

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re **Qwest Broadcasting LLC**

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Serial No. 75/064,426

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**Michael D. Hobbs, Jr.** of Troutman Sanders LLP for applicant.

Charles T.J. Weigell, Trademark Examining Attorney, Law Office  
109 (**Deborah S. Cohn**, Managing Attorney).

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Before Simms, Hohein and Hairston, Administrative Trademark  
Judges.

Opinion by **Hohein**, Administrative Trademark Judge:

**Qwest Broadcasting LLC** has filed an application to register the term "NON-STOP ENTERTAINMENT" as a service mark for "television programming and production" services.<sup>1</sup>

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

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<sup>1</sup> Ser. No. 75/064,426, filed on February 27, 1996, which alleges dates of first use of April 15, 1995.

Applicant has appealed. Briefs have been filed,<sup>2</sup> but an oral hearing was not requested. We affirm the refusal to register.

It is well settled that a term is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or idea about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used on or in connection with those goods or services and the possible significance that the term would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark alone

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<sup>2</sup> With respect to applicant's practice of citing opinions of the Board which have been designated as not citable as precedent, we note that except for certain situations not applicable to this appeal, such practice is improper. See *General Mills Inc. v. Health Valley Foods*, 24 USPQ2d 1270, 1275 (TTAB 1992) at n. 9. We have accordingly given

is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985).

Applicant argues that inasmuch as "the mark NON-STOP ENTERTAINMENT does not immediately identify with particularity any nature, feature or characteristics of television programming or production services," such term is suggestive rather than merely descriptive. In particular, applicant contends that because the terms "'entertainment' and 'non-stop' are vague, general words that relay little, if any, substantive information to the public," "[a] consumer must exercise 'mature thought' or 'follow a multi-stage reasoning process' to make a connection between the Mark and the services identified by the Mark-- television programming and production services."<sup>3</sup> Since "the

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no consideration to applicant's citation to cases designated as not citable as precedent of the Board.

<sup>3</sup> Applicant, in this regard, asserts that (**emphasis in original**):

Even when applied to television, which [the record shows] ... is rarely the case, the Mark is vague and encompasses a virtually infinite variety of format and content options. What exactly are "non-stop entertainment" television programming services? Do the words "non-stop" describe an all-sports channel, an all news channel, a channel devoted to news and sports, a movie channel, a public access channel or a channel devoted to government affairs? All of these formats are "entertaining" to different persons possessing different tastes.

Do the words "non-stop" refer to the fact that it is commercial-free, that it broadcasts 24 hours a day, or that the programming is commercial free? Do the words "non-stop entertainment" describe the programming, the content, both or neither? Further, what are "non-stop entertainment" television **production** services? Do the production crew and actors work 24 hours a day, 7 days a week to entertain the audience or to create and produce programming? Is one entire show entertaining from start to finish? Or, as in the instant case, do the words have no specific meaning at all and are generally intended to provide a memorable and distinctive designation for identifying Applicant's services[?]

mental leap between the Mark and the service's [sic] attributes are neither automatic nor instantaneous, applicant consequently insists that the term "NON-STOP ENTERTAINMENT" is only suggestive rather than merely descriptive of its services.

Applicant also maintains that the evidence submitted by the Examining Attorney does not support a finding that the term "NON-STOP ENTERTAINMENT" is merely descriptive of television programming and production services. Specifically, applicant argues that "the vast majority" of the excerpts of articles obtained by the Examining Attorney from his searches of the "NEXIS" computerized database, which were retrieved from the "ALLNWS" file of the "NEWS" library using the queries "NON STOP ENTERTAINMENT W/10 TELEVISION" and "NON-STOP ENTERTAINMENT AND TELEVISION," relate not to "television production and programming services, or even [to] programs or activities that aired on television, but rather to unrelated goods or services." Moreover, applicant urges that because the Examining Attorney was able to locate only three articles "that have appeared in the United States since 1982 [and] that have used the Applicant's Mark and also mentioned television services,"<sup>4</sup> the Examining

