

O-025-04

**DECISION OF THE TRADE MARKS REGISTRY**

**TRADE MARKS ACT 1994**

**APPLICANT: KINGSPAN GROUP PLC**

**OPPOSITION N<sup>o</sup>. 80352**

**AND**

**OPPONENT: BAUM, JUTZI UND PARTNER INC**

**APPLICATION N<sup>o</sup>. 2272262**

**CLASSES 6, 17 & 19**

**STYROZONE**

## TRADE MARKS ACT 1994

### BACKGROUND

1. The mark is shown on the front page of this decision. It was applied for on 11<sup>th</sup> June 2001 by the Kingspan Group Plc, Dublin Road, Kingscourt, Co. Cavan, Republic of Ireland for:

Class 6: Building materials of metal; metal coated building materials; transportable buildings of metal, ironmongery, small items of metal hardware; pipes and tubes of metal; parts and fittings for the aforesaid goods.

Class 17: Packing, stopping and insulating materials; plastics in extruded form for use in manufacture; flexible pipes; parts and fittings for the aforesaid goods.

Class 19: Building materials (non-metallic); non-metallic rigid pipes for buildings; non-metallic transportable buildings; parts and fittings for the aforesaid goods.

2. Registration of the mark is opposed by Baum, Jutzi Und Partner Inc. under s. 5(2)(b) of the Act on the basis of the earlier Community Trade Mark registration No. 482919 STYRO STONE, for:

Class 17: Packing, stopping and insulating materials.

Class 19: Building materials (non metallic); wall building, boarding and covering pieces (not of metal) for building purposes.

Grounds of opposition under ss. 3(6), 5(3), 5(4) and 56 were dropped by the opponent on written request of the Registrar.

3. A Counterstatement was provided by the applicant denying the grounds asserted. Both parties ask for costs to be awarded in their favour.

### HEARING

4. Neither party requested a hearing, though the applicant provided written submissions.

### EVIDENCE

5. The opponent's evidence appears in two Witness Statements: the first by Alastair John Rawlence, and that in reply to the applicant's evidence by Roger Stuart Grimshaw. Both are trade mark attorneys with Mewburn Ellis. These Statements are, but for that small part discussed below, not evidence at all, but pure submission. I consider the latter in the body of my decision.
6. The applicant's evidence consists of a Witness Statement by Antony Xavier Gallafent, also a trade mark attorney. Much of this is submission as well. However, Mr. Gallafent argues that

the element STYRO in each mark is well known in the building industry as being a term related to polystyrene, plastics, and or insulating products – he states that the term STYRO is derived from STYRENE. His evidence is as follows:

Exhibit AXG1: In the *MERCK INDEX*, an encyclopedia of, amongst other things, chemicals, styrene is, in his words, ‘associated with two alternative names for styrene’.

Exhibit AXG2: encloses a selection of CTM and UK registrations ‘having effect in UK’ which are said to show ‘that in the context of building materials, the prefix “Styro” is commonly used in connection with polystyrene, plastics and/or insulating products’. Mr. Gallafent notes that the marks exhibited are not all in the same ownership.

Exhibit AXG3: contains an extract from the Chambers Dictionary, where a definition of styrene appears before that of ‘Styrofoam<sup>®</sup>’ the latter being defined as ‘a type of expanded plastic made from polystyrene.’

Exhibit AXG5: this is an extract from the applicant’s own website. I note the following extracts:

“STYRO STONE is the registered trade mark for **Styrofoam stones**, which, when used as lost shuttering provide an extremely economic and environment friendly method of wall construction with optimum insulation for living accommodation.

STYRO STONES are delivered to the construction site, where they are set out according to the architect’s plans and then pump filled with concrete.

Three – four experienced operators can complete the walls of an average size, one storey, single family home in just one day, with roof laying commencing the following morning.

STYRO STONES are suitable for all insulated walls, including  
Residential Homes  
Industrial Buildings  
Commercial Buildings

STYRO STONES consist of an EPS formwork with integral bridges of either EPS or rigid synthetic wall ties. (**Styrofoam = EPS = Expanded PolyStyrene**)...”

