

TTAB

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Commissioner for Trademarks, Attn: TTAB,
P.O. Box 1451, Alexandria, VA, 22313-1451 on 7-6-09

By [Signature]

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

In the Matter of:
Trademark Application Serial No. **77/530,518**
Filed: July 24, 2008
For the Mark: **MATRIXCOTE**
Published in the *Official Gazette* on March 10, 2009
Opposer's Reference No. UMEE 7 00120

_____)	
Unimin Corporation)	
)	
Opposer)	
v.)	Opposition No. _____
)	
DENTSPLY International Inc.)	
)	
Applicant)	
_____)	

NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451
Attention: TTAB

Unimin Corporation, a Delaware corporation, with offices at 258 Elm Street, New Canaan, CONNECTICUT 06840 (hereinafter "Opposer"), believes it will be damaged by the registration of the word phrase shown in the application bearing S.N. 77/530,518 and hereby opposes registration of said word phrase. Application S.N. 77/530,518 was published for opposition on March 10, 2009. Opposer filed a thirty day extension of time and then a sixty day extension of time, to oppose Application S.N. 77/530,518 wherein the current due date to file a Notice of Opposition is July 8, 2009.

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07-08-2009

1. Upon information and belief, DENTSPLY International Inc., a Delaware corporation, with offices at 221 West Philadelphia Street, York, PENNSYLVANIA 17405-0872 (hereinafter "Applicant"), filed an Intent-to-Use application to register "MATRIXCOTE", Application S.N. 77/530,518 for "Chemicals in the nature of a refractory binder for investment casting" in International Class 1, on July 24, 2008 (hereinafter "the '518 application"). The '518 application did not claim use at the time of filing.

2. Upon information and belief, the '518 application is in Standard Character or Typewritten form wherein no claim is made to any stylized format for the word phrase "MATRIXCOTE" of the '518 application.

3. Upon information and belief, an Amendment to Allege use was filed in the '518 application on January 29, 2009 wherein first use was claimed as August 6, 2008.

4. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to August 6, 2008.

5. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to July 24, 2008.

6. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to January 1, 2008.

7. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to January 1, 2005.

8. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to January 1, 2000.

9. Upon information and belief, Applicant did not use "MATRIXCOTE" for the goods recited in the '518 application prior to January 1, 1995.

10. Upon information and belief, Applicant's goods sold under the MATRIXCOTE mark are used for coating purposes.

11. In view of the descriptive and/or generic nature of the wording "cote," the wording MATRIX is the dominant portion of the word phrase MATRIXCOTE.

12. In view of the descriptive and/or generic nature of the wording "cote," the wording MATRIX is the only portion of the word phrase MATRIXCOTE that has trademark significance.

13. The goods listed in the '518 application include no limitation to the particular type of chemicals except that these chemicals are those which can, among other uses, be used as a refractory binder for investment casting. These chemicals include minerals.

14. The goods listed in the '518 application include minerals.

15. The goods listed in the '518 application cover all minerals that can, among other uses, be used as a refractory binder for investment casting.

16. The goods listed in the '518 application make no limitation as to the type of mineral, but only as to how the minerals are used, namely, that the minerals can, as one of their uses, be used as a refractory binder for investment casting.

17. Opposer is the owner of Registration No. 1,805,656 for the mark MATRIX which was filed on May 5, 1992 and which recites "minerals as additives for glass manufacture," in International Class 1; (hereinafter "the '656 registration").

18. The goods listed in the '656 registration include no limitation to the particular type of mineral except that these minerals are those which can, among other uses, be used as additives for glass manufacture.

19. The goods listed in the '656 registration cover all minerals that can, among other uses, be used as additives for glass manufacture.

20. The goods listed in the '656 registration make no limitation as to the type of mineral, but only as to how the minerals are used, namely, that the minerals can, as one of its uses, be used as additives for glass manufacture.

21. Opposer is also the owner of common law rights in its MATRIX mark which is used for Opposer's mineral products including, but not limited to, the goods recited in the '656 registration.

22. Opposer sells a wide range of mineral products and sells these mineral products for many uses including, but not limited to, industrial and manufacturing uses in many fields. These fields include the casting fields such as investment casting.

23. Opposer sells a wide range of mineral products and sells these mineral products for many uses including, but not limited to, industrial and manufacturing uses in connection with binding and coating products that are mineral based and non-mineral based.

24. Opposer sells a wide range of minerals wherein, upon information and belief, the same consumer purchases both the goods sold by Applicant and Opposer.

