

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

Mailed:
February 1, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Expo Communications, Inc.

Serial Nos. 78654480, 78978112 and 78978113

Joseph F. Nicholson and Michael J. Freno of Kenyon & Kenyon
LLP for Expo Communications, Inc.

Steven Foster, Trademark Examining Attorney, Law Office 106
(Mary I. Sparrow, Managing Attorney).

Before Seeherman, Quinn and Drost, Administrative Trademark
Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Expo Communications, Inc. filed a single application,
Serial No. 78654480, to register the mark VIDEOPINIONS for
the following services, as amended:

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

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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).

The application was filed on June 20, 2005, and was based on Section 1(b) of the Trademark Act (intent-to-use).

After the Examining Attorney issued a final refusal of registration pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified services, applicant filed a notice of appeal, a request for reconsideration, and a request to divide the application into the separate classes.¹ Accordingly, the Class 35 services remain in the parent application, Serial No. 78654480, while the Class 38 services were placed in child application Serial No. 78978112, and the Class 41 services were placed in child application Serial No. 78978113. The Examining Attorney considered the request for reconsideration after the application was divided, and

¹ In point of fact, the request for reconsideration was filed more than six months after the issuance of the final refusal, and therefore was technically a request for remand. However, as the Board pointed out in its March 13, 2007 order, because applicant had indicated in its notice of appeal that it was simultaneously filing a request for reconsideration, and the Board remanded the application to the Examining Attorney based on that statement, the Board chose not to disturb that decision.

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issued a combined Office action with respect to all three classes, denying the request.

The appeals for all three applications have been fully briefed.² Because the applications are identical in terms of the evidence that has been submitted, and because they involve similar questions of law and fact, we hereby consolidate the appeals and decide them in this single opinion. Because the evidence in the file was submitted prior to the division of the application, our references to statements made in Office actions and responses, and evidence submitted with such correspondence, is the same for all three applications. Separate briefs were filed for each application, but because the language/arguments in both applicant's and the Examining Attorney's briefs are largely the same, we will cite the briefs in the parent application in this opinion unless an argument is specific to one of the child applications. Thus, in our discussion of the services of the individual applications, we have cited to the brief filed in the individual application.

² It is noted that with its appeal briefs applicant has submitted as exhibits Office actions and responses that are in each file, resulting in attachments of almost 300 pages. Applicant is advised that, while occasionally it is helpful to attach a single page as an exhibit to a brief, there is no need to resubmit copies of correspondence and evidence in their entirety. In deciding an appeal, the Board reviews the entire application file.

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Applicant has explained the nature of its services as follows:

The Applicant solicits consumer information about products and services and allows people to upload homemade digital audiovisual works describing and demonstrating those products or services. Although several websites allow consumers to review products by writing out descriptions of the product (see, e.g., www.epinions.com and www.amazon.com), the Applicant's service does not strictly solicit written reviews of products. Rather, the Applicant's services allow people to upload audiovisual demonstrations of products (or services) and also allow people to view and listen to the audiovisual demonstrations of others.

Applicant has further explained:

The Applicant itself does not provide opinions about the products or services of others *per se*, but rather, 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 product (or service) demonstrations and information offered by the Applicant cover the gamut of products and services. ... 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

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consumer's opinion about a particular product or service, and may instead involve the demonstration of a particular product or service and useful information about it.

Response filed July 13, 2006, pp. 2, 3.

The Examining Attorney has refused registration on the basis that VIDEOPINIONS is merely a telescoped version of the words VIDEO OPINIONS, and would be immediately recognized as this term, and that VIDEO OPINIONS describes a significant feature of the services as identified in each application.

In support of his position the Examining Attorney has made of record dictionary definitions of "video" and "opinions," including the following:

Video: (adj.) 1. relating to visual image reproduction: relating to the recording or broadcasting of visual information or entertainment by means of videotape or television³

Opinion: 2. a personal view, attitude or appraisal;⁴
1a. a view, judgment or appraisal formed in the mind about a particular matter.⁵

The Examining Attorney has also made of record articles taken from the NEXIS database, and website pages. Excerpts

³ <http://Encarta.msn.com>.