7. I struggle to accept Mr. Gallafent’s contention, as set out in the first part of paragraph 6 above. First, the *MERCK INDEX* reference shows that ‘styrol’ and ‘styrolene’ are alternative names for the chemical ‘stryene’, also given are ethenylbenzene, cinnamene, cinnamol and vinylbenzene. This is not verification of whether, how much and in what way the term is used in the UK building industry. Second, in Exhibit AXG2, the use of the prefix in CTM and UK registrations, aside from the fact that only two UK businesses have attempted to register marks using the names, proves only that there is a desire to adopt it for use in trade marks related to certain building materials, mostly plastics, notably incorporating styrene in polymer form. It says nothing, again, about the status of STYRO as a term of art in the UK. In fact, a wide-spread understanding of the term as associated with ‘styrene’ might make its use in a trade mark less likely, as the inherent capacity of a mark to distinguish might be effected and, consequently, its registrability.

8. However, there is the definition of ‘Styrofoam’, and the use of the term by the applicant in their website (Exhibits AXG3 and AXG5). Taking the latter first, I have highlighted the two references (see above). The first does appear to assume a knowledge of the meaning of the Styrofoam on behalf of the reader, but the second provides a definition of the same, and therefore does not. As for the dictionary definition, this is clearly of a registered trade mark. Styrofoam is defined as ‘a type’ of expanded polystyrene. Is it a type that is well known in the UK? Indeed, how is expanded polystyrene described in this country? Even if certain experts in the building industry – such as architects and others who have a professional familiarity with a wide range of construction materials – know of ‘Styrofoam’ as a trade name of ‘expanded polystyrene’, awareness of one trade name is not enough for me to find that the *prefix* ‘STYRO is well known in the UK industry as term related to polystyrene, plastics, and or insulating products’. – Which is what I am being asked to accept.
9. Further, I am not told who the average consumer is – certainly the information from the applicant’s website suggests the definition is not a limited one – the site is directed at builders of residential homes, industrial buildings, commercial buildings, which will include the building trade as a whole – large and small – and also ‘self-build’ (see page 3 of the download). As a consequence, I cannot conclude that all of this constituency would have come across Styrofoam, and I certainly cannot make the extrapolation that Mr. Gallafant asks of me, concerning the prefix STYRO.
10. Evidence that might have helped Mr. Galafent – and myself – here, would be material (trade directories, promotional material, ‘downloads’ from the Internet) showing common use of the name throughout the industry. I cannot make the leap that is asked of me by Mr. Galafent on the evidence I have seen.
11. The rest of Mr. Gallafent’s evidence is submission only.
12. The only piece of genuine evidence in the opponent’s Statements appears in the fifth paragraph of Mr. Grimshaw’s Statement, where he refers to an extract from the opponent’s website (Exhibit RSG1), which lists a number for telephone ordering, and also to the applicant’s website (Exhibit RSG2) which cites a ‘quotation hotline’. He adds: ‘It seems clear that both products are likely to be discussed and ordered over the telephone which increases the likelihood of confusion in the marketplace’.

## LAW

13. The relevant section of the Act is:

“5(2) A trade mark shall not be registered if because -

(a) ... , or

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

## DECISION

14. The applicant's, only, forwarded written submissions, in the form of a letter from Mr. Gallafent. I consider these below. A small part of the letter contains what I regard as evidence – a further extract from the opponent's website. I have ignored this.
15. In approaching this section I am mindful of the following decisions of the European Court of Justice (ECJ) on this provision (equivalent to Article 4(1)(b) of Directive 89/104/EEC) in *Sabel BV v Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v Adidas AG* [2000] E.T.M.R. 723. It is clear from these cases that:
  - (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel*, paragraph 22;
  - (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV*, paragraph 23, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd*, paragraph 27;
  - (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV*, paragraph 23;
  - (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV*, paragraph 23;
  - (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and *vice versa*; *Canon*, paragraph 17;
  - (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either *per se* or because of the use that has been made of it; *Sabel*, paragraph 24;
  - (g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel*, paragraph 26;
  - (h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode*, paragraph 41;
  - (i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon*, paragraph 29.

