

O-178-05

TRADE MARKS ACT 1994

**IN THE MATTER OF INTERNATIONAL
REGISTRATION No. 789723
AND A REQUEST BY OTKRYTOE AKTSIONERNOE OBSHCHESTVO
“NIZHNEKAMSKNEFTEKHIM”
TO PROTECT THE TRADE MARK ELASTOKAM IN CLASS 17**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER No. 70996
BY ELASTOGRAN GMBH**

TRADE MARKS ACT 1994

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and a request by Otkrytoe aktsionernoe obshchestvo “Nizhnekamskneftekhim”
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**IN THE MATTER OF Opposition thereto under No. 70996
by Elastogran GmbH**

BACKGROUND

1. On 19 August 2002 Otkrytoe aktsionernoe obshchestvo “Nizhnekamskneftekhim” (hereafter Otkrytoe), on the basis of a Russian Federation registration, requested protection in the United Kingdom for the mark ELASTOKAM. The request was made in relation to “Ethylene-propylene synthetic rubber, ethylene-propylene-diene synthetic rubber”. These goods fall in Class 17 of the International Classification system.
2. The United Kingdom Trade Marks Registry considered that the request satisfied the requirements for protection in accordance with Article 3 of the Trade Marks (International Registration) Order 1996 and particulars of the international registration were published in accordance with Article 10.
3. On 15 April 2003 Elastogran GmbH (hereafter Elastogran) filed notice of opposition to the conferring of protection on this international registration. The opponent is the proprietor of the UK and Community trade mark registrations, details of which are shown in the Annex to this decision.
4. Elastogran claims to be one of the world’s leading companies in the field of plastics materials and products and to have used the mark ELASTOGRAN in the UK for such goods for over 30 years. It also claims substantial use of the marks ELASTOPAN, ELASTOLLAN and ELASTURAN in relation to plastics materials and products.
5. Elastogran claims to be the proprietor of a large family of ELASTO- prefixed marks used and registered in respect of plastics materials and products. Details of these are also given but it is not necessary to set them out here.
6. Elastogran says that the mark applied for is similar to each of the marks shown in the Annex to this decision and covers identical or similar goods such that there is a likelihood of confusion. Refusal of the application is sought under Section 5(2)(b).
7. The applicant international registration holder (I will for convenience simply refer to Otkrytoe as the applicant) filed a counterstatement denying the above ground and putting the opponent to proof of its claim. The counterstatement also contains a number of submissions in relation to the marks. I will deal with these points in my decision below.

8. Both sides ask for an award of costs in their favour.

9. Only the opponent has filed evidence. Neither side has asked to be heard. Written submissions have been received from Elkington & Fife, Elastogran's professional representatives, under cover of their letter of 6 June 2005.

THE EVIDENCE

10. The opponent's evidence consists of the following:

Witness statement by Colin Dunn and exhibits CD1-8
Witness statement by Dennis Bailey and exhibit DB1
Witness statement by Carmelo Fregapane and exhibit CF1
Witness statement by Barry Nicholls and exhibit BN1
Witness statement by Paula Tennent and exhibit PT1
Witness statement by Ernest Whiteoak and exhibits EW1-2
Witness statement by George Wilfred Ball and exhibits GWB1-2

11. Mr Dunn is the Managing Director of Elastogran UK Ltd, a wholly owned subsidiary of the opponent. Both companies are part of the BASF group.