⁴ Random House Unabridged Dictionary, © 1997.

⁵ Merriam-Webster Online Dictionary, www.m-w.com.

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from some of these articles and webpages are set forth
below:

Headline: Media Morph: Videopinions
... 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 [applicant] has built a business on aggregating videos of its users reviewing products--so far they have more than 13,000 on the website. ...
Where you'll find it: Expo TV syndicates its reviews to places such as GoogleVideo and AOL Video and on VOD with cable operators such as Comcast, Time Warner and Charter. ...But the big growth opportunity for video reviews lies in the search engines integrating video and text--something largely considered inevitable. ...
The ad angle: Video opinion sites will be mostly ad-supported on a cost-per-click basis.
"Advertising Age," October 23, 2006

Gorson... 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.
"Chicago Daily Herald," October 15, 2006

[article on "Survivor" plan to separate contestants into ethnic groups]
The show has played up its racial politics both through TV ads and online, asking fans on the "Survivor"

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Web site to submit video opinions on the upcoming season.

"The Boston Herald," September 8, 2006

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.

"Los Angeles Times," July 25, 1991

Watch video opinions from regular citizens, community leaders, politicians.

[Webpage headed Buck the System]

www.latinosfor89.org

Make a "free speech" opinion video for Katie Couric [title]

Katie Couric just instituted a segment on the CBS news called "Free Speech."

...She should involve us regular folks in the conversation by creating a website where we can upload our own video opinions, we can vote and comment on each others' opinions, and CBS can use selected opinions from the website in their free speech segment. If you want Katie to open up the conversation, upload a video expressing your opinion about any issue...

<http://wearethemedia.com>

Sports Video Sharing Site Launches with NCAA Tournament

Fans can upload video opinions or record webcam comments directly to the site.

www.prnewswire.com

[same article at <http://be.sys-con.com>]

Another cable network, ExpoTV has gained traction as a video-on-demand service featuring high-quality

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infomercials and user-generated
consumer video opinions on various
products.
www.mediavillage.com

A new way to communicate health,
www.3four50.com, has been launched by
the Oxford Health Alliance...
All of the content on this open space
will be user-generated, and currently
falls under a number of categories...
...Blogs and v-blogs—text and video
opinions from anyone wanting to share
their views text or video
www.medicalnewstoday.com

Video opinions allow our viewers to
share their own unbiased, personalized
experiences with Keen shoes and to
share with our community. Vide [sic]
opinions are another way [keenmart.com](http://www.keenmart.com)
wants to make you a wiser shopper. But
we need your Help! Upload your video
opinion to YouTube.com and then email
us the link. We'll post it here for
others to see.
www.keenmart.com

Play The Voting GAME—Use Voting (Not
Guns) And Swing The Sword Your Way With
a Vote!!! [headline]
...Step 3—We encourage UNCENSORED video
opinions and debates on various topics
at [http://www.youtube.com/group/WeThe
PeopleVideos](http://www.youtube.com/group/WeThePeopleVideos) to allow yourself to tell
people about your own identity or
persuade them to VOTE the way you want
them to in some upcoming online vote.
www.newtechnologyadvantage.com

A term is deemed to be merely descriptive of goods or
services, within the meaning of Section 2(e)(1) of the
Trademark Act, 15 U.S.C. §1052(e)(1), if it forthwith
conveys an immediate idea of an ingredient, quality,

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characteristic, feature, function, purpose or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered to be merely descriptive; rather, it is sufficient that the term describes one significant attribute, function or property of the goods or services. In re H.U.D.D.L.E., 216 USPQ 358 (TTAB 1982); In re MBAssociates, 180 USPQ 338 (TTAB 1973). Whether a term is merely descriptive is determined not in the abstract, but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with the goods or services, and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use; that a term may have other meanings in different contexts is not controlling. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979). Moreover, if the mark is descriptive of any of the goods or services for which registration is sought, it is proper to refuse registration as to the entire class. In re Analog Devices Inc., 6 USPQ2d 1808 (TTAB 1988), aff'd without pub. op., 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989).