## Similarity of goods

16. I need to set out a background of the relevant case law.
17. In the case of *Harding v. Smilecare Limited* [2002] F.S.R. 37, P. W. Smith Q.C. (sitting as a Deputy Judge of the High Court) stated:

“... for an action under section 10(2)(b) [equivalent to s. 5(2)(b)] to succeed there is a threshold which has to be crossed namely that the goods or services are identical with or similar to those for which the trade mark is registered.”

There is a point at which goods or services become so dissimilar that confusion is unlikely, no matter the identity shared by the marks in issue. As the Appointed Person stated in *RALEIGH INTERNATIONAL Trade Mark* [2001] R.P.C. 11, paragraph 21:

“Similarities between marks cannot eliminate differences between goods or services; and similarities between goods and services cannot eliminate differences between marks.”

18. Next, I must consider only the goods as they are set out in the specifications as listed; under s. 5(2)(b), notional and fair use of the respective marks for the goods/services contained within the specifications is assumed (see *Origins Natural Resources Inc v Origin Clothing Ltd* [1995] FSR 280, page 284). I will thus compare mark against mark and specification against specification.
19. In assessing the differences between the goods, I will apply the test set out by Mr. Justice Jacob in *British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281, at page 296 (the *TREAT* case). He stated:

“I think the following factors must be relevant in considering whether there is or is not similarity:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

This is rather an elaboration on the old judicial test for *goods of the same description*. It seeks to take account of present day marketing methods. I do not see any reason in principle why, in some cases, goods should not be similar to services (a service of repair might well be similar to the goods repaired, for instance).”

These factors were referred to in the opinion of the Advocate General in *Canon*; page 127, paragraphs 45 - 48. In its judgment, the ECJ stated at paragraph 23:

“23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.”

20. A number of other authorities have dealt with the proper approach to the meaning of particular terms. Terms are to be given their ordinary and natural meaning. For example, Neuberger J, in *Beautimatic International Ltd v Mitchell International Pharmaceuticals Ltd and Another* [2000] FSR 267, puts a more recent gloss on the point:

“I should add that I see no reason to give the word “cosmetics” and “toilet preparations” or any other word found in Schedule 4 to the Trade Mark Regulations 1994 anything other than their natural meaning, subject, of course, to the normal and necessary principle that the words must be construed by reference to their context. In particular, I see no reason to give the words an unnaturally narrow meaning simply because registration under the 1994 Act bestows a monopoly on the proprietor.”

Also from *TREAT*:

“When it comes to construing a word used in a trade mark specification, one is concerned with how the product is, as a practical matter, regarded for the purposes of trade. After all, a trade mark specification is concerned with use in trade.”

21. Finally, the Registrar is entitled to treat the Class number as relevant to the interpretation of the scope of the specification of goods (*Reliance Water Controls Ltd v Altecnic Ltd* [2002] RPC 34).
22. The goods in question in this case, are:

Applicant's	Opponent's
<p>Class 6: Building materials of metal; metal coated building materials; transportable buildings of metal, ironmongery, small items of metal hardware; pipes and tubes of metal; parts and fittings for the aforesaid goods.</p> <p>Class 17: Packing, stopping and insulating materials; plastics in extruded form for use in manufacture; flexible pipes; parts and fittings for the aforesaid goods.</p> <p>Class 19: Building materials (non-metallic); non-metallic rigid pipes for buildings; non-metallic transportable buildings; parts and fittings for the aforesaid goods.</p>	<p>Class 17: Packing, stopping and insulating materials.</p> <p>Class 19: Building materials (non-metallic); wall building, boarding and covering pieces (not of metal) for building purposes.</p>