12. Mr Dunn says that the opponent has been using the mark ELASTOGRAN on a continuous basis for over 10 years in the UK and the other marks relied on for over 12 years. The marks are used in relation to a large range of products in the field of plastics and polyurethane materials. UK turnover figures for goods sold under the mark ELASTOGRAN are given as follows:

Year	£ (€)
1998	47,000,000 (67,000,000)
1999	43,000,000 (61,000,000)
2000	41,000,000 (58,000,000)
2001	40,000,000 (57,000,000)
2002	41,000,000 (58,000,000)
2003	40,000,000 (57,000,000)

13. Turnover figures for the other marks are said to be:

Year	ELASTOLLAN £ (€)	ELASTOPAN £ (€)	ELASTURAN £ (€)
1998	4,640,000 (6,700,000)	-	3,460 (5,000)
1999	4,570,000 (6,600,000)	-	3,460 (5,000)
2000	4,570,000 (6,600,000)	1,560,000 (2,249,000)	4,150 (6,000)
2001	3,740,000 (5,400,000)	1,720,000 (2,496,000)	-
2002	3,460,000 (5,000,000)	1,520,000 (2,204,000)	10,000 (15,000)

2003	3,460,000 (5,000,000)	910,000 (1,315,000)	18,000 (26,000)
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14. Advertising and promotional costs relating to the marks (the house mark ELASTOGRAN is referred to in any advertising or promotional material relating to the other marks) is as follows:

Year	£ (€)
1998	208,000 (300,000)
1999	208,000 (300,000)
2000	278,000 (400,000)
2001	347,000 (500,000)
2002	278,000 (400,000)
2003	257,000 (370,000)

15. Exhibited at CD2 are copies of articles produced by trade magazines, newspapers and other sources circulating in the UK referring to the marks.

16. The marks are affixed to goods by means of labels. Exhibited at CD3 are samples of such labels. Samples of promotional literature and advertisements which have been circulated to customers in the UK and referring to the mark ELASTOGRAN are exhibited at CD4. Specific products sold under the trade marks ELASTOLLAN, ELASTURAN and ELASTOPLAN have their own range of brochures, examples of which are exhibited at CD5.

17. The goods are sold throughout the UK. A list of towns where customers are situated is shown at Exhibit CD6. Material relating to other ELASTO- marks is exhibited at CD7. As the opponent's pleaded case did not provide full information on the range of other marks that are said to be registered and used I do not propose to record this part of the evidence.

18. Mr Dunn goes on to say in relation to the parties' goods:

"... The Opponent's Goods are used in a wide range of different fields, including the manufacture of footwear, sports equipment, furniture, refrigerators and the automobile and petroleum industries. See, for instance, the brochure "Elastogran is Polyurethanes – The Company" (Paragraph 10.2, Exhibit CD4) and the brochures referred to in paragraphs 11.2-4 (Exhibit CD5). The customers for these products will themselves be manufacturers operating in the above fields, who can be expected to be aware of the reputation of the Opponent in the mark ELASTOGRAN and the Opponent's Trade Marks. This view is supported by the various references to the Opponent appearing in the trade magazines included in Exhibit CD2 above.

16. Many of the Opponent's products are supplied to its customers in liquid or pellet form for moulding or further processing (see for instance the brochures "Elastogran is Polyurethanes – The Company" and "BASF Polyurethane – The Better Solution" in Exhibit CD5). However the Opponent also provides plastic and polyurethane materials in other forms such as semi-finished and finished products for use in cars and motor vehicles for the automobile industry (see for instance the brochures "ELASTOFLEX – Everyone is different" and "Elastogran is Polyurethanes – The Company", Pages 10-11, exhibit CD4).

17. The goods covered by the subject application are “Ethylene-propylene synthetic rubber, ethylene-propylene-diene synthetic rubber” (“The Applicant’s Goods”). The Opponent’s Goods, consist of plastic and polyurethane materials and are not therefore identical to synthetic rubber materials. However, the Opponent’s Goods can all be used in the same products and applications as the Applicant’s Goods and are often viewed as substitutes or alternatives for synthetic rubber. For instance, the products supplied by the Opponent to the automobile industry can and are often produced in synthetic rubber materials. In addition, plastic, polyurethane and synthetic rubber materials are often produced by the same companies and are used by the same customers. In the light of this, the Opponent’s Goods are highly similar to the Applicant’s Goods.”

