

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 76/216,493
For the mark SYNTEL
' Published in the Official Gazette on June 18, 2002

SYNTELSOFT INC
Opposer

v.

SYNTEL INC
Applicant

Opposition No.91152909

09-11-2003
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Trademark Trial and Appeal Board
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REPLY BRIEF TO APPLICANT'S REPLY OF 26 JUNE 2003

Applicant's "Amended Certificate of Mailing" acknowledges the false statement that Applicant made on the original "Certificate of Mailing" for this "Motion for Summary Judgement and Suspension of Proceedings." The original motion was improperly served and should be dismissed.

Furthermore, Applicant's "Amended Certificate of Mailing" asserts that Opposer "declined to receive the documents by facsimile." This falsely implies that Opposer knew what was being faxed and waived its right to timely service. In fact, Applicant telephoned and said that they were trying to fax "something." Applicant did not inform Opposer that the materials to be faxed were a Motion or that the Motion required a timely response. Had Applicant so informed Opposer, then Opposer would have provided a working fax

number. Also, Applicant could have stipulated that Opposer's Response to the Motion was filed in a timely manner and allowed this matter to be judged on its merits. Instead Applicant offered up this questionable implication.

Opposer has provided to Applicant advertising demonstrating its use of the SYNTEL word mark, published references to its products described with the SYNTEL word mark, and invoices for its products bearing the SYNTEL word mark. These materials span a period of many years, from before Applicant's first claimed use right up to the present day.

Opposer has been using the word mark SYNTEL for twenty years. Opposer has, for several years, published on its SYNTEL.COM "Web site" a list of numerous independent users of the SYNTEL word mark in International Classes 035 and 042 (including Applicant), many of whom started using the SYNTEL word mark long before either Applicant or Opposer.

Applicant uses the SYNTEL word mark solely as a trade name, whereas Opposer actually uses the word mark to identify a product. This Application would cause great confusion among the many other users of the SYNTEL word mark. Opposer and others have used the SYNTEL word mark since well before Applicant's first claimed use. Applicant's use of the SYNTEL word mark is not in any way exclusive; any purchaser of goods or services in International Classes 035 and 042 is confronted with literally dozens of independent users of this mark. Opposer has used the word mark continuously since 1983. Applicant does not meet any distinctiveness test. This Application would interfere with Opposer's long-standing use of the Internet domain SYNTEL.COM. For these many grounds, this Application must be rejected.

Opposer requests that the Motion for Summary Judgement be dismissed and that the Application be rejected.

Respectfully submitted,

SyntelSoft Inc.



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Date: 8 September 2003

