

This is responsive to the December 15, 2010, Office Action in this application to register the mark, ITM, as a mark "in use" under Section 1 (a). Although the Trademark Examining Attorney found no registered mark that would block advancement of this application there was cited the earlier filed Section 1 (b) application, No. 77/485.040 in which a Notice of Acceptance was entered by the PTO March 29, 2011. However a comparison of the two trademarks, the industrial fields where the two owners operate tells that confusion as to the source of the respective goods or services is very remote.

Perhaps as a starting point it's instructive to view the web sites of the two owners: <http://www.heatandcontrol.com/eqmain.asp?eqid=54> as well as <http://www.greenspacepros.com/> and the alternate web site: <http://local.yahoo.com/info-49951080-international-telemetry-machines-corporation-southampton>.

The marks are displayed on the owners' web sites as well as in their trademark application files.

The senior party 'Telemetry Machines Corporation, displays its mark in a highly stylized logo format. The junior party, Heat and Control, Inc. displays its mark in a plain, unadorned type-font.

The goods/services of the respective applicants could hardly be more different. Whereas, Heat and Control serves the processed foods and snack foods industry where product cooking is the norm, 'Telemetry Machines Corporation seems intent to be " a multi-faceted electrical engineering company dedicated to reducing customer's electric bills. We design and install custom energy conservation systems ***" They position themselves as a "green company" and evidentially seek a customer base attracted to the "green" philosophy. Perhaps someone would characterize the processed and snack foods industry as "green" but more likely than not it is associated with fast food products having a generous fat component. We don't know but can imagine that those consumers of the "green" persuasion are repulsed by ordinary fast food products that can be produced using the junior party's goods.

Further, we should have in mind that the consumers here are engineers and purchasing agents working in their chosen industry. These consumers are highly educated. knowledgeable and critical in making choices of goods/services for their employers.

The two marks can quite well co-exist. There are distinct differences in appearances, the industries served and the consumers attracted to the respective goods. For these reasons we respectfully request the Examining Attorney to send the present application to publication.

Standard Character Claim: The mark consists of standard characters without claim to any particular font style, size or color.