the Examining Attorney submitted a few articles spanning the past 16 years along with a few random webpages wherein the words “video” and “opinion” were used in conjunction, Applicant objects to the relevance of each article/webpage because in each case, Applicant’s mark is not used to describe anything like Applicant’s actual and intended services, *i.e.*, information on consumer products.

For example, the 1996 Kansas City Star article entitled “Students view life from both sides of camera” uses the phrase “video opinion poll”—not “videopinions.” Not only does the phrase “video opinion poll” have nothing to do with the Applicant’s intended and identified service, but also, the term “opinion poll” is a common compound term recognized by the Oxford English Dictionary (Ex. B at 10-12). In the 1991 LA Times article entitled “Private Eyes” concerns how everyday people record odd and diverse subjects on their camcorders ranging from photojournalistic events to their neighbors in hot-tubs. (Ex. B at 12-15). In the passage quoted by the Examining Attorney, “video opinions” is used to refer to recordings of individuals discussing their frustration of network news coverage of the Gulf War. Clearly, the phrase is not used to describe “[p]roviding information on consumer products and services by way of a global computer network.”

There are a number of instances in the past and in other cases wherein the Board has come across similar circumstances and held that NEXIS articles and stray webpages submitted as evidence of use cannot show descriptiveness when they do not show the proposed mark being

used to describe the applicant's recited services. In the case of In re Harrington, 219 USPQ 854, 856 (TTAB 1983), the Office refused registration of COLLEGE ACADEMY for "education services, namely, providing special learning programs for gifted and talented children in grades 4 to 8." There was no evidence showing use of the composite term COLLEGE ACADEMY in the academic field. Id. Likewise, in this case, there is no evidence showing use of VIDEOPINIONS (or "video opinions") in the field of providing information on consumer products and services by way of a global computer network. See also In re L.Vad Technology, Inc., 2006 TTAB LEXIS 160 (TTAB Apr. 28, 2006) (Ex. I) (reversing refusal of PATCH BOOSTER for "heart assist devices" and rejecting NEXIS articles because they "do not support a finding that 'patch' is merely descriptive of applicant's goods"); In re Adamchik, 2006 TTAB LEXIS 345, at *8-10 (TTAB Aug. 7, 2006) (Ex. J) (holding that the Office's "single example of use of 'object style' in instructions for working with drawing objects and graphics fails to demonstrate that OBJECTSTYLE merely describes a function, feature or characteristic of the recited services").

B. Despite the Office's Submission of a Few Dictionary Definitions, the Coined Mark VIDEOPINIONS Has No Meaning at All, and the Combination of "Video" and "Opinions" Evokes a New Commercial Impression

VIDEOPINIONS is a coined term. The term "video opinion" or "video opinions" appears in no known dictionary. Nonetheless, the Examining Attorney has tried to deconstruct the mark into the words "video" and "opinion" separately, suggesting that each individually describe some aspect of the Applicant's services. The analysis is flawed for several reasons: (1) The words "video" and "opinion" have numerous known meanings and it was improper to arbitrarily select meanings which most closely matched the Examining Attorney's characterization of Applicant's services. (2) In this case, the combination of two otherwise known terms creates an entirely new commercial impress.

1. **Given The Various Definitions of “Video” And “Opinion,” The Expression VIDEOPINIONS or “Video Opinion” Has No Clear Meaning**

For the word “video,” the Examining Attorney cited the Microsoft® Encarta® dictionary (Ex. A at 39-41) and stated that the word has “its normal meaning.” Ex. A at 4. But Encarta® lists five definitions of the noun and two definitions of the adjective. Ex. E at 40-41 (Ex. 1). When one also considers the definitions of www.Infoplease.com (id. at 43-44 (Ex. 2)), Merriam-Webster Online definitions of “video” (id. at 46-48 (Ex. 3)); American Heritage Dictionary (id. at 51 (Ex. 4)); Dictionary.com (id. at 50-51); and the Oxford English Dictionary (id. at 56-57 (Ex. 5)), one is inundated with definitions ranging from, *inter alia*, music videos, movies, video recorders, videocassettes or videotapes, television, and the visual portion of television. See Ex. E at 6-7 (listing more than 30 definitions). Given the various grammatical forms and definitions of the word “video,” the question presents itself: What does the term “video” mean to consumers? The Examining Attorney never explains.

For the word “opinion,” the Examining Attorney offered definitions from two sources: Infoplease.com and Merriam-Webster Online. Ex. A at 27-28. But again, when one also considers the definitions from Microsoft® Encarta (Ex. E at 114-15 (Ex. 7)), American Heritage (id. at 117-23 (Ex. 8)), and the Oxford English Dictionary (id. at 125-33 (Ex. 9)), one is inundated by definitions ranging from, *inter alia*, favorable esteem, a formal statement by a judge, a belief or conclusion held with confidence but not substantiated by positive knowledge or proof, the public or general opinion, and/or a judgment based on special knowledge. Given the various definitions of the word “opinion,” the following question presents itself: What does the word “opinion” mean to consumers? The Examining Attorney defines “opinion” as follows: “The term ‘opinion’ is defined as ‘a personal view, attitude, or appraisal’ or as ‘a view,

judgment, or appraisal formed in the mind about a particular matter.” Ex. A at 3. The Examining Attorney offers no justification for choosing this definition from amongst the many and diverse possibilities.

Given all the various meanings of the terms “opinion” and “video,” consumers cannot come to any clear understanding as to what “videopinions” (or “video opinions”) could possibly mean. In an analogous case, the Office originally refused registration of the mark POLYDECK as descriptive of, *inter alia*, “polyethylene dock sections.” In re FineLine Lakeshore Servs., LLP, 2006 TTAB LEXIS 339, at *9-12 (TTAB Aug. 24, 2006) (Ex. K).

The Examining Attorney argues that POLYDECK is a compound term with two merely descriptive components: ‘deck’ which is an alternative generic term for ‘dock’ and ‘poly’ which is an abbreviation for ‘polyethylene.’

Id. The Board looked at the proffered dictionary definitions and noted that “poly” had multiple definitions and could mean an abbreviation of “polyethylene” or suggest that the particular goods—dock sections—may be configured in many ways. The Court held that the fact that the terms had multiple meanings made the combined mark POLYDECK more suggestive than descriptive.

This indicates further that the combination of ‘poly’ and ‘deck’ may have a suggestive meaning which is more than the sum of its parts contrary to the Examining Attorney’s position.

Accordingly, we conclude that POLYDECK is not merely descriptive of ‘polyethylene dock sections.’ In concluding so we acknowledge that there is some doubt and that, in such a case under Trademark Act Section 2(e)(1), we must resolve doubt in favor of applicant.

Id. at *9-12 (emphasis added and citations omitted). Like the case in FineLine, the terms “video” and “opinion” have multiple definitions. Indeed, the term “video” may be used as a noun or an adjective and there are literally hundreds of permutations and possibilities, many of

which make no sense (e.g., combining the noun “video” with “opinion” creates nonsense, similar to “cat dog”). The mark VIDEOPINIONS may suggest in the mind of consumers (i) an opinion poll in video format (as indicated in the Kansas City Star article proffered by the examiner); (ii) video recordings of court proceeding or court “opinions”; (iii) a video of political or religious issues; (iv) written movie reviews, i.e., reviews of videos. Applicant’s coined term could suggest a lot of different things, none of which describe or even hint of the Applicant’s claimed service of “[p]roviding information on consumer products and services by way of a global computer network.” Because of the diverse possible consumer interpretations of the mark VIDEOPINIONS, the Applicant’s mark should be deemed, if not fanciful, at most suggestive. The ambiguity raised by the various meanings and consumer interpretations weighs in favor of the Applicant because any doubt “must resolve in favor of the applicant.” In re Rank Organisation Ltd., 222 USPQ 324, 326 (TTAB 1984).

Even though Applicant contends that a consumer could not possibly ascertain its services from hearing its mark, Applicant is not here arguing that point. Applicant is arguing that the coined word VIDEOPINIONS or the combination of “video” and “opinions” has no meaning whatsoever in the English language or in the minds of consumers. To that extent, the present case resembles the circumstances of Harrington, wherein the Board reversed a descriptiveness refusal of COLLEGE ACADEMY for “education services” in part because “the composite of the two words is not a term in general use to describe educational services (or anything else, for that matter) and has no dictionary meaning.” 219 USPQ at 856. In the present case, the Office does not dispute that “videopinions” has no dictionary meaning. There is no evidence that the composite of “video” and “opinions” is in general use to describe providing information on

consumer products and services by way of a global computer network. The Office concedes there is little evidence of the combined use to describe anything whatsoever.

2. The Combination of “Video” and “Opinions” Evokes a New and Unique Commercial Impression

Even though the individual terms “video” and “opinions” do not individually describe any aspect of Applicant’s class 35 service, assuming *arguendo* that the word “video” was descriptive and the word “opinion” was separately descriptive of something in the abstract, the combination of the words still evokes a new and unique commercial impression. “When two or more merely descriptive terms are combined, [the Board] must determine whether the combination of terms evokes a new and unique commercial impression.” FineLine, 2006 TTAB LEXIS 339, at *9-12 (Ex. K); see also Colonial Stores, 394 F.2d 549 (holding that combination of two descriptive elements may result in a non-descriptive composite); In re Werner Electric Brake & Clutch Co., 154 USPQ 328 (TTAB 1967) (ELECTRO-MODULE not descriptive of goods even though each term, considered separately, was found to describe applicant’s goods); In re Shutts, 217 USPQ 363 (TTAB 1983) (SNO-RAKE not merely descriptive for “a snow removal hand tool having a handle with a snow-removing head at one end, the head being of solid uninterrupted construction without prongs.”); In re Shop Vac Corp., 219 USPQ 470 (TTAB 1983) (WET/DRY BROOM is not merely descriptive of a vacuum cleaner or an electric cleaning appliance of similar appearance); Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co., 186 USPQ 557 (TTAB 1975) (BIASTEEL is at most suggestive of the character of tires); In re Idiag, 2001 TTAB LEXIS 475, at *9 (TTAB June 19, 2001) (“we agree with applicant that the combined expression, SPINALMOUSE, is somewhat incongruous, and that no purpose or characteristic is readily described by this combined term, either generally or with particularity.”) (Ex. L).

To the extent that the individual words “video” and “opinions” have identifiable meanings, VIDEOPINIONS does not describe either Applicant’s service of providing “[p]roviding information on consumer products and services by way of a global computer network,” or a function or characteristic of this service. For example, in the case of In re TBG Inc., 229 USPQ 759 (TTAB 1986), the Office initially refused registration of SHOWROOM ONLINE as descriptive for “leasing computer databases and video disks in the field of interior furnishings and related products of others.” The applicant in that case provided a database service to third parties which allowed them to show furniture products on the third parties’ website. Reversing the refusal, the Board held that the words SHOWROOM and ONLINE did not accurately or merely describe the applicant’s leasing or information services. Id. at 759. Analogous to the applicant in TBG, the Applicant more similarly provides something like a database for providing consumer information. The Applicant itself does not create videos and does not provide opinions on products. The Applicant’s service includes providing consumer information, but such information does not originate from the Applicant, who merely allows third parties to share such information amongst one another. As such, even if the words “video” and “opinions” means something in the abstract, the words do not merely describe either the Applicant’s consumer information service or its function or characteristics.

**III. APPLICANT ARGUES THAT VIDEOPINIONS
COULD AT MOST BE SUGGESTIVE**

Arranged in ascending order of protectability, trademarks are categorized as generic, descriptive, suggestive, or arbitrary/fanciful. Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763 (1992). A mark that suggests rather than merely describes a particular good or service is protectable without evidence of secondary meaning. While a descriptive term will directly and clearly convey information about the qualities or characteristics of the associated service, a

“suggestive” term only indirectly suggests certain qualities or characteristics of the service. Courts have held that if the consumer must exercise mature thought or follow a multi-stage reasoning process in order to determine attributes of the services from the mark, the mark is suggestive and not descriptive. In re Tennis in the Round, Inc., 199 USPQ 496, 498 (TTAB 1978).

Simply stated, in the present case, there is no evidence that the words “video” and “opinions” directly and clearly convey information about the qualities or characteristics of a “global computer network” devoted to, *inter alia*, information on consumer products and services. Grand Forest Holdings, 78 USPQ2d 1152 (“What we lack in this case is significant evidence that, when prospective purchasers encounter term FREEDOM FRIES used on frozen French fried potatoes, they will immediately understand that it identifies a feature, quality, or characteristic of the applicant’s goods”); In re Telechat Networks, Inc., 2006 TTAB LEXIS 178, at *8 (TTAB May 11, 2006) (Ex. M) (citing Rank, 222 USPQ at 326 (The “fact that the term LASER is cable of being analyzed does not render the term merely descriptive.”)); see also In re Remacle, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) (“It is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork.”). The words “video” and “opinions” are simply too broad and harbor too many possible meanings to be merely descriptive. See, e.g., In re Hutchinson Technology Inc., 852 F.2d 552 (Fed. Cir. 1988) (TECHNOLOGY too broad a term to be merely descriptive of applicant’s particular goods). Consumers must engage in highly mature thought processes and multiple steps to arrive at anything remotely resembling any aspect of the Applicant’s specific recited class 35 services.

The Applicant's specific mark is not needed by competitors to identify their own services. The purpose of Section 2(e)(1) is to protect the competitive needs of others, and thus, if the message conveyed by the mark about the services is so direct and clear that competing sellers would be likely to need to use the term in describing or advertising their own services, then this indicates that the mark is descriptive. In re TMS, 200 USPQ at 59; Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1218 (9th Cir. 1987). In the present case, the Applicant's business is novel—or was novel when it filed its application in June 2005.⁵ There is no evidence that any television network or consumer information service uses or needs to use "videopinions" or "video opinions" to describe similar services. In re Dollar-A-Day Rent-A-Car Systems, Inc., 173 USPQ 435, 437 (TTAB 1972) ("If the term is as highly descriptive as asserted by the examiner, one would suppose that there would be at least one descriptive use thereof by a competitor but none has been shown."). But also, there is no indication that anyone in the general field of information services would need to use this term. Minnesota Mining & Mfg. Co. v. Johnson & Johnson, 454 F.2d 1179, 1180 (C.C.P.A. 1972) (SKINVISIBLE not necessary to describe transparent medical adhesive tape). For this reason too, the Applicant's mark should be deemed suggestive and not "merely descriptive."

As marks go, VIDEOPINIONS is certainly less descriptive than numerous marks which have been deemed to be suggestive by the Board. See, e.g., Grand Forest Holdings, 78 USPQ2d 1152 (TTAB 2006) (FREEDOM FRIES not descriptive of frozen french fries); In re Intelligent Medical Sys., 5 USPQ2d 1674 (INTELLIGENT MEDICAL SYSTEMS not descriptive of

⁵ Applicant has since learned about several quasi-competitor type companies called ShopWiki (www.shopwiki.com), Zvedo (www.zvdeo.com), CNET Reviews (<http://reviews.cnet.com>), and ShareReviews (<http://sharedreviews.com>). None of the sites use the Applicant's mark.

“electronic thermometers for measuring human body temperature.”); In re Sundown Technology Inc., 1 USPQ2d 1927, 1928 (TTAB 1986) (GOVERNOR not descriptive for controls used to limit sound from musical amplifier); In re WSI Corp., 1 USPQ2d 1570 (TTAB 1986) (SUPERSAT not descriptive of collecting meteorological information via satellite); In re Southern Nat'l Bank, 219 USPQ 1231 (TTAB 1983) (MONEY 24 not descriptive of automatic teller machines); Harrington, 219 USPQ 854 (COLLEGE ACADEMY not descriptive for education services for gifted children).

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests the Board reverse the refusal to register its mark. In this case, the Applicant respectfully contends that (at the very least) it has raised doubts as to whether the Applicant's mark is "merely descriptive." Moreover, if the Board agrees, Applicant requests that such doubts be resolved in favor of the applicant. In re The Stroh Brewery, 34 USPQ2d 1796, at *4-5 (TTAB 1995); In re Gourmet Bakers, Inc., 173 USPQ 565, at *1 (TTAB 1972), accord, On Technology, 41 USPQ2d 1475, at *8; Telechat Networks, Inc., 2006 TTAB LEXIS 178, at *8 (Ex. M).

Respectfully submitted,

Dated: July 23, 2007

By: _____

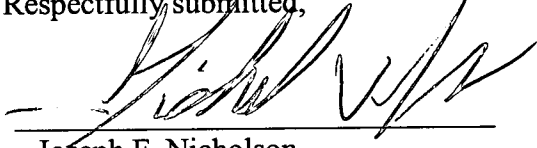

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(212) 425-7200
Attorneys for Applicant

TABLE OF AUTHORITIES

Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co., 186 USPQ
557 (TTAB 1975) 17

In re Adamchik, Ser. No. 76571862, 2006 TTAB LEXIS 345 (TTAB
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In re Air Control Science, 1997 TTAB LEXIS 185 (TTAB June 18, 1997)..... 10

In re Cerner Corp., 2001 TTAB LEXIS 87 (TTAB Jan. 31, 2001)..... 3, 4

In re Colonial Stores, Inc., 394 F.2d 549 (C.C.P.A. 1968)..... 3, 17

In re Dollar-A-Day Rent-A-Car Systems, Inc., 173 USPQ 435 (TTAB
1972) 20

In re Epigenomics AG, 2006 TTAB LEXIS 85 (TTAB Mar. 14, 2006)..... 6, 10, 11

In re FineLine Lakeshore Servs., LLP, No. 76/428,109, 2006 TTAB
LEXIS 339 (TTAB Aug. 24, 2006) 15, 17

In re Gourmet Bakers, Inc., 173 USPQ 565 (TTAB 1972) 22

In re Grand Forest Holdings Inc., 78 USPQ2d 1152 (TTAB 2006)..... 1, 11, 19, 20

In re Gyulay, 820 F.2d 1216 (Fed. Cir. 1987) 5 n.3

In re Harrington, 219 USPQ 854, 856 (TTAB 1983)..... 13, 21

In re Hutchinson Technology Inc., 852 F.2d 552 (Fed. Cir. 1988) 19

In re Idiag, 2001 TTAB LEXIS 475 (TTAB June 19, 2001) 17

In re Intelligent Medical Sys., 5 USPQ2d 1674 (TTAB 1987) 3, 20

In re L.Vad Technology, Inc., No. 78/285,714, 2006 TTAB LEXIS 160
(TTAB Apr. 28, 2006) 13

In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567 (Fed.
Cir. 1987)..... 1

In re On Technology Corp., 41 USPQ2d 1475 (TTAB 1996)..... 3, 22

In re Rank Organisation Ltd., 222 USPQ 324 (TTAB 1984)..... 16

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In re Southern Nat'l Bank, 219 USPQ 1231 (TTAB 1983) 21

In re Stahlbush Island Farms, Inc., 2005 TTAB LEXIS 548 (TTAB Dec. 20, 2005) 9

In re The Stroh Brewery, 34 USPQ2d 1796 (TTAB 1995) 1, 5, 22

In re Sundown Technology Inc., 1 USPQ2d 1927 (TTAB 1986) 21

In re TBG Inc., 229 USPQ 759 (TTAB 1986) 18

In re Telechat Networks, Inc., 2006 TTAB LEXIS 178 (TTAB May 11, 2006) 19, 22

In re Tennis in the Round, Inc., 199 USPQ 496 (TTAB 1978) 19

In re TMS Corporation of the Americas, 200 USPQ 57 (TTAB 1978) 3, 4, 20

In re Werner Electric Brake & Clutch Co., 154 USPQ 328 (TTAB 1967) 17

In re WSI Corp., 1 USPQ2d 1570 (TTAB 1986) 21

Minnesota Mining & Mfg. Co. v. Johnson & Johnson, 454 F.2d 1179 (C.C.P.A. 1972) 20

Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215 (9th Cir. 1987) 20

Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763 (1992) 18

Statutes, Rules and Regulations

15 U.S.C. § 1052(e)(1) 1

37 C.F.R. § 2.32(a)(6) 7

37 C.F.R. § 2.61(b) 9

Trademark Manual of Examining Procedure § 805 7

Trademark Manual of Examining Procedure § 1402.01 7

CERTIFICATE OF MAILING

I hereby certify that APPLICANT'S OPENING APPEAL BRIEF and Exhibits A thru M are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Trademarks, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on July 23, 2007.



Andrew R. Schmidt

EXHIBIT A

To: Expo Communications, Inc. (tmducketny@kenyon.com)
Subject: TRADEMARK APPLICATION NO. 78654480 - VIDEOPINIONS - 13114/29
Sent: 8/17/06 9:13:37 AM
Sent As: ECOM106@USPTO.GOV
Attachments: Attachment - 1
Attachment - 2
Attachment - 3
Attachment - 4
Attachment - 5
Attachment - 6
Attachment - 7
Attachment - 8
Attachment - 9
Attachment - 10
Attachment - 11
Attachment - 12
Attachment - 13

[Important Email Information]

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/654480

APPLICANT: Expo Communications, Inc.

78654480

CORRESPONDENT ADDRESS:

JOSEPH F. NICHOLSON, ESQ.
KENYON & KENYON,
1 BROADWAY
NEW YORK, NY 10004-1007

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: VIDEOPINIONS

CORRESPONDENT'S REFERENCE/DOCKET NO: 13114/29

CORRESPONDENT EMAIL ADDRESS:

tmdocketny@kenyon.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/654480

This letter responds to the applicant's communication filed on July 13, 2006.

SECTION 2(e)(1) REFUSAL MADE FINAL

The refusal to register under Section 2(e)(1) of the Trademark Act is continued and made FINAL.

Applicant seeks registration of VIDEOPINIONS for services wherein consumers offer opinions

about products and services on videotape. Applicant indicates that its services include soliciting, collecting, and sharing audiovisual demonstrations and information about consumer products and services, and admits that "such audiovisual works may or may not include or involve a consumer's opinion about a particular product or service."

Attached are two web page articles or listings apparently indicating what is done through applicant's services. Consumers apparently review and

rate different products or services, giving their opinions thereof. Note that in the first attachment, the person reviewing applicant's service regarded it as a place "devoted to online video opinions." The second attachment apparently shows the result of a cooperative effort between the applicant and another party called "GamePro" where consumers offer reviews of games. Note how the term "videopinion" itself is used in lower case letters. See also enclosed results from a search of the *Nexis* research database showing use of the phrase "video opinion" and its plural in descriptive fashion.

The term "opinion" is defined as "a personal view, attitude, or appraisal" or as "a view, judgment, or appraisal formed in the mind about a particular matter." See attached dictionary definitions. There can be little doubt that the personal views, judgments, or appraisals of the products or services reviewed by the consumers in the videos shown by the applicant constitute opinions. The term "video" is also being used for its normal meaning. See attached dictionary definition and the broader definitions of "video" provided below.

Applicant is correct that whether a mark is merely descriptive is determined in relation to the identified goods or services, not in the abstract. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985); *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985). TMEP §1209.01(b). However, this does not mean that the descriptive feature of the services has to exist in the recitation of services in order for a mark to be merely descriptive. If this were the case, applicants could easily avoid descriptiveness refusals simply by being careful not to include in the recitation the feature of the goods or services described by the mark. Moreover, the fact that the mark does not describe how the services are offered

does not foreclose the finding of descriptiveness. It is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods/services to be merely descriptive. It is enough if the term describes one attribute of the goods/services. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973). TMEP §1209.01(b).

Even though the applicant itself may not be expressing its own opinions about the goods and services of others, its services nonetheless feature opinions on video.

The telescoping of the terms "video" and "opinion" into one word does not create an impression differing from that created by the two words and still results in a descriptive mark. See, for example, *In re BankAmerica Corp.*, 229 USPQ 852 (TTAB 1986) (PERSONALINE merely descriptive of consumer loan services in which a personal line of credit is provided); *In re U.S. Steel Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); *In re Gagliardi Bros., Ind.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES is merely descriptive of thinly sliced beef).

The above refusal is FINAL. Any other prior informalities not addressed above are deemed satisfied or are withdrawn.

If the applicant has any questions about this Office action, please telephone the assigned examining attorney.

Please note that the only appropriate responses to a final action are (1) compliance with the outstanding requirements, if feasible, (2) filing of an appeal to the Trademark Trial and Appeal Board, or (3) filing of a petition to the Director if permitted by 37 C.F.R. §2.63(b). 37 C.F.R. §2.64(a); TMEP §715.01. Regarding petitions to the Director, see 37 C.F.R. §2.146 and TMEP Chapter 1700. If the applicant fails to respond within six months of the mailing date of this refusal, this Office will declare the application abandoned. 37 C.F.R. §2.65(a).

/Steven Foster/

Steven Foster, Trademark Attorney

Law Office 106

(571) 272-9318

Fax number for the Law Office: (571) 273-9106

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond using the Office's Trademark Electronic Application System (TEAS) Response to Office action form available on our website at <http://www.uspto.gov/teas/index.html>. If the Office action issued via e-mail, you must wait 72 hours after receipt of the Office action to respond via TEAS. **NOTE: Do not respond by e-mail. THE USPTO WILL NOT ACCEPT AN E-MAILED RESPONSE.**

- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above, and include the serial number, law office number, and examining attorney's name. **NOTE: The filing date of the response will be the date of receipt in the Office,** not the postmarked date. To ensure your response is timely, use a certificate of mailing. 37 C.F.R. §2.197.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

GENERAL TRADEMARK INFORMATION: For general information about trademarks, please visit the Office's website at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

108B8C

Print Request: Selected Document(s): 13,19

Time of Request: August 17, 2006 07:45 AM EDT

Number of Lines: 53

Job Number: 1821:113847575

Client ID/Project Name:

Research Information:

US Newspapers

video opinion

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13 of 19 DOCUMENTS

Copyright 1996 The Kansas City Star Co.

Kansas City Star (Kansas & Missouri)

June 19, 1996 Wednesday JOHNSON COUNTY EDITION

SECTION: ZONE/SHAWNEE MISSION; Pg. 3

LENGTH: 369 words

HEADLINE: Students view life from both sides of camera

BYLINE: ROBERTA JOHNSON, Staff Writer

BODY:

...Amanda Hays, a

seventh-grader at Westridge Middle School. "We got to tape

(yesterday) and today, and I get to do the video opinion poll."

Many students were excited about the idea of being on camera.

"It's fun to use our imagination and interview people," ...

19 of 19 DOCUMENTS

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Los Angeles Times

July 25, 1991, Thursday, Home Edition

SECTION: View; Part E; Page 1; Column 2; View Desk

LENGTH: 1975 words

HEADLINE: PRIVATE EYES;

MAKING A HOME VIDEO HAS BECOME SO EASY THAT NOTHING IS TOO MUNDANE OR TOO WEIRD FOR TAPE.

BYLINE: By GERALDINE BAUM, TIMES STAFF WRITER

DATELINE: NEW YORK

BODY:

...article recounted how a consortium of peace groups became frustrated with network news coverage of the Gulf War. They solicited video

opinions from groups nationwide, received 100 responses and then culled them, broadcasting four short programs on cable and PBS stations.

"Increasingly, ...