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The evidence submitted by the Examining Attorney shows that "video opinions" is a term that has been used in both newspaper articles and websites to refer to videos in which people give their opinions on a subject. This meaning is also supported by the dictionary definitions the Examining Attorney made of record.

Applicant has asserted that "video" and "opinion" have various definitions (which applicant has made of record), including, for "video," music videos and video recorders, and, for "opinion," favorable esteem and a formal statement by a judge. Because these words have many meanings, it is applicant's position that "consumers cannot come to any clear understanding as to what 'videopinions' (or 'video opinions') could possibly mean." Brief, p. 15.

Rather, applicant states that because of the different meanings of the words "video" and "opinion," "there are 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')." Brief, pp. 15-16. These include "video recordings of court proceeding or court 'opinions'" and "written movie reviews, i.e., reviews of videos." Brief, p. 16.

We are not persuaded by this argument. As stated above, the determination of whether a mark is merely

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descriptive is not made in the abstract, but in relation to the services for which registration is sought. In particular, that a term may have other meanings in different contexts is not controlling. We must be concerned with how potential consumers would view the mark as it is used in connection with applicant's services. In the context of applicant's services, consumers would not, for example, view the word "opinion" as a court decision or view "video" as a video recorder. See *In re Polo International Inc.*, 51 USPQ2d 1061 (TTAB 1999) (DOC-CONTROL is merely descriptive of document management software; in view of the goods, DOC would be viewed as "document" rather than "doctor").

Nor are we persuaded by applicant's argument that the combination of "video" and "opinions" "has no meaning whatsoever in the English language or in the minds of consumers." Brief, p. 16. The uses of the term "video opinions" in the above-quoted articles and websites show that the term is viewed as having a readily understood meaning. It would make no sense for an author to use a term that readers would not understand. The fact that the entire phrase "video opinions" is not defined in a dictionary does not prove otherwise. Many descriptive terms result from a combination of two words that are

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defined separately in a dictionary, but are not listed as a combined term. See *In re National Basketball Association*, 180 USPQ 480 (TTAB 1973) (DRIBBLE AND SHOOT merely descriptive of service of conducting contests to develop basketball skills; "the mere fact that this combination of words is not found in any dictionary is not controlling on the question of descriptiveness"). In fact, we would not expect to see a specific dictionary listing for "video opinion" unless the term were generic, and that is not the basis for the Examining Attorney's refusal of registration.

In its brief applicant claims that the Office has conceded that there is little descriptive usage of "video opinions." p. 12. In fact, the Examining Attorney has stated in his brief that "the evidence of third-party use is not extensive." However, the Examining Attorney's statement was not a concession that there is little descriptive usage of "video opinions," only that there is limited evidence that third parties are using the phrase in their own businesses. It is clear from the articles and website evidence set forth in this opinion that "video opinions" is a recognized term for videos in which people give their opinions on a topic or product. We also agree with the Examining Attorney that it is not necessary to show descriptive use of a term by competitors in order to

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support a finding of mere descriptiveness. The cases are legion that the first and only user may not appropriate a descriptive term. See *In re Polo International Inc.*, supra; *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991); *In re National Basketball Association*, supra.⁶ Here, the limited evidence of third-party use could be explained by the fact that third parties are not currently offering these services. See applicant's response filed July 13, 2006. ("The Applicant is not aware of any third party offering services of the same type.")⁷

Having found that "video opinions" is a recognized term, we consider whether applicant's mark, VIDEOPINIONS, would be recognized as "video opinions." Although applicant's mark is telescoped, such that the letter "O" services as the last letter of "video" and the first letter of "opinions," we have no doubt that consumers would perceive VIDEOPINIONS as being the equivalent of "video

⁶ In its brief applicant says that a subissue is "whether the Office failed to make out a prima facie case of obviousness when it concedes that there is little evidence of descriptive use of the proposed mark. p. 3. "Obviousness" is, of course, a concept in patent law, not trademark law, and it has no relevance to the issue of descriptiveness.

