

**TRADE MARKS ACT 1938 (AS AMENDED)  
TRADE MARKS ACT 1994 IN THE MATTER OF  
APPLICATIONS FOR REGISTRATION NOS. 1546848, 1546849, 1551652  
AND 1552224  
BY DURAMAX INC  
AND OPPOSITION NOS. 42457, 42447, 42435 AND 44098  
IN THE NAME OF H & R JOHNSON TILES LIMITED**

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10 **BACKGROUND**

15 Duramax Inc of Middlefield, Ohio, United States of America, applied on 6 September 1993 to register the trade mark JOHNSONITE in Class as 01 and 19, under applications 1546848 and 1546849 respectively. On 28 October 1993 Duramax Inc. applied to register the trade mark JOHNSONITE COLORMATCH in Class 27 and Class 19 under numbers 1552224 and 1551652. The specifications in relation to the applications falling into Class 1 and Class 19 were amended just prior to the Hearing and my considerations and decision is in respect of the following:

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<u>No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Specifications</u>
25 1546848	JOHNSONITE	01	Mastic resins, epoxy compounds, all being adhesives; all included in Class 1; but not including adhesives for ceramic tiles.
30 1546849	JOHNSONITE	19	Stair nosings, under floor suspension pads, bumper guards, cove base and cove base end strips, stair treads, stringer material and edging strips; all made from vinyl or rubber; all included in Class 19.
35 1552224	JOHNSONITE COLORMATCH	27	Rubber floor coverings; rubber landing mats; stair nosings, under floor suspension pads, cove base end strips, stringer material; all included in Class 27.
40 1551652	JOHNSONITE COLORMATCH	19	Wall bases, moulding for floor covering, carpet edge guards, carpet transition strips, carpet reducers, resilient reducers, carpet cove caps, resilient cove caps, filler strips, tub mouldings, bumper guards, thresholds, stair nosings, stair

treads, vent covers, matting and flooring;  
all included in Class 19; none of the  
aforesaid goods being made of ceramic or  
earthenware.

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All these applications were subsequently advertised for opposition purposes and on 5 May 1995 H & R Johnson Tiles Limited filed notice of opposition against No. 1551652 (Class 19), on 12 May 1995 they filed notice of opposition against Application No. 1546848 (Class 01), on 8 February 1996 they filed notice of opposition against No. 1552224 (Class 27) and on 11 May 1995 they filed notice of opposition against No. 1546849 (Class 19). In each case the grounds of opposition were, in summary, as follows:-

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- (i) under the provisions of Section 12(1) because the trade marks applied for, ( JOHNSONITE and JOHNSONITE COLORMATCH, are confusingly similar to the opponents' trade mark JOHNSON registered under No. 1214540 in Class 19 in respect of "ceramic tiles"
- (ii) under the provisions of Section 11 of the Act because of the use by the opponents of their trade mark JOHNSON and the name H R Johnson use by the applicants of the trade marks JOHNSONITE or JOHNSONITE COLORMATCH is likely to lead to deception and cause confusion
- (iii) under Sections 9 and 10 because the trade marks the subject of the applications are neither adapted to distinguish nor capable of distinguishing the goods of the applicant from those of other traders.

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The opponents also asked the Registrar to refuse the applications in the exercise of his discretion.

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The applicants deny, or do not admit, these grounds and both sides seek an award of costs.

At an early stage in these proceedings it was agreed that they should be consolidated. Each side filed evidence and the matter came to be heard on 6 July 1999 when the applicants were represented by Mr Martin Krause, Haseltine Lake Trademarks and the opponents by Mr Stephen Kinsey, Wildbore & Gibbons.

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By the time this matter came to be decided, the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. In accordance with the transitional provisions set out in Schedule 3 of that Act however, I must continue to apply the relevant provisions of the old law to these proceedings. Accordingly, all references in the later parts of this decision are references to the provisions of the old law.

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### **OPPONENTS' EVIDENCE**

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This consists of a Statutory Declaration dated 2 August 1996 by Martin Keith Payne, the Finance Director of H & R Johnson Tiles Limited.

Mr Paynes states that the trade mark JOHNSON has been used in the United Kingdom by his company and its predecessors in business since 1901. It is, he says, the company's house mark and is often referred to as JOHNSON, JOHNSON TILES etc. The trade mark is used in relation to ceramic tiles and related products and turnover in the United Kingdom in 1994 was £45million. He goes on to say that his company is the registered proprietor of trade mark registration No. 1214540 in respect of the word JOHNSON and that this covers ceramic tiles.

Mr Payne goes on to state that the specification of goods covered by application No. 1546848 for the trade mark JOHNSONITE in Class 01 covers adhesives for tiles and thus confusion is likely between it and his company's prior registration. Similarly, the specification of goods claimed in respect of application No. 1546849 (in respect of the trade mark JOHNSONITE) and 1551652 (in respect of the trade mark JOHNSONITE COLORMATCH), both in Class 19 and No. 1552224 (for the trade mark JOHNSONITE COLORMATCH) in Class 27 include:-

(Application No. 1546849) - stair nosings, bumper guards, cove base and cove base end strips, stair treads, stringer material and edging strips.

