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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Teccor Electronics, Inc.
v.
Tecore, Inc.

Opposition Nos. 119,231; 119,491; and 119,806
to Application Serial Nos. 75/461,859; 462,132; and 462,155

Marie V. Driscoll and John J. Margiotta of Fross Zelnick
Lehrman & Zissu, P.C. for Teccor Electronics, Inc.

Steven E. Tiller of Whiteford, Taylor & Preston L.L.P. for
Tecore, Inc.

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

Opinion by Drost, Administrative Trademark Judge:

On April 3, 1998, Tecore, Inc. (applicant) filed three
applications to register the word TECORE on the Principal
Register. The first application (Serial No. 75/461,859) for
the mark T TECORE and the design is shown below.



The application alleges a date of first use and a date of first use in commerce of December 15, 1993, and it sets out the following identification of goods and services.

Integrated telecommunications networks comprised of T1 circuit boards, E1 circuit boards, digital signal processor boards, modems; and computer operating system software for use in telecommunications networks; computer hardware for telecommunications networks; and computer software for use in networking and control of telecommunications networks in International Class 9.

Project management, namely, telecommunications computer network design for others; computer consultation, namely, analysis of telecommunications system traffic; design and integration of telecommunications computer systems and networks in International Class 42.

The second application (Serial No. 75/462,155) is for the mark shown below and the third application (Serial No. 75/462,132) is for the mark TECORE in typed form.

TECORE

The '155 application claims a date of first use and a date of first use in commerce of December 15, 1993, and the

Opposition Nos. 119,231; 119,491; and 119,806

'132 application claims a date of first use and a date of first use in commerce of December 15, 1991. The goods and services in both applications are the same and they are set out below.

Integrated telecommunications networks comprised of T1 circuit boards, E1 circuit boards, digital signal processor boards, modems; and computer operating system software for use in telecommunications networks; computer hardware for telecommunications networks; and computer software for use in networking and control of telecommunications networks in International Class 9.

Business management regarding telecommunication systems in International Class 35.

Installation and repair of telecommunication systems in International Class 37.

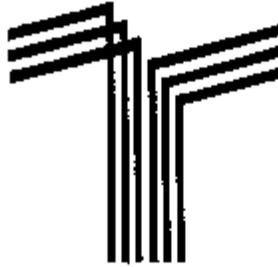
Telecommunication system education training seminars in International Class 41.

Project management, namely, telecommunications computer network design for others; computer consultation, namely, analysis of telecommunications system traffic; design and integration of telecommunications computer systems and networks in International Class 42.

On July 18, 2000, Teccor Electronics, Inc. (opposer) filed three notices of opposition to the registration of applicant's marks alleging that applicant's marks were confusingly similar under Section 2(d) of the Trademark Act to two trademark registrations it owned. 15 U.S.C. § 1052(d). The first registration is for the mark TECCOR, in typed form,¹ and opposer's second registration is for the stylized "T" design shown below.²

¹ Registration No. 1,660,550 issued October 15, 1991, renewed.

² Registration No. 1,606,198 issued on July 17, 1990, renewed.



Both registrations are for the goods set out below:

Electric power controls and semiconductor components for consumer industrial and commercial applications in which A.C. or D.C. power is switched and controlled, including power controls for household appliances, for lighting, heating, ventilating and air conditioning equipment, for power hand tools and for business machines and transient surge protectors for telecommunications equipment, for household appliances and for business machines in International Class 9.

Applicant denied that its marks and opposer's marks are confusingly similar. On November 2, 2000, the Board consolidated the three oppositions.

The Record

The record consists of the file of the involved applications; the trial testimony deposition, with accompanying exhibits, of David Lark, opposer's marketing manager; opposer's Notice of Reliance on Registration Nos. 1,606,198 and 1,660,550; and the trial testimony deposition, with accompanying exhibits, of Shiblee O. Shiblee, applicant's vice-president.