Definitions of video on the Web:

the visible part of a television transmission; "they could still receive the sound but the picture was gone"

video recording: a recording of both the video and audio components (especially one containing a recording of a movie or television program)

television: broadcasting visual images of stationary or moving objects; "she is a star of screen and video"; "Television is a medium because it is

neither rare nor well done" - Ernie Kovacs

wordnet.princeton.edu/perl/webwn

Note:

In order to avoid size limitation constraints on large e-mail messages, this Office Action has been split into 2 smaller e-mail messages. The Office Action in its entirety consists of this message as well as the following attachments that you will receive in separate messages:

Email 1 includes the following 5 attachments

1. vid-1
2. vid-2
3. vid-3
4. vid1-1
5. vid1-2

Email 2 includes the following 8 attachments

1. vid1-3
2. op-1
3. op-2
4. op2-1
5. op2-2

6. video-1

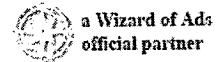
7. video-2

8. video-3

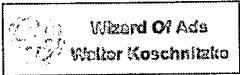
Please ensure that you receive all of the aforementioned attachments, and if you do not, please contact the assigned-examining attorney.

Branding Ad Vice

Rants, Raves, Small Business Advertising and Marketing Advice
From Walter Koschnitzke

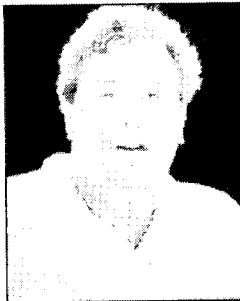


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APRIL 26, 2006

Today's New Word "Videopinion"



This was going to be a post about the brilliant ad campaign for Tag@ Body Spray. But as I searched for the new "Strip Poker" ad I came across a site called [Expo Television](#), devoted to online [video opinions](#), reviews and product demonstrations and buying tips.



According to Expo's Homepage:

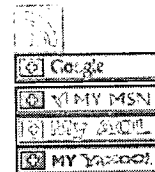
Videopinions is another way Expo TV wants to make you a smarter shopper!

A Videopinion is YOU, showing and telling us in FULL MOTION VIDEO what you love and hate about the products and services that make your world go round. Show us everuthing from whu uou love your iPod Shuffle.

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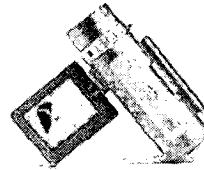
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[Sales](#)

world go round. Show us everything from why you love your iPod Shuffle, to the essential baby swing that every mom needs, to the pros and cons of your electric razor.

Videopinions allows our viewers to share their own unbiased, personalized experiences with other consumers.

The reviews are hokey, crudely produced but they are real. And real people have often been known to topple the mighty. Here's the review of [Tag@Body Spray](#). Madison Avenue it ain't, but what would someone say if given the opportunity to upload a videopinion of your product or service? With the low cost of cameras everyone can become a producer.



In today's brave new world of virtual communities it's vital that you deliver what you promise and to keep your eyes and ears open and your fingers on the pulse of what people are saying behind your back. If you aren't "Googling" your business every couple of months you may miss what someone says about you good or bad.

But that's just my opinion.

April 26, 2006 in [Marketing](#), [Web/Tech](#) | [Permalink](#)

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<http://www.typepad.com/t/trackback/4749739>

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FEATURED MEMBER

Shinobi558



Beware of Ninja

QUICK POLL

Which system will come out first: PS3 or Wii?

Wii

PS3

ASK THE PROS

- ◆ Sony Expert
- ◆ Microsoft Expert
- ◆ Nintendo Expert
- ◆ PC Expert
- ◆ Sports Expert
- ◆ Industry Expert
- ◆ Buyers Beware

Domestic | Feature

Feature: Expert Gamer Contest: Voters' Top 4 Video Reviews


Feature by The Gamepros | 08/10/2006 | 02:15:41 AM PST

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As of now, these are the top four videos that voters have found useful. But are they really worthy of the top four position? Do you think they are? Find out for yourself.

GamePro and Expo TV have joined forces to bring forth a contest that seeks out the best videopinion game review. The main requirements? The reviewer's face must be present and the game being reviewed must be recent. The following four videos have topped the votes so far, but do we think they're worthy of the spot? More importantly, do you think they are? Let your voice be heard and rock the vote at [Expo TV's videopinion website](#).

Trackmania Nation



Verdict: Good
Why it's good: Aside from the fancy intro and in-game footage, the reviewer actually talks about the benefits of playing this game, and hey!

ONCE YOU ENTER SILENT HILL THERE IS NO TURNING BACK.

SILENT HILL



OWN IT 8.22.06

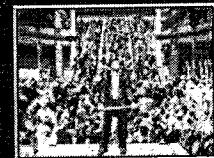
DVD PSP Blu-ray Disc

ROLL OVER TO EXPERIENCE SILENT HILL


Most Recent Features

- It Ain't All Just PlayStation 3 [Domestic]
- Expert Gamer Contest: Voters' Top 4 Video Reviews [Domestic]
- The 14 Freakiest Moments of Prey [Xbox 360]
- Extreme Sports Preview! [Domestic]
- MMORPG End of Days [Domestic]

Recently Added Screenshots



Dead Rising [Xbox 360]



Thrillville [PS2]

◆ Retro Expert

◆ Ask your question!

THE GAMEPROS

◆ Vicious Sid

◆ Mr. Marbles

◆ Dr. Zombie

◆ Major Mike

◆ Bro Buzz

◆ Rice Burner

◆ Lunchbox

◆ Ahoy_And_Avast

◆ Agent Marmalade

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reviewer actually talks about the benefits of playing this game, and hey! It's free to download and play, so why not give it a try? He also leads us through the gameplay by showing and telling, not just telling. No wonder this video's one of the top four.

Battlefield 2: Armored Fury



Verdict: Okay

Why it's okay: Similar to the previous review on *Trackmania Nation*, this review also features some in-game footage and a brief overview on what's good and bad about the game itself. He accomplishes the goal of letting me know whether or not he thinks it's worth the purchase. However, he still sounds a bit stiff, knocking this video from "Good" to "Okay." But voters have found his review to be useful so maybe you will too.

WarCraft 3: Frozen Throne (DoTA Custom Map)



Verdict: Enthusiastic

Why this could be good and bad: Well, I was certainly surprised to see a review of the ever-beloved custom map "Defense of the Ancients" (or commonly called DoTA), not only because I'm a huge fan of it, but I just never expected a fan-made custom map to be the subject of any review. This person does a great job of covering why DoTA is awesome and fun, but this review could also be a setback because #1 WC3: FT is an old expansion set, as well as DoTA itself and #2 it brings up the question of whether or not this sort of thing should be reviewable; it sort of implies that either only WC3 veterans would be interested in this review, or that anyone who could be potentially interested would have to buy two games in order to play it. Maybe it's just me, but I'd prefer to view a video opinion on a video game in its entirety rather than one based on a fan-made custom map. But that's just me. As a reviewer and a reviewer, this



Thrillville (Xbox)



NBA 07 (PS2)

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custom map. But that's just me. As a review and a review alone, this could be a good one.

Guitar Hero



Verdict: Good

Why it's good: The introduction is funny in that lame way, he covers the basic bases of the game, and even plays a little bit of it for those completely unfamiliar with the game. All in all, it's a great review of Guitar Hero. I'm not surprised it made the top four.

Remember to vote on the videos at [Expo TV's videopinion website](#), and keep it real and safe. Want to read my past videopinion editorials?

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Dictionary

Find definitions for:

o·pin·ion

Pronunciation: (u-pin'yun), [key]

—n.

1. a belief or judgment that rests on grounds insufficient to produce complete certainty.

2. a personal view, attitude, or appraisal.


3. the formal expression of a professional judgment: *to ask for a second medical opinion.*

4. Law the formal statement by a judge or court of the reasoning and the principles of law used in reaching a decision of a case.





5. a judgment or estimate of a person or thing with respect to character, merit, etc.: *to forfeit someone's good opinion.*

6. a favorable estimate; esteem: *I haven't much of an opinion of him.*

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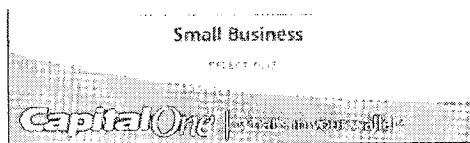
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Find definitions for:

- **opinioned** *ˈɒ-pi-njən/ˈæd-jɪ-tɪv*

synonyms OPINION, VIEW, BELIEF, CONVICTION, PERSUASION, SENTIMENT mean a judgment one holds as true. OPINION implies a conclusion thought out yet open to dispute <each expert seemed to have a different *opinion*>. VIEW suggests a subjective opinion <very assertive in stating his *views*>. BELIEF implies often deliberate acceptance and intellectual assent <a firm *belief* in her party's platform>. CONVICTION applies to a firmly and seriously held belief <the *conviction* that animal life is as sacred as human>. PERSUASION suggests a belief grounded on assurance (as by evidence) of its truth <was of the *persuasion* that everything changes>. SENTIMENT suggests a settled opinion reflective of one's feelings <her feminist *sentiments* are well-known>.

See physician-reviewed articles on **opinion** on [Healthline](#).

1. **Second Opinion** (Trust Mark: Doctor-Reviewed)

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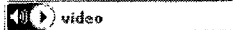
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video



vid·e·o [vid-ee-oh]

noun (plural vid-ee-ohs)

Definition:

- visual part of television:** the visual part of a television broadcast
- something recorded onto videotape:** something that has been recorded on videotape, especially a movie

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recorded on videotape, especially a movie or music performance

- a video of my brother's wedding

3. videocassette: videotape, or a videocassette (*informal*)

- now available to rent or buy on video

4. COMPUT images on computer screen: the text and graphics images that appear on a computer screen

5. image reproduction industry: the industry of recording and broadcasting visual information and entertainment, especially that which can be viewed on a television

- a star of stage, screen, and video

adjective

Definition:

1. relating to visual image reproduction: relating to the recording or broadcasting of visual information or entertainment by means of videotape or television

2. relating to video frequencies: relating to or using video frequencies

[Mid-20th century. < Latin *videre* "to see," after audio.]

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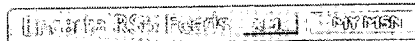
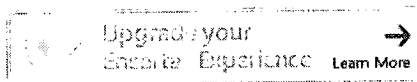


EXHIBIT B

Kissell, Joanie

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Posted At: Thursday, March 15, 2007 12:41 PM
Conversation: TRADEMARK APPLICATION NO. 78654480 - VIDEOPINIONS - 13114/29 - Message 1 of 5
Posted To: TMDocketNY
Subject: TRADEMARK APPLICATION NO. 78654480 - VIDEOPINIONS - 13114/29³¹ - Message 1 of 5

[Important Email Information]
UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/654480
APPLICANT: Expo Communications, Inc.

78654480

CORRESPONDENT ADDRESS:
JOSEPH F. NICHOLSON, ESQ.
KENYON & KENYON,
1 BROADWAY
NEW YORK, NY 10004-1007

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
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MARK: VIDEOPINIONS

CORRESPONDENT'S REFERENCE/DOCKET NO: 13114/29

CORRESPONDENT EMAIL ADDRESS:
tmdocketny@kenyon.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address..

Serial Number 78/654480

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the point at issue in the final action. TMEP §715.03(a). Accordingly, applicant's request for reconsideration is denied and the refusal to register under Section 2(e)(1) of the Trademark Act is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

Initially, it is pointed out that the parent application has been successfully divided so that applicant's services in class 35 fall in application 78-654480, while the services in class 38 fall in application 78-978112 and the services in class 41 fall in application 78-978113. All of the services will be addressed

in this Office action, which will be replicated so that it appears in all three files.

Applicant seeks registration for VIDEOPINIONS for: providing information on consumer products and services by way of a global computer network (class 35); television broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services (class 38); and entertainment services in the nature of on-going television programs in the field of information about consumer products and services (class 41).

Applicant argues that the terms "video" and "opinion" have multiple meanings. However, this fact is not controlling. The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (CCPA 1978); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (DOC in DOC-CONTROL would be understood to refer to the "documents" managed by applicant's software, not "doctor" as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT PC-DOS found merely descriptive of "computer programs recorded on disk" where relevant trade uses the denomination "concurrent" as a descriptor of this particular type of operating system); *see* TMEP §1209.01(b). The question is thus not whether "videopinions" would have meaning in the abstract, but rather what meaning it would have when used in connection with applicant's particular services. Further, the fact that the compound word is not found in the dictionary is not controlling on the question of registrability. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Orleans Wines, Ltd.*, 196 USPQ 516 (TTAB 1977); TMEP §1209.03(b).

Interestingly, applicant claims that its mark is "not needed by competitors to identify their own services", while at the same time admitting that its business is novel. In fact, in its first response, applicant stated that it was not aware of any third party offering services of the same type. The fact that an applicant may be the first and sole user of a merely descriptive or generic designation does not justify registration where the evidence shows that the term is merely descriptive of the identified goods and/or services. *In re Acuson*, 225 USPQ 790 (TTAB 1985) (COMPUTED SONOGRAPHY descriptive of ultrasonic imaging instruments); *In re National Shooting Sports Foundation, Inc.*, 219 USPQ 1018 (TTAB 1983) (SHOOTING, HUNTING, OUTDOOR TRADE SHOW AND CONFERENCE held apt descriptive name for conducting and arranging trade shows in the hunting, shooting and outdoor sports products field); TMEP §1209.03(c). Further, a new product that differs from an established product in some significant, functional feature or characteristic may actually become its own genus for purposes of determining registrability. *A.J. Canfield Co. v. Honickman*, 808 F.2d 291, 1 USPQ2d 1364 (3rd Cir. 1986); *In re Reckitt & Colman*, 230 USPQ 369 (TTAB 1986). Applicant's admission that its services are novel may well explain why the Office cannot supply a large quantity of evidence of descriptive usage of the phrase "video opinions" by others. However, this does not preclude a finding of descriptiveness when applicant's telescoped word, when viewed in the context of the services, is being used for the ordinary descriptive meanings of its component parts.

Applicant relies upon the fact that its recitation of services never mentions opinions or videotape. It then argues that the Office is incorrect when it states that the feature of the services described by the mark need not appear in the recitation of services itself in order for the mark to be merely descriptive. However, there are abundant decisions holding marks descriptive of features of goods or services not reflected in the identifications of goods or services themselves. *See In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987) (APPLE PIE held merely descriptive of goods identified as "potpourri"); *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (TTAB 2002) (SMARTTOWER merely descriptive of "commercial and industrial cooling towers and accessories therefor, sold as a unit"); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS held merely descriptive of "computer software for use in the development and deployment of application programs on a global

computer network”); *In re Shiva Corp.*, 48 USPQ2d 1957 (TTAB 1998) (TARIFF MANAGEMENT held merely descriptive for “computer hardware and computer programs to control, reduce and render more efficient wide area network (WAN) usage and printed user manuals sold therewith”); *In re Putnam Publishing Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ON-LINE merely descriptive of “a news and information service updated daily for the food processing industry, contained in a database”); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (CONCURRENT DOS and CONCURRENT PC-DOS held merely descriptive of “computer programs recorded on disk”). The context of use and reaction of purchasers to how the mark is used in connection with the goods or services allow for tribunals to hold marks descriptive even where the features described by the mark do not appear in the identification of goods or services clause. The term “NURSING MAGAZINE” is no less descriptive of goods identified as “medical magazines” than it is of goods identified as “magazines about nursing,” if the record shows that the medical magazines feature articles about nursing. To hold otherwise would be to insert a new issue into every application where the Office made a refusal based upon descriptiveness; for every refusal under Section 2(e)(1) of the Trademark Act, the examiner would make a corresponding requirement that the applicant insert into the identification of goods or services clause the feature of the goods or services described by the mark.

As applicant was advised previously, for the purpose of a Section 2(e)(1) analysis, a term need not describe all of the purposes, functions, characteristics or features of the goods and/or services to be merely descriptive. *In re Dial-a-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 U.S.P.Q.2d 1807 (Fed. Cir. 2001). It is enough if the term describes only one significant function, attribute or property. *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (“[A] mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.”) (quoting *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). Many goods and services have multiple features that could be described by different terms. Even the applicant’s services fall into this realm. Some of the means by which the services are to be offered have been included in the recitations, but not the subject of each service, opinions on video. However, the fact that the feature described by the mark is not evident in the recitation itself does not mean that it does not exist, or wouldn’t be recognized by purchasers. Phrases like “made of leather” and “six feet long” may be descriptive of goods identified merely as “couches”, if the record shows that the couches are made of leather and are six feet long. This would be so even though neither phrase alone describes *all* of the couch’s features.

Turning to the record, applicant admits the following about its services:

.... the Applicant solicits, collects, organizes, and shares objective third party demonstrations, commentary, and reviews of consumer products and services of others with others.

...The demonstrations of and information on consumer products and services is shared amongst consumers in the form of homemade digital audiovisual works, i.e., videos with an audio component.

....The Applicant's services include soliciting, collecting, and sharing audiovisual demonstrations and information about consumer products and services. Such audiovisual works may or may not include or involve a consumer's opinion about a particular product or service, and may instead involve the demonstration of a particular product or service and useful information on it.

Applicant admits that the services may include or involve a consumer’s opinion on audiovisual works, and that the services involve the sharing of the information. This also includes the sharing of “commentary and reviews” on video. These are the contexts in which applicant’s mark will be viewed, whether the videotaped opinions are provided via computer (class 35), via broadcasting or video-on-demand (class 38), or on a television program (class 41). Marks describing the subject matter of such

activities have been held merely descriptive. See e.g., *In re Conus Communications Co.*, 23 USPQ2d 1717 (TTAB 1992) (ALL NEWS CHANNEL generic for a television channel broadcasting all news); *In re Weather Channel, Inc.*, 229 USPQ 854 (TTAB 1986) (WEATHER CHANNEL merely descriptive). Note how the latter case appears to disagree with the unpublished case quoted by applicant herein, stating that WEATHER CHANNEL was merely descriptive of the intended users of the applicant's programming services, which were directed to the broadcasters or channels.

Applicant states that it cannot fully understand the attachments to the Office action of August 17, 2007, believing that it did not receive all of the attachments. However, it appears that applicant did receive all of the attachments. The Office designates as separate attachments each page sent. Thus multiple page listings appear as separate attachments.

Applicant also wanted full copies of the *Nexis* stories previously provided. The Office obliges by submitting the stories below.

Also added, however, are additional stories from a search of the *Nexis* research database, also submitted in full. Story number 4 shows descriptive use of the phrase "video opinions" in an apparent reference to the applicant's services. Story number 5 refers to another offering a video opinion, and story number 6 shows use of "videopinion" by another writer. Also attached is a web page from the applicant, referring to the subject matter of its "videopinions" as being "short, unbiased video product reviews."

Further still, additional web pages are attached, showing how "video opinions" has become a highly descriptive phrase for opinions expressed on video.

Applicant's mark is a telescoped version of the words "video opinions", with VIDEOPINIONS having the shared "o". Although the resulting term has one less syllable than "video opinions", this does not appear to be controlling. The Trademark Trial and Appeal Board has affirmed a refusal to register in a similar situation, holding DATALERTS, a telescoped version of DATA ALERTS, to be a descriptive term. See attached copy of opinion in *In re Visual Analytics, Incorporated*, SN 76-465520 (Decided July 27, 2005).

The file will now be returned to the Trademark Trial and Appeal Board for resumption of applicant's appeal.

/Steven Foster/
 Steven Foster, Trademark Attorney
 Law Office 106
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Advertising Age

October 23, 2006

SECTION: DIGITAL; Pg. 35**LENGTH:** 313 words**HEADLINE:** Media Morph: Videopinions**BYLINE:** Abbey Klaassen**BODY:**

What it is: Text is so yesterday. While written user reviews have become a powerful tool for consumers looking to buy, a few firms are betting video opinions will be the next driver. ExpoTV has built a business on aggregating videos of its users reviewing products-so far they have more than 13,000 on the website. The beauty of it, said CEO Daphne Kwon, is that the reviews aren't anonymous: "If you find someone who's maybe like yourself or very credible, it's very effective." Wiki-style buying guide ShopWiki also offers user-generated video reviews, but so far the volume of them appears more limited.

Where you'll find it: ExpoTV syndicates its reviews to places such as GoogleVideo and AOL Video and on VOD with cable operators such as Comcast, Time Warner and Charter. A greater number of categories and videos are available online, only because the VOD platform is limited in the type of searching it can do. But the big growth opportunity for video reviews lies in the search engines integrating video and text-something largely considered inevitable.

Why people upload: There are monetary incentives. ShopWiki is offering \$50 each for the first 500 videos it accepts. ExpoTV will run similar promotions, paying \$10 for a video, and has had a refer-a-friend bonus. Its sustainable payment model, however, is a play-for-pay one-1[#x203a] every time a video is played.

The ad angle: Video opinion sites will be mostly ad-supported on a cost-per-click basis. Right now ExpoTV boasts some direct marketers who are making videos, all of which the company marks as advertisements. "We're inviting advertisers to join the word-of-mouth conversation," said Ms. Kwon. "We believe that if a user is coming and looking for a Dell laptop that if Dell has something in a longer format video the user might value that." Soon, she hopes the advertising will evolve into a click-to-buy model.

LOAD-DATE: October 25, 2006

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Chicago Daily Herald

October 15, 2006 Sunday
Lake Edition

SECTION: NEIGHBOR; Pg. 1

LENGTH: 282 words

HEADLINE: Justin Gorson's got a gift for gab about PC gaming

BYLINE: Georgia Evdoxiadis, Daily Herald Staff Writer

BODY:

Your mom may have told you that playing video games was a waste of time.

But for Justin Gorson, it was his affection for PC gaming that helped win him a high-definition, flat-screen Sony TV and surround- sound speaker system.

Gorson, a 23-year-old Hawthorn Woods resident, recently entered an online contest to post a **video opinion** and found himself one of the grand-prize winners.

"I thought I'd try my hand at reviewing," said Gorson of his decision to enter the ExpoTV contest with his thoughts on "Prey", a personal computer game.

As a result of Gorson's win, his **video opinion** also will be featured on the Comcast On Demand network.

"Justin is a perfect example of someone who is really able to convey what he liked or didn't like," said Daphne Kwon, ExpoTV's chief executive officer, about why Gorson's opinion stood out. "He's a great guy and we were really pleased."

Gorson, who attends Illinois Wesleyan University in Bloomington, says he will eventually bring the TV-speaker combo home. But first, he plans to set it up for some serious gaming with his brother and college friends.

"I'm gonna have to bring it to school for a while," he said with a laugh.

Gorson named "Final Fantasy 7" as his all-time favorite video game.

"My brother and I have spent many hours playing that game," he said. Gorson said his grandmother first started his fascination with video games when she bought Super Mario Bros. 3 for him and his brother.

At school, Gorson majors in business management and says he's considering a future in intellectual property law, where he can put his interests to use.

"If there's an opportunity into the gaming field, I'd love to (get involved)," he said.

gevdoxiadis@dailyherald.com

LOAD-DATE: October 20, 2006

6 of 26 DOCUMENTS

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Deseret Morning News (Salt Lake City)

September 30, 2006 Saturday

LENGTH: 514 words

HEADLINE: Gaming leads to big prize

BYLINE: Jeremy Twitchell Deseret Morning News

BODY:

PROVO -- Remember wishing as a kid that someday you could get paid to play video games?

Provo resident Dan Chan may not yet have figured out how to draw a paycheck for pursuing his electronic hobby, but the home theater system he recently won for doing so will probably do for now.

Chan, an electrical engineering/pre-med major at Brigham Young University, was one of five grand prize winners in a contest sponsored by Gamepro.com, an online video-game review site, and ExpoTV.com, an online consumer review site, to create a review of his favorite video game.

In exchange for his 3-minute review of "Battlefield 2: Armored Fury," Chan won a Sony high-definition, flat-screen television and a surround sound system.

"I was shocked," Chan said. "It was the first time I've won something significant, so I was excited."

Chan, who has been creating video reviews -- or "videopinions" -- since last November, couldn't pass up the opportunity when he heard about the contest.

"I decided to whip one up since I'm a college student and I do a little computer gaming," Chan said.

In his review, Chan used a "green screen" that allowed him to edit in game footage behind him as he spoke about the game, a trick no other entrant used.

Where did he get the high-tech green screen? His linen closet -- it was simply a green bed sheet. Fortunately for Chan, Carolyn, his wife and partner in making the videopinions, is a film major at BYU.

Representatives from ExpoTV.com said the use of the green screen was one of the main reasons Chan's entry was selected for a grand prize.

They said they weren't surprised when they saw Chan's entry because they had a lot of confidence in him to begin with. So much so, in fact, that when they announced the contest, they asked Chan to make a how-to video for other contestants to check out.

"We love Dan and we feel like we know who he is, because we know what he looks like, we know what kind of clothes he wears," ExpoTV.com CEO Daphne Kwon said. "He's been really supportive of what we're trying to do ... he's the perfect example of the consumer voice and he's one of the best we have out there."

Kwon said the idea behind the 2-year-old company is to give consumers a chance to voice their opinions and give others a chance to get informed, independent opinions when shopping for an item.

The company's Web site, www.ExpoTV.com, lists consumer reviews of everything from arts and crafts to travel. Chan's winning entry, as well as the other four grand prize winners, are available for viewing at the site.

"(The **videopinions**) are all real quality, thoughtful and authentic," Kwon said. "And they're really sincere, because you have to put your face on it."

And Chan, who has done more than 30 **videopinions** in the past year, plans to be putting his face on more.

"The cool thing about it is they're online and easy to see," Chan said. "When you're looking at a product, it's nice to get a third-party opinion from someone who isn't influenced by the company ... it's an interesting, novel approach, and it's really taking off," he said. E-mail: jtwitchell@desnews.com

LOAD-DATE: September 30, 2006

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September 8, 2006 Friday
ALL EDITIONS

SECTION: NEWS; Pg. 003

LENGTH: 329 words

HEADLINE: 'Survivor' star defends battle of the races

BYLINE: By SEAN L. McCARTHY

BODY:

Can a TV show celebrate ethnic pride by promoting racial divisions?

Host Jeff Probst defended the controversial premise of the upcoming "Survivor: Cook Islands" (premiering Thursday at 8 p.m. on WBZ, Ch. 4) that calls for the separation of 20 contestants into four groups: white, black, Hispanic and Asian.

"I think when most people hear the idea, the first reaction is to flinch a little bit. It's a sensitive subject," Probst said in a conference call yesterday with reporters.

In previous seasons, producers have separated tribes by age and gender.

But dividing by race and ethnicity has prompted everything from outcries by advocacy groups to

cheers from white supremacists.

Viewers should give the show a chance, Probst said. "You have to recognize you're condemning our show before you've seen it," he said.

The show has played up its racial politics both through TV ads and online, asking fans on the "Survivor" Web site to submit **video opinions** on the upcoming season.

Probst said he and producer Mark Burnett knew "Survivor" would need a trick to stay competitive in its Thursday night time slot. At first, they intended to answer critics of the show's lack of diversity by merely casting 20 people of different ethnicities.

"We actually felt dividing them ethnically was a positive idea, because it came from our discussions with them in casting," Probst said.

They also thought increasing the number of minorities might attract new viewers. Probst acknowledged that "Survivor" is mostly a white show watched by white people, with whites submitting more than 80 percent of the applications each year.