⁷ In its appeal briefs applicant has stated that it has since learned about "several quasi-competitor type companies." We have given this statement no consideration. No evidence of competitors' activities is of record, and applicant cannot attempt to make such evidence of record by an untimely statement made in its briefs. See TBMP §704.06(b) (2d ed. rev. 2004).

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opinions." In this respect, it is similar to other cases in which telescoped marks have been found descriptive. See, for example, *In re Omaha National*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987 (FIRSTIER, the equivalent of "first tier," is merely descriptive of banking services); *In re Wells Fargo & Co.*, 231 USPQ 95 (TTAB 1986) (EXPRESSERVICE merely descriptive of banking and trust services); *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, Inc.*, 218 USPQ 181 (TTAB 1983) (BEEFLAKES merely descriptive of thinly sliced beef). As in those cases, consumers will merely fill in the missing letter without thinking. Thus, despite the telescoping of the words, consumers will readily perceive the mark as being "video opinions." VIDEOPINIONS does not, contrary to applicant's argument, evoke "a new and unique commercial impression." Brief, p. 17. This case is different from *Firestone Tire & Rubber Co. v. Goodyear Tire & Rubber Co.*, 186 USPQ 557 (TTAB 1975), cited by applicant, in which BIASTEEL was found not descriptive of tires. It was not the telescoping of the two descriptive words BIASTEEL that resulted in this

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finding, but the fact that there was no evidence that "bias steel" or "biased steel" was a descriptive term.

When VIDEOPINIONS is used in connection with applicant's identified Class 35 services-- providing information on consumer products and services by way of a global computer network--it immediately tells consumers a characteristic of those services, namely, that the information that is provided are opinions that are conveyed in the form of videos. The computer disc submitted by applicant in response to the Examining Attorney's request for information confirms that this is, at least in part, the subject matter of the videos. People featured on the video state that they are reviewing a product, and they point out features of the product and give their opinions about the product, e.g., an electric shaver gives a "pretty clean shave." We agree with applicant that the mark does not convey the fact that the information appears on a global computer network, but that does not take away from its descriptiveness. As we stated above, a mark need not describe each and every specific feature of the applicant's goods or services in order to be considered to be merely descriptive. As for the fact that the videos are not limited to people's opinions, and that some videos may contain product demonstrations, this does not obviate the

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mark's descriptiveness. Applicant has acknowledged that the videos may include or involve a consumer's opinion about a particular product or service. Again, as we stated above, a mark is descriptive if it describes any of the identified goods or services.

Applicant has also asserted that it does not actually create the videos or provide opinions on products. However, applicant's service is to provide or make available the information by way of a global computer network, and it is not germane that applicant itself does not create the content of the video opinions. VIDEOPINIONS describes the nature of the information that is provided through applicant's services, and therefore describes a characteristic of the services. In re TBG Inc., 229 USPQ 759 (TTAB 1986), on which applicant relies, is readily distinguishable from the present situation. That case involved the mark SHOWROOM ONLINE for leasing computer databases and video disks in the field of interior furnishings and related products of others. The mark was found to be not merely descriptive because the word SHOWROOM had "no direct significance in relation to appellant's leasing or information service." Id. at 760. Simply put, the subject matter of the leasing and information service was not a "showroom." Compare, In re

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Putman Publishing Co., 39 USPQ2d 2021 (TTAB 1996), in which FOOD & BEVERAGE ON-LINE was found merely descriptive for "a news and information service updated daily for the food processing industry, contained in a database." Here, in contrast to SHOWROOM ONLINE, VIDEOPINIONS directly conveys information about a characteristic of the information service applicant provides, i.e., the information consists of opinions in the form of videos.

