

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 26, 99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Mattec Corporation
v.
Charles Anthony Czarnecki

Opposition No. 96,813
to application Serial No. 74/458,157
filed on November 15, 1993

John D. Poffenberger and Keith R. Haupt of Wood, Herron &
Evans, L.L.P. for Mattec Corporation.

Gerald E. McGlynn III of Bliss McGlynn P.C. for Charles
Anthony Czarnecki.

Before Hairston, Wendel and Bucher, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

An application has been filed by Charles Anthony
Czarnecki to register the mark MATTECH for "computer
software for material waste prevention and user manuals sold
therewith."¹

¹ Serial No. 74/458,157 filed November 15, 1993 claiming dates of
first use of November 8, 1993.

Opposition No. 96,813

Registration has been opposed by Mattec Corporation under Section 2(d) of the Trademark Act on the ground that applicant's mark, when used in connection with applicant's goods, so resembles opposer's previously used and registered mark shown below,

for "business consultation services in the field of quality and quantity production control;"² "computers, computer interface modules and computer interface boards;"³ and "computers, computer interface modules, computer interface boards, and computer software programs for monitoring industrial plant production;"⁴ as to be likely to cause confusion.

² Registration No. 1,321,203 issued February 19, 1985; Sections 8 & 15 affidavit filed.

³ Registration No. 1,607,299 issued July 24, 1990; Sections 8 & 15 affidavit filed.

⁴ Registration No. 2,028,581 issued January 7, 1997.

Opposition No. 96,813

Applicant, in its answer, denied the salient allegations of the notice of opposition.

The record consists of the pleadings; the file of the opposed application; the testimony deposition (with exhibits) of opposer's president, Michael A. Thiel; and opposer's notices of reliance on applicant's responses to certain of opposer's interrogatories and requests for admissions. Applicant did not take testimony or offer any other evidence. Only opposer filed a brief.

According to its president, Mr. Thiel, opposer was founded in July 1983 and is in the business of developing and selling computer software and hardware for use in industrial plants. Mr. Thiel testified that opposer "deals with the manufacturing industries; products for shop floor control, products for scrap waste monitoring, products for material control, [and] products for quality control." (Deposition, p. 8). Opposer uses the MATTEC mark in connection with its complete product line and, in particular, on boxes, invoices, and product manuals.

Opposer has a customer base of between 500 and 700 industrial plants or facilities, most of which are located in the states of Michigan, Ohio, Indiana, Illinois and Pennsylvania. In addition to its own sales personnel, opposer uses independent manufacturing representatives to market its products.

Opposer advertises in industry specific trade magazines (e.g., magazines concerning the automotive industry and magazines concerning the plastics industry), and at national and regional trade shows. Information concerning opposer and its products also appears in industrial directories.

During the course of his deposition, Mr. Thiel introduced copies of the three pleaded registrations for the MATTEC and design mark. He testified that each registration was active and valid. Further, Mr. Thiel testified that the mark had been in continuous use in connection with the goods and services since the dates of first use claimed in the registrations.

As indicated above, applicant took no testimony and offered no other evidence. Mr. Thiel, however, during the course of his deposition, introduced a copy of an executive summary which describes applicant's computer software. It reads, in pertinent part, as follows:

MatTech is an engineering tool designed to help you continuously cut production costs by reducing raw material waste. MatTech combines an unsurpassed material waste prevention knowledge base with Client-Server technology to provide you with the most technically advanced world class product available. From our past experiences, we estimate that by utilizing MatTech, you can save an average of 15% of your raw materials from becoming wasted. Depending upon your specific plant, these savings can reach millions of dollars saved each and every year! With MatTech's multiple plant and multiple division capabilities, the

savings could be even higher for a corporation with several plants.

With respect to priority, inasmuch as opposer introduced copies of its pleaded registrations and offered testimony that the registrations are "active and valid," it has established its priority.

We turn our attention then to the issue of likelihood of confusion. At the outset, we note that opposer, in the argument section of its brief, discusses the relatedness of its computer software programs and applicant's computer software. Opposer makes no mention of the other goods and services in its pleaded registrations. In view thereof, and since opposer's computer software programs are the most pertinent of its goods, we will focus on these goods, as well.

We find that opposer's computer software programs for monitoring industrial plant production are closely related, if not identical, to applicant's computer software for material waste prevention. Opposer's president, Mr. Thiel testified that its "base [computer software] product starts with machine monitoring, scrap control, [and] productivity improvements." (Dep., p. 9) emphasis added. Applicant's computer software is for material waste prevention. Also, we note that the customers of the parties' computer software are the same--industrial plants.

Opposition No. 96,813

We turn then to compare the marks MATTEC and design and MATTECH. Although the marks must be compared in their entirety, there is nothing improper in giving more weight to a particular portion of a mark if it would be remembered and relied upon to identify the goods. In re National Data Corp., 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Thus, if one of the marks consists of a word and a design, then the word is normally accorded greater weight because it would be used by purchasers to request the goods. In re Appetito Provisions Co., 3 USPQ2d 1553, 1554 (TTAB 1987). In the present case, the literal portions of the marks are identical in terms of sound, differing in appearance and spelling by only one letter. In finding that the similarities of the marks outweigh the differences, we have kept in mind the normal fallibility of human memory over time and the fact that the average consumer retains a general rather than a specific impression of trademarks encountered in the marketplace.

We conclude that persons familiar with opposer's computer software programs for monitoring plant production offered under the mark MATTEC and design, upon seeing the mark MATTECH for computer software for material waste prevention and user manuals sold therewith are likely to believe the latter product emanates from opposer also.

Opposition No. 96,813

Decision: The opposition is sustained.

P. T. Hairston

H. R. Wendel

D. E. Bucher
Administrative Trademark
Judges, Trademark Trial and
Appeal Board