23. It is obvious that certain of these goods are identical: the Class 17 'packing, stopping and insulating materials' and the Class 19 'building materials (non metallic)'. The latter description is all inclusive and, in my view, must subsume: 'non-metallic rigid pipes for buildings' and 'parts and fittings for the aforesaid goods'. Thus, listing the identical goods:

Identical goods	
<p>Class 17: Packing, stopping and insulating materials ... parts and fittings for the aforesaid goods.</p> <p>Class 19: Building materials (non-metallic); non-metallic rigid pipes for buildings; parts and fittings for the aforesaid goods.</p>	<p>Class 17: Packing, stopping and insulating materials.</p> <p>Class 19: Building materials (non-metallic).</p>

24. I think I must find 'Building materials of metal; metal coated building materials' are similar to non-metallic building materials. Such items have the same uses and are likely to be used by the same users. Though differing in physical nature, they are liable to have similar channels of trade, and be competitive or complementary (see *Treat* and *Canon*, above).
25. As for 'plastics in extruded form for use in manufacture', I think I must regard these as raw materials for production of items made from plastic. Though I have no doubt that such products can be used in the construction of buildings (its actually hard to exclude most materials) I cannot consider that they are similar to building materials *per se*. As for 'flexible pipes', Mr. Gallafent states in his Witness Statement:

“With regard to ‘flexible pipes’, I believe that a ‘building’ is a substantial structure for giving shelter. Plumbing, drainage and the like services for a building are totally different from a building and, indeed, not essential for a building to exist or perform its essential function. On this basis, I believe that although pipes are often associated with buildings in that they are used to supply services and utilities within a building, they are not the same as building materials or confusingly similar thereto.”

Though I do not disagree with Mr. Gallafent’s definition of a building, the opponent’s goods are non-metallic building materials, not buildings. Nevertheless, neither is the reference to ‘builders’ materials’, but ‘*building* materials’. Though a definition could be drawn rather widely on the basis that builders’ merchants stock an extensive variety of products, all of which might be regarded as materials used by builders, I feel the natural meaning of the expression ‘building materials’ encompasses only those products that are used in the physical structure of a building – e.g. bricks, blocks, cement, roof coverings etc.

In this context, I do not regard the ‘hardware’ that deliver ‘utilities’ such as water to a structure as building materials essential to its construction; whether for factory, an office block or a dwelling. I have therefore come to the conclusion that flexible pipes are not similar to, or subsumed by, building materials, and the same applies to pipes and tubes of metal. Thus the goods that are similar are:

Similar goods	
Class 6: Building materials of metal; metal coated building materials; parts and fittings for the aforesaid goods.	Class 19: Building materials (non metallic).

26. In my view, ‘non-metallic transportable buildings’ are not building materials, they are more in the nature of the finished product, as are transportable buildings of metal: with Mr. Gallafent, I agree that such have different purposes, natures and, often different sources. I believe that the same can also be said for ironmongery, that is tools and metal hardware (including the applicant’s ‘small items of metal hardware’). Though such might be found at a builders merchants, I do not believe they are of the same nature and uses as building materials in general.

27. Thus, I find the following goods to be dissimilar:

dissimilar goods	
Class 6: transportable buildings of metal, ironmongery, small items of metal hardware; pipes and tubes of metal.	Class 17: Packing, stopping and insulating materials.
Class 17: plastics in extruded form for use in manufacture; flexible pipes.	Class 19: Building materials (non metallic); wall building, boarding and covering pieces (not of metal) for building purposes.
Class 19: Non-metallic transportable buildings.	

### The Average Consumer

28. Following my findings at paragraph 10 above, the average consumer is found in the building trade as a whole – large and small – and does not exclude ‘self-build’, that is the talented (or unwise) amateur.

### The distinctiveness of the earlier mark

29. As I have found above, there is not enough material before me to conclude that the prefix element of the opponent’s mark – STYRO – is so well known in the UK building industry that its presence introduces a quotidian descriptive element. Following from this, I find that the opponent’s mark, though not a wholly invented mark, has a reasonable inherent capacity to distinguish.