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<sup>4</sup> While several articles from English language publications in Canada and Great Britain arguably demonstrate the merely descriptive significance of the term "NON-STOP ENTERTAINMENT" for television programming services (e.g., an April 30, 1996 story in the London Daily Mirror which is headlined: "QUACKING GOOD VIEWING; CABLE '96 TURN ON TO NON-STOP ENTERTAINMENT FROM MASTERS OF FAMILY FUN; FOCUS ON THE DISNEY CHANNEL" and a February 2, 1996 comment in the British daily racing paper Sporting News which asks: "can greyhound racing ... expect to win over newcomers - used to non-stop entertainment at cinemas, theatres, football and on television etc. - by offering just 30 seconds of action every 15 minutes?"), applicant correctly points out that articles from foreign publications generally are considered

Attorney "has not met the burden of proving that the Mark is merely descriptive," citing *In re Stroh Brewery Co.*, 34 USPQ2d 1796, 1797 (TTAB 1994).<sup>5</sup>

The Examining Attorney, on the other hand, contends that the evidence which he has made of record and the manner of

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to be irrelevant and immaterial. As the Board stated in *In re Men's Int'l Professional Tennis Council*, 1 USPQ2d 1917, 1919-20 (TTAB 1986), "we cannot--absent other evidence--, infer that these foreign uses have had any material impact on the perceptions of the relevant public in this country." Likewise, the Board indicated in *In re Bel Paese Sales Co.*, 1 USPQ2d 1233, 1235 (TTAB 1986), that articles from a British newspaper were "of no probative value as to public perception in the United States since they are foreign publications and there is no evidence as to the extent of circulation of those publications in the United States, if any." Consequently, since the record in this case contains no evidence showing that the foreign publications from which certain articles were excerpted have at least a limited circulation in the United States, we will not further consider such excerpts. Similarly, with respect to the Examining Attorney's reliance upon a number of excerpts from news-wire reports, applicant is again correct that articles from proprietary news services are of little, if any, probative value with respect to descriptiveness issues. This is because, unlike newspaper, magazine and journal articles published in the United States, wire-service stories are not presumed to have circulated among the general public so as to have had any influence on purchasers' attitudes towards the particular term or designation in question. See, e.g., *In re Appetito Provisions Co. Inc.*, 3 USPQ2d 1553, 1555 (TTAB 1987) at n. 6 and *In re Men's Int'l Professional Tennis Council*, *supra* at 1918 n. 5. Accordingly, the wire-service excerpts of record also will not be given any further consideration.

<sup>5</sup> The Board, in such case, found that the term "VIRGIN" had not been shown to be merely descriptive of non-alcoholic malt beverages, reasoning that (case citations omitted):

Given the fact that (1) non-alcoholic malt beverages is a large and old product category, and that (2) the NEXIS data base is extremely extensive, we believe that if the term "virgin" was descriptive of non-alcoholic malt beverages, it would have been used in relationship to such beverages at least occasionally. .... The fact that it has not raises strong doubts in our minds as to whether, as applied to non-alcoholic malt beverages, the term "virgin" is descriptive. When doubts exist as to whether a term is descriptive as applied to the goods or services for which registration is sought, it is the practice of this Board to resolve doubts in favor of the applicant and pass the mark to publication with the knowledge that a competitor of applicant can come forth and initiate an opposition proceeding in which a more complete record can be established. ....

use disclosed by applicant's specimens of use establish that the term "NON-STOP ENTERTAINMENT" is merely descriptive of a feature or characteristic of applicant's television programming and production services. In this regard, the Examining Attorney notes that Webster's II New Riverside University Dictionary (1994) defines the word "nonstop" as an adjective meaning, in pertinent part, "2. Unceasing : unremitting <nonstop chatter>" Additionally, as previously noted, the Examining Attorney relies upon excerpts from various articles, of which the following are sample are considered to be particularly relevant and representative, which he located through searches of the "NEXIS" computerized database (**emphasis added**):

The Independence Blue Cross Children's Special Sunday Series promises free and different **non-stop entertainment** and interactive workshops .... -- Allentown, Pennsylvania Morning Call, July 7, 1996, at F4;

Festa Italiana is a blend of special attractions, food, virtually **non-stop entertainment**, children's activities, Italian fire-works, religious observances and generous doses of nostalgia. -- Italian Voice, June 20, 1996, at 6 (article headlined: "Milwaukee's Italian Community Center Readies 19th Annual Festa Italiana");

