

12/14/01

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

Paper No. 33

RLS/TAF

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Morton International, Inc.

v.

Asahi Denka Kogyo Kabushiki Kaisha

Opposition No. 114,298 to application Serial No.
75/314,756 filed June 25, 1997.

Paul J. Bernardo of Deckert, Price & Rhoads for Morton
International, Inc.

Robert J. Patch of Young & Thompson for Asahi Denka Kogyo
Kabushiki Kaisha.

Before Simms, Cissel and Seeherman, Administrative
Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Morton International, Inc. (opposer), an Indiana
corporation, has opposed the application of Asahi Denka
Kogyo Kabushiki Kaisha (applicant), a Japanese
corporation, to register the mark ADKSTAB for anti-
oxidants, absorbing agents, stabilizers, nucleating
agents, metal deactivators

and lubricants used in connection with making plastics.¹

In the notice of opposition, opposer asserts that it makes and sells stabilizers for vinyl resins under the mark ADVASTAB, and that it owns Registration No. 568,044, issued Dec. 16 1952, twice renewed, covering this mark

¹ Application Serial No. 75/314,756, filed June 25, 1997, based upon a Japanese registration, under Section 44(e) of the Act. Specifically, the identification of goods is:

anti-oxidants for use as additives in polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers; ultraviolet absorbing agents for use as additives in polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers; hindered amine light stabilizers for use as additives in polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers; nucleating agents for use as additives in polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers; and metal deactivators for use as additives in polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers, in Class 1; and lubricants for polyolefin plastics, styrene plastics, polycarbonate plastics, linear polyester plastics, polyurethane plastics and polybutadiene-type rubbers, in Class 4.

Opposition No. 114,298

for "stabilizers for vinyl resins." Opposer alleges that applicant's mark ADKSTAB so resembles opposer's mark as to be likely to cause confusion, to cause mistake or to deceive. As a further ground for opposition, opposer asserts that applicant is not entitled to registration because of the doctrine of collateral estoppel (issue preclusion). Opposer pleaded that applicant filed an application in 1992 to register the mark ADK STAB covering stabilizers and additives for plastics. Opposer filed an opposition against that application in 1993 (Opposition No. 91,457), which was consolidated with Opposition No. 91,340, brought against applicant's mark ADEKA STAB. Opposer alleges that, in those proceedings, the Board held that there was a likelihood confusion of applicant's marks with opposer's mark ADVASTAB. Opposer also states that the Board in its decision determined that ADVASTAB was a famous mark. In the current application, applicant has merely combined two separate elements (ADK and STAB) into one word, according to opposer. With respect to the goods in applicant's applications in the prior proceeding and in this proceeding, opposer alleges that anti-oxidants, absorbing agents, stabilizers, nucleating agents, metal deactivators and lubricants are all additives for

plastics, and that most of applicant's goods are additives for plastics encompassed in the identifications in the prior applications. Opposer also asserts that applicant has not used its mark in commerce.

In its answer, applicant has denied the essential allegations of the notice of opposition, but has asserted that it used its mark until October 1996, and that its goods were on sale until the spring of 1997.

A trial was conducted at which both parties took testimony and introduced other evidence. Also, pursuant to stipulation, testimony from the prior proceeding involving these parties was introduced into this record. Briefs have been filed but no oral hearing was requested.

Trial Testimony and Evidence

During trial, opposer filed a notice of reliance upon its pleaded registration of the mark ADVASTAB for stabilizers for vinyl resins, as well as on official records of the prior proceeding.²

As noted, opposer has made of record a deposition from the prior proceeding--that of Fred Altieri, the

² Applicant has filed a motion to strike that part of opposer's notice of reliance on materials from the prior proceeding. Applicant argues that this case involves a different and detailed identification of goods so that the prior proceeding is irrelevant. We agree with opposer, however, that the records of the prior opposition are official records which are relevant to

Opposition No. 114,298

director of sales and marketing of opposer's Plastics Additives Group--taken in October 1994. At that time, Mr. Altieri testified that ADVASTAB is opposer's house mark used since the 1950s for heat stabilizers for rigid polyvinyl chloride (PVC) processing in the field of methyltin mercaptide chemistry. Mr. Altieri explained that heat stabilizers are additives used to keep plastics from burning or otherwise decomposing. According to Mr. Altieri, the prefix "ADVA" was derived from the name of a predecessor company--Advanced Coating and Chemicals.