Both parties have filed briefs, and an oral hearing was held on November 6, 2002.

Background

Opposer seeks to prevent the registration of applicant's marks because it argues that applicant's marks, when used on applicant's goods and services, are confusingly similar to opposer's marks as used on its goods. Opposer first argues that it has obtained registration for marks that are "commercially indistinguishable" from applicant's marks. Opp. Br. at 19. In addition, its word mark is an arbitrary mark without "any descriptive or even suggestive connotation." Opp. Br. at 20. Regarding the goods and services, opposer maintains that applicant's software and opposer's semiconductors are complimentary products. "Clearly, it may be expected that, in the natural course of its business, [applicant] will necessarily produce and market turnkey systems that will, of necessity, incorporate semiconductors such as those manufactured by [opposer]." Opp. Br. at 27. Opposer further alleges that both applicant and opposer focus on "overlaying phone installation in the rural markets in America." Opp. Br. at 30. Opposer also alleges that there has been some actual confusion between the marks. As a result, opposer submits that the applications should be denied registration and that the oppositions should be "in all respects sustained." Opp. Br. at 34.

Opposition Nos. 119,231; 119,491; and 119,806

Applicant, on the other hand, while submitting that the marks show distinct differences, concentrates on the differences in the goods and services. Applicant's telecommunication systems cost between \$500,000 and \$3 million. Opposer's "switches, although sometimes purchased in bulk, are relatively simple switches that range in cost from anywhere between 8¢ and \$9.00." App. Br. at 15. Applicant also argues that the purchasers of its systems are sophisticated individuals and that the purchasers of opposer's products are "design engineers and buyers who test the product to ensure that it meets their specifications." App. Br. at 15. In addition, applicant claims that there has been no evidence of actual confusion among potential customers. As a result, applicant submits that the oppositions should be denied.

Priority

Priority is not an issue here in view of opposer's ownership of two registrations for marks containing either the word TECCOR or a T design. See King Candy Co. v. Eunice King's Kitchen, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974).

Likelihood of Confusion

The main issue in this case is whether applicant's marks are confusingly similar to opposer's marks. We, of course, analyze the issue of the likelihood of confusion in

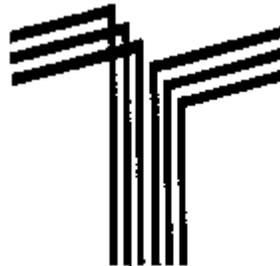
Opposition Nos. 119,231; 119,491; and 119,806

light of the factors set forth in In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973).

We start with the marks themselves. Applicant's marks consist of the word TECORE in typed form and the following marks in special form:



Opposer's marks consist of the word TECCOR in typed form and the following stylized mark:



Applicant points out that the words TECORE and TECCOR are spelled differently and it argues that the marks sound differently and that "a mere side-by-side comparison of the design marks shows distinct differences." App. Br. at 14. While we agree that there are differences in spelling between the words, these differences are slight and likely to be overlooked by potential customers. Overall, the words look similar, and while "there is no correct pronunciation

Opposition Nos. 119,231; 119,491; and 119,806

of a trademark," these marks would likely sound similar when they are pronounced. In re Belgrade Shoe Co., 411 F.2d 1352, 162 USPQ 227, 227 (CCPA 1969). See also Interlego AG v. Abrams/Gentile Entertainment Inc., 63 USPQ2d 1862, 1863 (TTAB 2002). In this case, opposer's mark has been pronounced by others with both a soft "E" and as "T-cor." Lark dep. at 8. In addition, since the words are arbitrary, they would not create different commercial impressions based on differences in their meanings. See Lark dep. at 8 ("[D]oes Teccor mean anything? A. No."); Shiblee dep. at 45 (The name TECORE is "a contraction of the words telecommunications, consulting and research.").