In the second episode, one tribe argues about whether they're perpetuating racial stereotypes, said Probst, declining to talk further about how race plays into the results.

"It wouldn't surprise me if people are rooting initially based on ethnicity," he said. "At the end of the day, I think you'll be rooting for people you like."

- slmccarthy@bostonherald.com

LOAD-DATE: September 8, 2006

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Kansas City Star (Kansas & Missouri)

June 19, 1996 Wednesday JOHNSON COUNTY EDITION

SECTION: ZONE/SHAWNEE MISSION; Pg. 3

LENGTH: 369 words

HEADLINE: Students view life from both sides of camera

BYLINE: ROBERTA JOHNSON, Staff Writer

BODY:

Mike Derting belted out the directions to his crew:

"Look behind you. Still look behind you OK. You're

3/15/2007

caught," he said, motioning to the others. "Act like you're putting him on the ground."

Derting laid on the floor and zoomed the camera into the captured student's face.

"It's a wrap," the recent Shawnee Mission South graduate said, getting off the floor.

Derting, who was filming the opening scene to the students' news magazine show, works as a teaching assistant in the Broadcast Explorers class through the summer enrichment program at South, 5800 W. 107th St.

The class has been offered several years and is popular enough that an advanced course will be introduced later this summer.

Broadcast Explorers, which is open to students in the fifth through eighth grades, is taught by South's broadcast and forensics teacher, Cathy McNamara.

During the week, the students will design, tape and edit their own TV show. They'll interview staff and students in the summer enrichment classes for K-SEN, the Summer Enrichment Network. Although they won't get to show off their work for all the enrichment classes, a videotape of the news programs will be in the lobby of the school, McNamara said.

"I like to be on TV," said news anchor Amanda Hays, a seventh-grader at Westridge Middle School. "We got to tape (yesterday) and today, and I get to do the video opinion poll."

Many students were excited about the idea of being on camera.

"It's fun to use our imagination and interview people," said anchor Rachel Paradise, a sixth-grader at Sunflower Elementary.

But a few said they like the work behind the scenes better and were interested in taking the advanced class next month.

"I'm really interested in how to take good videos of things," said reporter Adam Fichman, a sixth-grader at Leawood Middle School, who liked to work with the video equipment. "Whenever people come over with their tapes, they have all this stuff in between the things they want to shoot.

"I think the class could teach me more and help me learn more. I like editing and stuff."

GRAPHIC: Photo (color), Eleven-year-olds Rachael Berlau and Rachel Paradise have fun pretending they're real life news anchors for KSEN or the Kansas Summer Enrichment News, during their broadcasting class at Shawnee Mission South High School. The class is one of many offered in the Shawnee Mission District's summer enrichment program.; DAWN VILLELLA/The Star

LOAD-DATE: June 19, 1996

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Los Angeles Times

July 25, 1991, Thursday, Home Edition

SECTION: View; Part E; Page 1; Column 2; View Desk

LENGTH: 1975 words

HEADLINE: PRIVATE EYES;
MAKING A HOME VIDEO HAS BECOME SO EASY THAT NOTHING IS TOO MUNDANE OR
TOO WEIRD FOR TAPE.

BYLINE: By GERALDINE BAUM, TIMES STAFF WRITER

DATELINE: NEW YORK

BODY:

For a moment, put aside the grainy scene of Los Angeles policemen bloodying a lone black man while a bystander records every tragic blow with his new video camera.

Forget the chaos in Detroit on the Fourth of July when a man at a fireworks display randomly videotaped a girls' gang beating up two bystanders.

And briefly put aside Newsweek, which coined "video vigilantes" last week to describe common folk with camcorders who capture the spectacular and send it overnight to CNN.

In other words, forget the important, insistent or socially unjust and for just a second think about yearbooks, doorbells, treasure hunts, camp counselors, grandma's strudel, diaries, funerals, stag parties, employee training.

And Boy Scouts. It is now possible for scouts to earn a merit badge for video production just the way they can for rubbing two sticks together to start a fire. It is also now a snap for Mina Johnson, a fledgling Los Angeles screenwriter, to depict her life on video the way Jane Austen might have portrayed a young woman unraveling her thoughts by writing in a diary.

For each of the last seven years, Johnson, 27, has made a one-hour video of herself comfortably sunk in a chair and rambling about her life. She never watches these 1/2-inch video diaries; rather, she says, she'll wait 30 years to take a look.

"I think of this as a tool to show my kids when they're older, the stages their mother went through," says Johnson, who has no children yet. "I want it to kind of explode in my brain when I see who I was."

In the last few years, the ability to make a home video has become so easy that it seems nothing is too mundane, too routine, too personal, too complicated or too weird to be scrutinized by a camcorder -- the camera that sees and hears all, no matter how dark the scene, how quiet the sound.

With each generation, the camcorder gets smaller, lighter, easier to operate and more affordable. With an \$800 camera, a hobbyist can now produce quality video similar to what professionals produce with \$50,000 worth of equipment. The same goofy family scenes that cost \$7 for a minute of film (Remember the stuff that had to be threaded through the projector while someone put up the screen and turned off the lights?) now cost \$2 for hours of instant record-and-review video tape.

Nearly one in six American families owns a camcorder, compared to the Stone Age -- 1985 -- when one in 30 had one. That year, a mere half-million camcorders were sold; this year, the consumer electronics trade group predicts sales of 3.3 million.

Tom Weinberg, executive producer of "The 90s" -- a critically acclaimed show on PBS that airs collages of home videos made by amateur producers around the country -- says we are again outwitting ourselves with technology that is changing our perspective on the world.

"Now that camcorders are so available, television has a different credibility factor because very little of what we see on TV now doesn't pass the test of 'I could have done that myself,'" says Weinberg.

A self-described "grizzled video veteran," Weinberg was among a small group of 1970s documentary makers who called themselves "video freaks" and used 30 pounds of equipment to produce shows about the national political conventions.

"Now, everywhere, people use video to express an opinion, and shows like mine and 'America's Funniest Home Videos' are growing in popularity because the viewer looks at the tape and says, 'I believe what I see because it's not filtered through some TV programmer. I believe *this* is reality.'"

Ubiquitous and persistent, the videomakers, camcorder operators, video artists -- whatever you want to call them -- constantly find new reasons to transfer life's realities onto High 8. (That's videospoken for high-resolution 8-millimeter videotape.)

People use these hand-held or shoulder-schlepped devices to get rich, get famous or just embarrass each other. There's the camp counselor who has become an entrepreneur by recording his campers and selling tapes to parents at summer's end. And there's the young woman who could never get her grandmother to write down her strudel recipe. She made a video with close-ups of grandma's knobby hands and her accented instructions to "use a pinch of this and a handful of that."

There are also the mean-spirited, those who play dirty tricks on animals and make a whole show of them. And there are the good citizens: A man in Southern California wanted a stop sign on a wickedly dangerous corner, so he spent days video taping near-accidents. After he turned his tapes over to his city council, a stop sign was erected.

Birth to death, the action is on video.

Actors Demi Moore and Bruce Willis had three video cameras rolling during the delivery of their first child -- with Moore pushing, Willis catching and a few friends watching.

The last moments of a person's life are also available on tape. A woman called the editor of Videomaker magazine and asked what would be the best equipment to capture her dying daughter's last days. Funeral directors in some cities offer to tape ceremonies following the coffin all the way to graveside.

And what about sex?

Yes, America has long been going at it in front of a camcorder atop a tripod, reviewing the tapes, showing them to friends, playing them back as another avenue to find variation and contrast. Some label this homemade erotica as pornography; others say it's as wholesome as buying sexy lingerie for the wife. In a mall.

In fact, people are so used to the *cinema verite* look produced by home videos -- the grainy scenes

shot at funny angles -- that professionals borrow it to make advertisements and movies.

A whole generation is so used to seeing itself on television that for some young people, there is a blurring of the lines of where the signal comes from, according to Leo Braudy, author of several books on popular culture and the Leo S. Bing professor of English at USC.

Braudy says his oft-videoed 3-year-old grandson, a rock 'n roll aficionado, spontaneously jumped on stage to perform with a mariachi band while vacationing in Mexico. Says Braudy: "The video camera is so often there, it creates a self-consciousness, the sense that we're always being looked at. It's a way to create a more perfect self."

Videography has gone so far beyond Jane Fonda's relentless smile and taut diaphragm that there is even a man out there making money selling videos that demonstrate how to lay asphalt on the front walk.

A Nashville, Tenn., firm is one of several that produces video yearbooks to give a graduate 30 minutes of memories for \$40. A Cincinnati firm has pioneered one of the dozens of ways video cameras are used for surveillance: The Ohio company sells "video doorbells" so visitors can be spied on before they're invited beyond the front door.

There are contests, festivals and support groups for camcorder operators as far and wide as Atlanta, Los Angeles and Carbondale, Ill. Scott Blumberg, a New York videographer, travels around the country organizing "treasure hunts" for amateurs to teach them how to better use video equipment often complicated by attachments. He creates teams of 10 people, gives them lists of things to record -- for example, "someone laughing all the way to the bank" -- and judges the results.

"There's a lot of frustrated producers and directors out there who are just sick of recording the kid's birthday party," says Blumberg.

Yet, studies show most camcorders are used for such nostalgic moments as a first haircut, first spin on a two wheeler, baptism or bris. There are also mountains of tapes of inanimate moments: the Eiffel Tower at sunrise, Maui at sunset.

During the Persian Gulf crisis, camcorders also went to war. For the first time, broadcast journalists used the lightweight, discreet equipment in the field; the networks also handed out camcorders on the Kuwaiti border to people sneaking back during the Iraqi occupation.

As well, 450 camcorders, 350 televisions, 370 VCRs and 250,000 blank videocassettes were sent free to soldiers in Saudia Arabia as part of the "Better Than a Letter" program. The soldiers were encouraged to "write" five-minute programs and send them home. Montgomery Ward also loaned VCRs to families who didn't have them and wanted to "read" their video mail.

Manufacturers constantly look for new niches in the home video market. News accounts say Sony first shrunk the shoulder-carried camcorders to palm-sized in the early 1980s primarily to attract a new consumer group.

In addition to new parents -- who seem to think camcorders are as critical as cribs -- Sony wanted to entice younger consumers to take the smaller 1.5-pound camera on vacation. And so goes the Handycam advertisement: "Something happens between the milestones. Between the weddings and the birthday parties. It's called the rest of your life."

Critics like Neil Postman, a professor of media ecology at New York University, believe we are numbing ourselves by recording our lives instead of actually living them: "If it wasn't videoed, it didn't happen? Isn't that the way it goes?"

"It's almost as if reality itself is not satisfactory if it's not recorded," he says, launching into a favorite fable about two little old ladies pushing baby carriages in the park. One looks at the other's grandchild and says, "Oooohh, he's such a cute baby." The other responds: "I have even cuter pictures at home."

Postman calls the video invasion downright evil.

"You take a picture of a baby to remember what he or she looks like -- that enriches life," he says. "But do you lug around a camcorder wherever you go to confirm that you actually went some place, taking endless pictures and then never looking at them again? . . . It's frightening. All this snooping, all of us looking at each other and ourselves. It makes you feel remote."

But Matt York sees a different reality.

"Empowerment," the 34-year-old publisher of Videomaker magazine says, almost dreamily. "Camcorders today are more like what paper and ink were 10 years ago, when anybody who was literate could express their spiritual or political feelings on paper. Now, people use videos to get on television. There are more and more outlets that provide more power to the individual."

After failing to make a career in New York City as a video producer, York started publishing Videomaker in 1986 in Chico, Calif. He has 75,000 readers, he says, mostly people who own camcorders for more than a weekend hobby. The magazine focuses on the equipment and how to use it. But the most frequent features are on people who use video to help society -- to teach children, illuminate the public about social ills, create art.

A recent article recounted how a consortium of peace groups became frustrated with network news coverage of the Gulf War. They solicited video opinions from groups nationwide, received 100 responses and then culled them, broadcasting four short programs on cable and PBS stations.

"Increasingly, you'll see raw footage by an individual getting into homes of America," says York.

Which comes back to hordes of so-called video vigilantes using their cameras as tools of communication and democracy. Or to spy on their neighbors.

At least one Tampa man thinks it's undemocratic. He and his girlfriend were arrested last week on charges of lewd and lascivious behavior around children after a neighbor videotaped them having sex in their hot tub.

"It seems almost communistic, being arrested at your own house for having sex," said Alfred Stephens, the man caught *au natural*. "It amazes me that someone had the audacity to actually videotape this."

So what would "1984" author George Orwell think of all this now?

Big Brother is watching us and we are watching him.

But mostly we are watching each other.

GRAPHIC: Photo, Screenwriter Mina Johnson uses her camcorder as a diary: "I think of this as a tool to show my kids when they're older, the stages their mother went through." ELLEN JASKOL / Los Angeles Times; Photo, COLOR, (Orange County Edition) Screenwriter Mina Johnson uses her camcorder as a diary: "I think of this as a tool to show my kids when they're older, the stages their mother went through." ELLEN JASKOL / Los Angeles Times

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In re Visual Analytics, Incorporated

Serial No. 76465520

Trademark Trial and Appeal Board

2005 TTAB LEXIS 318

July 27, 2005, Mailed

[*1]

Before Quinn, Walters and Bucher, Administrative Trademark Judges.

COUNSEL:

Peter J. Willsey and Adam L. Barea of Cooley Godward for Visual Analytics, Incorporated.

Anne Madden, Trademark Examining Attorney, Law Office 103 (Michael Hamilton, Managing Attorney).

OPINIONBY: WALTERS

OPINION:

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB

Opinion by Walters, Administrative Trademark Judge:

Visual Analytics, Incorporated has filed an application to register on the Principal Register the mark **DATALERTS** for "computer software that monitors changes and additions to information in databases and provides automatic notification to users of changes and additions to information in databases," in International Class 9. n1

n1 Serial No. 76465520, filed October 30, 2002, based on an allegation of a bona fide intention to use the mark in commerce.

The 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 in connection with its goods.

Applicant has appealed. Both applicant and the examining attorney have filed briefs, but an oral hearing was [*2] not requested. We affirm the refusal to register.

Preliminarily, we note the examining attorney's objection to Exhibits A and D submitted by applicant with its brief on the ground that this matter is untimely. Applicant did not file a reply brief and, so, did not respond to this objection. The examining attorney does not object to Exhibits B and C to the brief because they are copies of the previously submitted dictionary definitions of "data" and "alert." Exhibit A is a printout from applicant's website that is different from the printout submitted during prosecution of the application. As such, it is untimely and has not been considered. Exhibit D consists of

copies from the USPTO database of four third-party registrations. Three of the third-party registrations were listed in applicant's response of October 20, 2003, and, as such, we find that the submission of the actual copies of these registrations is acceptable. Not only did the examining attorney have notice of these registrations, but she did not object to the mere listing of the registrations by applicant in the October response. However, we have given no consideration to the copy of Registration No. 2192630, which was not [*3] previously listed by applicant in its response and, thus, is untimely.

Turning to the substantive refusal in this case, the examining attorney contends that the mark is a telescoping of the two words DATA and ALERT; that the telescoped mark merely describes a significant feature of the identified goods, namely, that applicant's software "processes data and information [and] send[s] notifications or alerts to defined users when a particular event occurs to change data in a database" (brief, p.4); that purchasers will understand that this "is a positive feature and the primary function of the software" (brief, p. 5); and that the combination of the two descriptive terms DATA and ALERT into **DATALERT** creates no incongruity and the mark remains merely descriptive.

Applicant contends that the mark as a whole creates a unique commercial impression different from the individual terms; that the term is not commonly used in this field nor does it possess a common meaning in any field; that competitors have no need to use applicant's mark descriptively; that the mark is, at most, suggestive; and that any doubt should be resolved in favor of publication of the mark.

Both the examining attorney [*4] and applicant have submitted definitions of the individual terms "data" and "alert." We note, of most relevance, the definition from *The American Heritage Dictionary of the English Language* (4th ed. 2000) n2 of "data" as "1. factual information, especially information organized for analysis or used to reason or make decisions [and] 2. *computer science* numerical or other information represented in a form suitable for processing by computer" and of "alert" as "*adjective* -- vigilantly attentive; watchful [and] *noun* -- a signal that warns of attack or danger"; and from *TechEncyclopedia*, an online dictionary, a definition of "alert" as a "sound or visual signal that indicates that some predefined event has occurred or some error condition has occurred[;] the terms alert and alarm are often used synonymously."

n2 As downloaded from Internet website bartleby.com on July 23, 2003.

Also in the record are excerpts submitted by applicant from its website wherein applicant makes the following statements (*emphasis added*):

DATALerts! (Rules and Alerts) is a monitoring and notification system that automatically notifies defined users when a particular event occurs. [*5] **DATALerts!** is fully configurable allowing users to define the events that trigger notification. **DATALerts!** sends notices, through push technology, to **alert** individuals of **data** changes.

The **DATALerts!** Rules and Alerts can be set up to notify specific users whenever new information is entered into a database, a specific type of data is modified, or a scheduled service returns results.

The examining attorney submitted excerpts from a representative sample of articles retrieved from the Lexis/Nexis database. The following are several examples:

The Searchspace system combines both human and data-mining rules to generate risk **alerts** at the individual, national, relationship or organizational level. [*Software Development*, May 4, 2004.]

The SEM server then aggregates and correlates the **data** to provide a meaningful look at

events within the environment. It can also archive the data, send out **alerts** and report on events, trends and usage. [*ComputerWorld*, April 5, 2004.]

Headline: "An inside look at how one of Symantec's security operations centers protects clients from cyber attacks."

Hillyard stares at a row of computer screens, all of which display [*6] a software application known as the Analyst Response Console (ARC). The color-coded user interface provides **alerts and data** to help analysts focus on the most critical events at any given moment. [*ComputerWorld*, March 29, 2004.]

The examining attorney submitted copies of eight third-party registrations for software products. Four of the registered marks include the disclaimed word "data" and the other four registered marks include the disclaimed word "alert." Applicant submitted copies of three third-party registrations for software or related products. Each is a telescoped mark, PDALERT, DERMALERT and AQUALERT, and none include disclaimers of the word "alert." Prior registrations do not control our determination in this application. *In re Nett Designs, Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). We must consider each application on its own merits based on the record in that application and *current* circumstances. *In re Sun Microsystems Inc.*, 59 USPQ2d 1084, 1088 (TTAB 2001). Furthermore, examining attorneys have wide discretion in requiring disclaimers. TMEP § 1213.01(a). In [*7] many instances USPTO policy directs examining attorneys not to require a disclaimer of a particular descriptive term, such as, when the descriptive term is part of a unitary mark. See, e.g., TMEP § 1213.05. Therefore, the presence or absence of a disclaimer in a particular registration does not necessarily indicate whether or not the USPTO considered a term merely descriptive, even at the time the particular application was examined. We find the third-party registrations submitted by the examining attorney and applicant are of little, if any, probative value.

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 product or service in connection with which it is used, or intended to be used. *In re Engineering Systems Corp.*, 2 USPQ2d 1075 (TTAB 1986); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). It is not necessary, in order to find that a mark is merely descriptive, that the mark describe each feature of the goods or services, only that it describe a single, significant [*8] quality, feature, etc. *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985). The examining attorney bears the burden of showing that a mark is merely descriptive of the identified goods or services. See *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 21567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987).

We agree with applicant that we must consider whether the mark as a whole is merely descriptive and not just the individual elements, *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1372 (Fed. Cir. 2004). However, it is reasonable to look, first, at the individual terms, "data" and "alert." Regarding the term "data," applicant expressly states that it "does not dispute that data' would be understood by a consumer to relate to computer information" (brief, p. 9). Regarding the term "alert," applicant relies on the definition of "alert" as "a signal that warns of attack or danger" to argue that this is a vague term in connection with software. However, we find the evidence of record, including the examining attorney's dictionary definition [*9] of "alert," applicant's own website and the excerpted articles, clearly establishes that "alert" in the context of applicant's goods would be understood as a synonym for "notify." Further, the evidence clearly establishes that the term "data alert" would be merely descriptive of a significant feature of applicant's software, namely, that it is designed specifically to "alert" users to changes that have occurred to information, or "data," in the user's database.

Applicant's argument that consumers would think that the software is a form of data protection against cyber attacks is not well taken. The identification of goods specifies the exact nature of the software and the question we must consider is whether someone who knows what the goods are will

understand the mark to convey information about those goods. *In re Tower Tech Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002); see also *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537 (TTAB 1998); *In re Home Builders Association of Greenville*, 18 USPQ2d 1313 (TTAB 1990); and *In re American Greetings Corporation*, 226 USPQ 365 (TTAB 1985). [*10]

We find that the individual terms "data" and "alert" as well as the composite term "data alert" are merely descriptive in connection with the identified goods because the terms describe the above-mentioned feature whereby the software alerts users to changes in data contained in their databases.

However, we must go one step further and consider whether the telescoped term **DATALERT** is merely descriptive. This turns on the question of whether the telescoping of "data" and "alert" evokes a new and unique commercial impression.

Applicant makes the following statement in support of its position that the telescoped mark creates a unique impression (brief, p. 9):

. . . Upon encountering applicant's mark, a consumer would first have to recognize that applicant's three-syllable **DATALERTS** is suggestive of the four-syllable, different-sounding phrase "data alerts." **DATALERTS** is not simply the mere juxtaposition of the terms "data" and "alerts." Rather, **DATALERTS** is a unique combination of these two terms, whereby the second "A" in "data" and the "A" in "alerts" are shared, creating a suggestive mark possessing one less syllable than the compound term "data alerts."

It is true that a [*11] prospective purchaser may pronounce **DATALERTS** as a three-syllable word. However, the two words comprising the mark, "data" and "alerts," are obviously apparent when viewing the mark in connection with the identified goods, regardless of the telescoping of the two words, and it is equally likely the viewer may automatically supply the missing "A" and pronounce the term as "data alerts." The telescoping creates no double entendre or unique characteristic that results in the telescoped mark **DATALERTS** being somehow more than a merely descriptive combination of the two individual words "data" and "alerts." This is not a situation where the goods are encountered under a mark wherein a multistage reasoning process, or resort to imagination, is required in order to determine the attributes or characteristics of the product or services, which would render the mark suggestive. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); and *In re Atavio*, 25 USPQ2d 1361, 1362 (TTAB 1992). Nor do we have any doubt that this mark is merely descriptive in connection with the identified goods. *In re Atavio, supra* at 1363. [*12]

In conclusion, when applied to applicant's goods, the term **DATALERTS** immediately describes, without conjecture or speculation, a significant feature or function of applicant's goods, as described above. Nothing requires the exercise of imagination, cogitation, mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's goods to readily perceive the merely descriptive significance of the term **DATALERTS** as it pertains to applicant's goods.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Trademark Law
 Conveyances
 General Overview
 Trademark Law
 Protection of Rights
 Registration
 Disclaimer of Unregistrable Matter
 Trademark Law
 Subject Matter
 Descriptive & Laudatory Terms
 General Overview

Decision: The refusal under Section 2(e)(1) of the Act is affirmed.

Note:

In order to avoid size limitation constraints on large e-mail messages, this Office Action has been split into 5 smaller e-mail messages. The Office Action in its entirety consists of this message as well as the following attachments that you will receive in separate messages:

Email 1 includes the following 7 attachments

1. vop-1
2. vop-2
3. vop2
4. vop3-1
5. vop3-2
6. vop4-1
7. vop4-2

Email 2 includes the following 7 attachments

1. vop5-1
2. vop5-2
3. vop5-3
4. vop6-1
5. vop6-2
6. vop7-1
7. vop7-2

Email 3 includes the following 11 attachments

1. vop8-1
2. vop8-2
3. vop9-1
4. vop9-2
5. vop9-3
6. vop10-1
7. vop10-2
8. vop10-3
9. vop12-1
10. vop12-2
11. vop13-1

Email 4 includes the following 12 attachments

1. vop13-2
2. vop14
3. vop15-1
4. vop15-2
5. vop15-3
6. vop15-4
7. vop15-5
8. vop15-6
9. vop15-7
10. vop15-8
11. vop15
12. vop16-1

Email 5 includes the following 1 attachment

1. vop16-2

Please ensure that you receive all of the aforementioned attachments, and if you do not, please contact the assigned-examining attorney.

EXHIBIT C

LEXSEE 2006 TTAB LEXIS 85

In re Epigenomics AG n1

n1 The application was originally filed by Epigenomics GmbH and a change of name to Epigenomics AG was subsequently recorded at Reel/Frame No. 2699/0960.

Serial No. 76089226

Trademark Trial and Appeal Board

2006 TTAB LEXIS 85

March 14, 2006, Mailed

[*1]

Before Hairston, Drost, and Zervas, Administrative Trademark Judges.

COUNSEL:

Edward M. Kriegsmann of Kriegsmann & Kriegsmann for Epigenomics AG.

Glenn Clark, Trademark Examining Attorney, Law Office 115 (Tomas V. Vlcek, Managing Attorney).

OPINIONBY: DROST

OPINION:

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE TTAB

Opinion by Drost, Administrative Trademark Judge:

On July 14, 2000, Epigenomics AG (applicant) applied to register the mark 5TH BASE GENOMICS, in standard character form, on the Principal Register for the following goods and services:

Diagnostic reagents for scientific purposes including forensic examination; diagnostic test kits for scientific purposes, consisting of reagents, working solutions, plasters, namely, adhesive tape, slides and solid matrix material, all sold together as a unit in Class 1.

Diagnostic reagents for medical purposes for diagnosing inflammations, infections, diseases of the central nervous system, heart, circulation, neurologic, endocrine, autoimmune and genetic diseases and cancers, consisting of reagents, working solutions, plasters, namely, adhesive tape, slides and solid matrix material, all sold together as a unit; medical diagnostic comprising reagents, working [*2] solutions, plasters, namely, adhesive tape, slides and solid matrix material, all sold together as a unit, for determining the presence of pathogens in the environment in Class 5.

Laboratory equipment, namely, an apparatus for testing a sample, for demonstrating the presence of analytical elements in samples and to determine types of samples in connection with distribution patterns and an apparatus for the production of a series of mole biological data and parts thereof in Class 9.

Providing multiple-user access to the Internet in Class 38.

Research and development services for third parties in the field of diagnostic chemicals, forensic methods, compositions and devices, measuring apparatuses for use in product research and development, in methods for preparation and purification in water treatment plants; methods for testing the environment and determining industrial quality; chemical separation analysis and diagnosis, forensic and medical genetics testing for third parties; computer programming for others in the field of data processing; computer services, namely, providing a searchable database in the field of DNA-related data on a global computer network in Class 42.

[*3]

The application is based on applicant's claim of priority under 15 U.S.C. § 1126(d) because of its ownership of German application No. 300 04 091.1/42 filed January 14, 2000, and on its ownership of German registration No. 300 04 091 issued April 17, 2000.

The examining attorney refused registration on the ground that the mark was merely descriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), because:

The term "5TH BASE" is a commonly used term in the field of genomics. Based on the information provided in the applicant's web site, it is clear that the term "5TH BASE" immediately names and describes a specific molecule, methylated cytosine ("mC"), that forms DNA and RNA molecules. The applicant's goods and services will be used to modify or change this "5TH BASE" in the DNA to treat certain complex diseases to which the identified goods and services relate.