At the time of that deposition, opposer had sales of over \$20 million per year with advertising expenses of around \$35,000 to \$55,000 per year. Applicant advertises in trade journals, at trade shows, and by means of directory listings, leaflets, data sheets and press releases. Opposer also distributes collateral merchandise items under the mark ADVASTAB.

According to Mr. Altieri, opposer is the market leader in heat stabilizers for rigid PVC processing, and ADVASTAB is the most well-known and widely recognized trademark in opposer's family of products. There are approximately 350 potential customers in this industry, and opposer's market share is 35 to 45 percent.

the issues in this case. Accordingly, applicant's motion to

Opposition No. 114,298

While there were no third-party uses of the prefix "AD" or "ADVA" in the field, Mr. Altieri testified that there was a third party which used the mark IRGASTAB. Opposer sells other products for the industry under other "ADVA"-prefixed marks, and other companies sell their products under marks with common prefixes or suffixes. Concerning the issue of likelihood of confusion, Mr. Altieri testified, at 50-51, and 54-55:

... And on a quick glance to me, A-D-K or ADKSTAB is too close to ADVASTAB and may be confused.

And while perhaps it may not be as easily as [sic] confused by people who have been in the industry for 20 or 30 years, there are new people entering the industry all the time who we wish to continue the identification and recognition of our trademark as being unique to Morton. And I would view this as a significant threat to us being able to continue that effort particularly with new people entering the industry.

Q. Do you think it likely that people in the market may make mistakes in ordering or using the ADKSTAB or A-D-K STAB products from Ashai Denka?

A. That's very very possible. We have seen mistakes at our order desk with trademarks that have absolutely nothing to do with our ADVASTAB coming into our office. And as a result as the names get similar, this could happen more and more frequently. And of great concern to us is that rather than us getting ADKSTAB inquiries and orders, ADVASTAB inquiries and orders could potentially be misplaced with Asahi Denka's agents in the United States, whoever they may be.

strike is denied.

Q. Does Morton International believe that if Asahi Denka were to obtain registrations of the trademarks and also use the trademarks ADKSTAB and A-D-K STAB in the United States that there could be injury or damage to Morton or its business interests?

A. We believe that is very possible.

Q. Would you describe or specify the type of damage or injury that you are concerned about.

A. Well, primarily loss of business, and that would be immediate one, confusion over the trademark leading to misplaced orders. But loss of goodwill is another one. We have taken, again, a great deal of time and invested a great deal of money, and taken a great deal of pride in our safety record. The way we manufacture our products, although there are two known suppliers of methyl tin chemistry, we are the only supplier that produces our product via a direct synthesis reaction ...

And confusing product, any chance of confusing product manufactured by our process with another process, we would consider damaging to the goodwill of our product name.

Opposer also took the testimony of Mr. Frank Oliveri in May 2000. He is the North American region business manager for plastics additives. He testified that the ADVASTAB product is a stabilizer and additive which gives plastics the ability to process in a wider thermal range and provides thermal stability for resins. Opposer's stabilizers are sold directly and through distributors to processors and to plastics compounders. In recent years, opposer's sales have exceeded \$40 million annually with

Opposition No. 114,298

advertising expenditures over \$1 million in the last three years. Opposer's ADVASTAB product currently has over 35 percent of the market. The product is the market leader and is very well known in the plastics industry. Oliveri dep., 8, 17 and 32. According to Mr. Oliveri, the parties' goods are promoted at the same trade shows and are advertised in the same publications. There are no third-party marks which are similar to opposer's, according to Mr. Oliveri.

Concerning the issue of likelihood of confusion, Mr. Oliveri testified, at 36:

... As you look at the varying processors and compounders that I have referred to, many of them process varying kinds of resins and plastics. Many of the folks who are people involved in the purchasing decisions are not necessarily technical people. Consequently, I think the name would create some confusion in their minds as to which product line and which company the trademarks were associated.