Finally, both applicant and opposer have marks shown in typed form so that there is no distinction between the marks based on the way the marks are displayed. Therefore, we find that the words TECCOR and TECORE are very similar in sound, appearance, meaning, and commercial impression, and these similarities far outweigh any differences between these word marks.

Opposer also relies on its stylized "T" registration as a basis for arguing that its marks and applicant's marks are similar. While the two "T" designs are different, the fact that both applicant and opposer use stylized "T" designs with their word marks enhances the likelihood of confusion.

Opposition Nos. 119,231; 119,491; and 119,806

Next, we must compare the goods and services as described in the applications and the registrations to determine if there is a likelihood of confusion. Canadian Imperial Bank v. Wells Fargo Bank, 811 F.2d 1490, 1493, 1 USPQ2d 1813, 1815 (Fed. Cir. 1987). Applicant seeks registration for the following goods and services³:

Telecommunications networks comprised of T1 circuit boards, E1 circuit boards, digital signal processor boards, modems; and computer operating system software for use in telecommunications networks; computer hardware for telecommunications networks; and computer software for use in networking and control of telecommunications networks in International Class 9.

Business management regarding telecommunication systems in International Class 35.

Installation and repair of telecommunication systems in International 37.

Telecommunication system education training seminars in International Class 41.

Project management, namely, telecommunications computer network design for others; computer consultation, namely, analysis of telecommunications system traffic; design and integration of telecommunications computer systems and networks in International Class 42.

Opposer's registrations contain the following goods:

Electric power controls and semiconductor components for consumer industrial and commercial applications in which A.C. or D.C. power is switched and controlled, including power controls for household appliances, for lighting, heating, ventilating and air conditioning equipment, for power hand tools and for business machines and transient surge protectors for

³ All three applications seek registration for the goods and services in International Classes 9 and 42. The application for TECCOR and stylized "T" design (Ser. No. 75/461,859) does not contain the services in International Classes 35, 37, and 41.

Opposition Nos. 119,231; 119,491; and 119,806

telecommunications equipment, for household appliances and for business machines in International Class 9. First, we will address applicant's goods in

International Class 9. It is apparent that applicant and opposer's goods are marketed in the telecommunications industry. Applicant's goods are telecommunications networks, software for use in telecommunications networks and computer hardware for telecommunications networks.⁴ Opposer's goods include electric power controls and semiconductor components for commercial applications including power controls for business machines and transient surge protectors for telecommunications equipment.

While both parties operate in the same industry, this by itself does not establish that the goods are related. Electronic Design & Sales, Inc. v Electronic Data Systems Corp., 954 F.2d 713, 21 USPQ2d 1388, 1391 (Fed. Cir. 1992) ("Although opposer's services and applicant's goods are purchased by some of the same large *corporations*, the individual departments therein may be as independent in their purchasing activities as were the hospital departments in Astra [Pharmaceutical Products v. Beckman Instruments,

⁴ At oral argument, applicant maintained that its identification of goods set out only one "good," an integrated network containing all of the items in the identification of goods. We disagree with applicant's interpretation of its identification of goods because the identification as written separates the goods into integrated telecommunications networks, computer hardware, and computer software. Applicant argues that it simply integrates other companies' products into its networks and that it does not use its trademarks on its goods. In response,

Opposition Nos. 119,231; 119,491; and 119,806

718 F.2d 1201, 220 USPQ 786 (1st Cir. 1986)]" (emphasis in original).

Here, we note that both applicant and opposer primarily market their goods to commercial purchasers as opposed to ordinary consumers. Applicant's systems cost at least \$250,000. See Shibley dep. at 55. While opposer's goods are much less expensive (typically costing between 8¢ and \$9, Lark dep. at 19), the purchasers of these products are sophisticated purchasers who normally work for corporations. Lark dep. at 16 ("[U]sually the first contact is with the design engineer... They have a circuit that they need to design and they know that they have a function that requires something that we can satisfy").