Brief at 5.

Applicant, in turn, argues (Brief at 6):

Applicant notes, for example, that none of the recited goods contains "5th bases."

Similarly, with respect to the term "genomics," the Trademark Examining Attorney has [*4] failed to explain how "genomics" conveys anything meaningful about the recited goods and services. At best, all the Trademark Examining Attorney has done is to conclude that the recited goods and services "will be used in the field of genomics."

Applicant notes that none of the search results provided by the Trademark Examining Attorney have disclosed the mark, as a whole, or have shown the mark, as a whole, being used to describe the recited goods/services.

In addition, Applicant notes that, to the best of its knowledge, 5TH BASE GENOMICS is being used exclusively by Applicant.

When the examining attorney made the refusal final, applicant appealed to this board.

A "mark is merely descriptive if the ultimate consumers immediately associate it with a quality or characteristic of the product or service." In re MBNA America Bank N.A., 340 F.3d 1328, 67 USPQ2d 1778, 1780 (Fed. Cir. 2003). See also In re Gyulay, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987); In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). [*5] We consider descriptiveness of a mark in the context of the particular goods or services for which registration is sought and not in the abstract. In re Abcor Dev. Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). A mark need only describe a single significant quality or property of the goods in order to be descriptive. Gyulay, 3 USPQ2d at 1009. In addition, we must consider the mark in its entirety. P.D. Beckwith, Inc. v. Commissioner, 252 U.S. 538, 545-46 (1920). However, "it is perfectly acceptable to separate a compound mark and discuss the implications of each part thereof . . . provided that the ultimate determination is made on the basis of the mark in its entirety." In re Hester Industries, Inc., 230 USPQ 797, 798 n.5 (TTAB 1986).

We begin our discussion of the descriptiveness issue by considering the evidence that the examining attorney has made of record. The examining attorney has included a definition of "genomic" as "Genetics. Of or relating to the genome." *Academy Press Dictionary of Science and Technology*. First [*6] Office Action, attachment. The examining attorney also included evidence from the Internet concerning the term "Genomics."

Cambridge Healthtech Institute's Fifth Annual Impact of Genomics on Medicine [2002 Program] . . . Genomic information is being applied as a critical component of drug development strategies for identifying therapeutic targets and for mapping out pathways of genes and proteins to gain a comprehensive view of biology. This meeting will look into the technologies underlying proteomics, gene expression, and functional genomics as well as applying genomics to overall strategies in drug discovery.

The examining attorney also submitted numerous trademark registrations in which the word "genomics" was used in the identification of goods and services or in which either the term "genomics" is disclaimed or the mark is registered on the Supplemental Register. "Such third party registrations show the sense in which the word is used in ordinary parlance and may show that a particular term has descriptive significance as applied to certain goods or services." *Institut National Des Appellations D'Origine v. Vintners International Company*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992). [*7] Several examples are set out below.

Registration No. 2,644,582 -- INVERSE GENOMICS ("Genomics" disclaimed) for, inter alia, scientific research and development relating to the discovery and validating of drug target genes

Registration No. 2,737,705 -- BEYOND GENOMICS ("Genomics" disclaimed) for, inter alia, chemicals and software for use in genomics

Registration No. 2,694,203 -- GENOMICSCOLLABORATIVE (Supplemental Register) for, inter alia, collecting and storing biological samples in the field of genomics

Registration No. 2,637,715 -- PHYSIOLOGICAL GENOMICS (Supplemental Register) for, inter alia, publications in the field of genomics

Registration No. 2,384,178 -- ORION GENOMICS LLC and design ("Genomics LLC" disclaimed) for, inter alia, consultation and research services in the field of structural and functional genomics

Registration No. 2,475,197 -- WE TAKE GENOMICS PERSONALLY. ("Genomics" disclaimed) for, inter alia, genomic and bioinformatics services

Registration No. 2,348,435 -- CG CLEVELAND GENOMICS and design ("Cleveland Genomics" disclaimed) for DNA sequencing

Registration No. 2,193,432 -- APOCOM CLIENT TOOL FOR GENOMICS (ACTG) ("Client Tool for Genomics [*8] (ACTG)" disclaimed) for computer software for locating genes for DNA sequencing

We also note that, from applicant's website, the following definitions were provided:

Genome:

The genome is the total DNA of a species. Since all the DNA is wrapped up in chromosomes, the number of chromosomes is characteristic for a species, for example 23 in humans.

Genomics:

The science and commercial exploitation of genomes and the function of genes.

Furthermore, applicant is described as follows (<http://informagen.com>):

Epigenomics is a young, growth-oriented biotech company, offering a unique technology platform. Epigenomics aims at introducing the first routine diagnostics based on molecular biology for complex genetic disease into clinical reality on a global scale. Epigenomics pioneers the massive collection of epi-

genetic information for a description of cells and individuals by digital phenotypes.' With its technology Epigenomics will be a leader in the revolution towards tomorrow's personalized medicine.

Therefore, the evidence shows that applicant is operating in the field of genomics to the extent that its goods and services use, locate, or develop a database of genomic information. [*9]

Regarding the term "Fifth Base" or its numerical equivalent "5TH Base," the examining attorney has supplied several references to explain that the term 5TH Base is merely descriptive. At the EpiGenx Pharmaceuticals website under "EpiGenx in the News," there is an entry entitled "Epigenetics, Methylation, and DNA's mysterious 5th base" that goes on to explain: "Epigenetic mechanisms are implicated . . . DNA methylation holds the key to understanding these changes."

The Glossary section from applicant's website contains the following information:

5th BASE genomics(R)

Cytosine, one of DNA's four bases, can also be present in a methylated version (mC). It then has an important impact on gene activity, which is why it is being acknowledged as DNA's fifth base. Each cell contains the entire genome, but only uses a subset of it according to its function (e.g., a liver cell switches on different genes than a skin cell). In complex genetic diseases such as cancer, cardiovascular, or autoimmune, different genes are active than in healthy cells, with each disease featuring a characteristic pattern of active and inactive cells. Reading the pattern of mC in DNA in the first place and correlating [*10] it to disease is what we named 5th BASE genomics(R) and what opens up fundamentally new diagnostics and therapeutic opportunities.

DNA (Desoxyribonucleic acid):

The carrier of genetic information for all complex organisms. DNA is shaped like a twisted step-ladder -- the famous "double helix." The genetic information consists of nucleotide bases bound to a sugar-phosphate-backbone and is carried on the rungs of the ladder. As yet, only four bases were known: adenine (A), cytosine (C), guanine (G); [and] thymidine (T). Now, it is becoming clear that there is a fifth: When a methyl group is bound to C, cytosine, a very different base is produced with a dramatic effect on gene activity.

DNA-Methylation:

The DNA consists of the bases A, T, G, and C that encode an organism's genetic blueprint, but also the 5th base mC (methylated C), DNA methylation provides information on gene regulation that is specific for cell types and diseases, because cells can actively exchange C with mC when they switch genes off or on.

Epigenetic:

Unlike conventional belief, human DNA consists of 5 different bases: A, T, G, C, and the 5th base, methylated cytosine "mC."

The examining attorney also submitted [*11] the following excerpts from electronic databases.

The drug is known for its ability to keep DNA undermethylated. Methyl groups are known for their ability to keep genes turned off. In fact, of the four nucleic-acid bases -- adenine, cytosine, guanine, and thymine -- only cytosine accepts methyl groups and the resulting 5-methylcytosine is considered the "fifth base" in DNA.

McGraw-Hill's Biotechnology Newswatch, January 17, 1983

A little-known and long-neglected component of DNA is the focus of recently intensified research -- looking for keys to cancer, tissue regeneration, cell differentiation, and gene control. It's "the fifth base" on the DNA double helix, says Arthur D. Riggs, who heads up the biology department at the City of Hope National Medical Center here . . .

A fifth base, he recalls, is 5-methylcytosine (5-MeC), a variant of cytosine that makes up about 1% of the nucleotides in mammalian DNA. This minor base was first described in 1950 by Gerald R. Wyatt, a Canadian agricultural researcher . . .

Altering a cell's expression by thus preventing formation of its "fifth base," 5-MeC, may some day have important effects on cancer and tissue regeneration in humans.

[*12] *McGraw-Hill's Biotechnology Newswatch*, January 4, 1982

Besides modulating specific DNA-protein interactions, methylated cytosine, frequently referred to as the fifth base of the genome, also influences DNA structure, recombination, repair, imprinting, and mutagenesis.

J Biol Chem, Aug 4, 1995 (MEDLINE Database)

The existence in eukaryotes of a fifth base, 5-methylcytosine, and of tissue-specific methylation patterns have been known for many years, but except for a general association with inactive genes and chromatin the exact function of this DNA modification has been elusive. The different hypotheses regarding the role of DNA methylation in regulation of gene expression, chromatin structure, development, and diseases, including cancer are summarized, and the experimental evidence for them is discussed. *Experientia* Dec. 1, 1991 (MEDLINE database)

From this evidence, we draw the following conclusions. First, the term "genomics" is a commonly used term that describes the exploitation of genes in the field of biotechnology, which is the field in which applicant operates. See Applicant's website included with Office action dated November 22, 2002. See also, [*13] "*Impact of Genomics on Medicine [2002 Program]*" . . . Genomic information is being applied as a critical component of drug development strategies for identifying therapeutic targets and for mapping out pathways of genes and proteins to gain a comprehensive view of biology." The numerous registrations of record show that "genomics" is a term that is commonly disclaimed or registered on the Supplemental Register for goods and services in the area of biotechnology.

Second, the evidence of record shows that the term 5TH BASE is a merely descriptive term in the field of biotechnology. The term certainly was used prior to any date associated with applicant. One article indicates that the "Fifth base" was first described in 1950 by a Canadian researcher and articles between 1982 and 1995 refer to the "Fifth Base." These articles describe the "Fifth Base" in a similar way that applicant's website does, i.e., as a methylated version of cytosine. Cytosine, along with adenine, guanine, and thymine, are the four bases normally associated with DNA.

Third, we likewise find that when the terms are combined in the term 5TH BASE GENOMICS, the combined term is equally descriptive. "Methyl groups [*14] are known for their ability to keep genes turned off. In fact, of the four nucleic-acid bases -- adenine, cytosine, guanine, and thymine -- only cytosine accepts methyl groups and the resulting 5-methylcytosine is considered the fifth base' in DNA." *McGraw-Hill's Biotechnology Newswatch*, January 17, 1983. Applicant's website (emphasis added) similarly touts the same quality: "DNA methylation provides information on gene regulation that is specific for cell types and diseases, because cells can actively exchange C with mC *when they switch genes off or on.*" Furthermore, these "DNA methylation signals, comparable to a switch turning on or off individual genes, can be digitized to create a unique fingerprint for each cell." *Impacts of Genomics on Medicine*, Description of remarks by Dr. Alexander Olek, Epigenomics, p.8. Obviously, to the extent that applicant is involved with the science and commercial exploitation of the human genome and the function of genes that involve using methylated cytosine (the Fifth Base) the term would immediately describe its goods and services.

At this point we note that it is simply not sufficient to find that the term for which registration [*15] is sought is descriptive of something. We must, of course, consider the mark for which applicant seeks registration in relation to the goods and services set out in the application. The examining attorney makes the following argument (Brief at 10) regarding the mark in relation to the goods and services:

The applicant will be marketing and developing novel diagnostic and pharmacodiagnostic products based on DNA methylation. These novel diagnostic and pharmacodiagnostic products are clearly the goods that are identified in International Classes 1 and 5. The laboratory goods are described in International Class 9, which will be used to develop and research the diagnostic and pharmacodiagnostic products. The word "genomics" also describes the functions, features, uses and subject matter of the applicant's communication services in International Class 38 and research and development services in International Class 42.

The examining attorney concludes (Brief at 12) by arguing that the "combination simply results in a term that is readily understood: the science and commercial exploitation of genomes and the functions of genes regarding DNA's

fifth base, methylated cytosine. As such, [*16] the term sought to be registered, 5TH BASE GENOMICS, immediately describes the salient functions, features, uses and purposes of the relevant goods and services."

We agree that the term 5TH BASE GENOMICS is merely descriptive of goods and services that are in the field of genomics and that involve locating, testing for, or using DNA methylation patterns. The term would describe applicant's medical and scientific reagents, laboratory equipment and testing services in Classes 1, 5, 9, and 42 to the extent that they detect or interpret DNA methylation patterns. The presence of methylated cytosine, the fifth base, is significant because of its possible role in such areas as cancer research, tissue regeneration, cell differentiation, and gene control. Therefore, the term 5TH BASE GENOMICS would describe a significant feature of applicant's goods and services in Classes 1, 5, 9, and 42.

However, we reach the opposite conclusion for the services of providing multiple-user access to the Internet in Class 38. Viewing the mark 5TH BASE GENOMICS in the context of providing users access to the Internet, we are unable to determine what characteristic, quality, or feature of the services in Class [*17] 38, the term would describe. The examining attorney does not point to specific evidence to show that providing access for multiple-users to the Internet is described by the term 5TH BASE GENOMICS. The Internet can be used to research virtually any topic. It would require some thought to understand that the term 5TH BASE GENOMICS for providing multiple-users access to the Internet described providing these users access to the Internet for research that may include the subject matter of 5TH Base Genomics. Therefore, the examining attorney's refusal regarding the services in Class 38 is reversed.

One final point we make is that even though applicant may be the first or only user of the term, this does not mean that the term is not merely descriptive. In re Interco Inc., 29 USPQ2d 2037, 2039 (TTAB 1993) ("We observe that even if applicant has been the first and/or, unlike its competitors, is presently the only user of the term LIGHTWEIGHTS' in connection with shoes, such fact cannot alter the merely descriptive significance of the term").

Legal Topics:

For related research and practice materials, see the following legal topics:

Trademark LawProtection of RightsRegistrationDisclaimer of Unregistrable MatterTrademark LawProtection of RightsRegistrationPrincipal RegisterTrademark LawProtection of RightsRegistrationSupplemental Register

Decision: The refusal to register under Section 2(e)(1) is reversed regarding the services in Class 38. The refusal [*18] to register under Section 2(e)(1) regarding the goods and services in Classes 1, 5, 9, and 42 is affirmed.

EXHIBIT D

Kissell, Joanie

From: ECom106 [Ecom1063@USPTO.GOV]
Posted At: Tuesday, January 10, 2006 5:38 PM
Conversation: TRADEMARK APPLICATION NO. 78654480 - VIDEOPINIONS - 13114/29
Posted To: TMDocketNY
Subject: TRADEMARK APPLICATION NO. 78654480 - VIDEOPINIONS - 13114/29

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/654480

APPLICANT: Expo Communications, Inc.

78654480

CORRESPONDENT ADDRESS:
JOSEPH F. NICHOLSON, ESQ.
KENYON & KENYON,
1 BROADWAY
NEW YORK, NY 10004-1007

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: VIDEOPINIONS

CORRESPONDENT'S REFERENCE/DOCKET NO: 13114/29

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:
tmdocketny@kenyon.com

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/654480

The assigned examining attorney has reviewed the referenced application and determined the following.

DESCRIPTIVENESS REFUSAL

1/11/2006

The examining attorney refuses registration on the Principal Register because the proposed mark merely describes the services. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant services. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP §1209.01(b).

The examining attorney must consider whether a mark is merely descriptive in relation to the identified goods/services, not in the abstract. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985); *In re American Greetings Corp.*, 226 USPQ 365 (TTAB 1985). TMEP §1209.01(b).

Applicant's mark is a telescoped version of the phrase "Video Opinions". A telescoped mark is one that comprises two or more words that share letters and is subject to refusal if the phrase is merely descriptive. See TMEP Section 1213.05(a)(1). The mark herein amounts to a slight misspelling of "Video Opinions".

It appears that applicant's services will involve the provision of opinions by means of video.

INDEFINITE IDENTIFICATION OF SERVICES

The recitation of services is unacceptable as indefinite because it suggests services in multiple classes without delineating them by class and uses broad language. Amendment is required. TMEP §1402.11.

The class 35 recitation is acceptable as stated.

However, the currently listed recitation of services in class 38 is unacceptable. Class 38 is not appropriate for information services, *per se*, merely because the means of the provision falls in that class. Information services fall in the class where the activities to which the information pertains would fall. Class 38 is reserved only for the true communication activity. It is possible that the mark will identify a broadcasting service in the field of specific information. This should be clear, however, in the recitation, because this is different than the provision of an information service itself. The only information services falling in class 38 would be those dealing with subject matter in that class. Further, if the provision of the information is in the form of a television show of some kind, the provision of on-going television programs would fall in class 41.

The applicant may adopt the following recitation, if accurate:

Providing information on consumer products and services by way of a global computer network. In class 35. (No change)

Television broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services. In class 38.

Entertainment services in the nature of on-going television programs in the field of information about consumer products and services. In class 41.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present identification.

For assistance with identifying and classifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>.

MULTIPLE CLASS REQUIREMENTS

The application identifies services that may be classified in several international classes. Therefore, the applicant must either: (1) restrict the application to the number of class(es) covered by the fee already paid, or (2) pay the required fee for each additional class(es). 37 C.F.R. §2.86(a)(2); TMEP §§810.01, 1401.04, 1401.04(b) and 1403.01.

The filing fee for adding classes to an application is as follows:

- (1) \$325 per class, when the fees are submitted with a response filed online via the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>; and
- (2) \$375 per class, when the fees are submitted with a paper response.

37 C.F.R. §§2.6(a)(i) and (ii); TMEP §810.

The applicant must list the services by international class number in ascending numerical order. TMEP §§801.01(b) and 1403.01.

INFORMATION REQUEST

The nature of the service is not clear from the present record. In order to allow proper examination of the services on which the applicant intends to use the mark, the applicant must submit samples of advertisements or promotional materials for services of the same type. If such materials are not available, the applicant must describe the nature, purpose and channels of trade of the services with which the applicant has asserted a bona fide intent to use the mark. 37 C.F.R. §2.61(b); TMEP §§814 and 1402.01(d).

Specific inquiry is made as to whether the services will in any way involve the use of or provision of opinions about the products or services of others. Will any of the opinions be provided by means of a video presentation, video recording, or video transmission of any kind? Will any of the opinions be *about* videos? Will the services in any way feature opinions recorded or presented by consumers on video? Explain in detail the exact nature of the services.

Note that the above information request and factual inquiries form an important part of this Office action. An applicant may not rely upon its own failure to provide information legitimately sought by the Office in claiming that its mark is registrable. See *In re Page*, 51 USPQ2d 1660 (TTAB 1999). Therefore, should applicant wish to pursue this application further by responding to this Office action, any failure to address the above information request and inquiries will be considered grounds for abandonment for failure to file a complete response. See 37 C.F.R. Section 2.65(a).

SEARCH CLAUSE

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

If the applicant has any questions about this Office action, please telephone the assigned examining attorney.

/Steven Foster/
Steven Foster, Trademark Attorney
Law Office 106
(571) 272-9318
Fax number for the Law Office: (571) 273-9106

HOW TO RESPOND TO THIS OFFICE ACTION:

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing return address above and include the serial number, law office number and examining attorney's name in your response.

STATUS OF APPLICATION: To check the status of your application, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov>.

VIEW APPLICATION DOCUMENTS ONLINE: Documents in the electronic file for pending applications can be viewed and downloaded online at <http://portal.uspto.gov/external/portal/tow>.

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FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY SPECIFIED ABOVE.

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 78/654,480

Mark: VIDEOPINIONS

Applicant: Expo Communications, Inc.

Filed: June 20, 2005

Examiner: Steven Foster

Law Office: 106

CERTIFICATE OF MAILING

I certify that the foregoing is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22213-1451.

Commissioner for Trademarks
P.O. 1451
Arlington, VA 22313-1451

February 20, 2007

Date of Deposit

Name of person mailing papers:

Signature

Michael J. Freno

[Signature]

REQUEST FOR RECONSIDERATION TO FINAL OFFICE ACTION

This letter is in response to the Office Action dated August 17, 2006.

REMARKS

- I. **APPLICANT RESPECTFULLY REQUESTS RECONSIDERATION OF THE EXAMINER'S DECISION TO MAKE THE AUGUST 17, 2006 ACTION FINAL**

The Applicant respectfully asks the Examiner to reconsider its decision to make the August 17, 2006 action final. The Applicant understands that an action may only be made final

when an examiner has raised in a previous action “all outstanding issues” and the “applicant has had an opportunity to respond to them”:

Final action is appropriate when a clear issue has been developed between the examining attorney and the applicant, i.e., the examining attorney has previously raised all outstanding issues and the applicant has had an opportunity to respond to them.

TRADEMARK MANUAL OF EXAMINATION PROCEDURES (“TMEP”) (4th Edition) § 714.03 (emphasis added). In this case, at least one new issue was raised in the August 17, 2006 office action even though the action was made final.

In particular, for the first time in the August 17, 2006 action, a refusal to register the Mark was made under Section 2(e)(1) for class 41. Office Action, 8/17/06 at 2 (“The refusal to register under Section 2(e)(1) of the Trademark Act is continued and made FINAL.”). This issue was never raised in the original and first January 10, 2006 office action, and could not be raised in the first office action because the Applicant did not claim services in class 41 until the Examiner recommended that the Applicant claim such services in the January 10, 2006 office action. The Applicant has never had an opportunity to respond to the Examiner’s refusal to register the VIDEOPINIONS mark in class 41 under Section 2(e)(1). Indeed, the Applicant argues below (for the first time) that VIDEOPINIONS is not descriptive for the claimed class 41 services, but only presents the argument for the first time because it was never raised before the August 17, 2006 office action. Quite simply, the Applicant did not know it was an issue—especially since it was the Examiner who recommended that the Applicant include a claim of services in class 41.

Furthermore, an office action cannot be made final in piecemeal: To make an action final at all, all requirements must have been made in the earlier action.

For a second action to be made final, all requirements or refusals must have been made in the first action. No requirement may be made final, even if it is a repeated requirement, unless the entire action is made final. Thus, if the examining attorney makes a new refusal or requirement in a second or subsequent action, a repeated refusal or requirement may not be made final.

TMEP § 714.03 (emphasis added). In this case, since the refusal to register the VIDEOPINIONS mark in class 41 was never made in an earlier action, Applicant respectfully contends that the refusal to register the mark in the August 17, 2006 office action should not have been made final.¹

Therefore, the Applicant respectfully asks the Examiner to find that the August 17, 2006 action to have been made final prematurely and asks the Examiner to issue a new non-final action. *See* TMEP § 714.06. However, if the Examiner decides on reconsideration that the application should publish, Applicant concedes that no new non-final action would be necessary.

II. REQUEST TO DIVIDE: 37 C.F.R. § 2.87

The Applicant separately files a request to divide the application into the three pending classes, International Class 35, International Class 38, and International Class 41.

III. SECTION 2(E)(1) REFUSAL OF CLASS 35

The Examiner has refused registration of the Applicant's mark in class 35 under Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1), stating that "[t]he refusal to register under Section 2(e)(1) of the Trademark Act is continued and made FINAL." Office Action, 8/17/06 at

¹ Additionally, the Examiner presented new evidence in the August 17, 2006 action, and the Applicant never had an opportunity to respond to this evidence. This is a separate and additional reason the August 17, 2006 should not have been made final. Furthermore, the Examiner has changed his characterization the Applicant's services to "offer[ing] opinions about products and services on videotape" from "the provision of opinions by means of video," which was his original characterization of the Applicant's service from the January 10, 2006 office action. See discussion below. Although Applicant disputes both characterizations, the Applicant was never given an opportunity to respond to the Examiner's latest characterization.

2. The Applicant respectfully traverses and requests reconsideration of the Examiner's refusal to register the VIDEOPINIONS mark in class 35.

The Lanham Act § 2 reads, in relevant part, as follows:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it— (e) consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive . . . of them . . .

§ 1052(e)(1) (emphasis added). The word “merely” means that the mark cannot be deemed descriptive unless it immediately conveys information with a “degree of particularity” concerning a significant quality, characteristic, function, attribute, or feature of the goods or services in connection with which it is used or is intended to be used. *In re Cerner Corp.*, 2001 TTAB LEXIS 87, at *3 (TTAB Jan. 31, 2001); *In re On Technology Corp.*, 41 USPQ2d (BNA) 1475, at *7 (TTAB 1996); *In re Intelligent Medical Sys.*, 5 USPQ2d (BNA) 1674 (TTAB 1987); *In re TMS Corporation of the Americas*, 200 USPQ (BNA) 57, 59 (TTAB 1978); *In re Colonial Stores, Inc.*, 394 F.2d 549 (C.C.P.A. 1968).

The Applicant contends that VIDEOPINIONS does not describe anything whatsoever, let alone “[p]roviding information on consumer products and services by way of a global computer network.” Respectfully, the Applicant believes the Examiner has chosen (without justification) dictionary definitions of the words “video” and “opinion” from among many possible definitions to define the mark VIDEOPINIONS to mean offering opinions by means of videotape, and then (ignoring the Applicant's recited services, and at times instead relying on extrinsic evidence and representations by third parties) characterized the Applicant's services as the service of the offering opinions by means of videotape. By bending and twisting the mark VIDEOPINIONS and bending and twisting the recited services of class 35, the Examiner unnaturally attempts to

force the Applicant's VIDEOPINIONS mark and the Applicant's services to converge. Such an analysis begs the question. An analysis under Section 2(e)(1) requires, *inter alia*, an objective analysis of the mark to determine what it means, if anything, to consumers; and a determination of whether the mark describes with a degree of particularity the recited class 35 services claimed by the Applicant.

A. The Coined Mark VIDEOPINIONS Has No Known Meaning

Applicant contends that even though the word "video" has multiple known meanings in the English language, and even though "opinions" has multiple known meanings in the English language, the combination "video opinions" has no recognized meaning. Without actually ever asserting what the Examiner takes the mark VIDEOPINIONS to mean or what the Examiner takes the mark VIDEOPINIONS to mean to consumers, the Examiner has provided dictionary definitions of the terms "video" and "opinion." *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987) (reversing Examiner and Board finding of descriptiveness, but holding that evidence of the public's understanding of a term may be obtained from any competent source, including dictionaries).