Mr. Oliveri also testified that some of the same processors and compounders who purchase opposer's goods could be purchasers of applicant's goods.

Further, Mr. Oliveri testified that anti-oxidants are stabilizers and additives that protect against oxidation, and that ultraviolet absorbing agents are also stabilizers and additives that stabilize plastics against ultraviolet light. Also, the goods in applicant's

Opposition No. 114,298

application listed as lubricants, nucleating agents and metal deactivators are also additives for plastics, according to Mr. Oliveri.

Opposer also made of record a copy of the prior Board decision, issued July 6, 1995. In that decision the Board found that applicant's marks ADK STAB and ADEKA STAB for "chemicals; namely, stabilizers and additives for plastics" were likely to cause confusion with opposer's mark ADVASTAB for stabilizers for vinyl resins. The Board determined that the parties' goods were in part identical and that the goods had common purchasers or users. Further, the Board found that the marks were substantially similar in appearance and overall commercial impression with the differences in the middle portions of the marks not as likely to be noticed as the identical letters at the beginning and the end of the marks. The Board stated that even discriminating purchasers may have an imperfect recollection of the marks. Further, the Board found that opposer's ADVASTAB mark was famous in the field with over 40 years of use in connection with PVC stabilizers as well as extensive promotion. The Board noted that this product had 35 to

Opposition No. 114,298

45 percent market share. The Board stated, at 8-9 of its opinion:

...Thus, despite the fact that the parties' goods travel in a specialized marketplace, even discriminating purchasers are likely to order stabilizers sold under applicant's marks in the mistaken belief that they are ordering opposer's goods.

Moreover, even those consumers who recognize the internal differences between the parties' marks are likely to believe, given the overall similarities of the marks and the fame of opposer's mark in this field, that applicant's marks are merely variations of the opposer's mark, and that both opposer's and applicant's goods emanate from the same source.

Applicant took the testimony on written questions of Mr. Kazumasa Yamada, applicant's general manager of the patent and information section. According to Mr. Yamada, applicant's mark has been used in the United States since 1990. However, use of this mark in this country ceased in 1997.

Applicant's mark is derived from the initial letters of applicant's name, to which the abbreviation "STAB," representing "stabilizer," has been added. Mr. Yamada indicated that applicant's mark (ADKSTAB) is pronounced "ei di kei stab" in this country. Applicant's goods are additives designed to prevent plastics from deteriorating or degrading and to maintain the quality of the plastics. Specifically, applicant's goods are designed to prevent products other than PVCs from oxidizing and deteriorating

Opposition No. 114,298

as a result of ultraviolet light or metal catalyzation, and by reducing the friction in the resins or between the resins and the molding machines in which the plastics are made. According to Mr. Yamada, applicant's goods cannot be used as stabilizers for rigid PVC resins.

Applicant's products are sold after they are explained directly to customers. These customers include plastics makers, plastics compound makers and plastics molding makers other than makers of PVCs. Applicant has sold its goods to approximately 60 to 70 customers in this country, with around 300 tons per year being sold during the period of use.

According to the testimony of Mr. Yamada, opposer is not a competitor of applicant. Rather, opposer sells to PVC makers, makers of PVC compounds and makers of PVC moldings. However, applicant does sell stabilizers for plasticizing PVC resins under a different mark. With respect to the issue of likelihood of confusion, applicant's witness testified, at 11:

A. I believe that purchasers will never confuse. While we use the ADKSTAB mark in the United States, the confusion have [sic] never happened. In addition, in other countries where the [sic] both ADKSTAB products and ADVASTAB products are sold, any confusion have [sic] never happened.

Opposition No. 114,298

Concerning the relationship between applicant's goods identified in the prior applications and the ones set forth in the current application, applicant's witness testified that the goods in the applications are different. At 13, Mr. Yamada testified:

A. The goods identified in former U.S. Application Serial No. 74/205,807 under the ADK STAB trademark are stabilizer and additives for plastics, thus including the designated goods of Morton International's ADVASTAB trademark, i.e., stabilizers for vinyl resins, whereas none of the goods identified in current U.S. Application Serial No. 75/314,756 under the ADKSTAB trademark are stabilizers for vinyl resins.