Applicant states that it "has never claimed use of its mark in connection with a service involving 'the provision of opinions by means of video.'" Brief, p. 3. Applicant appears to take the position that because those specific words are not in its identification of services, it is immaterial whether VIDEOPINIONS describes that service. However, in order for a mark to be found descriptive it is not necessary that the words that are found in the mark appear in the identification. Here, applicant's services as identified, "providing information on consumer products and services by way of a global computer network," encompass providing information that consists of opinions in the form of videos on consumer products and services by way of a global computer network. Applicant acknowledges that its services include soliciting, collecting and sharing audiovisual information about consumer products and

services, and these audiovisual works may include a consumer's opinion about a particular product or services. Response filed July 13, 2006.⁸ It appears that applicant may be arguing that this service is separate from its identified services. "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." Brief, p. 6 (emphasis in original). However, as discussed, applicant's identified services encompass providing information in the form of video opinions. Therefore, "video opinions" describes a characteristic of applicant's identified services.⁹

⁸ In its brief, at p. 9, applicant points out that it stated that the audiovisual works it presents "may or may not" include a consumer's opinion, and may instead involve the demonstration of a product or service. Although applicant may choose to focus on the "may not" part of its statement, it has said that the audiovisual works it presents may include a consumer's opinion on a product or service, and the CD it filed in response to the Examining Attorney's information request in fact shows that the videos it makes available are of consumer opinions. Its identification of services, as we have discussed, encompasses providing videos of consumer's opinions of products and services. The fact that some of the videos applicant shows as part of its service do not contain consumer opinions does not obviate the descriptiveness of its mark. As we have previously stated, a mark need not describe each and every specific feature of the applicant's goods or services in order to be considered to be merely descriptive.

⁹ In footnote 3 of its brief applicant asserts that it does not intend to provide information on opinions of videos or information on videos of opinions. That is beside the point, however, since, as the identification is written, it encompasses providing information in the form of video opinions, and the

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Applicant has also argued that it is incorrect for the Board (or the Examining Attorney) to "rewrite" applicant's identified services by relying on third-party websites which referred to applicant's services, and in which the third parties misused "videopinions" or "video opinions" or mischaracterized applicant's services. We have not done so. This evidence, quoted at length above, is not being used to show what applicant's services are, but to demonstrate how others view the terms "videopinions" and "video opinions." For example, the "Advertising Age" excerpt ("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") shows that the reporter not only refers to the format of the information applicant provides as "video opinions," but believes that readers will have this understanding of the term. Similarly, the www.mediavillage.com website, stating that "ExpoTV has gained traction as a video-on-demand service featuring ...user-generated consumer video opinions on various

sample videos, as shown on the CD submitted by applicant, show that the videos made available through applicant's services give consumers' opinions on products.

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products" shows that the writer views "video opinions" as a recognized term for video reviews of products.

In conclusion, we find that applicant's mark, VIDEOPINIONS, is merely descriptive for "providing information on consumer products and services by way of a global computer network," its identified services in Class 35.

As for applicant's services in Class 38---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--many of the same comments we made in connection with the Class 35 services apply. Therefore, we will not burden this opinion by repeating and addressing the arguments that applicant made in its brief in connection with its services in Class 35. With respect to the Class 38 services, VIDEOPINIONS describes the subject matter of the various types of television broadcasting services and of the video-on-demand transmission services. Again, although applicant's identification does not contain the term "videopinions" or its equivalent, "video opinions," the very nature of television broadcasting and video-on-demand transmission is that they broadcast or transmit video. And "opinions" are

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a type of information for consumer products and services. When the mark is used in connection with the identified services, consumers will immediately understand that the information provided by the different methods of television broadcast and video-on-demand transmission is opinions presented in a video format about consumer products and services.