25. Opposer sells a wide range of minerals wherein, upon information and belief, the same consumer purchases both the goods sold by Applicant and Opposer in the same commercial transaction.

26. Upon information and belief, Applicant and Opposer are the suppliers to the same consumers.

27. Upon information and belief, Applicant and Opposer are competitors of one another in certain industries.

28. Upon information and belief, Applicant and Opposer are both suppliers to the same consumers.

29. Opposer sells more than one type of mineral under its MATRIX mark which results in a family of MATRIX Marks used by Opposer.

30. Opposer sells refractory materials for investment casting wherein the same consumer is exposed to both the MATRIX mark of Opposer and the MATRIXCOTE word phrase of Applicant.

31. Opposer has used its MATRIX mark to identify its mineral products long prior to the filing date of Applicant's '518 application or the date of first use claimed in the '518 application.

32. Opposer has made a substantial investment in advertising and promoting the goods sold under Opposer's MATRIX Mark.

33. Opposer's extensive and continuous use of MATRIX has generated substantial revenue and valuable goodwill and reputation.

34. Opposer's extensive and continuous use of MATRIX has made this mark well known in the mineral field wherein new trademarks including MATRIX would be viewed as an extension of Opposer's family of MATRIX marks.

35. Opposer is the owner of Registration No. 2,788,839 for the mark TOURNAMENT BLEND which was filed on October 24, 2002 and which identifies a blended mineral based product, namely, golf course growing media and top dressing consisting of a mixture of silica sand and diatomaceous earth, in International Class 1 (hereinafter "the '839 registration"). The mark shown in the '839 registration has been used since 1999.

36. Opposer is the owner of Registration No. 2,625,691 for the mark UNIPAR TOURNAMENT BLEND which was filed on November 17, 1999 and which identifies a blended mineral based product, namely, golf course growing media and top dressing consisting of a mixture of silica sand and diatomaceous earth, in International Class 1 (hereinafter "the '691 registration"). The mark shown in the '691 registration has been used since 1999.

37. Opposer is the owner of Registration No. 1,985,775 for the mark SANBLEND which was filed on August 25, 1995 and which identifies a blended mineral based product, namely, inorganic ceramic oxides, particularly mixtures of fine, naturally occurring and/or synthetic clays for use as a raw material in manufacturing goods by others, in International Class 1 (hereinafter "the '775 registration"). The mark shown in the '775 registration has been used since 1994.

38. Opposer is the owner of a family of marks which include the word BLEND that are all used to identify Opposer's mineral products including the marks shown in the '691 registration, the '775 registration and the '839 registration along with common law rights in marks with the word BLEND used alone and in combination with other well known marks owned by Opposer (hereinafter "Opposer's BLEND Marks").

39. It would be a natural extension of Opposer's MATRIX mark to use MATRIX with a second component such as COTE to sell its mineral based products. This is especially true if the product is used on coating applications.

40. Opposer sells mineral based products that are used in coating applications.

41. Opposer is the owner of several families of marks which are in a two part format similar to the MATRIXCOTE of the '518 application including the marks EXCELBLEND, EXCELCAST, CERAMIX, CERASIL, HIFILL, HIWHITE, UNIMIN, UNIBLAST, UNIPAR, UNIFRAC, UNIPRESS, UNICAST, SNO BRITE and SNO FIL of Opposer. (hereinafter "Opposer's TWO PART Marks").

42. It would be a natural extension of Opposer's MATRIX mark to use the word phrase MATRIXCOTE to sell its mineral based products. This is especially true if the product was used for coatings or coating applications.

COUNT 1

Opposer incorporates the allegations of paragraphs 1-42 as is stated herein.

43. Opposer has priority trademark rights in Opposer's MATRIX Mark to identify its mineral products long prior to the filing date of the '518 application and claimed first use dates of Applicant's '518 application.

44. Opposer has priority trademark rights in Opposer's TWO PART Marks to identify its mineral products long prior to the filing date of the '518 application and claimed first use dates of Applicant's '518 application.

45. Applicant's '518 application for the word phrase MATRIXCOTE consists of or comprises a phrase which so resemble Opposer's MATRIX Mark, including the '656 registration, as to be likely, when used on or in connection with the goods sought to be registered by Applicant to cause confusion, or to cause mistake, or to deceive.

46. Applicant's '518 application for the word phrase MATRIXCOTE consists of or comprises a phrase which so resemble Opposer's BLEND Marks, including the '691 registration, the '775 registration and the '839 registration, as to be likely, when used on or in connection with the goods sought to be registered by Applicant and used in combination with Applicant's MATRIXBLEND mark to cause confusion, or to cause mistake, or to deceive.