1. The Term "Video" Has Multiple Meanings

There are numerous definitions of the word "video," with conventional uses of the word as either a noun or an adjective. The Examiner provided the definitions of "video" from a single source, the Microsoft® Encarta® dictionary. Encarta® lists at least the five definitions of the noun word "video" and two definitions of the adjective word "video." Ex. 1 (Microsoft® Encarta definitions of "video"). To eliminate any bias in picking and choosing definitions of the words and to complete the record, the Applicant provides additional dictionary definitions. *See, e.g.,* Ex. 2 (www.infoplease.com definitions of "video"); Ex. 3 (Merriam-Webster Online

definitions of “video”); Ex. 4 (American Heritage Dictionary definitions of “video”),² Ex. 4 (Dictionary.com definitions of “video”),³ and Ex. 5 (Oxford English Dictionary definitions of “video.”). The various dictionary sources provide definitions of “video” ranging from, *inter alia*, music videos, movies, video recorders, videocassettes or videotapes, television, and the visual portion of television. The definitions include each of the following:

A music video.	Ex. 4
a program, movie, or the like, that is available commercially on videocassette	Ex. 2
a recording similar to a videotape but stored in digital form (as on an optical disk or a computer's hard drive)	Ex. 3
A video recorder; also, a VDU.	Ex. 5
A video recording; videotape as a recording medium.	Ex. 5
A videocassette or videotape, especially one containing a recording of a movie, music performance, or television program.	Ex. 4
being, relating to, or involving images on a television screen or computer display <a video terminal>	Ex. 3
being, relating to, or used in the transmission or reception of the television image <a video channel> -- compare AUDIO	Ex. 3
comput images on computer screen: the text and graphics images that appear on a computer screen	Ex. 1
Computer Science Of or relating to the production of images on video displays	Ex. 4
Computer Science The appearance of text and graphics on a video display.	Ex. 4
image reproduction industry: the industry of recording and broadcasting visual information and entertainment, especially that which can be viewed on a television a star of stage, screen, and video	Ex. 1
Informal.television: She is a star of stage and video.	Ex. 2
Informal.videotape	Ex. 2
of or pertaining to television, esp. the visual elements	Ex. 2
of or pertaining to the electronic apparatus for producing the television picture: video amplifier	Ex. 2
of or pertaining to videocassettes, videocassette recorders, music video, etc.: a video shop	Ex. 2
Of or relating to television, especially televised images	Ex. 4
Of or relating to videotaped productions or videotape equipment and technology	Ex. 4
pertaining to or employed in the transmission or reception of television pictures	Ex. 2
relating to video frequencies: relating to or using video frequencies	Ex. 1
relating to visual image reproduction: relating to the recording or broadcasting of visual	Ex. 1

² The American Heritage® Dictionary of the English Language, Fourth Edition. Retrieved February 18, 2007, from Dictionary.com website: <http://dictionary.reference.com/browse/video>.

³ Dictionary.com. Dictionary.com Unabridged (v 1.1). Random House, Inc. <http://dictionary.reference.com/browse/video> (accessed: February 18, 2007).

information or entertainment by means of videotape or television	
something recorded onto videotape: something that has been recorded on videotape, especially a movie or music performance a video of my brother's wedding	Ex. 1
Television as a broadcasting medium. U.S. colloq.	Ex. 5
Television. the elements of television, as in a program or script, pertaining to the transmission or reception of the image (distinguished from audio).	Ex. 2
Television. the video part of a television broadcast.	Ex. 2
Television: a star of stage, screen, and video.	Ex. 4
TELEVISION; also : the visual portion of television	Ex. 3
That which is displayed or to be displayed on a television screen or other cathode-ray tube; the signal corresponding to this	Ex. 5
The production or use of video recordings.	Ex. 5
The visual portion of a televised broadcast.	Ex. 4
videocassette: videotape, or a videocassette (informal) now available to rent or buy on video	Ex. 1
VIDEOTAPE: as a : a recording of a motion picture or television program for playing through a television set b : a videotaped performance of a song often featuring an interpretation of the lyrics through visual images	Ex. 3
visual part of television: the visual part of a television broadcast	Ex. 1

Given the various definitions of the word “video” and given the different definitions of the noun and adjective forms of the word “video,” the question presents itself: What does the term “video” mean to consumers? The Examiner never explains. Instead, the Examiner simply states: “The term “video” is . . . being used for its normal meaning.” Office Action, 8/17/06 at 2 (emphasis added). However, in view of the diverse meanings of the word “video,” it is unclear which meaning is “normal” and which meaning the Examiner believes to be attributed to this word.⁴

2. The Term “Opinion” Has Multiple Meanings

Similarly, there are numerous definitions of the noun word “opinion.” The Examiner provides definitions of “opinion” from two sources, a website called Infoplease.com and

⁴ The word “video” is not inherently descriptive of the services of class 35. For example, there are numerous registered service marks containing the word “video” in class 35, including VIDEOSPACE, VIDEOSHOPPING, VIDOSEEKER, VIDEORESUMECREATOR, VIDEOMASTERS, VIDEOMARATHON, VIDEOFINDER, VIDEOVIEW, VIDEOLINK, and VIDEOLOGO. See Ex. 6.

Merriam-Webster Online. Office Action, 8/17/07 (attachments). To round out the record, the Applicant provides definitions of "opinion" from additional dictionaries. *See, e.g.*, Ex. 7 (Microsoft® Encarta definitions of "opinion"); Ex. 8 (American Heritage definitions of "opinion"); and Ex. 9 (Oxford English Dictionary online definitions of "opinion"). The Oxford English Dictionary's ("OED") definition of "opinion" is the following.

opinion, n.

I. Simple uses.

1. As a count noun: a view held about a particular issue; a judgement formed or a conclusion reached; a belief; a religious or political conviction. Formerly (also): a plan, an intention (obs.).

2. a. What is thought of a person by others; the (esp. good) estimation in which one stands; reputation (of being such, or of possessing some quality). Obs.

b. Report, rumour. Obs.

3. a. With specifying adjective, as common, general, public, vulgar, etc. A judgement, belief, or conviction held by the majority of or many people; what is generally thought about something. See also opinion poll, opinion survey, sense 7.

b. More generally: what or how one thinks about something; judgement or belief. Esp. in in my opinion: according to my thinking; as it seems to me. a matter of opinion: a matter about which each may have his or her own opinion; a disputable point.

c. to be of (the) opinion (that): to hold the belief or view; to think (that). Also with further syntactic variation.

d. Public or general opinion.

4. A formal statement by a judge or other competent authority of what he or she judges or advises on a matter; professional advice; as a legal (also medical) opinion, to get an opinion of counsel, etc. In a second (also another) opinion: the opinion of a second (esp. medical) expert or adviser. Also in transferred and extended uses.

5. a. Favourable estimate of oneself; conceit, arrogance; self-confidence. Obs. rare.

b. spec. A good or favourable estimate of someone or something; esteem. Esp. in to have no (great) opinion of: to regard as inferior or unworthy.

c. What one thinks of a person or thing; an estimate of character, quality, or value.

6. Thought of what is likely to be the case, knowledge; expectation based on knowledge or belief. Obs.

II. Compounds.

7. General attrib., as opinion-former, holder, leader, -maker, etc.; opinion-breeding, -making n. and adj.; opinion-forming, -tapping adjs. opinion column, a column in a newspaper or periodical which contains an opinion piece; an article in such a column (quot. 1947 refers to a regular column entitled 'Opinion'). opinion mill, a person who or organization which speculates on or disseminates public opinions. opinion piece, an article in a newspaper or periodical expressing the opinion (freq. one which is controversial or biased) of the writer on a particular item of news. opinion poll, an assessment of public opinion taken by questioning a random or representative sample of the public, often as a basis for forecasting patterns of voting (cf. sense 3a). opinion polling, the compiling of opinion polls. opinion pollster, a person or organization engaged in compiling opinion polls. opinion survey = opinion poll. opinion trade, the business of polling or expressing opinions.

Id. Although the OED provides compound forms of the word "opinion," the OED does not recognize the compound "video-opinion."

The word "opinion" has multiple meanings, with definitions ranging from, *inter alia*, favorable esteem, a formal statement by a judge, a belief or conclusion held with confidence but not substantiated by positive knowledge or proof, the public or general opinion, and/or a judgment based on special knowledge. The definitions include each of the following.

A belief or conclusion held with confidence but not substantiated by positive knowledge or proof	Ex. 8
a belief or judgment that rests on grounds insufficient to produce complete certainty	Infoplease.com
a favorable estimate; esteem: I haven't much of an opinion of him.	Infoplease.com
a formal expression of judgment or advice by an expert b : the formal expression (as by a judge, court, or referee) of the legal reasons and principles upon which a legal decision is based	Merriam-Webster OnLine
A formal statement by a judge or other competent authority of what he or she judges or advises on a matter; professional advice; as a legal (also medical) opinion, to get an opinion of counsel, etc. In a second (also another) opinion: the opinion of a second (esp. medical) expert or adviser. Also in transferred and extended uses	Ex. 9
A judgment based on special knowledge and given by an expert: a medical opinion	Ex. 8
a judgment or estimate of a person or things with respect to character, merit, etc.: to forfeit someone's good opinion.	Infoplease.com
A judgment or estimation of the merit of a person or thing: has a low opinion of	Ex. 8

braggarts	
a personal view, attitude, or appraisal	Infoplease.com
a view, judgment, or appraisal formed in the mind about a particular matter b : APPROVAL, ESTEEM	Merriam-Webster OnLine
As a count noun: a view held about a particular issue; a judgement formed or a conclusion reached; a belief; a religious or political conviction	Ex. 9
belief stronger than impression and less strong than positive knowledge b : a generally held view	Merriam-Webster OnLine
body of generally held views: the view or views held by most people or by a large number of people	Ex. 7
estimation: a view regarding the worth of somebody or something	Ex. 7
expert view: an expert assessment of something	Ex. 7
Favourable estimate of oneself; conceit, arrogance; self-confidence. Obs. rare.	Ex. 9
Law A formal statement by a court or other adjudicative body of the legal reasons and principles for the conclusions of the court	Ex. 8
law conclusion of fact: a conclusion drawn from observation of the facts	Ex. 7
Law. The formal statement by a judgment or court of the reasoning and the principles of law used in reaching a decision of a case	Infoplease.com
More generally: what or how one thinks about something; judgement or belief. Esp. in in my opinion: according to my thinking; as it seems to me. a matter of opinion: a matter about which each may have his or her own opinion; a disputable point	Ex. 9
personal view: the view somebody takes about an issue, especially when it is based solely on personal judgment	Ex. 7
Public or general opinion	Ex. 9
Report, rumour. Obs.	Ex. 9
spec. A good or favourable estimate of someone or something; esteem. Esp. in to have no (great) opinion of: to regard as inferior or unworthy.	Ex. 9
the formal expression of a professional judgment: to ask for a second medical opinion	Infoplease.com
The prevailing view: public opinion	Ex. 8
Thought of what is likely to be the case, knowledge; expectation based on knowledge or belief. Obs.	Ex. 9
to be of (the) opinion (that): to hold the belief or view; to think (that). Also with further syntactic variatio	Ex. 9
What is thought of a person by others; the (esp. good) estimation in which one stands; reputation (of being such, or of possessing some quality)	Ex. 9
What one thinks of a person or thing; an estimate of character, quality, or value.	Ex. 9
With specifying adjective, as common, general, public, vulgar, etc. A judgement, belief, or conviction held by the majority of or many people; what is generally thought about something. See also opinion poll, opinion survey.	Ex. 9

Given the various definitions of the word “opinion,” the following question presents itself: What does the word “opinion” mean to consumers? In this case, the Examiner provides the following definition of the word “opinion.”

The term “opinion” is defined as “a personal view, attitude, or appraisal” or as “a view, judgment, or appraisal formed in the mind about a particular matter.” See attached dictionary definitions. . . .

Office Action, 8/17/06 at 2. Although the Examiner focuses on a single definition of “opinion” from among many, no explanation or evidentiary basis is given for choosing this particular definition over the others.⁵

3. The Coined Mark VIDEOPINIONS Has No Meaning at All, and the Combination of “Video” and “Opinions” Evokes a New Commercial Impression

The Applicant’s VIDEOPINIONS mark is a unique expression, coined by the Applicant for use in connection with its service of “[p]roviding information on consumer products and services by way of a global computer network.” The mark VIDEOPINIONS has no dictionary definition, and no meaning in common language. There is no such thing as a “videopinions” or a “video opinions.” This is undisputed.

a. Given The Various Definitions of “Video” And “Opinion,” The Expression VIDEOPINIONS or “Video Opinion” Has No Clear Meaning

Given the all the various meanings of the terms “opinion” and “video,” one cannot come to any clear understanding as to what “videopinions” or “video opinions” could possibly mean. There are hundreds of permutations and possibilities, many of which make no sense.

⁵ The word “opinion” is also not inherently descriptive of the services of class 35. For example, there are numerous registered service marks containing the word “opinion” in class 35, including WORLDOPINION, VALUEDOPINION, INTERNETOPINIONS.COM, QUALITYOPINIONS.COM, OPINIONBANK, OPINIONLAB, and OPINIONSITE. See Ex. 12.

For example, taking the noun form of the word “video” and placing it beside the noun word “opinion” creates nonsense: It is like referring to “cat dog.” For example, taking the first occurring definitions from the OED, the definition of “video” is “that which is displayed or to be displayed on a television screen or other cathode-ray tube. . . .” (Ex. 5) and the definition of “opinion” is “a view held about a particular issue; a judgement formed or a conclusion reached; a belief; a religious or political conviction.” Ex. 9. The combination makes no sense, *e.g.*, “that which is displayed or to be displayed on a television screen or other cathode-ray tube a view held about a particular issue; a judgement formed or a conclusion reached; a belief; a religious or political conviction.” The same applies for the various other combinations of definitions for the respective words.⁶

The Applicant is not arguing that a consumer would have difficulty figuring out what the Applicant’s services are from looking at the mark VIDEOPINIONS (which the Applicant also believes to be the case), but rather, the Applicant is here arguing that the coined word VIDEOPINIONS or the combination of “video” and “opinions” has no meaning whatsoever in the English language. Reaffirming this conclusion that VIDEOPINIONS has no meaning, the Examiner himself never actually states what he takes the combined terms to mean. The present case is analogous to the case of *In re Harrington*, 219 USPQ 854, 856 (TTAB 1983), where the applicant filed for the mark COLLEGE ACADEMY for “education services, namely, providing special learning programs for gifted and talented children in grades 4 to 8.” Reversing the examining attorney’s refusal to register the mark under Section 2(e)(1), the Trademark Trial and Appeal Board (“Board”) found that “the composite of the two words is not a term in general use

⁶ Even when the word “video” is taken as an adjective instead of a noun, the combination of terms still makes no sense: “of or pertaining to the electronic apparatus for producing the television picture a view held about a particular issue; a judgement formed or a conclusion reached; a belief; a religious or political conviction.”

to describe educational services (or anything else, for that matter) and has no dictionary meaning.” *Id.* at 856 (emphasis added). No dictionary defines “videopinions.”

In the *Harrington* case, there was no evidence showing use of the composite term COLLEGE ACADEMY in the academic field. *Id.* Likewise, in this case, there is no evidence showing use of the term VIDEOPINIONS (or “video opinions”) in the field of providing information on consumer products and services by way of a global computer network. Although the Examiner has attached two documents to the August 17, 2006 office action which the Examiner alleges “show[] use of the phrase ‘video opinion’ and its plural in descriptive fashion,” the Applicant disputes the relevance and admissibility of the documents.⁷

The first proffered document comprises excerpts apparently from a Kansas City Star article entitled “Students view life from both sides of camera” by Roberta Johnson. The excerpts apparently (though it is unclear because the full article and context was not provided) quote a seventh-grade student as saying: “We got to tape (yesterday) and today, I get to do the video opinion poll.” The Applicant objects to the admissibility of this document because it is impossible to understand what the limited text means and the Applicant requests the entire article be submitted.⁸ At the same time, based on the limited text provided, a “video opinion poll” is clearly not a use of VIDEOPINIONS. Moreover, whereas the term “opinion poll” is a common

⁷ Note that the Examiner’s attachments to his August 17, 2007 cannot fully be understood or appreciated. According to the August 17, 2007 office action, the “Office Action has been split into 2 smaller e-mail messages.” According to the office action, Email 1 includes 5 attachments, and Email 2 includes 8 attachments. The Applicant only received 7 attachments in total, which include: (1) webpages titled “Branding Ad Vice”; (2) webpages titled “GamePro.com”; (3) webpage for Infoplease dictionary; (4) webpage for Merriam-Webster Online; (5) webpage from MSN Encarta®; (6) excerpts apparently from a Kansas City Star article entitled “Students view life from both sides of camera” by Roberta Johnson; and (7) an unknown and unidentified excerpt titled “Private Eyes” by Garaldine Baum. If the Examiner intended to attach more exhibits than described herein, the Applicant never received such attachments and such other attachments are not part of the public record accessible on the www.uspto.gov website.

⁸ Federal Rule of Evidence 106 states: “When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.”

compound term recognized by the Oxford English Dictionary (see above), the compound term “video opinion” is not a recognized compound term.

The second document proffered by the Examiner is from an unknown and unidentified source, but appears to be entitled “Private Eyes” by Geraldine Baum. The document states:

...article recounted how a consortium of peace groups frustrated with network news coverage of the Gulf War. They solicited video opinions from groups nationwide, received 100 responses and then culled them, broadcasting four short programs on cable and PBS stations.

It is unclear from this excerpt what the article is exactly saying or how “video opinions” is being used. Again, the Applicant objects to this evidence under Federal Rules of Evidence 106 as failing to proffer the full document and context and the Applicant requests the full document be submitted for examination. However, even from the limited text provided, it is clear that the use does not involve “[p]roviding information on consumer products and services by way of a global computer network,” which is the Applicant’s class 35 services at issue.

Perhaps the most compelling fact derived from the evidence proffered by the Examiner is that from a NEXIS database search, not a single instance of use of the coined term VIDEOPINIONS was apparently found. Moreover, the Examiner’s submission of a single use of the phrase “video opinions” is not sufficient to demonstrate that VIDEOPINIONS merely describes the Applicant’s recited class 35 services. For example, *In re Adamchik*, Ser. No. 76571862, 2006 TTAB LEXIS 345 (TTAB Aug. 7, 2006), an applicant sought registration for the mark OBJECTSTYLE for “providing web and e-mail hosting services to the open-source software development community” in class 38. The examiner submitted a webpage as an example of use of the term “object style,” but the Board held that a single example of use is not enough to show descriptiveness.

The only example of use of the term “object style,” or a variation thereof, in the examining attorney’s evidence occurs in an Internet web page instructing a user in a method to “Save a drawing object style as the default.” However, it is not clear from this evidence whether the term “object style” is used as a term of art, or merely in syntax. In any event, this single example of use of “object style” in instructions for working with drawing objects and graphics fails to demonstrate that OBJECTSTYLE merely describes a function, feature or characteristic of the recited services.

Id. at *8-10. A single unclear use is not enough to show descriptiveness.

Furthermore, not only is a single occurrence of the use of “video opinions” insufficient, but also, that particular and indefinite use identified by the Examiner (by an unknown source) clearly does not describe anything related to the Applicant’s services—it clearly has nothing to do with consumer information provided via a global computer network. In the case of *In re L.Vad Technology, Inc.*, Ser. No. 78/285,714, 2006 TTAB LEXIS 160 (TTAB Apr. 28, 2006), the examiner refused to register PATCH BOOSTER under Section 2(e)(1) for class 10 goods identified as, *inter alia*, “permanent and temporary heart assist devices utilizing intra arterial air pressure to assist the circulating assist machinery and controls therefor. . . .”⁹ The examiner in that case proffered “excerpts of articles obtained from the NEXIS database which refer to a medical procedure involving a patch of tissue (from human and/or animal cells) used to patch a hole in the heart or to mend damaged heart tissue.” *Id.* at *6-7. On appeal, the Board reversed the examiner’s refusal, and rejected the examiner’s evidence stating:

These articles do not support a finding that “patch” is merely descriptive of applicant’s goods. There is no evidence in the record from which we might conclude that applicant’s goods, as identified in the application, are, or involve, tissue patches of the type mentioned in these articles.

⁹ Because this disposition is not citable as precedent, the Applicant only cites the case (and other non-precedential opinions mentioned in this paper) as an instructive example.

Id. at *8 (emphasis added). Again, even if the “Private Eyes” article constituted one of the only instances wherein the term “video opinions” was ever used by anyone in the past, apart from the fact that it is not a use of the coined VIDEOPINIONS mark claimed by the Applicant, there is further no evidence in the record from which one might conclude that the Applicant’s class 35 services—“[p]roviding information on consumer products and services by way of a global computer network”—are, or involve, the unidentified object of the “Private Eyes” article. In other words, the person quoted in the “Private Articles” article was clearly not talking about “[p]roviding information on consumer products and services by way of a global computer network.”

**b. The Combination of “Video” and “Opinions”
Evokes a New and Unique Commercial Impression**

The individual terms “video” and “opinion” do not individually describe the Applicant’s class 35 service of “[p]roviding information on consumer products and services by way of a global computer network.” However, assuming *arguendo* that the word “video” was descriptive and the word “opinion” was separately descriptive of something in the abstract, the combination of the words still evokes a new and unique commercial impression.

“When two or more merely descriptive terms are combined, [the Board] must determine whether the combination of terms evokes a new and unique commercial impression.” *In re FineLine Lakeshore Servs., LLP*, Serial No. 76/428,109, 2006 TTAB LEXIS 339, at *9-12 (Trademark Trial & App. Bd. Aug. 24, 2006); *see also Colonial Stores*, 394 F.2d 549 (holding that combination of two descriptive elements may result in a non-descriptive composite). Without any supporting evidence, the Examiner simply concluded that VIDEOPINIONS does not create an impression differing from that created by the two words.

The telescoping of the terms “video” and “opinion” into one word does not create an impression differing from that created by the two words and still results in a descriptive mark.

Office Action, 8/17/06 at 2 (citations omitted). Nothing proffered by the Examiner—including the dictionary definitions—supports this conclusion.¹⁰

In an analogous case, an applicant sought registration of the mark POLYDECK and the examiner refused registration under Section 2(e)(1) as descriptive of, *inter alia*, “polyethylene dock sections.” *FineLine*, 2006 TTAB LEXIS 339, at *9-12.

The Examining Attorney argues that POLYDECK is a compound term with two merely descriptive components: “deck” which is an alternative generic term for “dock” and “poly” which is an abbreviation for “polyethylene.”

Id. In that case, the Board looked at the dictionary definitions proffered by the examiner, noting that “poly” had multiple definitions and could mean an abbreviation of “polyethylene” or suggest that the particular goods—dock sections—may be configured in many ways. The Court held that the fact that the terms had multiple meanings made the combined mark POLYDECK more suggestive than descriptive.

This indicates further that the combination of “poly” and “deck” may have a suggestive meaning which is more than the sum of its parts contrary to the Examining Attorney’s position.

Accordingly, we conclude that POLYDECK is not merely descriptive of “polyethylene dock sections.” In concluding so we acknowledge that there is some doubt and that, in such a case under Trademark Act Section 2(e)(1), we must resolve doubt in favor of applicant.

Id. at *9-12 (emphasis added and citations omitted). Like the case in *FineLine* and as explained above, the terms “video” and “opinion” have multiple definitions, and the term “video” may be

¹⁰ The Examiner cited the following cases: *In re BankAmerica Corp.*, 229 USPQ 852 (TTAB 1986) (PERSONALINE merely descriptive of consumer loan services in which a personal line of credit is provided); *In re U.S. Steal Corp.*, 225 USPQ 750 (TTAB 1985) (SUPEROPE merely descriptive of wire rope); *In re Gagliardo Bros., Ind.*, 218 USPQ 181 (TTAB 1983) (BEEKFLAKES is merely descriptive of thinly sliced beef).

used as a noun or an adjective. The mark VIDEOPINIONS may suggest in the mind of consumers an opinion poll in video format (as indicated in the Kansas City Star article presented by the Examiner), or may suggest video recordings of court proceeding or court “opinions,” or may suggest a video of political or religious issues (as indicated in the other article presented by the Examiner), or may suggest written movie reviews. The coined term could suggest a lot of different things, none of which describe or are even related to the Applicant’s claimed service of “[p]roviding information on consumer products and services by way of a global computer network.” Because of the diverse possible consumer interpretations of the mark VIDEOPINIONS, the Applicant’s mark should be deemed at most suggestive. The ambiguity raised by the various interpretations weighs in favor of the Applicant because any doubt “must resolve in favor of the applicant.” *In re Rank Organisation Ltd.*, 222 USPQ 324, 326 (TTAB 1984).

c. The mark VIDEOPINIONS Is At Most Suggestive

Arranged in an ascending order of protectability, trademarks are categorized as (1) generic; (2) descriptive; (3) suggestive; or (4) arbitrary or fanciful. *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 23 USPQ2d (BNA) 1081, 1083 (1992). A mark that suggests, rather than merely describes, a particular good or service is protectable without evidence of secondary meaning. Even if the definitions of the individual terms “video” and “opinions” could be contorted to mean something like a “global computer network” devoted to, *inter alia*, information on consumer products and services, such a conclusion is not immediately evoked by the mark VIDEOPINIONS. While a descriptive term will directly and clearly convey information about the qualities or characteristics of the associated service, a “suggestive” term only indirectly suggests certain qualities or characteristics of the service. It has often been said

that if the consumer must exercise mature thought or follow a multi-stage reasoning process in order to determine attributes of the services from the mark, the mark is suggestive and not descriptive. *In re Tennis in the Round, Inc.*, 199 USPQ (BNA) 496, 498 (TTAB 1978).

There is no evidence that the Examiner's own interpretation of the mark —“offer[ing] opinions about products and services on videotape”—will immediately come to mind when prospective consumers encounter the term VIDEOPINIONS used in association with the Applicant's services. *In re Telechat Networks, Inc.*, 2006 TTAB LEXIS 178, at *8 (TTAB May 11, 2006) (citing *Rank*, 222 USPQ at 326 (The “fact that the term LASER is cable of being analyzed does not render the term merely descriptive.”)); *see also In re Remacle*, 66 USPQ2d 1222, 1224 n.5 (TTAB 2002) (“It is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork.”) *and In re Grand Forest Holdings Inc.*, 78 USPQ2d 1152 (TTAB 2006) (“What we lack in this case is significant evidence that, when prospective purchasers encounter term FREEDOM FRIES used on frozen French fried potatoes, they will immediately understand that it identifies a feature, quality, or characteristic of the applicant's goods”).

The Applicant contends that upon hearing VIDEOPINIONS, a consumer must engage in highly mature thought processes and multiple steps to arrive at anything remotely resembling any aspect of the Applicant's specific recited class 35 services. As marks go, VIDEOPINIONS is certainly much less descriptive than numerous marks which have been deemed to be suggestive by the Trademark Trial and Appeal Board. *See, e.g., In re Grand Forest Holdings Inc.*, 78 USPQ2d 1152 (TTAB 2006) (FREEDOM FRIES not descriptive of frozen french fries); *In re Intelligent Medical Sys.*, 5 USPQ2d (BNA) 1674 (INTELLIGENT MEDICAL SYSTEMS not descriptive of “electronic thermometers for measuring human body temperature.”); *In re*

Sundown Technology Inc., 1 USPQ2d 1927, 1928 (TTAB 1986) (GOVERNOR not descriptive for controls used to limit sound from musical amplifier); *In re WSI Corp.*, 1986 TTAB LEXIS 60, 1 USPQ2d (BNA) 1570 (TTAB 1986) (SUPERSAT not descriptive of collecting meteorological information via satellite); *In re Southern Nat'l Bank*, 219 USPQ (BNA) 1231 (TTAB 1983) (MONEY 24 not descriptive of automatic teller machines); *Harrington*, 219 USPQ 854 (COLLEGE ACADEMY not descriptive for education services for gifted children).¹¹

Moreover, the Applicant's specific mark is not needed by competitors to identify their own services. The purpose of Section 2(e)(1) is to protect the competitive needs of others, and thus, if the message conveyed by the mark about the services is so direct and clear that competing sellers would be likely to need to use the term in describing or advertising their own services, then this indicates that the mark is descriptive. *In re TMS*, 200 USPQ at 59; *Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1218 (9th Cir. 1987). In the present case, the Applicant's business is novel. There is no evidence that any television network or consumer information service uses or needs to use "videopinions" or "video opinions" to describe similar services. *In re Dollar-A-Day Rent-A-Car Systems, Inc.*, 173 USPQ (BNA) 435, 437 (TTAB 1972) ("If the term is as highly descriptive as asserted by the examiner, one would suppose that there would be at least one descriptive use thereof by a competitor but none has been shown.").