Applicant also filed a notice of reliance on various third-party registrations and Web pages from the Internet. These registrations include such marks as MAXISTAB for chemical compounds used as stabilizers; AKROSTAB for polymers, polymer additives and stabilizers for making plastics; ZINSTABE for activator stabilizers for polymers; and HALSTAB for chemicals for stabilizing polyvinyl chloride resins.

Arguments of the Parties

Opposer argues that the doctrine of collateral estoppel bars registration of applicant's mark for its goods and that applicant's mark is likely to cause confusion with opposer's previously used and registered mark. With respect to the doctrine of collateral

Opposition No. 114,298

estoppel, opposer argues that applicant is attempting "to take another bite at the registration apple" (brief, 20) because applicant's filing is an attempt to relitigate facts and issues already determined by the Board in its previous decision in 1995, wherein, among other things, the Board found that applicant's mark ADK STAB for stabilizers and additives for plastics was likely to cause confusion with opposer's mark ADVASTAB. It is opposer's position that applicant's mark ADKSTAB merely drops a space between the two parts of applicant's mark, and that this mark and the mark ADK STAB create substantially the same commercial impressions. Opposer argues that the specified stabilizers and additives involved in the current application are products which, according to applicant's own witness, were sold by applicant at the time its previous application was filed. According to opposer, applicant's current application has a narrower, more detailed identification of goods which lists applicant's stabilizers and additives individually, but these goods are merely a subset of the generalized stabilizers and additives covered in the previous application. Accordingly, applicant's current goods are fully encompassed by the goods involved in the prior proceeding, according to opposer.

Opposition No. 114,298

Even if the doctrine of collateral estoppel is not applicable, opposer argues that it should nevertheless prevail on the issue of likelihood of confusion for the same reasons it prevailed before. Since the 1950s, opposer's ADVASTAB heat stabilizers for processing rigid PVC plastics have been sold to compounders of plastics (who mix resins and additives) and to processors (who process the compounded resins by extruding, molding, etc. into a finished product). Opposer's ADVASTAB product is the market leader in the field of heat stabilizers for rigid PVC with a share of between 35 to 45 percent of the market. Opposer maintains that the record establishes that its mark is very well known in the industry. Opposer argues that applicant's stabilizers and additives for plastics are closely related goods also sold to plastics compounders and processors and advertised in the same trade publications and at the same trade shows. Opposer argues that a manufacturer of stabilizers and additives for plastics could very well offer a variety of stabilizers and additives used in a variety of different plastics. Indeed, opposer states that applicant itself offers such a variety of stabilizers and plastics. Opposer maintains that a plastics compounder or processor who associates opposer's ADVASTAB mark with one kind of

Opposition No. 114,298

additive would assume that applicant's ADKSTAB stabilizers and additives come from the same source. These goods, according to opposer, move through the same channels of trade and are sold to many of the same customers, who compound different types of plastics, not just vinyl. Opposer maintains that the respective marks--ADVASTAB and ADKSTAB--are similar in sound, appearance and commercial impression. Finally, opposer points out that applicant knew of opposer's mark before it commenced use of its mark, and that any doubt on the issue of likelihood of confusion should be resolved in favor of the prior user and registrant.

With respect to the issue of collateral estoppel, it is applicant's position that the doctrine does not apply if the facts, circumstances or the law has changed between the prior decision and the instant case. Here, it is applicant's position that the circumstances and conditions are different. Applicant points to the fact that the additives and stabilizers listed in its current application are also used to make rubber, a new set of goods different from plastics. Applicant argues that it deliberately listed with great specificity the actual chemicals sold by it in order to avoid a claim of potential confusion and to provide an entirely new set of

Opposition No. 114,298

goods. In this regard, applicant refers to the following definition of "plastics" from Grant & Hackh's Chemical Dictionary (5th ed. 1987):

Plastics A group of organic materials which, though stable in use at ordinary temperatures, are plastic at some stage of manufacture and then can be shaped by application of heat, pressure, or both. Synthetic rubber and certain inorganic materials, e.g., glass, comply with this definition but are not usually regarded as [plastics]...