### The similarity of the marks

30. Though unlikely to be the experience of the relevant public, I have placed the two marks side by side, with the opponent’s mark on the left:

STYRO STONE

STYROZONE

31. Mr. Rawlence comments:

“The mark STYRO STONE of the Opponent is visually very similar to the mark STYROZONE of the subject application. Both marks contain the common prefix ‘STYRO’ and both marks end with the suffix ‘ONE’ with only the letters ST and Z to effectively distinguish one from the other. This visual similarity between the two marks should also be considered within the context of imperfect recollection in the minds of consumers for the relevant products, consumers who may come across each mark at different times and may never have the opportunity to compare each mark simultaneously with the other.

The marks STYRO STONE and STYROZONE are phonetically very similar to one another. Both marks are (i) prefixed by the identical element ‘STYRO’ and (ii) are suffixed by the identical phonetic element ‘ONE’. The prefix STYRO is preceded respectively by the terms ‘ZONE’ and ‘STONE’, elements which are both phonetically similar to one another both when account is taken of the similar ‘hard’ consonant sound at the beginning of each mark and account is taken of the tendency to ‘slur’ the endings of words in everyday speech.

The marks STYROZONE and STYRO STONE are conceptually similar to one another. Neither mark conveys a central recognisable idea as such - they are both essentially ‘neutral’ in meaning and are both invented terms. Both marks are prefixed/suffixed by the identical elements STYRO and ONE and they are both visually and conceptually similar to one another for the reasons given in 4 and 5 above. As a result, the two marks convey essentially the same ‘idea’ i.e. two ‘invented’ marks which are visually and phonetically similar to one another but which convey no clear meaning other than the fact that they are two highly similar ‘STYRO’ marks.”

32. Mr. Gallafent countered:

“The mark STYRO STONE of the registration is dissimilar and not confusable with the mark STYROZONE of the subject application visually, phonetically and conceptually.

Visually, the mark of the registration is two words with the second word being the generic name of a well known building material. The mark of the application is a single word. Thus the mark of the registration is visually very different from the one word mark that comprises the mark of the subject application. The visual difference is enhanced by the marks being of different length. The most important visual distinction is, however, the fact that the mark of the registration is two words and the mark would be remembered as such. I agree that the concept of imperfect recollection should be considered when comparing marks, but believe that the difference in number of words between the mark of the registration and the mark of the subject application will cause a member of the relevant public to correctly differentiate between the mark of the application and the mark of the registration.

Phonetically, the mark of the application and the mark of the application are not similar. If one accepts that both marks will be pronounced STYRO then one has to compare the STONE and ZONE elements of each mark. Although both STONE and ZONE terminate with the phonetic element ‘ONE’ the ‘ST’ and ‘Z’ are phonetically very different from each other despite both being ‘hard’ consonant sounds. Both require very different mouth shapes and are strong sounds unlikely to be slurred by the average member of the public. On this basis it is submitted that the mark of the application and the mark of the registration are phonetically dissimilar and unlikely to be confused.

An alternative pronunciation of the mark of the application is STYR-OZONE. If that pronunciation is adopted, then the mark of the application and the mark of the registration have totally different sounds and will not be confused.

....

When considering the concept arising from the first postulated pronunciation of the mark of the application, the following factors arise. The first portion of the mark of the subject application, STYRO, will, again, give rise to the concept of polystyrene, plastics or insulating products. The second portion of the mark of the application, ZONE, is, again, a well known English word. ... On this basis, I believe that a member of public will take from the mark of the application the concept a zone or region of polystyrene, plastics and/or insulating material from the mark of the application.

When considering the concept arising from the second postulated pronunciation of the mark of the application, the following factors arise. The first portion of the mark of the application, STYR, will again give rise to the concept of polystyrene, plastics, or insulating products. The second portion of the mark of the application, OZONE, is, again, a well known English word. ... On this basis, I believe that a member of the public will take from the mark of the application the concept of a product of polystyrene, plastics, and/or insulating material that is in some way linked to the ozone layer.