¹¹ There are numerous non-precedential decisions as well. See, e.g., *L.Vad Technology, Inc.*, 2006 TTAB LEXIS 160 (PATCH BOOSTER for heart devices); *In re Telechat Networks, Inc.*, 2006 TTAB LEXIS 178, at *8 (TTAB May 11, 2006) (TELECHAT NETWORK for telephone and online dating service); *In re Orincon Indus.*, 2004 TTAB LEXIS 560 (TTAB Sept. 14, 2004) (TRAC SYSTEM for computer and software designed to track traffic patterns); *In re Sierra Design Group*, 2004 TTAB LEXIS 279 (TTAB May 6, 2004) (CASINO MERCHANDISING TECHNOLOGY as a trademark for goods described as "networked gaming system comprising gaming machines and accounting and gaming software."); *In re Thomas J. Manski*, 2005 TTAB LEXIS 250 (TTAB Apr. 28, 2004) (FLAT VU not descriptive for flat video display devices, including televisions); *In re IdaTech, LLC*, 2004 TTAB LEXIS 259 (TTAB Apr. 19, 2004) (ADVANCED FUEL CELL SOLUTIONS not descriptive of, *inter alia*, "electrical power generation equipment, namely, fuel cells"); *In re Intermedia Advertising Group, Inc.*, 2004 TTAB LEXIS 152 (TTAB Mar. 19, 2004) (REWARDTV not descriptive for a website providing information on television programs); *In re BrainLAB AG*, 2003 TTAB LEXIS 543 (TTAB Nov. 14, 2003) (iPLAN not descriptive for Internet planning software); *In re Gast Mfg. Corp.*, Ser. No. 74/541,668, 1997 TTAB LEXIS 182 (TTAB June 18, 1997) (SMART AIR not descriptive for "air compressors and vacuum pumps").

But also, there is no indication that anyone in the general field of information services would need to use this term. *Minnesota Mining & Mfg. Co. v. Johnson & Johnson*, 454 F.2d 1179, 1180 (C.C.P.A. 1972) (SKINVISIBLE not necessary to describe transparent medical adhesive tape). For this reason too, the Applicant's mark should be deemed suggestive and not "merely descriptive."

B. The Coined Mark VIDEOPINIONS Does Not Describe Applicants' Recited Class 35 Services, Namely, "Providing Information On Consumer Products And Services By Way Of A Global Computer Network"

The Applicant contends that VIDEOPINIONS—a meaningless coined term—does not describe with a degree of particularity any aspect of the Applicant's recited class 35 services, namely, "[p]roviding information on consumer products and services by way of a global computer network." Rather than looking that the recited services of class 35 in the Applicant's application, the Examiner appears to have rewritten the Applicant's services as "services wherein consumers offer opinions about products and services on videotape."

Applicant seeks registration of VIDEOPINIONS for services wherein consumers offer opinions about products and services on videotape.

Office Action, 8/17/07 at 2.¹² Again, the Applicant's service recited in class 35 is for the following:

Providing information on consumer products and services by way of a global computer network.

The Applicant's recited class 35 service never mentions opinions and never mentions videotape. It appears that the Examiner has attempted to bend and twist the Applicant's services such that it conforms to the Examiner's chosen definitions of the words "opinions" and "video."

¹² Even though an analysis descriptiveness of a mark for services must be applied on a class-by-class basis, the Examiner appears to conflate the various classes claimed by Applicant and simple attributes to the Applicant a single service.

In so far as the VIDEOPINIONS mark has nothing to do with the actual services claimed by the Applicant, the present case resembles the situation in *In re Major League Baseball Properties, Inc.*, Ser. Nos. 78/183,355 and 78/183,381, 2005 TTAB LEXIS 94 (TTAB Mar. 2, 2005). There, the applicant, Major League Baseball Properties, Inc., filed an application to register, *inter alia*, THE BASEBALL CHANNEL for “entertainment services, namely baseball games. . . through broadcast media including television” and “providing, producing and distributing programming for others in the nature of baseball games.” *Id.* at *1. The examiner refused to register the mark as descriptive under Section 2(e)(1) after citing the American Heritage Dictionary definitions of “baseball” and “channel” and concluding that the “the combined term THE BASEBALL CHANNEL may be used to describe a television channel about the game of baseball or featuring baseball games.” *Id.* at *3. On appeal, the Board held that even though each individual term described something, and even though the combination of terms may even describe something, the mark does not describe the actual and specific services recited in the applicant’s trademark application.

There is no dispute that the word BASEBALL is descriptive of applicant’s services. Indeed, it is clear from the recitation of services that the programming applicant intends to produce and distribute is in the nature of baseball games. Therefore a significant characteristic of such programming is that it will feature baseball games.

Further, we recognize that the word CHANNEL is descriptive of television broadcasting services. However, the services at issue in this case are not television broadcasting services, but rather the production and distribution of programming. It is not at all clear from the definition of “channel” of record that the term has descriptive significance as applied to such services. Moreover, the record is devoid of any descriptive uses of “channel” for the production and distribution of programming. Thus, we are not persuaded that the phrase THE BASEBALL CHANNEL as used in connection with such services conveys an immediate idea about the services with any degree of particularity. Specifically what THE BASEBALL CHANNEL

describes about the services of producing and distributing programming is ambiguous and unclear.

In sum, based on the limited record before us, we conclude that THE BASEBALL CHANNEL when considered as a whole in connection with “producing and distributing programming for others in the nature of baseball games . . . through broadcast media including television” is not merely descriptive. To the extent that there is any doubt in this case, we have resolved that doubt in applicant’s favor.

Id. at *7-8 (emphasis). Like that case, the Applicant here contends that regardless of whether the words “video” and “opinions” could be deemed to describe something in the abstract, the combination simply does not describe any aspect of the Applicant’s services with any degree of particularity. See also *In re TMS*, 200 USPQ at 59 (finding THE MONEY SERVICE non-descriptive for financial services wherein funds are transferred to and from a savings account because it “falls short of describing applicant’s services in any one degree of particularity”); *In re On Technology*, 41 USPQ2d (BNA) 1475 (finding AUDITTRACK non-descriptive for computer software for monitoring activity); *In re Cerner*, 2001 TTAB LEXIS 87.

1. **Respectfully, the Applicant Believes the Examiner Posits an Incorrect Proposition of Law When the Examiner States that the “Descriptive Feature of the Services” Does Not Have To Exist “in the Recitation of Services”**

The Examiner argues that VIDEOPINIONS does not have describe any aspect of the Applicant’s recited class 35 services to be descriptive. The Applicant respectfully believes that this is an incorrect statement of the law. Although the Examiner acknowledges that whether a “mark is merely descriptive is determined in relation to the identified goods or services, not in the abstract” (Office Action, 8/17/07 at 2 (emphasis added)), the Examiner goes on to proffer a new proposition of law. The Examiner writes:

Applicant is correct that whether a mark is merely descriptive is determined in relation to the identified goods or services, not in the abstract. . . . However, this does not mean that the descriptive

feature of the services has to exist in the recitation of services in order for a mark to be merely descriptive. If this were the case, applicants could easily avoid descriptiveness refusals simply by being careful not to include in the recitation the feature of the goods or services described by the mark.

Office Action, 8/17/07 at 2 (citations omitted).

First, the Applicant respectfully contends that this proposition is incorrect. The Examiner does not cite any legal authority or precedent for this proposition. In fact, binding courts have consistently held that whether a particular term is “merely descriptive” must be determined in relation to the goods or services for which registration is sought. *In re Cerner*, 2001 TTAB LEXIS 87, at *3; *TMS*, 200 USPQ at 59; *In re The Stroh Brewery*, 34 USPQ2d (BNA) 1796, at *4-5 (TTAB 1995); *In re Majestic Distilling Co.*, 420 F.2d 1086 (C.C.P.A. 1970). And there are good reasons for this law. For example, imagine the situation where a computer manufacturer (who also sells apples) seeks the registration of the mark APPLE for only “computer manufacturing.” The applicant should not be denied a registration of the mark for the claimed services simply because it also sells apples on the side. However, on the Examiner’s reasoning, the Examiner need not consider the applicant’s recited services for “computer manufacturing.”

Second, the proper battlefield for disputing the recitation of services is, namely, a determination of whether the recitation of services was proper. If an examiner believes that the Applicant’s recited services do not clearly, definitively, and/or accurately describe the Applicant’s services, the Examiner may refuse registration on that basis. 37 C.F.R. § 2.32(a)(6); TMEP § 1402.01. However, in the present case, the Examiner has accepted the Applicants’ recited services (but has simply chosen to ignore them). And third, the Applicant respectfully disagrees that a hypothetical “clever applicant” could easily avoid descriptiveness refusals by being careful not to include in the recitation of services the feature of the goods or services

described by the mark. Applicants choose descriptions for its services to accurately and definitively describe the services for which the mark will be used. It would be counterproductive for an applicant to remove from the applicant's recitation of services the very services it wishes to protect. An applicant's rights under the Lanham Act are restricted to the claimed services (and perhaps natural zones of expansion). If an applicant left out a feature for his description of services, the applicant would be surrendering rights for that particular use or service.

The Applicant, Expo Communications, Inc., provides and/or intends to provide various services. The only way to determine whether VIDEOPINIONS is descriptive for the purpose of Section 2(e)(1) is to look at the recited services claimed by the Applicant on a class-by-class basis.

2. Respectfully, the Applicant Believes the Examiner Has Used Extrinsic Evidence In an Effort to Rewrite the Applicant's Recited Services

Rather than simply looking at the Applicant's recited services in class 35, the Applicant respectfully believes that the Examiner has attempted to rewrite the Applicant's claimed services based on extrinsic evidence. The Examiner first looked to the webpages of two third party websites. The Examiner wrote:

Attached are two web page articles or listings apparently indicating what is done through applicant's services. Consumers apparently review and rate different products or services, giving their opinions thereof. Note that in the first attachment, the person reviewing applicant's service regarded it as a place 'devoted to online video opinions.' The second attachment apparently shows the result of a cooperative effort between the applicant and another party called "GamePro" where consumers offer reviews of games. Note how the term "videopinion" itself is used in lower case letters.

Office Action, 8/17/07 at 2. This passage indicates that the Examiner may be improperly using third party representations about Expo Communications, Inc. to rewrite the Applicant's services class 35 services.

The person referenced in the first attachment, Walter Koschnitzke, is an unrelated third party who apparently wrote the following on his blog: “. . . Expo Television, devoted to online video opinions, reviews and product demonstrations and buying tips.” Clearly, the person is either not using the Applicant’s mark, VIDEOPINIONS, at all or is misusing the Applicant’s service mark. Nonetheless, Mr. Koschnitzke certainly has no authority to alter the Applicant’s recited class 35 services for use of its VIDEOPINIONS mark. The Applicant cannot fathom a reasonable justification for giving greater weight to Mr. Koschnitzke’s statement about an aspect of Expo Communications, Inc.’s business than the Applicant’s own recited services in class 35. The second attachment refers to a webpage from a site called GamePro.com. The Examiner suggests that the Applicant condoned an improper and descriptive use of the mark “videopinion” when the Examiner points to GamePro’s webpage and observes: “Note how the term ‘videopinion’ itself is used in lower case letters.” The Applicant has taken steps to correct GamePro.com’s inadvertent misuse of the Applicant’s service mark. The Applicant has written to the third party and asked GamePro.com to modify its usage of VIDEOPINIONS. See Ex. 10. However and regardless, an example of a third party’s inadvertent misuse of the Applicant’s mark does constitute evidence that the Applicant’s mark is descriptive.

The Examiner also apparently suggests that the Applicant indirectly limited its recited services when it answered the Examiner’s questions posed in his January 10, 2006 office action.

The Examiner writes:

Applicant indicates that its services include soliciting, collecting, and sharing audiovisual demonstrations and information about consumer products and services, and admits that ‘such audiovisual works may or may not include or involve a consumer’s opinion about a particular product or service.

Office Action, 8/17/07 at 2. Applicant respectfully disagrees. The Applicant believes the Applicant's answers to the Examiner's questions from its January 10, 2006 office action is not an admission of descriptiveness—if that is what the Examiner is suggesting. The Examiner never asked about the Applicant's intended class 35 services and did not ask whether the Applicant intended to use VIDEOPINIONS in connection with any particular service. The Applicant said:

The Applicant's services include soliciting, collecting, and sharing audiovisual demonstrations and information about consumer products and services. Such audiovisual works may or may not include or involve a consumer's opinion about a particular product or service, and may instead involve the demonstration of a particular product or service and useful information on it.

Applicant's statement that Expo Communications, Inc.'s overall services (at that time) included product demonstrations was not intended to limit its claimed class 35 services, which again, recites: “[p]roviding information on consumer products and services by way of a global computer network.” Applicant contends that the best indication of an applicant's claimed services—especially for an intent-to-use application—is simply the applicant's recited services, not third party representations about the applicant's business or even the applicant's statements about some unspecified existing services—which may differ from the intended services defined exclusively by the recitation of services in the application.

3. The VIDEOPINIONS Mark Does Not Even Describe the Examiner's Revised Version of the Applicant's Services

The literal application of the definitions posited by the Examiner for “video” and “opinion” is not an accurate description of the Applicant's services. According to the Examiner, “video” is “being used for its normal meaning.” Office Action, 8/17/06 at 2. Although it is unclear what that the normal meaning of “video” is, the Applicant presumes that the Examiner means the first of five definitions occurring from Microsoft® Encarta®'s dictionary, which is

the only dictionary source relied upon by the Examiner for the word "video." Encarta® states that "video" means: "visual part of television: the visual part of a television broadcast."

According to the Examiner, "opinion" means "a view, judgment, or appraisal formed in the mind about a particular matter." Office Action, 8/17/06 at 2. Combining the terms, one obtains:

Examiner's Definition of VIDEOPINIONS: "visual part of television: the visual part of a television broadcast; a view, judgment, or appraisal formed in the mind about a particular matter."

Moreover, the Examiner has apparently defined the Applicant's class 35 services thus:

Examiner's Statement of Applicant's Services: "offer[ing] opinions about products and services on videotape"

Although Applicant disagrees with the Examiner's definition of VIDEOPINIONS and his depiction of Applicant's services, nevertheless, Applicant contends that there is no logical or rational way to get from the Examiner's definition of VIDEOPINIONS to the Examiner's rendition of the Applicant's services.

In the Examiner's first office action, the Examiner stated that "[i]t appears that the applicant's services will involve the provision of opinions by means of video." Office Action, 1/10/06 at 2. In the Applicant's response to that office action, the Applicant explained that the Applicant itself does not provide opinions in the form of videos, but rather, provides a means by which people can submit, share, and obtain product (and service) information. Now, the Examiner acknowledges that VIDEOPINIONS does not describe the services he originally attributed to the Applicant in the January 10, 2006 office action.

Even though the applicant itself may not be expressing its own opinions about the goods and services of others, its services nonetheless feature opinions on video.

Office Action, 8/17/07 at 2. To circumvent the Applicant's response, the Examiner has simply changed his version of what he takes to be the Applicant's class 35 services. Instead of stating that the Applicant's services involve "the provision of opinions by means of video," the Examiner now states that the Applicant's service involves "consumers offer[ing] opinions about products and services on videotape." The Examiner now writes:

Applicant seeks registration of VIDEOPINIONS for services wherein consumers offer opinions about products and services on videotape.

Office Action, 8/17/07 at 2. Although this characterizes the Applicants' class 35 services as "offer[ing] opinions about products and services on videotape," the Examiner has conspicuously left out from his rendition of the Applicant's services anything involving the Applicant.

According to the Examiner "consumers offer opinions about products and services on videotape." Applicant is not a consumer offering opinion about products and services on videotape. The Applicant does not create videos. The Applicant does not create opinions. The Applicant provides information by means of a global computer network. This is not the same as consumers offering opinions about products and services on videotape.¹³

The situation resembles that of the case of *In re TBG Inc.*, 229 USPQ 759 (TTAB 1986), where the applicant applied for the mark SHOWROOM ONLINE for "leasing computer databases and video disks in the field of interior furnishings and related products of others." Reversing the examining attorney's refusal to register the mark under Section 2(e)(1), the Board

¹³ The Examiner seems to recognize the awkwardness of his depiction of the Applicant's services when he writes: "the fact that the mark does not describe how the services are offered does not foreclose the finding of descriptiveness." Office Action, 8/17/06 at 2. However, when the services of the applicant are defined to include "how the services are offered" (as in this case), one cannot simply ignore this aspect of the Applicant's services. The Applicant's services in this case are "[p]roviding information on consumer products and services by way of a global computer network." One cannot ignore the fact that these services related to information distributed "by way of a global computer network."

noted that even though the mark could be viewed as describing some service in the abstract, it did not accurately describe the applicant's particular service.

The theory on which the refusal of registration rests depends almost entirely on the definitions of the terms "showroom" and "online" and a literal application of those definitions to appellant's services. Thus, since a "showroom" is a room where merchandise is exposed for sale or where samples are displayed, and "online" indicates information that may be requested by and transmitted to a user through a computer terminal, the combination in relation to appellant's services, in the view of the Examining Attorney, conveys the immediate idea of providing an interior furnishings showroom by means of a computer terminal.

While the definitions are accurate, the literal application of them to appellant's services is not. The product information which is provided in appellant's disks relates to the products of others. Appellant does not represent the manufacturers of these products, does not sell or lease interior furnishings, and is not otherwise in the interior furnishing business. Moreover, appellant does not take a pictorial representation of a showroom, or even data relating to a showroom, and place such online. Rather, it leases the means by which a user may obtain interior furnishings product information. Such information is typically found in catalogues. Although catalogues, as well as the products themselves, may be found in some furniture showrooms, showrooms have no direct significance in relation to appellant's leasing or information service. Accordingly, we disagree that the mark SHOWROOM ONLINE merely describes either the appellant's leasing service or its function or characteristics.

Id. at 759 (emphasis added). Like the applicant in *TBG*, the Applicant does not represent the manufacturers of the products demonstrated in videos, and does not sell each and every of the particular products demonstrated through its service. Moreover, Applicant's services here do not include offering opinions in the form of videotapes and do not include making videos containing opinions. The services include providing information via a global computer network. No matter how one unpacks and reinterprets "video opinion," it still does not describe any aspect of this service.

The Examiner also argues that if a proposed mark describes any small aspect of an applicant's services, the mark should be deemed descriptive of all of the applicant's services. Thus, the Examiner propounds that he need not prove that VIDEOPINIONS describes the recited class 35 services, but rather, the Examiner propounds that he only needs to show that it touches upon any single attribute of the services.

It is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods/services to be merely descriptive. It is enough if the term describes one attribute of the goods/services. . . .

Office Action, 8/17/06 at 2 (citations omitted). This proposition is more applicable where an applicant recites twenty different services in a single class, in which case, the mark could be deemed descriptive if it described with a degree of particularity any one of the twenty different services. This proposition may also be more applicable where the applicant recites a particular product—not a service—comprising multiple features, characteristics, and attributes.¹⁴ Such the proposition clearly does not mean that a mark could be descriptive of a particular service without telling consumers anything about the service. Moreover, the Examiner still fails to point to a single attribute of the Applicant's recited class 35 services which is described by its mark.

IV. SECTION 2(e)(1) REFUSAL OF CLASS 38

The Examiner has also refused registration of the Applicant's mark in class 38 under Section 2(e)(1). The Applicant respectfully traverses and requests reconsideration of the Examiner's refusal to register the VIDEOPINIONS mark in class 38. The Applicant contends that VIDEOPINIONS does not describe anything whatsoever, let alone "[t]elevison broadcasting, cable television broadcasting, satellite television broadcasting, and interactive

¹⁴ The cases relied by the Examiner are distinguishable because they both deal with products, not services. See, e.g., *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982) (bathroom toiletry); *In re MBAssociates*, 180 USPQ 338 (TTAB 1973) (non-lethal weapon which fires a deformable projectile, tear gas cannisters).

video-on-demand transmission services, all in the field of information on consumer products and services.” An analysis under Section 2(e)(1) requires, *inter alia*, an objective analysis of the mark to determine what it means, if anything, to consumers; and a determination of whether the mark describes with a degree of particularity the recited class 38 services claimed by the Applicant. As many of the Applicant’s arguments for registration of the mark in class 35 overlap with class 38, for the convenience the Examiner, the Applicant incorporates those arguments by reference and does not repeat all arguments in full, but provides a brief summary instead.

A. The Coined Mark VIDEOPINIONS Has No Known Meaning

As discussed in detail above, whereas the words “video” and “opinion” have many known meanings, the combination “video opinions” has no recognized meaning.¹⁵ The Applicant’s VIDEOPINIONS mark is a unique expression, coined by the Applicant for use in connection with its service (and/or intended service) of “[t]elevision broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services.” The mark VIDEOPINIONS has no dictionary definition, and there is no such thing as a “videopinions” or a “video opinions.” *See, e.g., Harrington*, 219 USPQ 854, 856 (“the composite of the two words is not a term in general use to describe educational services (or anything else, for that matter) and has no dictionary meaning”).

Given the various meanings of the terms “opinion” and “video,” one cannot come to any clear understanding as to what “videopinions” or “video opinions” could possibly mean. There are hundreds of permutations of the various definitions, many of which make no sense. Moreover, there is no evidence of common usage of VIDEOPINIONS or “video opinions” in

¹⁵ Neither “video” nor “opinion” is descriptive for class 38. *See* Ex. 6 (video-related registrations) and Ex. 12 (opinion-related registrations).

“[t]elelevision broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services.” The two attachments proffered by the Examiner purporting to show instances of use of “video opinions” are not relevant. Apart from other deficiencies described above, neither attachment shows a use of “video opinions” to mean “[t]elelevision broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services,” which is the Applicant’s class 38 services at issue. *L.Vad Technology*, 2006 TTAB LEXIS 160 at *8. For example, the person quoted in the “Private Articles” article was clearly not talking about “interactive video-on-demand transmission services, all in the field of information on consumer products and services.” Regardless, finding a single use of the phrase “video opinions” itself would not be sufficient to demonstrate descriptiveness of the Applicant’s mark. *Adamchik*, 2006 TTAB LEXIS 345, *8-10.

Although the Examiner concluded (without supporting evidence) that VIDEOPINIONS does not create an impression differing from that created by the two words, it has been found that when a new mark is subject to multiple meanings, the mark is suggestive—not descriptive. *See, e.g., FineLine*, 2006 TTAB LEXIS 339, at *9-12. The Applicant contends that upon hearing VIDEOPINIONS, a consumer must engage in highly mature thought processes and multiple steps to arrive at anything remotely resembling any aspect of the Applicant’s specific recited class 38 services. *Tennis in the Round*, 199 USPQ at 498. Moreover, the Applicant’s specific mark is not needed by competitors to identify their own services. *TMS*, 200 USPQ at 59; *Dollar-A-Day Rent-A-Car Systems*, 173 USPQ at 437.

B. The Coined Mark VIDEOPINIONS Does Not Describe Applicants' Recited Class 38 Services, Namely, "Television Broadcasting, Cable Television Broadcasting, Satellite Television Broadcasting, And Interactive Video-On-Demand Transmission Services, All In The Field Of Information On Consumer Products And Services."

The Applicant also contends that VIDEOPINIONS does not describe with a degree of particularity any aspect of the Applicant's recited class 38 services, namely, "[t]elevision broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services." Rather than looking that the recited services of class 38, the Examiner appears to have rewritten the Applicant's services to be the following:

Applicant seeks registration of VIDEOPINIONS for services wherein consumers offer opinions about products and services on videotape.

Office Action, 8/17/07 at 2. But the services recited in class 38 is for the following:

Television broadcasting, cable television broadcasting, satellite television broadcasting, and interactive video-on-demand transmission services, all in the field of information on consumer products and services.

The Applicant's recited class 38 services never mentions opinions and never mentions videotape.

It appears that the Examiner has attempted to rewrite the Applicant's services such that it conforms to the Examiner's chosen definitions of the words "opinions" and "video." Regardless of whether the words "video" and "opinions" could be deemed to describe something in the abstract, the combination simply does not describe any aspect of the Applicant's services with any degree of particularity. *See Major League Baseball Properties*, 2005 TTAB LEXIS 94; *TMS*, 200 USPQ at 59; *On Technology*, 41 USPQ2d 1475; *In re Cerner*, 2001 TTAB LEXIS 87.

V. SECTION 2(e)(1) REFUSAL OF CLASS 41

The Examiner has also refused registration of the Applicant's mark in class 41 under Section 2(e)(1). The Applicant respectfully traverses and requests reconsideration of the Examiner's refusal to register the VIDEOPINIONS mark in class 41. The Applicant contends that VIDEOPINIONS does not describe anything whatsoever, let alone "[e]ntertainment services in the nature of on-going television programs in the field of information about consumer products and services." As many of the Applicant's arguments for registration of the mark in class 35 and 38 overlap with class 41, for the convenience the Examiner, the Applicant incorporates those arguments by reference and does not repeat all arguments in full, but provides a summary instead.

A. The Coined Mark VIDEOPINIONS Has No Known Meaning

As discussed in detail above, whereas the words "video" and "opinion" have many known meanings, the combination "video opinions" has no recognized meaning.¹⁶ The Applicant's VIDEOPINIONS mark is a unique expression, coined by the Applicant for use in connection with its service (or intended service) of "[e]ntertainment services in the nature of on-going television programs in the field of information about consumer products and services." The mark VIDEOPINIONS has no dictionary definition. *Harrington*, 219 USPQ 854, 856.

Given the various meanings of the terms "opinion" and "video," one cannot come to any clear understanding as to what "videopinions" or "video opinions" could possibly mean. Moreover, there is no evidence of common usage of VIDEOPINIONS or "video opinions" in "[e]ntertainment services in the nature of on-going television programs in the field of information about consumer products and services." The two attachments proffered by the

¹⁶ Neither "video" nor "opinion" is descriptive for class 41. See Ex. 6 (video-related registrations) and Ex. 12 (opinion-related registrations).

Examiner purporting to show instances of use of “video opinions” are not relevant as neither attachment shows a use of “video opinions” to mean “[e]ntertainment services in the nature of on-going television programs in the field of information about consumer products and services,” which is the Applicant’s class 41 services at issue. *L.Vad Technology*, 2006 TTAB LEXIS 160 at *8.¹⁷ Although the Examiner summarily concluded that VIDEOPINIONS does not create an impression differing from that created by the two words, when a new mark is subject to multiple meanings, the mark is suggestive—not descriptive. *See, e.g., FineLine*, 2006 TTAB LEXIS 339, at *9-12. The Applicant also contends that the Applicant’s specific mark is not needed by competitors to identify their own services. *TMS*, 200 USPQ at 59. There is no evidence that any television network or consumer information service uses “videopinions” or “video opinions” to describe similar services. *Dollar-A-Day Rent-A-Car Systems*, 173 USPQ at 437.