19. The remainder of Mr Dunn’s statement largely consists of submissions in relation to the marks and the issue of likelihood of confusion.

20. Dennis Bailey is the Technical Manager of Advanced Thermal Composites Ltd. Carmelo Fregapane is Managing Director of Interfoam Limited. Barry Nicholls is the Director and General Manager of Carter Coldstore Systems, a division of Carter Retail Equipment Ltd. Paula Tennent is the Purchasing Manager of Celotex Ltd. Ernest Whiteoak is a Director of Isothane Ltd. All of these individuals have very lengthy experience in the plastics and polyurethane industries. They each confirm that they are aware of use by the opponent of the ELASTOGRAN mark and other marks commencing with ELAST- or ELASTO- in relation to plastic and polyurethane products. They confirm the substantial reputation attaching to the ELASTOGRAN mark. They also say that if they saw the mark ELASTOKAM used in relation to plastics, polyurethane or rubber products they would believe the mark originated from the opponent or was in some way connected with the opponent. Three of the individuals also say that they are not aware of any other manufacturer who uses a mark commencing with ELAST- in relation to these products. Mr Whiteoak adds that ‘elastomer’ is used as a generic term within the plastic and polyurethane industries to refer to natural or synthetic rubber or rubber-like plastic. He too confirms that he does not believe that any third parties use a word beginning ELASTO- as a trade mark in this field.

21. The final witness statement is from George Wilfred Ball, Chief Executive and Company Secretary of The British Rigid Urethane Foam Manufacturers Association (BRUFMA). He has almost 50 years’ experience in the field of plastics and polyurethane. He confirms that he first became aware of use of the trade mark (I infer he means ELASTOGRAN) in about 1983 and that he is aware that the opponent has used a number of other ELASTO- marks. He too is not aware of any similar usage by third parties.

22. That completes my review of the evidence.

DECISION

23. The sole ground of opposition is under Section 5(2)(b) of the Act which reads:

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

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

24. There is well-established guidance from the following judgments of the European Court of Justice which I must apply - *Sabel BV v. Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* [1999] R.P.C. 117, *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.

25. In essence, the test under Section 5(2) is whether there are similarities in marks and goods which would combine to create a likelihood of confusion. The likelihood of confusion must be appreciated globally and I need to address the degree of visual, aural and conceptual similarity between the marks, evaluating the importance to be attached to those differing elements, taking into account the degree of identity/similarity in the goods and how they are marketed. I must compare the marks in issue having regard to the distinctive character of each and assuming normal and fair use of the marks across the full range of the goods within their respective specifications.

Similarity of goods

26. The applied for goods are synthetic rubbers of varying compositions. The opponent's goods are in a range of Classes but I infer from the statement of grounds (paragraph 5 thereof) that it relies particularly on its specifications in Classes 1 and 17 which include chemical products for use in industry (UK No. 1037238) and unprocessed plastics (CTM No. 104737) in Class 1 and extruded plastic films, slabs, rods and blocks (CTM No. 104737) and goods made of plastics (UK No. 828026) in Class 17. Although both parties have goods in Class 17 the terms used to describe the respective products suggest that they cannot be identical. The issue is, therefore, whether they are similar and, if so, how similar. The guidance from *Canon* is as follows:

“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, intended purpose and their method of use and whether they are in competition with each other or are complementary.”

27. The opponent regards itself as a market leader in the supply of polyurethane systems with over 25% of the market according to the *Elastogran PUR* magazine for 2002 (CD4). The same exhibit also claims that “ELASTOGRAN is the worldwide market leader in the entire assortment of thermoplastic polyurethane elastomers, with Elastollan as a tailor-made material for virtually all areas of industry”. These may be said to be self-serving claims but the applicant has not sought to challenge them if it disagreed. The business is said to cover both the supply of raw materials, semi-finished products and polyurethane components (the 1998 *Elastogran* magazine at CD4).