We note in footnote 3 of its brief applicant's statement that it "intends to use the mark on, inter alia, 'interactive video-on-demand transmission services,' not on opinions of videos or videos of opinions." However, in its response filed July 13, 2006 applicant said that it solicits consumer information about products and services and allows people to upload homemade digital audiovisual works describing and demonstrating those products or services, and its services also allow people to view and listen to the audiovisual demonstrations of others. Further, it stated that the audiovisual works may ... include or involve a consumer's opinion about a particular product or service. These statements in the response are borne out by the CD showing portions of the informational videos. We can reconcile the statements made in the footnote and response only by assuming that applicant is taking the position that because its identified services are

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transmission services, its services are not opinion videos.¹⁰ We accept that applicant is not actually selling videos of opinions. However, a mark may be merely descriptive of services if it identifies a characteristic of those services. See *In re Pencils Inc.*, 9 USPQ2d 1410 (TTAB 1988) (PENCILS merely descriptive of retail stationery and office supply services). Thus, because applicant makes or intends to make available video opinions through its broadcasting and transmission services, and its services, as identified, encompass making available video opinions, "video opinions" or its equivalent, the applied-for mark VIDEOPINIONS, is merely descriptive of the services in Class 38.

The third application in this appeal is for services in Class 41, identified as "entertainment services in the

¹⁰ Applicant has provided the following explanation in its brief, at pp. 9-10:

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 products and services." First, this is not a statement of class 38 communications services. (emphasis in original)

The second point applicant makes is mere sophistry. Applicant says that it "explained that such works 'may not' include a consumer opinion about a particular product or service." Obviously, the videos may contain consumer opinions, something that applicant acknowledged in its original response. As we have stated previously in this opinion, a mark need not convey an idea of each and every specific feature of the applicant's goods or services in order to be considered to be merely descriptive.

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nature of on-going television programs in the field of information about consumer products and services." Again, in its brief applicant makes essentially the same arguments it made in its briefs in the other two applications, so we will not repeat them here, or address them again. We find that VIDEOPINIONS is merely descriptive of these services as well, because the mark describes the subject matter of the television programs which comprise applicant's entertainment services. Although applicant's identification does not contain the term "videopinions" or its equivalent, "video opinions," as we have already said, this is not a necessary prerequisite for a finding of mere descriptiveness. This Class 41 application presents a situation very similar to that in *In re Ethnic Home Lifestyles Corp.*, 70 USPQ2d 1156 (TTAB 2003), in which the mark ETHNIC ACCENTS was found to be merely descriptive of "entertainment in the nature of television programs in the field of home décor." The Board, after determining the term "ethnic accents" refers to items of home décor, found that ETHNIC ACCENTS was merely descriptive of applicant's entertainment services "because ETHNIC ACCENTS indicates that ethnic accents are significant features or the subject matters of such programs." Id. at 1158.

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Applicant's own statements about the nature of its services, and the CD it submitted, show that the television programs will include video reviews in which customers give their opinions about various products and services. Thus, when the mark is used in connection with the identified services, consumers will immediately understand that applicant's entertainment services are television programs presenting reviews about products and services in a video format, i.e., video opinions. The mark is merely descriptive of the services in Class 41.

As a final argument, made in all of its briefs, applicant asserts that VIDEOPINIONS is less descriptive than other marks which have been found registrable. Applicant has cited certain cases involving marks which have been found to be suggestive, and has submitted various third-party registrations for marks which include VIDEO or OPINIONS as an element. We need hardly point out that we must decide the present case on the record provided herein. The cases cited by applicant involve facts that differ markedly from the facts in the present case and thus, do not compel a finding that the mark herein is not descriptive. See *In re Cox Enterprises Inc.*, 82 USPQ2d 1040, 1045 (TTAB 2007). Nor does the allowance by Examining Attorneys of different marks for different goods

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or services bind the Board. In re Nett Designs Inc., 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

Decision: The refusals of registration with respect to all three applications are affirmed.