B. The Coined Mark VIDEOPINIONS Does Not Describe Applicants’ Recited Class 41 Services, Namely, “[E]ntertainment Services In The Nature Of On-Going Television Programs In The Field Of Information About Consumer Products And Services.”

The Applicant contends that VIDEOPINIONS does not describe with any degree of particularity any aspect of the Applicant’s recited class 41 services, namely, “[e]ntertainment services in the nature of on-going television programs in the field of information about consumer products and services.” Rather than looking at the Applicant’s recited services for class 41, the Examiner appears to have rewritten the Applicant’s services to be the following:

Applicant seeks registration of VIDEOPINIONS for services wherein consumers offer opinions about products and services on videotape.

Office Action, 8/17/07 at 2. Again, the service recited in class 41 is for the following:

¹⁷ Moreover, finding a single use of the phrase “video opinions” itself would not be sufficient to demonstrate descriptiveness of the Applicant’s mark. *Adamchik*, 2006 TTAB LEXIS 345, *8-10.

Entertainment services in the nature of on-going television programs in the field of information about consumer products and services.

The Applicant's recited class 41 services never mentions opinions and never mentions videotape. It appears that the Examiner attempted to rewrite the Applicant's services such that it conforms to the Examiner's chosen definitions of the words "opinions" and "video." Regardless of whether the words "video" and "opinions" could be deemed to describe something in the abstract, the combination simply does not describe any aspect of the Applicant's services with any degree of particularity. *See Major League Baseball Properties*, 2005 TTAB LEXIS 94; *TMS*, 200 USPQ at 59; *On Technology*, 41 USPQ2d 1475; *In re Cerner*, 2001 TTAB LEXIS 87.

* * * *

On the issue of whether a particular mark is merely descriptive, the examiner bears the burden of showing that the mark only describes the identified goods or services. *See In re Merrill, Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567 (Fed. Cir. 1987); *Grand Forest Holdings*, 78 USPQ2d 1152. The Board has indicated time-and-again that if there are any doubts on the issue of descriptiveness after considering the evidence, such doubt must be resolved in favor of the applicant, allowing the mark to be published so that if competitors have a need to use the term, they may oppose registration of it to applicant. *In re Gourmet Bakers, Inc.*, 173 USPQ (BNA) 565, at *1 (TTAB 1972), *accord*, *On Technology*, 41 USPQ2d (BNA) 1475, at *8; *In re Telechat Networks, Inc.*, 2006 TTAB LEXIS 178, at *8 (TTAB May 11, 2006) ("Because we have doubts as to whether applicant's mark is merely descriptive, we resolve those doubts, as we are required to do, in applicant's favor."). In this case, the Applicant contends that it has raised several doubts as to the Examiner's initial identification of the Applicant's mark as "merely descriptive."

VI. NOTICE OF APPEAL

As the Examiner August 17, 2006 refusal to register was made final, Applicant is also filing, concurrently herewith, a Notice of Appeal to preserve the application. A copy of that filing is attached herewith at Ex. 11.

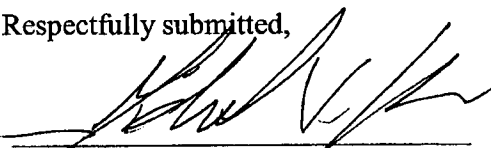
CONCLUSION

For the foregoing reasons, the Applicant respectfully requests that the Examiner: (i) reconsider the decision to make the August 17, 2006 action final; and (ii) reconsider the refusal to register the mark in classes 35, 38, and 41 under Section 2(e)(1). For the foregoing reasons, the Applicant respectfully requests the Examiner to pass the mark on for publication in the *Official Gazette*. If the Examiner should have any questions regarding this application, the undersigned attorney would be happy to speak with him and answer any questions.

Respectfully submitted,

Dated: February 20, 2007

By: _____


Michael J. Freno
KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

Attorney for Applicant

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video blog

video camera

video card

video display terminal

video frequency

video game



vid·e·o [víddee ò]

noun (plural vid·e·os)

Definition:

1. **visual part of television:** the visual part of a television broadcast

2. **something recorded onto videotape:** something that has been recorded on videotape, especially a movie or music performance

- a video of my brother's wedding

3. **videocassette:** videotape, or a videocassette (*informal*)

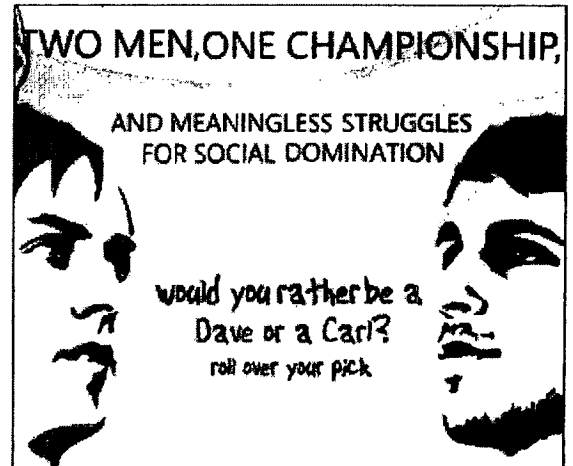
- now available to rent or buy on video

4. **COMPUT images on computer screen:** the text and graphics images that appear on a computer screen

5. **image reproduction industry:** the industry of recording and broadcasting visual information and entertainment, especially that which can be viewed on a television

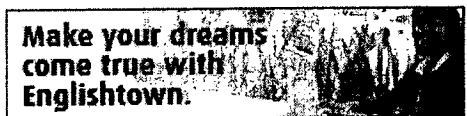
- a star of stage, screen, and video

adjective



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Definition:

1. relating to visual image

reproduction: relating to the recording or broadcasting of visual information or entertainment by means of videotape or television

2. relating to video frequencies: relating to or using video frequencies

[Mid-20th century. < Latin *videre* "to see," after audio]

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EXHIBIT 2

Dictionary

Find definitions for: 

vid•e•o

Pronunciation: (vid'ē-ō"), [key]

—n.

1. Television.

a. the elements of television, as in a program or script, pertaining to the transmission or reception of the image (distinguished from audio).

b. the video part of a television broadcast.

2. Informal.videotape.

3. Informal.television: She is a star of stage and video.

4. a program, movie, or the like, that is available commercially on videocassette.

5. See music video.

—adj.

1. of or pertaining to the electronic apparatus for producing the television picture: video amplifier.

2. of or pertaining to television, esp. the visual elements.

3. of or pertaining to videocassettes, videocassette recorders, music video, etc.: a video shop.

4. pertaining to or employed in the transmission or reception of television pictures.

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- video[1,noun]
- video[2,adjective]
- digital video disc
- home video
- video camera
- video card

Main Entry: **1**vid·eo

Pronunciation: 'vi-dE-"O

Function: *noun*

Etymology: Latin *vidEre* to see + *-o* (as in *audio*)

1 : **TELEVISION**; *also* : the visual portion of television

2 : **VIDEOTAPE**: as **a** : a recording of a motion picture or television program for playing through a television set **b** : a **videotaped** performance of a song often featuring an interpretation of the lyrics through visual images

3 : a recording similar to a **videotape** but stored in digital form (as on an optical disk or a computer's hard drive)

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video

9 entries found for **video**.
To select an entry, click on it.

- video[1,noun]
- video[2,adjective]
- digital video disc
- home video
- video camera
- video card

Main Entry: **2**video
Function: *adjective*

- 1** : being, relating to, or used in the transmission or reception of the television image <a *video* channel> -- compare [AUDIO](#)
- 2** : being, relating to, or involving images on a television screen or computer display <a *video* terminal>

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–noun

1. *Television.*

a. the elements of television, as in a program or script, pertaining to the transmission or reception of the image (distinguished from [AUDIO](#)).

b. the video part of a television broadcast.

2. *Informal.* [VIDEOTAPE](#).

3. *Informal.* television: *She is a star of stage and video.*

4. a program, movie, or the like, that is available commercially on videocassette.

5. [MUSIC VIDEO](#).

–adjective

6. of or pertaining to the electronic apparatus for producing the television picture: *video amplifier*.

7. of or pertaining to television, esp. the visual elements.

8. of or pertaining to videocassettes, videocassette recorders, music video, etc.: *a video shop*.

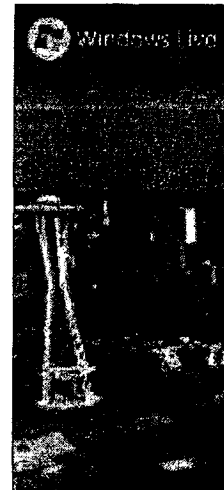
9. pertaining to or employed in the transmission or reception of television pictures.

[Origin: 1930-35; < L *vidē(re)* to see + *-o* as in [AUDIO](#)]

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music video

-noun


a commercial videotape featuring a performance of a popular song, often through a stylized dramatization by the performers with lip-synching and special effects.

Also called video, video record.

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vid·e·o  (vĭd'ē-ō) Pronunciation Key

adj.

1. Of or relating to television, especially televised images.
2. Of or relating to videotaped productions or videotape equipment and technology.
3. *Computer Science* Of or relating to the production of images on video displays.

n. *pl.* vid·e·os

1. The visual portion of a televised broadcast.
2. Television: *a star of stage, screen, and video.*
3. A videocassette or videotape, especially one containing a recording of a movie, music performance, or television program.
4. A music video.
5. *Computer Science* The appearance of text and graphics on a video display.

[From Latin *videō*, first person sing. present tense of *vidēre*, *to see*; see **vide**.]

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video

noun

1. the visible part of a television transmission; "they could still receive the sound but the picture was gone"
2. a recording of both the video and audio components (especially one containing a recording of a movie or television program) [syn: video recording]
3. broadcasting visual images of stationary or moving objects; "she is a star of screen and video"; "Television is a medium because it is neither rare nor well done" – Ernie Kovacs [syn: television]

video (adj., n., pref.)

1935, as visual equivalent of audio, from L. *video* "I see," first person singular present indicative of *videre* "to see" (see *vision*). *Videotape* (n.) is from 1953; the verb is 1959, from the noun; *videocassette* is from 1971; *video game* is from 1973. *Videocassette recorder* is from 1971, now usually *VCR* (also 1971).

video¹ ['vidiəu] noun — plural **videos**

the recording or broadcasting (by means of a video recorder) of television pictures and sound

<i>Arabic:</i> فيديو	<i>Japanese:</i> ビデオ
<i>Chinese (Simplified):</i> 视频	<i>Latvian:</i> video
<i>Chinese (Traditional):</i> 影片	<i>Lithuanian:</i> video
<i>Czech:</i> videofonie	<i>Norwegian:</i> videooptak, fjernsyn (ssending)
<i>Danish:</i> video	<i>Polish:</i> nagranie, *audycja video
<i>Dutch:</i> het opnemen, uitzenden op video	<i>Portuguese (Brazil):</i> vídeo
<i>Estonian:</i> videosalvestis	<i>Portuguese (Portugal):</i> video
<i>Finnish:</i> kuvanauhoitus	<i>Romanian:</i> videofonie
<i>French:</i> vidéophonie	<i>Russian:</i> видеозапись
<i>German:</i> das Video	<i>Slovak:</i> video
<i>Greek:</i> μαγνητοσκοπήση	<i>Slovenian:</i> video
<i>Hungarian:</i> videó	<i>Spanish:</i> vídeo
<i>Icelandic:</i> sjónvarpsupptaka, *-útsending	<i>Swedish:</i> video
<i>Indonesian:</i> video	<i>Turkish:</i> video kaydı
<i>Italian:</i> video	

video² ['vidiəu] noun

a videotape

<i>Arabic:</i> شريط تسجيل فيديو	<i>Japanese:</i> ビデオテープ
<i>Chinese (Simplified):</i> 录像带	<i>Latvian:</i> videolente; videokasete
<i>Chinese (Traditional):</i> 錄影帶	<i>Lithuanian:</i> vaizdajuostė
<i>Czech:</i> videokazeta	<i>Norwegian:</i> videokassett
<i>Danish:</i> videomaskine	<i>Polish:</i> taśma video
<i>Dutch:</i> videoband	<i>Portuguese (Brazil):</i> videotape
<i>Estonian:</i> videolint	<i>Portuguese (Portugal):</i> filme video
<i>Finnish:</i> videonauha	<i>Romanian:</i> bandă video
<i>French:</i> bande magnétoscopique	<i>Russian:</i> видеоплёнка
<i>German:</i> das Video	<i>Slovak:</i> videokazeta
<i>Greek:</i> βιντεοταινία	<i>Slovenian:</i> magnetni trak
<i>Hungarian:</i> videoszalag	<i>Spanish:</i> cinta de
<i>Icelandic:</i> myndband	

Italian: video,
videocassetta

Swedish: videoband
Turkish: teyp

video³ ['vidiəu] *noun*

(also video cassette recorder; ~VCR) a machine used for watching or recording television films and programmes on videotape

<i>Arabic:</i> جهاز فيديو	<i>Italian:</i> video, videoregistratore
<i>Chinese (Simplified):</i> 录像机	<i>Japanese:</i> 映像記録機
<i>Chinese (Traditional):</i> 錄影機	<i>Latvian:</i> videomagnetofons
<i>Czech:</i> video(rekordér)	<i>Lithuanian:</i> kasetinis vaizdo magnetofonas
<i>Danish:</i> videomaskine	<i>Norwegian:</i> videospiller, videooptaker
<i>Dutch:</i> videorecorder	<i>Polish:</i> magnetowid
<i>Estonian:</i> videomagnetofon	<i>Portuguese (Portugal):</i> gravador video
<i>Finnish:</i> videonauhuri	<i>Romanian:</i> videocasetofon
<i>French:</i> magnétoscope	<i>Russian:</i> видеоманитофон
<i>German:</i> der Video(rekorder)	<i>Slovak:</i> videorekordér
<i>Greek:</i> συσκευή μαγνητοσκοπήσης, βίντεο	<i>Slovenian:</i> videorekorder
<i>Hungarian:</i> videomagnó	<i>Spanish:</i> vídeo, grabador de vídeo
<i>Icelandic:</i> myndbandstæki	<i>Swedish:</i> videobandspelare
<i>Indonesian:</i> mesin perekam, *pemutar pita video	<i>Turkish:</i> video kayıt cihazı

video ['vidiəu] *verb*

to record on a video recorder or videotape

Example: He videoed the television programme on volcanoes.

<i>Arabic:</i> يُسجّل على شريط تسجيل فيديو	<i>Korean:</i> ...에 비디오 를
<i>Chinese (Simplified):</i> 录像	<i>Latvian:</i> ierakstīt videolentē
<i>Chinese (Traditional):</i> 錄影	<i>Lithuanian:</i> įrašyti į vaizdajuostę
<i>Czech:</i> nahrát na video	<i>Norwegian:</i> ta opp på video
<i>Danish:</i> optage på video	<i>Polish:</i> nagrać na taśmie video
<i>Dutch:</i> op een videoband opnemen	<i>Portuguese (Brazil):</i> gravar em vídeo
<i>Estonian:</i> videosalvestama	<i>Portuguese (Portugal):</i> passar em vídeo
<i>Finnish:</i> videoida	<i>Romanian:</i> a înregistra pe video
<i>French:</i> enregistrer au magnétoscope	<i>Russian:</i> записывать на видео
<i>German:</i> auf Video aufzeichnen	<i>Slovak:</i> zachytiť na video
<i>Greek:</i> μαγνητοσκοπώ	<i>Slovenian:</i> posneti na
<i>Icelandic:</i> taka upp á myndband	
<i>Indonesian:</i> merekam dengan video	
<i>Italian:</i> registrare (su videocassetta)*	

Spanish: grabar en
vídeo

Swedish: spela in på
video

Turkish: videoya
çekmek,
*almak

See also: video (cassette) recorder, video arcade, video camera, video jockey, videotape

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EXHIBIT 5

video, *n.*

SECOND EDITION 1989

(ˈvɪdɪəʊ) [f. L. *vidē-re* to see + -O, after AUDIO-.]

Absol. use of VIDEO-.

1. That which is displayed or to be displayed on a television screen or other cathode-ray tube; the signal corresponding to this.

1937 *Printers' Ink Monthly* May 45/2 *Video*, the sight channel in television, as opposed to audio, the sound channel. **1940** *Broadcasting* 1 June 32 *Video* seen 230 miles at sea. Clear steady images picked up during test. **1946** [see DISPLAY *n.* 1c]. **1949** *Hollywood Q.* Winter 157 And pipe the finished output of these segments, both video and audio, instantaneously and simultaneously to the kinescope recorders. **1951** *Proc. IRE* XXXIX. 8/1 One cycle of video during active horizontal scanning represents one dark and one light picture element on a particular scanning line. **1960** J. L. BERNSTEIN *Video Tape Recording* p. vii, Directors, editors, cameramen, and others..would benefit if they could learn the processes involved in recording video on tape. **1964** *Times* 7 Feb. p. iv/3 Except for its width..video tape looks exactly like sound recording tape. But it records not only sound but a continuous picture—video—as well! **1976** *Aviation Week* 10 May 131/1 An IBM scan converter transforms radar video into a format suitable for presentation on the TV monitors. **1977** *Gramophone* Aug. 361/2, I see it as the precursor of the all-purpose high quality cassette recorder that will record both video and audio. **1979** W. C. BRANDENBURG *Introd. Television Servicing* ii. 4/2 Both the audio and video can be broadcasted from the same antenna. **1982** G. WHITE *Video Techniques* vi. 134 Sound is as important as the video and often more difficult to edit.

2. Television as a broadcasting medium. *U.S. colloq.*

1941 *Amer. Mercury* Nov. 581/2 *Vidio*..television. **1946** *Time* 25 Feb. 72 NBC published a 55-page booklet, listing words & phrases commonly used in video. **1954** *Billboard* 13 Nov. 21 Most of the big name spinners have taken a fling in video during the last five years, but their survival-average has been low. **1979** *Boston Globe* 10 Apr. 32 Their play was flashed by video to an adjoining room where experts commented on it before a throng.

3. A video recorder; also, a VDU.

1958 *Observer* 26 Jan. 14/6 The Video is like a combined tape-recorder and cinema camera. It records your television appearance complete with sound track and can be played back at the touch of a switch. **1979** *Television & Home Video* Mar. 7/2 There's not a lot of point in owning a home video and using it to record the rubbish you might otherwise have missed. **1982** *Times* 7 May 17/5 Last year over 900,000 videos were

rented or sold in Britain. **1983** *What's New in Computing* Jan. 5/1 The rest of the machine, the discs, the power supplies and the videos are all retained or upgraded and existing software can be run side by side with new software. **1984** S. TOWNSEND *Growing Pains A. Mole* 190 We are the only family in our street who haven't got a video.

4. A video recording; videotape as a recording medium.

1968 *Observer* 14 Jan. 28/4 The days of the disc, in the pop world at least, are numbered. For soon will come the video. We will have the top 20 videos which you plug into your home video-machine. **1978** *Radio Times* 4-10 Mar. 4/2 We've got some video of a man he has already made contact with... We'll just have to cut in with that if necessary. **1981** *Church Times* 7 Aug. 5/3 They..went down to BBC television... Later he popped round to the school and showed them a video of themselves. **1983** *New Scientist* 3 Mar. 569/1 The BBC recognised early on that there was money to be made from selling archive programmes on video. **1984** *Melody Maker* 6 Oct. 3/1 Spandau Ballet have just returned from Hong Kong where they filmed the video for 'Highly Strung'.

5. The production or use of video recordings.

1970 *It* 9-24 Apr. 7 There are also groups of people exploiting video in any way they can think of. **1977** *N.Y. Rev. Bks.* 23 June 25/4 Made images move (cinema) and achieved their simultaneous recording and transmission (video). **1980** *Times* 31 Mar. 24/6 There are enough able practitioners around to demonstrate how effectively video, like any other artistic tool, can be used. **1980** C. MACCABE *Godard* 26 You envisaged a different kind of distribution: film and video as a handcraft industry. **1982** *Listener* 11 Feb. 34/3 The good news is that things in video could be worse. The bad news is that things in video will get worse.

DRAFT ADDITIONS JUNE 2001

video, n.

► **video on demand** *Broadcasting*, a pay-per-view television service accessed via a telephone line, which allows a customer to select at any time from a list of programmes; abbreviated *VOD*.

1983 *Telephone Engineer & Managem.* (Nexis) 15 July 92 Customers..will demand not only voice service, but access to data, text display, remote telemetry, *video on demand, and broadband services. **1990** M. M. MIRABITO & B. MORGENSTEIN *New Communications Technol.* vii. 137/2 The new system, the so-called 'video on demand,' could offer the same collection of television shows in addition to self-help and exercise videotapes, movies, and a library of older television programs. **2000** *Atlanta Jrnl. & Constit.* (Electronic ed.) 26 Nov., Once it reaches the head end, the customer's order triggers a server that holds hundreds of digitized movies. The server signals the cable company's billing system, and the video-on-demand order is added to the customer's cable bill.

EXHIBIT 6



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Typed Drawing

Word Mark VIDEOFASHION

Goods and Services IC 041. US 100 101 107. G & S: Entertainment, namely a continuing fashion and lifestyle show distributed over Television, satellite, audio, and video media; production and distribution of motion pictures; production of television fashion and lifestyle programs; videotape production. FIRST USE: 19770100. FIRST USE IN COMMERCE: 19770100

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 78025083

Filing Date September 8, 2000

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 26, 2002

Registration Number 2688697

Registration Date February 18, 2003

Owner (REGISTRANT) Video Edition, Inc. CORPORATION NEW YORK 100 Avenue of the Americas, 12th Floor New York NEW YORK 10013

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

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Typed Drawing

Word Mark VIDEO/VISUALS, INC.
Goods and Services IC 040. US 106. G & S: VIDEOTAPE DUPLICATION SERVICES. FIRST USE: 19750000. FIRST USE IN COMMERCE: 19750000
 IC 041. US 107. G & S: VIDEOTAPE PRODUCTION SERVICES AND VIDEO EQUIPMENT RENTAL SERVICES. FIRST USE: 19750000. FIRST USE IN COMMERCE: 19750000
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 73672405
Filing Date July 16, 1987
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 5, 1988
Registration Number 1506452
Registration Date September 27, 1988
Owner (REGISTRANT) VIDEO/VISUALS, INC. CORPORATION MASSACHUSETTS 63 CHAPPEL STREET NEWTON MASSACHUSETTS 02158
Attorney of Record MARGARET M. GEARY
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "INC." APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Typed Drawing

Word Mark VIDEOSTORE1
Goods and Services IC 038. US 100 101 104. G & S: BROADCASTING SERVICES, NAMELY, FILE BROADCASTING OF VIDEO DATA VIA A GLOBAL INFORMATION NETWORK. FIRST USE: 19970201. FIRST USE IN COMMERCE: 20001001
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75598650
Filing Date December 3, 1998
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition November 16, 1999
Registration Number 2470164
Registration Date July 17, 2001
Owner (REGISTRANT) TRANZ-SEND BROADCASTING NETWORK, INC. CORPORATION CALIFORNIA 601 Van Ness Avenue Suite E3613 San Francisco CALIFORNIA 94102
Attorney of Record Teresa C. Tucker
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOSPACE

Goods and Services IC 035. US 100 101 102. G & S: online retail store services provided via a global computer network featuring DVDs, movies, music, compact discs, books, magazines, posters, clothing, toys, games and computer, video and electronic games. FIRST USE: 20030328. FIRST USE IN COMMERCE: 20030328

IC 041. US 100 101 107. G & S: Providing a web site containing information and content on movies, videos, music, toys, games and electronic games. FIRST USE: 20030328. FIRST USE IN COMMERCE: 20030328

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 78301725

Filing Date September 17, 2003

Current Filing Basis 1A

Original Filing Basis 1B

Published for Opposition June 8, 2004

Registration Number 2929837

Registration Date March 1, 2005

Owner (REGISTRANT) Razor & Tie Direct, L.L.C. LTD LIAB CO NEW YORK 214 Sullivan Street, Suite 4A New York NEW YORK 10012

Attorney of Record Todd Braverman

Type of Mark SERVICE MARK

Register PRINCIPAL

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Typed Drawing

Word Mark VIDEOSHOPPING
Goods and Services IC 035. US 100 101 102. G & S: Conducting market and consumer research and preparing advertisements for others; namely, developing new product ideas and store or section layouts. FIRST USE: 19900712. FIRST USE IN COMMERCE: 19900712
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75688239
Filing Date April 21, 1999
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition December 7, 1999
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 2324504
Registration Date February 29, 2000
Owner (REGISTRANT) New Product Insights, Inc. CORPORATION MISSOURI 8700 Indian Creek Parkway Overland Park KANSAS 66210

(LAST LISTED OWNER) NPI, INC. CORPORATION MISSOURI ONE WARD PARKWAY, SUITE 236 OVERLAND PARK KANSAS 64112
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record MARCIA J. RODGERS
Type of Mark Register SERVICE MARK
PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator 63 LIVE



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Typed Drawing

Word Mark VIDEOSEEKER

Goods and Services IC 035. US 100 101 102. G & S: Preparing and placing advertising in an electronic magazine accessed through a global computer network; Promoting the goods and services of others by placing advertisements and promotional displays in an electronic site accessed through computer networks. FIRST USE: 19980420. FIRST USE IN COMMERCE: 19980420

IC 041. US 100 101 107. G & S: Providing information regarding television programming, entertainment, music and video, recreational activities and cultural and civic events via a global computer network; providing multi-user on-line computer games and contests; providing an online computer data base of links to other websites in the field of music and entertainment. FIRST USE: 19980420. FIRST USE IN COMMERCE: 19980420

IC 042. US 100 101. G & S: Computer services, namely, providing an on-line database of information, web sites and other resources in a wide variety of subjects; providing search engines for obtaining data on a global computer network. FIRST USE: 19980420. FIRST USE IN COMMERCE: 19980420

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75604593

Filing Date December 21, 1998

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 2, 1999

Registration Number 2311563

Registration Date January 25, 2000

Owner (REGISTRANT) National Broadcasting Company, Inc. CORPORATION DELAWARE 30 Rockefeller Plaza New York NEW YORK 10112

(LAST LISTED OWNER) NBC UNIVERSAL, INC. CORPORATION DELAWARE 30 ROCKEFELLER PLAZA NEW YORK NEW YORK 10112

Assignment 84 ASSIGNMENT RECORDED

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Attorney of Record Gillian M. Lusins
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 8 (6-YR).
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Typed Drawing

Word Mark VIDEOSECRETS
Goods and Services (CANCELLED) IC 035. US 100 101 102. G & S: [Dissemination of advertisements for others via a global on-line computer communications network]. FIRST USE: 19961230. FIRST USE IN COMMERCE: 19961230

 IC 038. US 100 101 104. G & S: Broadcast of live adult entertainment via a global on-line computer communications network. FIRST USE: 19961230. FIRST USE IN COMMERCE: 19961230

 IC 041. US 100 101 107. G & S: Production of live adult entertainment for distribution by web sites of others via a global on-line computer communications network. FIRST USE: 19961230. FIRST USE IN COMMERCE: 19961230

Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75796295
Filing Date September 10, 1999
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition February 29, 2000
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 2352104
Registration Date May 23, 2000
Owner (REGISTRANT) VS Media, Inc. CORPORATION CALIFORNIA 250 North Westlake Boulevard Westlake Village CALIFORNIA 91362

Attorney of Record BERNARD R. GANS
Type of Mark Register SERVICE MARK PRINCIPAL
Affidavit Text SECT 15. PARTIAL SECT 8 (6-YR).
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Typed Drawing

Word Mark VIDEORESUMECREATOR
Goods and Services IC 035. US 100 101 102. G & S: providing an online computer database in the field of employment. FIRST USE: 20000801. FIRST USE IN COMMERCE: 20000801
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76119038
Filing Date August 25, 2000
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 18, 2001
Registration Number 2516936
Registration Date December 11, 2001
Owner (REGISTRANT) QuikView, Inc. CORPORATION CALIFORNIA 4280 Brisbane Circle El Dorado Hills CALIFORNIA 95762
Attorney of Record Robert D. Fish
Type of Mark SERVICE MARK
Register PRINCIPAL
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Typed Drawing

Word Mark VIDEOPLAN
Goods and Services IC 041. US 107. G & S: RENTAL OF VIDEOCASSETTES THROUGH LIBRARIES. FIRST USE: 19831204. FIRST USE IN COMMERCE: 19831204
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 73521479
Filing Date February 11, 1985
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 22, 1986
Registration Number 1413686
Registration Date October 14, 1986
Owner (REGISTRANT) VIDEOPLAN, INC. CORPORATION CALIFORNIA 19122 SOUTH VERMONT AVENUE GARDENA CALIFORNIA 90248
Attorney of Record ALAN H. LEVINE
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
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Typed Drawing

Word Mark VIDEOMINING
Goods and Services IC 041. US 100 101 107. G & S: PROVIDING AN ONLINE COMPUTER DATABASE IN THE FIELD OF VIDEO CLIPS THAT ARE SEARCHABLE USING KEY WORDS AND OTHER FIELDS. FIRST USE: 19990900. FIRST USE IN COMMERCE: 19990900

 IC 039. US 100 105. G & S: ELECTRONIC STORAGE AND ARCHIVING OF VIDEO CLIPS AND VIDEO MATERIALS OF OTHERS ON A COMPUTER SERVER ACCESSIBLE VIA GLOBAL COMPUTER NETWORK. FIRST USE: 19990900. FIRST USE IN COMMERCE: 19990900

Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75732869
Filing Date June 21, 1999
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition May 15, 2001
Registration Number 2571867
Registration Date May 21, 2002
Owner (REGISTRANT) Technology Education Network, Inc. CORPORATION DELAWARE 450 Saw Mill River Road Ardsley NEW YORK 105022605

Attorney of Record ANNA C. SILVA
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOMATE
Goods and Services IC 041. US 100 101 107. G & S: Casino gaming services
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76329471
Filing Date October 24, 2001
Current Filing Basis 44E
Original Filing Basis 1B;44D
Published for Opposition October 29, 2002
Registration Number 2677069
Registration Date January 21, 2003
Owner (REGISTRANT) Aristocrat Technologies Australia Pty Ltd CORPORATION AUSTRALIA 71 Longueville Road Lane Cove, New South Wales AUSTRALIA
Attorney of Record Michael D. Hobbs Jr
Priority Date April 30, 2001
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOMASTERS
Goods and Services IC 035. US 100 101 102. G & S: Business marketing consulting services. FIRST USE: 20000401. FIRST USE IN COMMERCE: 20000401
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75710507
Filing Date June 17, 1999
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition January 11, 2000
Registration Number 2672504
Registration Date January 7, 2003
Owner (REGISTRANT) VIDEOMASTERS, INC CORPORATION VIRGINIA 2200 Dunbarton Drive, Suite D Chesapeake VIRGINIA 23325
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOMARATHON
Goods and Services IC 035. US 100 101 102. G & S: ADVERTISING AGENCY SERVICES

 IC 041. US 100 101 107. G & S: MOTION PICTURE FILM PRODUCTION; ORGANIZING CULTURAL EVENTS, NAMELY AN AWARD SHOW FOR THE ASSIGNMENT AND PRESENTMENT OF PRIZES FOR FILMS; ENTERTAINMENT SERVICES, NAMELY PROVIDING A WEBSITE FEATURING FILM CLIPS AND OTHER MULTIMEDIA MATERIALS

Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76348964
Filing Date December 14, 2001
Current Filing Basis 44E
Original Filing Basis 1B;44D
Published for Opposition December 17, 2002
Registration Number 2695075
Registration Date March 11, 2003
Owner (REGISTRANT) True Stories v/ David Peter Fox SOLE PROPRIETORSHIP DENMARK Burmeistersgade 2, 3. tv. DK-1429 Copenhagen K. DENMARK

Attorney of Record David Ehrlich
Priority Date June 15, 2001
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOMAKER
Goods and Services IC 041. US 100 101 107. G & S: providing on-line information on the subject of video production, video equipment and other video-related goods and services. FIRST USE: 19941201. FIRST USE IN COMMERCE: 19941201
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74536472
Filing Date June 13, 1994
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition October 15, 1996
Registration Number 2028128
Registration Date January 7, 1997
Owner (REGISTRANT) VIDEOMAKER, INC. CORPORATION NEW HAMPSHIRE 1350 East 9th Street Chico CALIFORNIA 95928
Attorney of Record GRACE M. ARUPO
Prior Registrations 1442045
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060922.
Renewal 1ST RENEWAL 20060922
Live/Dead Indicator LIVE

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VIDEOLOGO

Word Mark VIDEOLOGO

Goods and Services IC 009. US 021 023 026 036 038. G & S: Photographic, cinematographic, optical, signaling apparatus and instruments namely projection apparatus, projection screens both for projecting pictures, movies and holographic films and projection apparatus for holographic images and films; apparatus for regulating and controlling electricity namely steel security boxes used in connection with installation of projection apparatus and players; apparatus for recording, transmission or reproduction of sound and images namely players and recorders including DVD players/recorders, CD players/recorders, tape players/recorders, hard disc players/recorders and steel; magnetic and digital data carriers namely magnetic discs, CDs, DVDs, and software for monitoring and operating projectors and projection screens; data processing equipment and computers

IC 011. US 013 021 023 031 034. G & S: Apparatus for lighting namely projector lamps

IC 035. US 100 101 102. G & S: Advertising; business management; business administration; office functions

IC 041. US 100 101 107. G & S: Entertainment namely development and production of motion pictures, movies and holographic films for entertaining and advertising purposes

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Design Search Code

Serial Number 79004267

Filing Date March 15, 2004

Current Filing Basis 66A

Original Filing Basis 66A

Published for Opposition October 25, 2005

Registration Number 3046341

International Registration Number 0830246

Registration 74

Date January 17, 2006
Owner (REGISTRANT) Delfin Produktion v/Peter Allan Simonsen PRIVATE COMPANY DENMARK Jesper Brochmands Gade
15, 2th. DK-2200 Copenhagen N. DENMARK
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
**Live/Dead
Indicator** LIVE

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Typed Drawing

Word Mark VIDEOLAW
Goods and Services IC 041. US 107. G & S: Educational Services-Namely, Offering Videotaped Continuing Legal Education Seminars to Lawyers. FIRST USE: 19791024. FIRST USE IN COMMERCE: 19791024
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 73462445
Filing Date January 25, 1984
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition October 2, 1984
Registration Number 1309409
Registration Date December 11, 1984
Owner (REGISTRANT) American Bar Association CORPORATION ILLINOIS 321 NORTH CLARK STREET Chicago ILLINOIS 60610
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record ELISABETH A EVERT
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20041207.
Renewal 1ST RENEWAL 20041207
Live/Dead Indicator LIVE

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VIDEOGRAPHY

Word Mark VIDEOGRAPHY
Goods and Services IC 041. US 100 101 107. G & S: Online publication of a magazine dealing with the television broadcast field. FIRST USE: 19960800. FIRST USE IN COMMERCE: 19960800
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78643653
Filing Date June 3, 2005
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition February 14, 2006
Registration Number 3090350
Registration Date May 9, 2006
Owner (REGISTRANT) CMP ENTERTAINMENT MEDIA, INC. CORPORATION DELAWARE 460 PARK AVENUE SOUTH 9TH FLOOR NEW YORK NEW YORK 10016
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Susan L. Heller and Amanda Laura Nye
Prior Registrations 1043865
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOFORUM
Goods and Services IC 016. US 002 005 022 023 029 037 038 050. G & S: printed journals providing information on independent films and film resources on various topics. FIRST USE: 19921130. FIRST USE IN COMMERCE: 19921130
 IC 041. US 100 101 107. G & S: providing on-line information on independent films and film resources on various topics. FIRST USE: 19980100. FIRST USE IN COMMERCE: 19980100
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75871518
Filing Date December 15, 1999
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 12, 2000
Registration Number 2410593
Registration Date December 5, 2000
Owner (REGISTRANT) National Video Resources, Inc. NOT-FOR-PROFIT DELAWARE 73 Spring Street New York NEW YORK 10012
Attorney of Record Gloria C. Phares
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOFINISH

Goods and Services IC 009. US 021 023 026 036 038. G & S: Computer software, namely, software for the processing of images, in particular of movement, including television applications of any kind; data processing equipment, namely, computers and computer peripherals for use in the processing of images, in particular of movement, intended for television applications

IC 038. US 100 101 104. G & S: Television broadcasting; cable television transmission and satellite transmission

IC 041. US 100 101 107. G & S: Video editing, namely, providing video signal containing virtual images in view of the broadcasting of television programs

IC 040. US 100 103 106. G & S: Services of digital image processing in view of the editing and performance on television

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75518443

Filing Date July 14, 1998

Current Filing Basis 44E

Original Filing Basis 44D

Published for Opposition February 22, 2000

Registration Number 2349420

Registration Date May 16, 2000

Owner (REGISTRANT) Ayer, Serge INDIVIDUAL SWITZERLAND 9, chemin des Perrettes 1024 Ecublens SWITZERLAND

Attorney of Record CLIFFORD W BROWNING

Priority Date January 15, 1998

Type of Mark TRADEMARK. SERVICE MARK

Register 79 PRINCIPAL

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Typed Drawing

Word Mark VIDEOFINDER
Goods and Services IC 016. US 038. G & S: promotional kit comprising catalogs, brochures, pamphlets and printed informational sheets pertaining to videos and merchandising, printed order forms, decals, printed advertisements, display cards, paper signs, and ornamental novelty buttons, all sold as a unit. FIRST USE: 19910215. FIRST USE IN COMMERCE: 19910215

 IC 042. US 100. G & S: mail and phone special order and locating services for video titles; phone ordering services permitting video stores and other retailers to place orders and receive confirmation by phone; database and information storage and retrieval services in the field of videos. FIRST USE: 19880707. FIRST USE IN COMMERCE: 19880707

 IC 035. US 101. G & S: information storage, database and retrieval services in the field of videotapes. FIRST USE: 19880707. FIRST USE IN COMMERCE: 19880707

Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74160747
Filing Date April 25, 1991
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition March 21, 1995
Registration Number 1898856
Registration Date June 13, 1995
Owner (REGISTRANT) BAKER & TAYLOR INC. CORPORATION DELAWARE 2550 West Tyvola Road Suite 300 Charlotte NORTH CAROLINA 28217

Assignment Recorded ASSIGNMENT RECORDED
Prior Registrations 1134490;1185534
Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20060523.
Renewal 1ST RENEWAL 20060523
Live/Dead Indicator LIVE

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VIDEOVIEW

Word Mark VIDEOVIEW
Goods and Services IC 035. US 100 101 102. G & S: Employment recruiting services. FIRST USE: 19891215. FIRST USE IN COMMERCE: 19891215
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78349228
Filing Date January 8, 2004
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 28, 2004
Registration Number 2913389
Registration Date December 21, 2004
Owner (REGISTRANT) Nutter, Roger W. INDIVIDUAL UNITED STATES 11427 Reed Hartman Highway, No. 205 Cincinnati OHIO 45241
Attorney of Record J. Michael Hurst
Prior Registrations 1816694
Type of Mark SERVICE MARK
Register PRINCIPAL
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Typed Drawing

Word Mark VIDEOTRONIC

Goods and Services IC 037. US 100 103 106. G & S: Installation, maintenance and/or repair of point of purchase and point of sale video equipment, namely units for recording, transmitting and replay of picture and sound, specially magnetic recording and replay units, optical recording and replay units, digital recording and replay units, transmitting and transceiver units for wireless transmitting, units of multimedia technic for picture, sound and scent, namely, multimedia computer terminals, video monitor flat screens, video monitors and computer touch screens. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19990300

IC 009. US 021 023 026 036 038. G & S: Point of purchase and point of sale video equipment, namely, television sets with built in video cassette recorders, multimedia computer terminals, video monitor flat screens, video monitors, computer touch screens. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19990300

IC 035. US 100 101 102. G & S: Business merchandising point of purchase and point of sale display services in the field of video equipment, namely units for recording, transmitting and replay of picture and sound, specially magnetic recording and replay units, optical recording and replay units, digital recording and replay units, transmitting and transceiver units for wireless transmitting, units of multimedia technic for picture, sound and scent, namely, multimedia computer terminals, video monitor flat screens, video monitors and computer touch screens. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19990300

IC 041. US 100 101 107. G & S: Rental of point of purchase and point of sale video equipment, namely units for recording, transmitting and replay of picture and sound, specially magnetic recording and replay units, optical recording and replay units, digital recording and replay units, transmitting and transceiver units for wireless transmitting, units of multimedia technic for picture, sound and scent, namely, multimedia computer terminals, video monitor flat screens, video monitors and computer touch screens. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19990300

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75832434

Filing Date October 26, 1999

Current Filing Basis 1A;44E

Original Filing Basis 1A;44E

Published for Opposition November 6, 2001

Registration

Number 2533371
Registration Date January 29, 2002
Owner (REGISTRANT) Videotronic International GmbH LTD LIAB CO FED REP GERMANY Im Steingerust 27 D-76437 Rastatt FED REP GERMANY
Attorney of Record CHARLES T. CALIENDO
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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VideoStitial

Word Mark VIDEOSTITIAL
Goods and Services IC 035. US 100 101 102. G & S: Online advertising on computer communication networks in a format that plays an audio and/or video file on an Internet browser between the origin and destination page of a click. FIRST USE: 20040501. FIRST USE IN COMMERCE: 20040511
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 76612012
Filing Date September 13, 2004
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition August 9, 2005
Registration Number 3010428
Registration Date November 1, 2005
Owner (REGISTRANT) EyeWonder, Inc. CORPORATION DELAWARE 1447 Peachtree Street Suite 900 Atlanta GEORGIA 30309
Attorney of Record Jerome F. Connell, Jr.
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOSEAT
Goods and Services IC 041. US 100 101 107. G & S: entertainment services; namely, special cable programming services by which subscribers pay only for the programs watched. FIRST USE: 19890908. FIRST USE IN COMMERCE: 19890908
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 74127111
Filing Date December 31, 1990
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 16, 1991
Registration Number 1660161
Registration Date October 8, 1991
Owner (REGISTRANT) HOST COMMUNICATIONS, INC. CORPORATION KENTUCKY 546 East Main Street Lexington KENTUCKY 40596
Attorney of Record J. Ralph King
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20010901.
Renewal 1ST RENEWAL 20010901
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEO-SCRIPT
Goods and Services IC 042. US 100 101. G & S: videotaping of legal proceedings, legal documents and other evidence. FIRST USE: 19830801. FIRST USE IN COMMERCE: 19830801

IC 035. US 100 101 102. G & S: transcription of legal proceedings. FIRST USE: 19830801. FIRST USE IN COMMERCE: 19830801
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75104066
Filing Date May 14, 1996
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition September 9, 1997
Registration Number 2117448
Registration Date December 2, 1997
Owner (REGISTRANT) Video-Script Enterprises, Inc. CORPORATION NEW YORK 1565 Franklin Avenue Mineola NEW YORK 11501
Attorney of Record Shelley J. Safer
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOSCAPE

Goods and Services IC 038. US 100 101 104. G & S: ON DEMAND VIDEO TO BE USED IN CONNECTION WITH CUSTOMIZED TRAINING CURRICULA VIA VIDEO CONFERENCING AND A GLOBAL COMPUTER NETWORK AND RELATED PRODUCTS AND SERVICES. FIRST USE: 19980430. FIRST USE IN COMMERCE: 19980430

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75670138

Filing Date March 29, 1999

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition March 27, 2001

Registration Number 2460846

Registration Date June 19, 2001

Owner (REGISTRANT) VideoScape Corporation CORPORATION DELAWARE 27 Spectrum Point, Suite 302 Irvine CALIFORNIA 92630

Attorney of Record Nancy O. Dix

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOSAIC
Goods and Services IC 041. US 100 101 107. G & S: VIDEOTAPE PRODUCTION. FIRST USE: 20000911. FIRST USE IN COMMERCE: 20001009
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78029247
Filing Date October 5, 2000
Current Filing Basis 1A
Original Filing Basis 1A;1B
Published for Opposition July 17, 2001
Registration Number 2496428
Registration Date October 9, 2001
Owner (REGISTRANT) Steranko, Robert Scott INDIVIDUAL UNITED STATES 1845 Clayton Avenue Suite 302 Pittsburgh PENNSYLVANIA 15214
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDELOCITY
Goods and Services IC 038. US 100 101 104. G & S: electronic transmission of entertainment programming via telephone lines, cables, and global computer networks. FIRST USE: 20001100. FIRST USE IN COMMERCE: 20001100
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76171237
Filing Date November 27, 2000
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition August 21, 2001
Registration Number 2636758
Registration Date October 15, 2002
Owner (REGISTRANT) VIDELOCITY INTERNATIONAL, INC. CORPORATION NEVADA 358 SOUTH 700 EAST SUITE B604 SALT LAKE CITY UTAH 84102
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Eric M Barzee
Type of Mark SERVICE MARK
Register PRINCIPAL
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Typed Drawing

Word Mark VIDEOLINK
Goods and Services IC 035. US 100 101 102. G & S: ON-LINE RETAIL STORE SERVICES FEATURING VIDEOCONFERENCING EQUIPMENT. FIRST USE: 19990701. FIRST USE IN COMMERCE: 19990806
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75920370
Filing Date February 5, 2000
Current Filing Basis 1A
Original Filing Basis 1A;1B
Published for Opposition March 19, 2002
Registration Number 2577222
Registration Date June 11, 2002
Owner (REGISTRANT) VideoLink, LLC LLC COLORADO 4101 E. Louisiana Ave Suite 301 Denver COLORADO 80246
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Word Mark VIDEOJET
Goods and Services IC 041. US 100 101 107. G & S: Technical training in the use of ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers and controllers for controlling production and bindery lines. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

IC 002. US 006 011 016. G & S: Inks, make-up fluids and cleaning solutions for ink jet printers and imagers. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

IC 009. US 021 023 026 036 038. G & S: Contact and non-contact equipment and apparatus for coding, imaging, marking, printing or labeling, namely, ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers, ink jet and laser coders and markers; computer programs and operating systems for the ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers; printer controllers, printheads, nozzles, and filters for ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers; electronic controllers for production and bindery lines. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

IC 037. US 100 103 106. G & S: Installation, maintenance, and repair services in the fields of ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers and controllers for controlling production and bindery lines. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

IC 042. US 100 101. G & S: Technical support services, namely, troubleshooting to identify problems with and provide solutions for ink jet printers and imagers, laser printers and imagers, thermal transfer overprinters and imagers and controllers for controlling production and bindery lines. FIRST USE: 20020300. FIRST USE IN COMMERCE: 20020300

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design 26.05.21 - Triangles that are completely or partially shaded

Search Code 26.05.25 - Triangles with one or more curved sides

Serial Number 78243165

Filing Date April 29, 2003

Current Fig 1A

Basis

Original Filing Basis 1A

Published for Opposition August 31, 2004

Registration Number 2904765

Registration Date November 23, 2004

Owner (REGISTRANT) Videojet Technologies Inc. CORPORATION DELAWARE 1500 Mittel Boulevard Wood Dale ILLINOIS 60191

Attorney of Record Kirk Vander Leest

Prior Registrations 0873692;1011903;1345617;1391366;1442859;2695961;2719508;2791277;AND OTHERS

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

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Typed Drawing

Word Mark VIDEOFLOW
Goods and Services IC 041. US 100 101 107. G & S: entertainment in the nature of on-going television programs, or programming segments, featuring music videos. FIRST USE: 19880905. FIRST USE IN COMMERCE: 19880905
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75396849
Filing Date November 26, 1997
Current Filing Basis 1A;44E
Original Filing Basis 1A;44D
Published for Opposition March 16, 1999
Registration Number 2251096
Registration Date June 8, 1999
Owner (REGISTRANT) CHUM Limited CORPORATION CANADA 299 QUEEN STREET WEST Toronto, Ontario, M5V 2Z5 CANADA
Attorney of Record LINDA M BYRNE
Priority Date May 27, 1997
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR).
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOFARM.COM

Goods and Services IC 038. US 100 101 104. G & S: Providing on-line chat rooms for transmission of messages among computer users concerning video production, editing and distribution as well as other topics of general interest; providing on-line electronic bulletin boards for transmission of messages among computer users concerning video production, editing and distribution as well as other topics of general interest. FIRST USE: 19981201. FIRST USE IN COMMERCE: 19981201

IC 041. US 100 101 107. G & S: Producing, editing and distributing videos over a global communications network. FIRST USE: 19981201. FIRST USE IN COMMERCE: 19981201

IC 042. US 100 101. G & S: Hosting the web sites of others on a computer server for a global computer network. FIRST USE: 19981201. FIRST USE IN COMMERCE: 19981201

IC 035. US 100 101 102. G & S: Computerized database management. FIRST USE: 19981201. FIRST USE IN COMMERCE: 19981201

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75707501

Filing Date May 17, 1999

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition May 1, 2001

Registration Number 2470935

Registration Date July 24, 2001

Owner (REGISTRANT) JAVU TECHNOLOGIES, INC. CORPORATION DELAWARE Chelsea Piers - Pier 62 New York NEW YORK 10011

Attorney of Record Karin Segall

Type of Mark SERVICE MARK

Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOEM
Goods and Services IC 041. US 100 101 107. G & S: PRODUCTION OF CDS AND DVDS FROM INFORMATION OBTAINED FROM SCIENTIFIC INSTRUMENTATION TO BE BROADCASTED OVER THE WEB, INTERNET, OR A TELEVISION MEDIUM. FIRST USE: 20021215. FIRST USE IN COMMERCE: 20021215
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 78212007
Filing Date February 7, 2003
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition December 30, 2003
Registration Number 2825146
Registration Date March 23, 2004
Owner (REGISTRANT) Hood, Darden INDIVIDUAL UNITED STATES 12785 SW 64 Court Miami FLORIDA 33156
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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VIDEODE

Word Mark VIDEODE
Goods and Services IC 041. US 100 101 107. G & S: Video production services, namely production of videos for a range of video projects including producing personal video tributes and videos for events such as weddings, bar mitzvahs, retirements and anniversary parties. FIRST USE: 20050706. FIRST USE IN COMMERCE: 20050706
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Design Search Code
Serial Number 78670049
Filing Date July 13, 2005
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition July 25, 2006
Registration Number 3157192
Registration Date October 17, 2006
Owner (REGISTRANT) MILLIGRACE PRODUCTIONS, LLC. LTD LIAB CO NEW YORK Suite 29D 60 West 66th Street New York NEW YORK 10023
Attorney of Record Jennifer Finn
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator 99 LIVE



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Typed Drawing

Word Mark VIDEOCOM
Goods and Services IC 038. US 100 101 104. G & S: television broadcasting; satellite transmission services, namely, distribution of television broadcast programs, news, sporting events, commercial, and data, namely, weather and radio network information in digitized form. FIRST USE: 19701123. FIRST USE IN COMMERCE: 19701222

 IC 041. US 100 101 107. G & S: distribution of television programs for others, television show production, videotape production. FIRST USE: 19701123. FIRST USE IN COMMERCE: 19701222

Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75484460
Filing Date May 13, 1998
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition January 7, 2003
Registration Number 2701605
Registration Date April 1, 2003
Owner (REGISTRANT) Videocom, Inc. CORPORATION DELAWARE 502 Sprague Street Dedham MASSACHUSETTS 02026
Attorney of Record DAVID WOLF
Type of Mark SERVICE MARK
Register PRINCIPAL-2(F)
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEO-CENTREX
Goods and Services IC 038. US 100 101 104. G & S: multipoint video conferencing services. FIRST USE: 20021029. FIRST USE IN COMMERCE: 20021029
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 75906723
Filing Date January 31, 2000
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition July 2, 2002
Registration Number 2976415
Registration Date July 26, 2005
Owner (REGISTRANT) Compunetix, Inc. CORPORATION PENNSYLVANIA Compunetix Building 2420 Mosside Boulevard Monroeville PENNSYLVANIA 15146
Assignment Recorded ASSIGNMENT RECORDED
Attorney of Record Ansel M. Schwartz
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEOBOB
Goods and Services IC 041. US 100 101 107. G & S: Video production services. FIRST USE: 19930102. FIRST USE IN COMMERCE: 19950802
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 76463799
Filing Date November 4, 2002
Current Filing Basis 1A
Original Filing Basis 1B
Published for Opposition September 2, 2003
Registration Number 3013569
Registration Date November 8, 2005
Owner (REGISTRANT) Johnson, Robert Brian INDIVIDUAL UNITED STATES 519 Camino Bailen Escondido CALIFORNIA 92029
Attorney of Record Charles E. Baxley
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Typed Drawing

Word Mark VIDEO SYSTEMS

Goods and Services IC 041. US 100 101 107. G & S: PROVIDING INFORMATION ABOUT VIDEO PRODUCTION AND PRESENTATION VIA A GLOBAL COMMUNICATIONS NETWORK. FIRST USE: 19980500. FIRST USE IN COMMERCE: 19980500

IC 016. US 002 005 022 023 029 037 038 050. G & S: MAGAZINE ABOUT VIDEO PRODUCTION AND PRESENTATION. FIRST USE: 19750000. FIRST USE IN COMMERCE: 19750000

IC 042. US 100 101. G & S: PROVIDING AN ON-LINE MAGAZINE ABOUT VIDEO PRODUCTION AND PRESENTATION VIA A GLOBAL COMMUNICATIONS NETWORK. FIRST USE: 19980500. FIRST USE IN COMMERCE: 19980500

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 75653936

Filing Date March 4, 1999

Current Filing Basis 1A

Original Filing Basis 1A

Supplemental Register Date July 15, 1999

Registration Number 2305009

Registration Date December 28, 1999

Owner (REGISTRANT) INTERTEC PUBLISHING CORPORATION CORPORATION DELAWARE 9800 METCALF OVERLAND PARK KANSAS 66212216

(LAST LISTED OWNER) PRISM BUSINESS MEDIA INC. CORPORATION DELAWARE 249 W. 17TH STREET, 4TH FLOOR NEW YORK NEW YORK 10011

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Jordan A. LaVine

Type of Mark TRADEMARK. SERVICE MARK

Register 103 SUPPLEMENTAL