However, both applicant and opposer market their products to the telecommunications industry and specifically the rural telecommunications industry. Opposer's advertising shows that its TECCOR and stylized T marks are used on goods described as:

Telecommunications Network Protection

... The T5 Series plug-in modules can be used with industry-standard five pin protection blocks in applications at central offices (telephone exchanges), remote locations, building entrances, and customer premises.

Lark, Ex. 4.

opposer pointed out that applicant apparently uses at least one of its marks on computer hardware. Shibley Ex. 5.

Opposition Nos. 119,231; 119,491; and 119,806

Opposer's goods are also described in the following way. "In telecommunications products, SIDACTors are connected across tip and ring, typically behind a current-limiting device such as a slow-blow fuse. Common applications include: central office line cards, T1/E1; ISDN and DSL transmission equipment, Customer Premises Equipment (CPE) such as phones, modems, and adjunct boxes, PBXs [private branch exchanges], KSUs [key system units] and other switches..." Lark, Ex. 1, p. 3. Applicant's network systems involving T1 circuit boards and opposer's goods are both designed to be used with T1 lines.

Furthermore, while applicant stresses that its goods and services are designed for wireless telecommunication systems, applicant's identifications of goods are not limited in this way. Applicant's integrated telecommunications networks include wired and wireless telecommunications networks. While applicant may only market its goods to rural telecommunications entities and make its products for wireless networks, applicant's actual use of its product does not limit its identification of goods. We must consider the services as they are identified in the application and registration. Paula Payne Products v. Johnson Publishing Co., 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the

Opposition Nos. 119,231; 119,491; and 119,806

respective descriptions of goods"); In re Dixie Restaurants, 105 F.3d 1405, 41 USPQ2d 1531, 1534 (Fed. Cir. 1997) (punctuation in original), quoting, Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813, 1816 (Fed. Cir. 1987) ("Likelihood of confusion must be determined based on an analysis of the mark applied to the ... services recited in applicant's application vis-à-vis the ... services recited in [a] ... registration, rather than what the evidence shows the ... services to be"). See also Octocom Systems, Inc. v. Houston Computers Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed").

Furthermore, we note that applicant's system "is a scalable switching platform that allows for interconnection from wireless networks such as cellular, PCS and satellite, to Public Switched Telephone Network (PSTN)." Shiblee, Ex. 2, p. 2; See also Shiblee Ex. 11, p. 2 ("TECORE - Scalable Switching Solutions for the Converging Wireless and Wireline Networks... TECORE provides the first switching platform on

Opposition Nos. 119,231; 119,491; and 119,806

the market that can simultaneously support multiple wireless protocols, wireline applications and a fully integrated prepaid solution"). Thus, applicant's system is designed to connect wireless and non-wireless phone systems. Engineers and others who work on applicant's telecommunications systems are likely to believe that opposer's semiconductor components and surge protectors they would be purchasing come from the same source. Furthermore, the same engineers are likely to be involved in purchasing applicant's "computer hardware for the telecommunications industry" and "computer software for use in networking and control of telecommunications networks" and in the purchase of opposer's semiconductors and surge protectors that could be used with these telecommunications network products.

While we may assume that the purchasers in this case will in most instances be sophisticated purchasers who "may be expected to exercise greater care," we do not think this sophistication is enough to avoid confusion between the goods in International Class 9. Electronic Design, 21 USPQ2d at 1392, quoting Pignons S.A. de Mecanique de Precision v. Polaroid Corp., 657 F.2d 482, 489, 212 USPQ 246, 252 (1st Cir. 1981). Even sophisticated purchasers would likely be confused when highly similar marks are used on related goods. Octocom Systems, 16 USPQ2d at 1787.

Opposition Nos. 119,231; 119,491; and 119,806

Opposer also alleges that there has been actual confusion in this case because twice, at large telecommunications shows, either a contractor setting up opposer's booth mistook opposer for applicant or another time a show employee reported that opposer had already paid its exhibition fee when in fact it had not, but applicant had. Opp. Br. at 33; Lark dep. at 46-47. We agree with applicant that neither of these incidents involved potential customers nor were the marks viewed in relationship to the parties' goods and services.