The concepts arising from the mark of the registration and the mark of the subject application are thus completely different and unlikely to be confused.”

33. Visually, I must follow the submission of Mr. Rawlance: though the application consists of two words, the STYRO and ONE prefix and suffix of the marks tends to significantly increase the sameness of their appearance.
34. Conceptually, I have already dealt with the issue of the notoriety of the STYRO prefix. I have not seen evidence enough to suggest that it will 'give rise to the concept of polystyrene, plastics or insulating products'. In my view, I must follow the opponent in stating that, for the majority of the relevant public the marks as will be an invented name – perhaps reminiscent of polystyrene, but that is all. Conceptually, thus, there is a strong link between the two.
35. I find Mr. Gallafent's alternative pronunciation of the applicant's mark as 'STYR-OZONE' (i.e. STIR-OZONE) not as easy to dismiss as Mr. Grimshaw suggests in his response (see paragraph 7 of his Statement):

“The applicants appear to be claiming that the mark STYROZONE might be pronounced in the form STIR-OZONE. If that were the case, it is equally likely that our clients mark may be pronounced STIR-O-STONE and the marks therefore remain phonetically similar.”

36. The pronunciation of the opponent's mark as STIR-O-STONE is incredible, given its separation into two words, which tends to run the verbalisation of STYR and O together as STYRO. Also, it is not fanciful that members of the public might pick out of the applicant's mark – elided as it is into one word – those elements that stand out, OZONE being a possible candidate. Nevertheless, based on my first impression of the marks, it is the STYRO element that predominates and, as I am ultimately concerned here with the issue of confusion between a later mark with an earlier one, those potentially confused will already be familiar with the STYRO element from the opponent's mark, and will tend to resolve this out of the applicant's STYROZONE.
37. Further, the STYRO- ZONE pronunciation is likely to be preferred because of the familiar English word STY appearing at the beginning of the mark producing the effectively equivalent articulation STY-RO-ZONE.
38. In agreement with Mr. Rawlance, I think I must find that STYRO STONE and STYROZONE – said quickly – are very close. I note Mr. Grimshaw's comments in respect of verbal ordering of the products at issue. Mr. Gallafent dismisses this evidence in his written submissions. I believe, however, that it is not unreasonable to expect building materials, as much as any product, to be ordered over the telephone, particularly in respect of repeat orders.

#### Likelihood of confusion

39. I have found the mark to be a reasonably strong sign. Following from this, and pursuant to the principle enunciated in *Sabel* (paragraph 24) – that there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character – I consider that confusion is likely where the goods at issue are similar or identical. I found the verbal similarity of the marks to be strong. Given this, and the other similarities in the marks, I find that they are likely to be confused for identical and similar goods. I do not consider that this extends to pipes and tubes of metal, which I have placed at the limits of similarity to the opponent's goods. The opposition is partially successful.

## CONCLUSION

40. The opposition is thus partially successful, the application being able to proceed to registration for the goods listed in paragraph 27 above. The applicant must amend their specification of goods and services to the following:

Class 6: Transportable buildings of metal, ironmongery, small items of metal hardware; pipes and tubes of metal; parts and fittings for the aforesaid goods.

Class 17: Plastics in extruded form for use in manufacture; flexible pipes; parts and fittings for the aforesaid goods.

Class 19: Non-metallic transportable buildings; parts and fittings for the aforesaid goods.

If the applicant does not file a TM21 within one month of the end of the appeal period for this decision restricting the specification as set out above the application will be refused in its entirety.

## COSTS

41. The opponent has succeeded to the extent of knocking out some of the application, but not all. There is nothing in the opponent's Statement of Case which prioritises the goods they particularly wished to remove from the application. In view of this, and their only partial success, I regard the result as a 'score draw', and decline to make a cost award to either side.

**Dated this 28th Day of January 2004.**

**Dr W J Trott  
Principal Hearing Officer  
For the Registrar**