28. The range of applications for *Elastogran* products can be gauged from the following A-Z guide taken from one of the pieces of product literature contained in CD4:

“**A**rm rests, **a**irbag steering wheels, **b**ody mounts, **b**ed sheets, **C**omputer casings, **c**onveyor-belt covers, **c**able sleeves, **c**omposite panels, **D**riving belts, **d**ialysis filters, **d**isplay cabinets, **E**lastic dampeners, **e**mergency wheels, **F**ootwear soles, **f**ilms furniture cushions, **G**lues, **H**ousing components, head

restraints, **I**nsulation materials, **i**nstrument panels, **J**ointing fillers, **K**nock-down furniture, **L**intels, **M**attresses, **N**oise insulation, **O**ffice chairs, **o**ffshore cables, **P**refabricated elements, **p**ipe lagging, **R**efrigerators, **r**ollers for in-line skates, **r**oller coverings, **S**pring aids, **s**andwich elements, **s**teering wheels, **T**ruck tenders, **U**nderbody coverings, **V**ibration bearings, **W**heel chair cushions, **Y**acht buoyancy aids, **Z**ero ODP materials and so on ...”

29. The applicant has remained silent about its own product range, its uses, channels of trade, customer base etc. It has not disputed the claim in Mr Dunn’s evidence that the “Opponent’s goods can all be used in the same products and applications as the Applicant’s Goods and are often viewed as substitutes or alternatives for synthetic rubber”. I find nothing inherently improbable in that claim. I think it unlikely that all products listed in the A-Z guide in CD4 (to take a convenient example) could be made from synthetic rubber as an alternative but it seems self-evident that many could be e.g. footwear soles, fenders, vibration bearings, sandwich elements etc. Even where rubber and polyurethane products are not alternatives they may be complementary and required by the same industry. Thus in relation to footwear an article from Technology Urethanes magazine (CD2) indicates that:

“All the polyurethane companies at Simac were heavily promoting developments in moulding vulcanised rubber (VR) outsoles with polyurethane mid-soles.”

The same article deals with what might be considered as the convergence of the technologies:

“The long-term aim of the polyurethane industry to develop rubber-like products continues apace and Elastogran GmbH, which has focused on this area, used the Simac show to introduce new products based both on polyether and polyester polyols. Its fully developed water-blown polyether systems have made tremendous strides in process tolerance.”

30. The fact that one of the trade publications is called *Plastics and Rubber Weekly* is a further indication of the closeness of the respective industries.

31. I conclude that, whilst there are differences in the nature of the respective products (save that they are all chemical-based manufactured products), their uses and intended purpose are or may be much the same; that customer groups will overlap; and that the products are both competitive and/or complementary. In the absence of countervailing arguments or evidence from the applicant I regard the goods (or at least the Class 17 goods) as being quite closely similar.

32. The evidence suggests that the average consumer for the goods at issue will be manufacturing companies who have a need for plastic or synthetic rubber in raw or semi-manufactured form or who require parts and components made from these materials. That

suggests an experienced and technically aware customer base with much of the business being regular or repeat orders.

Similarity of marks

33. The opponent is entitled to have its position tested on the basis of each of the marks set out in the Annex to this decision. Without intending to detract from the generality of that claim I note that the written submissions concentrate primarily on the mark ELASTOGRAN (the version without the device provides the opponent with a somewhat stronger case) and the claim that the opponent has a family of ELASTO- or ELAST- prefixed marks.