The Florida Lottery Showvan has been reserved to provide a full, covered stage for the "**non-stop entertainment**" schedule that will again feature a mix of country, jazz, and gospel music .... - Lakeland, Florida Ledger, October 11, 1995, at 3F;

The "Parade of Stars" [event] remains **television's** only national fund-raising event which benefits education. .... On hand during the seven hours of **non-stop entertainment** are perennial favorites Ray

Charles, Patti LaBelle, Luther Vandross and Anita Baker. -- Jet, January 9, 1995, at 59;

Last year's second half was the usual **non-stop entertainment** fest we've come to expect from the Super Bowl. -- Arizona Republic, January 28, 1994, at C2 (article about **television** sports);

HILLARD, Correspondent: On a Las Vegas stage, Jerry Lewis rehearses for his annual Labor Day telethon for muscular dystrophy. The 21 ½ hour fund raiser promises **non-stop entertainment** .... -- CNN News, September 4, 1992 (transcript of broadcast concerning a report on "a **television** event that's becoming an enduring Labor Day tradition");

For the adults, **non-stop entertainment** on three outdoor stages between noon and 7 p.m. will include the Fabulous Thunderbirds, the Edgar Winters Blues .... -- San Diego Union-Tribune, April 24, 1991, at B-3;

Families can bring their own picnic baskets ... and eat on the grass while enjoying the **non-stop entertainment**. Rounding out the entertainment will be 70 bands, performing on five stages throughout the park. -- Los Angeles Times, April 4, 1987, § View, at 8, col. 3 (article headlined: "FAMILY SPOTS: 2-DAY COUNTRY JAMBOREE AT HANSEN DAM");

Through its actual birth date was September 5, 1955, Channel 11, now featuring Chicago's most literate television, will celebrate on the night of Nov. 9, turning the main floor of the Field Museum of Natural History into a huge television studio with a glittery party and **non-stop entertainment**. -- Chicago Tribune, November 3, 1985, § Tempo, at 1; and

[I]t's reassuring that not everyone in Hollywood has forgotten one of the functions of movies -- and it was most fitting, for this movie is **non-stop entertainment**. -- San Diego Union-Tribune, March 30, 1984, at C-1.

Noting, furthermore, that applicant originally identified its television programming and production services as "entertainment services, namely, television programs," the Examining Attorney argues that the above evidence "attests to the widespread and continuous usage of [the term] 'non-stop entertainment' to favorably describe an entertainment format which features [an] unremitting or continuous entertainment presentation." The merely descriptive significance of such term, the Examining Attorney observes, is readily apparent from the context of its use in the video advertisements initially filed by applicant as specimens. As the Examining Attorney points out, "[t]he video ads feature music and hip-hop or rap style vocals over a montage of clips from famous movies and television shows, [which are] presumably examples of those programs comprising applicant's television services," with the accompanying vocal overdubs comprising a jingle which states (*emphasis added*):<sup>6</sup>

Non stop ...  
Non stop ...  
*Non stop entertainment*  
The hottest stars and the biggest pics  
We got 'em all, FLIX 36  
*We're entertainment* so you can't lose  
Cause here no news is good news

Additional specimens furnished by applicant, consisting of a listing of its "1996 Evening Fall Schedule & Premiere Dates," reflect that from four o'clock in the afternoon until midnight,

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<sup>6</sup> The Examining Attorney also accurately observes that, with respect to "the television graphics accompanying the music, apparently 'no news' is intended to inform viewers that applicant's television services forego any news programming in favor of more 'entertaining' programming."

applicant has scheduled a variety of situation comedies, dramatic series and other programs, but no news or sports presentations.

The Examining Attorney, in light of the above, asserts that (footnotes omitted):

There is no doubt, despite the amendment to the [recitation of] services ... to delete the term "entertainment" therefrom, that the applicant's services comprise a continuous schedule of entertaining programming for television. This is aptly demonstrated by viewing the specimens of record which were first submitted with the application. .... These ad spots give a clear indication of the context within which the mark is used ....

....

[T]he proposed mark [thus] appears in a promotional ad featuring informational, albeit colloquial, wording regarding the applicant's programming format. The common meanings of the constituent terms in the applicant's mark as presented in this context provide persuasive evidence of the merely descriptive meaning and impression of NON-STOP ENTERTAINMENT as applied to applicant's services, touting the type and style of programming offered by applicant. The fast pace of excerpts from movies and television shows, featuring clips of famous celebrities ..., only reinforces the entertainment format of the applicant's services presented at a pace intended to seem unremitting or "non-stop".