47. Applicant's '518 application for the word phrase MATRIXCOTE consists of or comprises a phrase which so resemble Opposer's MATRIX Mark, Opposer's TWO PART Marks and Opposer's BLEND Marks, including the '656 registration, the '691 registration, the '775 registration and the '839 registration and others, as to be likely, when used on or in connection with the goods sought to be registered by Applicant to cause confusion, or to cause mistake, or to deceive.

48. The word phrase MATRIXCOTE as is set forth in the '518 application, would be improperly viewed as an extension of Opposer's MATRIX Marks, TWO PART Marks and/or BLEND Marks, and registration of MATRIXCOTE to Applicant is therefore likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of

Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods, services, or commercial activities by Opposer and, therefore, would damage Opposer.

49. The word phrase MATRIXCOTE as is set forth in the '518 application, is confusingly similar to Opposer's MATRIX Mark, TWO PART Marks and/or BLEND Marks, and registration of MATRIXCOTE to Applicant is therefore likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods, services, or commercial activities by Opposer and, therefore, would damage Opposer.

COUNT II

Opposer incorporates the allegations of paragraphs 1-49 as is stated herein.

50. Applicant seeks registration of MATRIXCOTE on goods and use of this word phrase is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer or as to the origin, sponsorship or approval of Applicant's goods by Opposer.

51. Opposer has priority trademark rights in Opposer's MATRIX Mark to identify its mineral products over any rights Applicant may have in the MATRIXCOTE mark as is shown in Applicant's '518 application.

52. Applicant seeks registration of MATRIXCOTE which consists of or comprises a phrase which so resembles the '656 registration and/or Opposer's common law rights in MATRIX and variations thereof previously used in the United States by Opposer as to be likely, when used on or in connection with the goods recited in the '518 application, to cause confusion, or to cause mistake, or to deceive.

53. Applicant seeks registration of MATRIXCOTE which consists of or comprises a phrase which so resembles the '691 registration, the '775 registration and the '839 and/or Opposer's common law rights in BLEND and variations thereof previously used in the United States by Opposer as to be likely, when used on or in connection with the goods recited in the '518 application, to cause confusion, or to cause mistake, or to deceive.

54. Applicant seeks registration of MATRIXCOTE which consists of or comprises a phrase which would improperly prevent any natural extensions of Opposer's MATRIX Marks, TWO PART Marks, and/or BLEND Marks that Opposer would be damaged if the '518 application was allowed to register.

55. Opposer, therefore, believes it will be damaged by the registration of the '518 Application to Applicant.

COUNT III

Opposer incorporates the allegations of paragraphs 1-55 as is stated herein.

56. Applicant seeks registration of MATRIXCOTE on goods such that use of this word phrase is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer or as to the origin, sponsorship or approval of Applicant's goods by Opposer and Applicant knew, or should have known, of Opposer's MATRIX Marks, TWO PART Marks and/or Opposer's BLEND marks when filing the '518 application and, therefore, committed fraud on the Trademark Office.

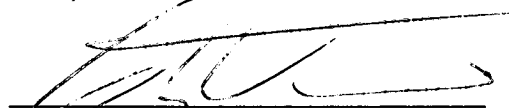
PRAYER FOR RELIEF

WHEREFORE, Opposer prays that application S.N. 77/530,518 be denied, that Applicant be enjoined from obtaining registration of S.N. 77/530,518, that no registration be issued to Applicant and that this opposition be sustained.

A check for the filing fee of \$300.00 is presented herewith. It is respectfully requested that additional fees be charged to Deposit Account No. 06-0308. Opposer further requests that all correspondence in this matter be addressed to the undersigned.

Respectfully Submitted,

FAY, SHARPE LLP



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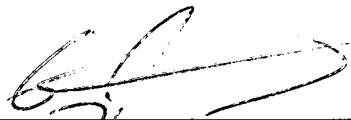
Unimin Corporation)	
)	
Opposer)	
v.)	Opposition No. _____
)	
DENTSPLY International Inc.)	
)	
Applicant)	
)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served on:

JUSTIN H. MCCARTHY II
DENTSPLY LEGAL DEPARTMENT
221 WEST PHILADELPHIA STREET
YORK, PA 17405-0872
Phone Number: 717-849-4204
Fax Number: 717-849-4360

by first class mail, postage prepaid, on 7-6-09.



Gregory S. Vickers