34. Before I deal with these claims I must revert to the observations contained in the applicant's counterstatement and which form the basis for its claim that the respective marks are distinguishable. For convenience I will set them out in full:

- “(i) The prefix “elasto-“ is descriptive and/or suggestive of the term “elasticity” and is therefore inherently weak, such that a greater emphasis would be placed on the suffixes of the marks concerned. The suffix –kam in the Applicant's Mark is sufficiently distinguishable phonetically and visually from the suffixes of the marks identified in paragraph 4 of the Grounds of Opposition.
- (ii) Further, the Applicant intends to rely on the fact that a search of elasto- prefixed marks disclosed numerous marks, owned by companies other than the Opponent co-existing in the same class for identical and/or similar goods with the marks identified by the Opponent in paragraph 1 of the Grounds of Opposition. This further supports the Applicant's contention that any rights, which exist in the prefix elasto- are likely to be construed extremely narrowly and therefore a greater emphasis would be placed on the suffixes of the marks concerned.”

35. Taking the first of these submissions, it is well established that an assessment of marks must take account of their distinctive and dominant components. In that respect elements which are, or may be taken as being, descriptive of a characteristic of the goods are likely to command less attention than elements which do not describe or allude to such characteristics. The effect was dealt with in the judgment of Millett L.J. in the Court of Appeal in *The European Limited v Economist Newspapers Limited* 1998 FSR at 283. The gist of this judgment can be gleaned from the following sentence of Millett L.J.'s judgment on page 290:

“The more descriptive and the less distinctive the major feature of the mark, the less likelihood of confusion.”

36. The marks at issue in that case were, on the one hand, the words THE EUROPEAN together with a mast head, and on the other hand, the words EUROPEAN VOICE. The goods were printed publications for which the word EUROPEAN is, of course, highly descriptive.

37. It appears to me that the marks at issue in this case (and it is true of all the opponent's marks) can be distinguished from the circumstances of the case before the Court of Appeal because ELASTO- (or ELAST-) has not been shown to be an accepted abbreviation or combining form, nor is it wholly descriptive in the same way as the word 'European'.

Nevertheless, even if ELASTO- or ELAST- cannot be regarded as wholly descriptive, nor can it be regarded as arbitrary. It would, I think, be taken as alluding to elastomer or elasticity in the context of the goods in question.

38. The applicant's second claim is that there are companies other than the opponent using ELASTO- prefixed marks in relation to identical or similar goods. If that claim had been substantiated then it might have provided support for the view that consumers rely on other elements (either alone or in combination with ELASTO-) to distinguish between the products of rival manufacturers. However, the applicant has failed to provide any evidence in support of the claim. Furthermore, there is evidence from experienced individuals in the relevant field of trade saying that they are not aware of any other manufacturer using a mark commencing with ELASTO-/ELAST- in relation to these products. That state of affairs is also borne out by Mr Ball of the trade association, BRUFMA. I am not, therefore, prepared to discount the contribution that ELASTO- or ELAST- makes to the distinctive character of the opponent's marks but I accept that the absence of other traders using such prefixes does not in itself render such prefixes particularly distinctive. I need hardly add that both parties' marks are entirely distinctive when considered as wholes.

39. One of the effects of these findings is, it seems to me, to suggest that the opponent may have a stronger case based on its family of marks claim where the effect of use of a common element may result in it achieving rather greater degree of distinctiveness in the eyes of consumers. The opponent's written submissions refer me to *The Infamous Nut Co. Ltd's Trade Marks* [2003] RPC 7 for guidance on the approach to a family of marks' claim:

“35 It is impermissible for s.5(2)(b) collectively to group together several earlier trade marks in the proprietorship of the opponent.

36 Section 5(2)(b) speaks of registration being refused on the basis of an earlier trade mark (as defined by s.6). Thus where the opponent relies on proprietorship of more than one earlier trade mark, the registrability of the applicant's mark must be considered against each of the opponent's earlier trade marks separately (*ENER-CAP Trade Mark* [1999] R.P.C. 362).

37 In some circumstances, it may be possible for the opponent to argue that an element in the earlier trade mark has achieved enhanced distinctiveness in the eyes of the public because it is common to a “family of marks” in the proprietorship and use of the opponent (*AMOR* Decision no. 189/1999 of the Opposition Division, OHIM O.J. 2/2000, p.235).”