Concerning the issue of likelihood of confusion, applicant maintains that the respective marks are dissimilar in sound, appearance and commercial impression. Applicant argues that the only common element, the suffix "-STAB," is suggestive because it is a commonly used industry abbreviation for "stabilizer." In support of this argument, applicant has pointed to the third-party registrations of record and Web pages of chemical companies showing marks which include this suffix. In particular, applicant points to such marks as MAXISTAB for chemical compounds used as stabilizers; AKROSTAB for polymers, polymer additives and stabilizers for making plastics; ZINSTABE for activator stabilizers for polymers; and HALSTAB for chemicals for stabilizing polyvinyl chloride resins. Because of the common use and

Opposition No. 114,298

suggestive nature of this suffix, it is applicant's position that the mere inclusion of this suffix in applicant's mark is not a sufficient basis on which to predicate a holding of likelihood of confusion. In other words, purchasers would look to the remaining or dominant elements of the marks in order to distinguish them.³

With respect to the goods, applicant maintains that it and opposer have never been competitors, with both companies making different, complementary stabilizers and additives, which are different in function and use, for different plastics. Applicant's goods are designed to prevent plastics other than PVC from oxidizing, by controlling crystallization, and by improving the properties and reducing friction. Applicant's goods are not interchangeable with opposer's, according to applicant, and there is no evidence to suggest that opposer's goods could be used with rubber.

Applicant also points to the relatively sophisticated nature of the purchasers, who know the

³ At one point in its brief, applicant has even argued that opposer's long-registered mark is merely descriptive (brief, 20). Not only has applicant not counterclaimed to cancel this registration, but also such an attack would be impermissible because opposer's registration is incontestable and well over five years old. See Section 14(1) of the Act, 15 USC §1064(1), Trademark Rule 2.106(b)(2)(i), and *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 105 S.Ct. 658, 224 USPQ 327 (1985).

Opposition No. 114,298

functions and properties of the chemicals they purchase. These chemicals require evaluation, testing and analysis before a purchasing decision is made. While applicant acknowledges that the trade channels could overlap in some instances, it is applicant's position that the differences in the marks and the sophistication of the purchasers would preclude any likelihood of confusion. Applicant also argues that there is a question as to how much fame can be attributed to opposer's mark without new evidence on this point. Finally, applicant points to the fact that there have been no instances of actual confusion between 1990 and 1997.

In reply, opposer argues that the current application merely identifies an additional use for the same stabilizers and additives that applicant was using when it earlier sought registration. Opposer accuses applicant of "semantic gamesmanship intended to circumvent the Board's adverse decision." The fact that applicant's goods may be used as additives to process a type of rubber does not alter the fact that they are also used in connection with plastics, according to opposer. Opposer maintains that the record contains no support for the argument that applicant's current products are different from those used in making plastics. Indeed,

Opposition No. 114,298

opposer points to the testimony of applicant's witness who indicated that applicant's goods are sold to plastics compounders and plastics makers. Opposer also points to precedent holding that the doctrine of collateral estoppel covers attempts to include uses of goods not previously mentioned.

Discussion

The doctrine of issue preclusion (also sometimes known as "collateral estoppel"), which serves to bar the revisiting of "issues" that have already been fully litigated, requires four factors:

- (1) identity of the issues in a prior proceeding;
- (2) the issues were actually litigated;
- (3) the determination of the issues was necessary to the resulting judgment; and,
- (4) the party defending against preclusion had a full and fair opportunity to litigate the issues.

See *Jet, Inc. v. Sewage Aeration Systems*, 223 F.3d 1360, 55 USPQ2d 1854, 1858-59 (Fed. Cir. 2000); and *Mother's Restaurant, Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 1569, 221 USPQ 394, 397 (Fed. Cir. 1983).

In determining the applicability of the doctrine of collateral estoppel, we must focus on whether the question of likelihood of confusion in the first case

Opposition No. 114,298

encompasses the marks and the goods involved herein. See *J.I. Case Co. v. F.L. Industries. Inc.*, 229 USPQ 697, 699 (TTAB 1986). Here, a review of the prior opinion reveals that likelihood of confusion between these marks and goods in the present proceeding was actually litigated and necessary to the judgment, and that applicant had a full opportunity to present its arguments on the question.