The descriptive nature of the applicant's use and promotion of the mark in an entertainment context is further supported by [excerpts of] articles from the NEXIS database. The NEXIS evidence illustrates widespread usage of "non-stop entertainment" as a unitary phrase to describe entertainment services of widely varying styles and formats, including televised programs, to convey their continuous or unremitting presentation style. The evidence demonstrates that "non-stop entertainment" is a commonly employed phrase for describing entertainment services and is readily

understood by the relevant ... public as such and identifies a desirable feature of an entertaining program, whether it be live or projected from celluloid on a large theater screen or projected by a cathode ray to a small ionized one.

With respect to applicant's criticism that only a few of the "NEXIS" excerpts relate to the medium of television, the Examining Attorney insists that "the evidence demonstrates that "non-stop entertainment" is a general term potentially applicable to describe exhibitions in all types of media including live sporting events, variety shows, festivals, telethons, music and music hall reviews." Therefore, according to the Examining Attorney, "applicant's services are squarely within that broad category of entertaining activities to which the wording 'non-stop entertainment' applies" since "[t]he common denominator of all of these is their intent to provide entertainment services to viewers and patrons."

The Examining Attorney also maintains that a term does not lose its merely descriptive significance just because it may be general in its scope. Citing *In re Analog Devices Inc.*, 6 USPQ2d 1808, 1810 (TTAB 1988), *aff'd in op. not for pub.*, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989), in which the Board stated that, while the words "ANALOG DEVICES" for a variety of specifically designated electronic components, "may be broad and even nebulous terms, nevertheless, these terms may not be exclusively appropriated but must be left for all to use in their ordinary generic sense," the Examining Attorney similarly urges that, "[w]hile the issue here is not genericness of the mark,

nonetheless, the exhibited general usage and applicability of 'non-stop entertainment' to a variety of entertainment fields and media does not dissipate its demonstrated and commonly perceived descriptive meaning when related to the more specific subcategory of entertainment services named by applicant."

Finally, as to applicant's criticism that the Examining Attorney's "NEXIS" evidence reveals only a very limited number of arguably pertinent excerpts, the Examining Attorney counters that the excerpted articles "resulted from a restricted search of 'non-stop entertainment'" and that the ones made of record were simply "intended to be a representative sampling of articles demonstrating the usage" of such term. "[E]ach article," the Examining Attorney insists, "without exception demonstrates use of the wording comprising applicant's mark in a context which merely describes an entertainment service" and thus shows that "'non-stop entertainment' is known and understood by the relevant public in the United States as descriptive of an attributed feature or quality of entertainment sources."

It is settled, of course, that registration must be denied if a term is merely descriptive of any of the goods or services for which registration thereof is sought. See, e.g., In re Quick-Print Copy Shop, Inc., 616 F.2d 523, 205 USPQ 505, 507 (CCPA 1980). The dispositive question herein is therefore whether the term "NON-STOP ENTERTAINMENT" is merely descriptive of any of applicant's services.

Upon consideration of the pertinent evidence and arguments, it is our view that, when applied to applicant's

"television programming" services, the term "NON-STOP ENTERTAINMENT" immediately describes, without conjecture or speculation, a significant characteristic or feature of such services, namely, that applicant presents television programs which provide non-stop entertainment. It is simply not necessary that a term describe in minute detail every aspect of the services in order for it to be merely descriptive. Instead, it is sufficient if the term, as here, describes one significant attribute of the services, such as a principal characteristic or feature thereof. See, e.g., In re Venture Lending Associates, 226 USPQ 285, 286 (TTAB 1985); In re Aid Laboratories, Inc., 223 USPQ 357, 358-59 (TTAB 1984); In re H.U.D.D.L.E., 216 USPQ 358, 359 (TTAB 1982); and In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973).