40. The point was reaffirmed in *TORREMAR Trade Mark* [2003] RPC 4:

“22 At this point it is necessary to observe that marks which converge upon a particular mode or element of expression may or may not be found upon due consideration to be distinctively similar. The position varies according to the propensity of the particular mode or element of expression to be perceived, in the context of the marks as a whole, as origin specific (see, for example, [Wagamama Ltd v City Centre Restaurants Plc \[1995\] F.S.R. 713](#)) or origin neutral (see, for example, [The European Ltd v The Economist Newspaper Ltd \[1998\] F.S.R. 283](#)).

23 The relevant propensity may, on established principles, be inherent or acquired through use. This leaves room for evidence demonstrating that the mode or element of expression in question has an established significance which the average consumer

would take to have been carried through to the marks in issue.

24 The view that the established significance is origin specific may be supported by evidence directed to the way in which the mode or element of expression has been used as the basis for a "family" of distinctively similar marks: Duonebs Trade Mark January 2, 2001 SRIS O/048/01 (Mr Simon Thorley Q.C.); [The Infamous Nut Company Ltd's Application September 17, 2001 SRIS O/411/01 \(Professor Ruth Annand\)](#); Lifesource International Inc.'s Application; Opposition of Novartis Nutrition AG [2001] E.T.M.R. 106, p.1227 (Opposition Division, OHIM). The view that the established significance is origin neutral may be supported by evidence directed to the way in which the mode or element of expression has been used by traders and consumers more generally.

25 In neither case can the proposition in contention be substantiated simply by evidence of entries in the register of trade marks: entries in the register do not in themselves affect the way in which marks are perceived and remembered.”

41. It is clear from these paragraphs that, merely being in possession of a number of registered marks with a common element, is insufficient to found a family of marks' claim. For the claim to have substance the marks must be in use and to have made an impact on consumers in the marketplace.

42. The opponent referred in its statement of grounds to a large number of ELASTO- or ELAST- prefixed marks. Its evidence concentrates on four of them, ELASTOGRAN, ELASTOLLAN, ELASTOPAN and ELASTURAN, all of which have been used in the UK. There has been very large scale use of the housemark ELASTOGRAN and smaller scale use of the other three marks (too small in the case of ELASTURAN for it to have made a material impact). In the case of ELASTOLLAN and ELASTOPAN the use has been at a significant level. The product brochures (CD5) show that the marks are both promoted in their own right and in association with the housemark ELASTOGRAN and other marks. Thus, for instance, the 2001 footwear applications brochure shows the ELASTOGRAN housemark and also the marks ELASTOPAN and ELASTOLLAN which are used in relation to materials with different weight, insulating, wear resistance and other properties.

43. The fact that more than one of the marks is often used in the same brochure seems to me to have the effect of re-enforcing the message to consumers that the same proprietor is using marks with a common element and similar overall construction to emphasise the single trade source of goods bearing such marks. On the evidence before me I find the family of marks claim to be made out.

44. That brings me to a comparison of the marks themselves. That is to say the above marks constituting the opponent's family and the applied for mark ELASTOKAM. I must consider the visual, aural and conceptual similarities and dissimilarities.

45. Visually all the marks are of about the same length and commence with ELASTO- or ELAST- (if ELASTURAN was to be included). The opponent's marks end in –AN and the applicant's in –AM. They differ in terms of the intermediate consonants). The overall impact is to create a reasonably high degree of visual similarity.

46. Similar considerations apply in relation to aural usage. As M and N sounds are not always easy to distinguish particularly when they form the last letter of words (the endings of words tend in any case to be slurred) there are marked aural similarities. Against this, the distinct hard K sound of ELASTOKAM will be clearly articulated. I do not share the opponent's view in its written submissions that the G of ELASTOGRAN and the K of ELASTOKAM will contribute to phonetic similarity. However, in each case, the words are made up of four syllables with the first three the same and are similarly stressed. The construction and internal rhythm of the words is therefore, similar.