Applicant argues that opposer has only recently moved into the telecommunications market (Br. at 24-25). Even if this were true, we note that opposer's identification of goods in its registrations specified that its goods were, inter alia, "for telecommunications equipment." Finally, applicant submits that "[d]uring eleven (11) years of concurrent use, no instances of actual confusion have occurred." Br. at 21. The absence of actual confusion does not mean that there is no likelihood of confusion. Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390, 396 (Fed. Cir. 1983); J & J Snack Foods Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1892 (Fed. Cir. 1991). Because of applicant's limited sales, it is not surprising that there was no evidence of actual confusion by potential purchasers.

Opposition Nos. 119,231; 119,491; and 119,806

Therefore, we conclude that there is a likelihood of confusion between applicant's marks when used with the goods in International Class 9 and opposer's marks when used on its Class 9 goods.

Next, we will consider whether applicant's services are related to opposer's goods. Applicant's services include business management regarding telecommunication systems, installation and repair of telecommunication systems, telecommunication system education training seminars, and project management, namely, telecommunications computer network design for others in International Classes 35, 37, 41, and 42. Here, the record is much less persuasive regarding the relatedness of these services to opposer's goods. While these services are in the telecommunications field, the record does not indicate why prospective purchasers of opposer's surge protectors and semiconductor components that cost between 8¢ and \$9 would believe that the same or related entity was also providing business management, installation and repair of telecommunication systems, education training seminars, and project management services. We, of course, decline to hold that all telecommunication goods and services are per se related. In re Quadram Corp., 228 USPQ 863, 865 (TTAB 1985) ("[W]e think that a per se rule relating to source confusion vis-à-vis computer hardware and software is simply too rigid and

Opposition Nos. 119,231; 119,491; and 119,806

restrictive an approach and fails to consider the realities of the marketplace”).

We find the Electronic Design case to be particularly relevant. In that case, the Court reversed a finding of likelihood of confusion noting that “although the two parties conduct business not only in the same field but also with some of the same companies, the mere purchase of the goods and services of both parties by the same institution does not, by itself, establish similarity of trade channels or overlap of customers.” 21 USPQ2d at 1391. The Court went on to determine that “it cannot be presumed, as the Board apparently did, that the general computer services are selected by the same individuals who select battery chargers and power supplies.” Id. Opposer’s goods are typically sold by contacting a design engineer. Lark dep. at 17. Unlike the goods in International Class 9, we cannot conclude from the record that the same person selecting applicant’s business management, installation and repair, education training seminars, and project management services would overlap with the design engineers and similar employees purchasing opposer’s semiconductor components and surge protectors. It is not even clear how the same person would encounter both marks. “We are not concerned with mere theoretical possibilities of confusion, deception, or mistake or with de minimis situations but with the

Opposition Nos. 119,231; 119,491; and 119,806

practicalities of the commercial world, with which the trademark laws deal." Witco Chemical Co. v. Whitfield Chemical Co., 418 F.2d 1402, 164 USPQ 43, 44-45 (CCPA 1969).

We have considered that there is no evidence of any third-party uses of similar marks⁵ and that opposer's mark is a coined term that has no meaning in the trade. However, despite the similarities of the marks, the significant differences in opposer's goods and applicant's services in International Class 35, 37, 41, and 42 obviate the likelihood of confusion.

Decision: The opposition to the registration of the goods in International Class 9 in Opposition No. 119,231; 119,491; and 119,806 is granted. The opposition to the other classes is dismissed.

⁵ We have not considered applicant's reference to two websites that it says involve other uses of nearly identical trademarks because they have not previously been made of record. We note in passing that log processing services and hardwood floors on their face appear to be unrelated to the goods and services in this case.