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THE TTAB

UNITED STATES PATENT AND TRADEMARK  
OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

wellington

MAILED: December 11, 2003

Opposition No. 91152909

SYNTELSOFT, INC.

v.

SYNTEL, INC.

12-19-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #74

Before Hohein, Walters and Drost, Administrative Trademark  
Judges.

By the Board:

This case now comes up for consideration of applicant's  
motion (filed June 5, 2003) for summary judgment. The  
motion has been fully briefed by the parties.

Summary judgment is an appropriate method of disposing  
of cases in which there are no genuine issues of material  
fact in dispute, thus leaving the case to be resolved as a  
matter of law. See Fed. R. Civ. P. 56(c). The party moving  
for summary judgment has the initial burden of demonstrating  
the absence of any genuine issue of material fact. See  
*Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and *Sweats  
Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4  
USPQ2d 1793 (Fed. Cir. 1987). A factual dispute is genuine  
if, on the evidence of record, a reasonable finder of fact

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could resolve the matter in favor of the non-moving party. See *Opryland USA Inc. v. Great American Music Show Inc.*, 970 F.2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992), and *Olde Tyme Foods Inc. v. Roundy's Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992). The evidence must be viewed in a light most favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. See *Lloyd's Food Products Inc. v. Eli's Inc.*, 987 F.2d 766, 25 USPQ2d 2027 (Fed. Cir. 1993), and *Opryland USA, supra*.

After reviewing the arguments and supporting papers of the parties, we conclude that there are genuine issues of material fact which preclude disposition of this matter by summary judgment. At a minimum, genuine issues of material fact exist as to priority and the nature/extent of opposer's use of its mark in relation to its services.<sup>1</sup>

In view thereof, applicant's motion for summary judgment is denied.<sup>2</sup>

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<sup>1</sup> The fact that we have identified these genuine issues of material fact as sufficient bases for denying the motion for summary judgment should not be construed as a finding that these are the only issues remaining for trial.

<sup>2</sup> The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final hearing must be properly introduced in evidence during their appropriate trial periods. See *Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

Accordingly, proceedings herein are resumed. Discovery is closed. The trial dates are reset as follows<sup>3</sup>:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
Thirty day testimony period for party in position of plaintiff to close:	February 17, 2004
Thirty day testimony period for party in position of defendant to close:	April 17, 2004
Fifteen day rebuttal testimony period to close:	June 1, 2004

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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<sup>3</sup> Applicant's motion (filed concurrently with its motion for summary judgment) to suspend proceedings pending resolution of the motion is moot in view of the Board's August 21, 2003 suspension order. In the same paper, applicant also requested the Board to reset the testimony dates in the event that the Board denied its motion for summary judgment; this request is granted to the extent that the testimony dates are rescheduled herein.