47. It is not suggested that the words have any conceptual meaning taken as wholes. There would appear to be no basis for thinking that consumers would look to conceptual similarities or dissimilarities to differentiate between the marks unless they focus on the impact of the first element. That said, I anticipate that consumers would rely on visual and aural considerations rather more than conceptual ones in their appraisal of the marks.

Likelihood of confusion

48. It is well established that likelihood of confusion is a matter of global appreciation taking all relevant factors into account (*Sabel v Puma*, paragraph 22). The principal considerations in this case are:

- the goods are or may be closely similar;
- the average consumer is likely to be reasonably knowledgeable and experienced;
- the respective marks are distinctive in terms of their totalities;
- the element ELASTO- or ELAST- is neither wholly descriptive nor entirely arbitrary;
- if that was the only consideration consumers might be expected to accord that element less attention within the context of the marks as wholes;
- but against that must be weighed the fact that the opponent has, through use, established a family of marks based on the element ELASTO- or ELAST-;
- no other traders in this field have been shown to use this element;
- the overall structure and appearance of the applied for mark mirrors that of the opponent's family of marks;
- experienced members of the trade say that they would believe the applied for mark emanated from the opponent though I do not regard this evidence as crucial or above criticism (in particular it is not clear how the individuals concerned came to give evidence or whether they are customers of the opponent or otherwise associated with Elastogran and they are not all precise about the marks with which they claim to be familiar).

49. Applying these considerations and the principle of interdependency which requires me to consider the net effect of the similarities and dissimilarities between the respective marks and goods I find that the opponent has made out its case under Section 5(2)(b). In particular, consumers would be led to believe that goods sold under the applied for mark emanated from the same stable as the other ELASTO- prefixed marks of the opponent with which they were already familiar. In the circumstances I do not find it necessary to go on to consider the opponent's earlier trade marks on an individual basis.

COSTS

50. The opponent is entitled to a contribution towards its costs. I order the applicant to pay the opponent the sum of £2000. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 24th day of June 2005

M REYNOLDS
For the Registrar
the Comptroller-General

CTM registrations	Mark	Class	Specification
104737	ELASTOGRAN	01	Unprocessed plastics (in the form of powders, liquids or pastes); adhesives used in industry.
		07	Machines for processing plastics; goods of plastic, namely technical parts for machine construction and conveyor technology, namely roller linings for conveyor belts, cog wheels of plastic, mixer blades, links for conveyor belts, skids for snow ploughs, wheel loader blades, shovels for excavators and diggers, elevator cars.
		12	Goods of plastic, namely technical parts for the vehicle production industry, namely cog wheels of plastic, covers for housings, bearing bushes and guide bushes, filter segments, expansion bellows, dust caps, rollers, membranes, stripper columns, bumpers, spring excursion limiters, skids for wheel loader blades.
		17	Films, slabs, rods and blocks of plastics in extruded form for use in manufacture; packing, stopping and insulating materials.
95117	ELASTOPAN	01	Unprocessed plastics (in the form of liquids, granules or pastes); chemicals used in the manufacture of plastics (so far as included in class 1).
		17	Plastics as semi-finished products in the form of films, slabs, pipes or rods.
		25	Parts of shoes manufactured from plastic, namely soles,

			heels.
94946	ELASTOLLAN	01	Chemicals used in industry; unprocessed plastics (in the form of powders, liquids, or pastes).
		17	Slabs and shaped pieces as semi-finished products not extended on rubber metal connections, manufactured from polyurethane injection moulding compounds.
94763	ELASTURAN	01	Unprocessed plastics (in the form of powders, liquids, granules or pastes).
		17	Ready-to-use liquid, ductile or foamed plastics for insulating and sealing purposes; semi-finished products of plastics (in the form of blocks, rods, pipes, slabs).