Applicant's mark ADK STAB involved in the prior proceeding and the mark ADKSTAB here are nearly identical and create very similar commercial impressions. See *Aromatique Inc. v. Lang*, 25 USPQ2d 1359 (TTAB 1992)(Board noting that we do not wish to encourage the losing party to modify its mark insignificantly to avoid the estoppel effect of a prior judgment); and *Miller Brewing Co. v. Coy International Corp.*, 230 USPQ 675 (TTAB 1986)(also involving an attempt to register a slightly different mark).

With respect to the goods, applicant's current detailed, technical description of goods is encompassed within the prior identification of goods. Applicant's goods are all stabilizers and additives for plastics, and applicant was using virtually the identical mark on these products at the time of the prior proceeding. Also,

Opposition No. 114,298

applicant's testimony reveals that its current products are sold to plastics compounders and plastics makers. The fact that applicant has now identified a new use for its goods is not a sufficient reason to avoid the application of the doctrine of collateral estoppel. What we said in *J.I. Case, supra*, at 700-01, where applicant was seeking to register a slightly different mark for slightly different goods from those involved in a prior proceeding, seems particularly appropriate:

The first opposition found likelihood of confusion with respect to the marks as used in connection with opposer's wide variety of lubricant products for both special and general purposes and applicant's goods described as multi-purpose lubricants. In this regard, opposer has shown, by way of submitting portions of the Schinske testimony deposition taken in the prior proceeding that the items of goods covered in the present application were being sold by ITT at that time under the "HI" mark. The Board's decision in the prior opposition was a broad one, finding International Harvester's logo to be widely used and famous and that International Harvester should not be restricted by reason of a newcomer's activity. *International Harvester, supra*, at 620. We think that the Board's prior decision precludes applicant from now coming in and specifying several different specialized lubricant products and thereby attempting to avoid the preclusive effect of the broad judgment rendered in the first case against applicant's broad description of goods, i.e., "multi-purpose lubricants." We think the goods recited in this application are fully encompassed by those claimed in the prior

proceeding and that applicant's assertions to the contrary are not well taken...

...We believe the new application seeks registration of a mark quite similar to the mark refused registration in the first proceeding. The only difference is that the stylized version of applicant's "HI" mark sought to be registered herein even more closely resembles opposer's logo than did the typed "HI" mark and the Board, in the first proceeding, specifically pointed this fact out. The goods covered by the present application are specific lubricants for specialized use and, in our view, are encompassed by the first decision refusing registration of applicant's "HI" mark for the broad description of "multi-purpose lubricant's" in view of opposer's long and extensive use of its logo in connection with a wide variety of lubricants...

...We conclude, then, that collateral estoppel bars applicant's application from registration; [and] that further litigation would put the parties to unnecessary expense and would be wasteful of administrative resources...

See also *The Toro Company v. Hardigg Industries, Inc.*, 549 F.2d 785, 193 USPQ 149 (CCPA 1977)(insignificant word change in the description did not eliminate the overlap in the identifications or the ground of controversy involved in the prior proceeding, was not a limitation of the nature, function or use of the goods, and, therefore, the issues in the second proceeding remained unchanged). Indeed, the only changes that have occurred herein would tend to increase, rather than diminish, the likelihood of

Opposition No. 114,298

confusion. For example, in this case, as in *J.I. Case*, applicant's mark is more similar to opposer's mark. Applicant's mark is presented as one word (ADKSTAB) as is opposer's mark (ADVASTAB), rather than two words (ADK STAB). Also, the increased level of sales and advertising expenditures have only served to strengthen opposer's mark since the prior decision. Opposer's mark remains a market leader with significant market share and is well known in the industry. Suffice it to say that the issue of likelihood of confusion between opposer's mark and applicant's mark has already been litigated, and that the doctrine of collateral estoppel bars this attempt by applicant to again seek registration.

Decision: The opposition is sustained on the ground of collateral estoppel, and registration to applicant is refused.