Plainly, to the audience for applicant's television programming services, which would obviously include members of the general public that desire for their viewing pleasure a source of continuous or unremitting amusement or diversion, there is nothing in the term "NON-STOP ENTERTAINMENT" which is vague, ambiguous or otherwise indefinite, nor would any imagination, cogitation, mental processing or gathering of further information be necessary in order for those persons to perceive precisely the merely descriptive significance of such term as it relates to a significant characteristic or feature of applicant's services, namely, a television programming format which delivers non-stop entertainment. Such term, as is made sufficiently clear by the dictionary definition of the word "nonstop," the relevant "NEXIS"

excerpts of the term's use in television and other entertainment presentations, and the context in which the term is employed in applicant's advertising and its scheduled list of shows, directly and unequivocally describes the basic format, content or subject matter of applicant's television programming services.

Furthermore, contrary to applicant's contentions, the term "NON-STOP ENTERTAINMENT" has been shown to possess the requisite degree of particularity when used in connection with applicant's television programming services. As the Examining Attorney persuasively observes:

The [relevant] evidence here presented shows common usage of "non-stop entertainment" to describe entertainment services in sources directed to the general public, composed largely of individuals likely to gain entertainment value from television watching. In no instance is "non-stop entertainment" accompanied by any further elaboration or explanation of its meaning, strongly implying [that] this meaning is directly grasped ... with no further required imagination, thought or perception. Moreover, the evidence shows "non-stop entertainment" is employed by a multiplicity of sources, each in a context directly describing attributes of the featured entertainment subject or event. NON-STOP ENTERTAINMENT, therefore, has a merely descriptive significance readily grasped by those encountering applicant's mark[,] who would not attribute its use to one exclusive and/or particular commercial source ....

Presenting, as applicant does, an unceasing or continuous variety of situation comedies, action/adventure dramas and recent motion pictures plainly constitutes a programming style or format which provides the television viewer with non-stop entertainment. The fact that the term "NON-STOP ENTERTAINMENT," when used in

connection with television programming services, is nevertheless a broad or encompassing designation does not mean that the term does not merely describe, with sufficient particularity, the programming services provided by applicant, especially since such services include a wide range of entertaining shows. Case law, as pointed out by the Examining Attorney, has in fact held broad or inclusive designations to be descriptive of a specific service or product covered thereby. See, e.g., In re Energy Products of Idaho, 13 USPQ2d 2049, 2052 (TTAB 1989) [phrase "THE WASTE-TO-ENERGY COMPANY" held merely descriptive of engineering consulting services in developing, designing, manufacturing, installing, starting up and operating low pollution fluid bed equipment], *citing* In re Analog Devices Inc., supra [term "ANALOG DEVICES" found descriptive of certain named devices having analog capabilities]; and In re National Patent Development Corp., 1 USPQ2d 1921, 1922 (TTAB 1986) [term "FIRST AID" found descriptive of various first aid items, including adhesive tape, gauze pads, sterile absorbent cotton and bandages].

In addition, while the sample of excerpts discovered by the Examining Attorney during his "NEXIS" searches reveals only three instances which plainly demonstrate third-party use of the term "NON-STOP ENTERTAINMENT" in connection with the field of television programming, such is simply not fatal to the Examining Attorney's position since, even if applicant were the sole entity to be using such term, that fact would not alter the term's merely descriptive significance and bestow service mark rights therein. See, e.g., In re Mark A. Gould, M.D., 173 USPQ 243, 245

(TTAB 1972) and cases cited therein. The fact that only a limited number of third-party usages have been shown with respect to television programming services is thus not dispositive where, as here, the term unequivocally projects a merely descriptive connotation. See In re MBAssociates, 180 USPQ 338, 339 (TTAB 1973). In any event, there is nothing which suggests that a television programming format in which only sitcoms, dramas and/or movies--with no news, sporting events and/or other interruptions--are presented as the featured entertainment is such a long-standing and/or well established broadcasting mode that one would expect the "NEXIS" database to contain a large number of, rather than just a few, references to the use of "non-stop entertainment" in connection with television programming services.

Accordingly, because the term "NON-STOP ENTERTAINMENT" conveys forthwith a significant characteristic or feature of applicant's television programming services, namely, that the content or format thereof provides the viewer with non-stop entertainment, such term is merely descriptive of applicant's services within the meaning of the statute.

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

R. L. Simms

G. D. Hohein

**Ser. No.** 75/064,426

P. T. Hairston  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board