(Application No. 1551652) - wall bases, moulding for floor covering, carpet edge guards, carpet transition strips, carpet reducers, resilient reducers, carpet cove caps, resilient cove caps, filler strips, tub mouldings, bumper guards, thresholds, stair nosings, stair treads, vent coves, matting and flooring.

(Application No. 1552224) - rubber floor coverings; rubber landing mats; stair nosings, under floor suspension pads, cove base end strips, stringer material.

All of the above products, says Mr Payne, can be produced in ceramic materials or are similar to products made in ceramic material and therefore confusion is again likely in view of the opponents prior registration and extensive use of their trade mark JOHNSON. He exhibits literature illustrating the product range of the opponents which includes tiles, for floors and stairways and also fittings such as step treads, edgings, drainage channels and covering materials. Mr Payne also exhibits a photocopy of literature, obtained from the United States of America, relating to the applicants' product range which, he says, shows that although their products are rubber or vinyl they include tiles (for floors, stairways etc.) and accessories and other goods intended for the same purposes as his company's products. Therefore the applicants goods are likely to be sold through the same trade channels as those of the opponents.

### **APPLICANTS' EVIDENCE**

This consists of a Statutory Declaration dated 24 July 1997 by Mr Raymond T Warner, Executive Vice President of Duramax Inc. He states: "Duramax Inc. is a successor to a company previously known as the Johnson Rubber Company which was founded in 1895 although the name of the corporation has been changed there is still a division called Johnson Rubber Company and another called Johnsonite".

Mr Warner goes on to state that the Johnsonite Division makes a variety of products for the flooring systems market including adhesives, vinyl and rubber tiles and sheet floor coverings,

under floor suspension pads, bumper guards, cove base and cove base end strips, stair treads, stringing material and edging strips, rubber landing mats, caulking compounds and the like. The trade mark JOHNSONITE has been used on all of these products and is registered in the United States of America, Brazil, the Benelux countries, Canada, France, Germany, Italy,  
5 Japan, South Korea, Morocco and Mexico. The applicant, says Mr Warner, has never made ceramic tiles and has no intention of doing so in the future.

Mr Warner further states that the opponent, H & R Johnson Tiles Limited applied to register the trade mark JOHNSON in Class 19 for ceramic tiles on 30 March 1993 at the Patent and  
10 Trade Mark Office in the United States of America and he exhibits a certified copy of the subsequent registration. He notes that in order to secure registration the opponents filed a declaration attesting to use of the JOHNSON trade mark in the United States since at least 1950, and he exhibits a certified copy of the file history of the United States registration in  
15 support of that. As far as Mr Warner is aware there has never been any instance of confusion in the market place between any products bearing the name JOHNSONITE and the trade marks of H & R Johnson Tiles Limited. He goes on to provide the gross worldwide sales figures for Johnsonite Flooring System Products together with brochures which show the products produced and sold by the Johnsonite Division of the applicant. None of these  
20 products are, he states, ceramic tiles.

Finally, Mr Warner states that COLORMATCH is a trade mark of Duramax Inc. which is the subject of a United States registration. He notes that there has never been any suggestion that there has ever been any confusion between the trade mark COLORMATCH and any other  
25 trade mark.

### **OPPONENTS' EVIDENCE IN REPLY**

This consists of a Statutory Declaration by Marina Stephanides and dated 23 January 1998. Marina Stephanides states that she is a designer employed by University College, London and  
30 that as part of her duties she designs the interiors for buildings belonging to the University that are to be refurbished. The information contained within the declaration is from her own knowledge and she is authorised to make the declaration on behalf of the University.

Marina Stephanides states that as part of her duties as a designer she specifies the materials to be used to decorate and refurbish the interiors of buildings. She is well aware of the  
35 substantial reputation and goodwill that the opponents have established in the trade marks H & R JOHNSON and JOHNSON in relation to ceramic tiles and flooring products in the United Kingdom and worldwide. She herself has specified the opponents' ceramic tiles under those trade marks for use in a number of refurbishment projects and in particular for use  
40 around sinks and washbasins within student rooms and for flooring upon stairways within student residences.

Marina Stephanides goes on to state that she is aware that the applicants have sought to register the trade marks JOHNSONITE and JOHNSONITE COLORMATCH in relation to a  
45 range of rubber based flooring products and adhesives for use in relation to such products. She believes that there is a strong likelihood of confusion between the applicants' trade marks and those of the opponents. This might occur when designers such as herself specify flooring

and wall products and adhesives for use with these goods for the decoration of the interiors for new and the refurbishment of old buildings, also, she believes that there is a danger that designers may believe, in view of the closeness of the respective trade marks, that the applicants' products are in some way connected or produced by the opponents (perhaps a new rubber flooring product as an extension to their current range of ceramic tiles and flooring products). This may lead designers to specify the products of the applicants. Finally, she comments in some detail on the similarity of the respective trade marks.

Mr David Charles Watkins a Director of O S E L Architecture Limited, which provide services of architects to clients, has filed a Statutory Declaration dated 23 January 1998. Like the previous declarant, he believes that there is a likelihood of confusion as between the applicants and the opponents trade marks because of the latter's reputation within the building industry and amongst architects and architectural technicians such that professional architects and architectural technicians might specify the applicants products in mistake for the opponents. Alternatively, they may believe that the applicants products are in some way associated with the opponents. He too comments upon the similarity of the trade marks.

Mr Martin Keith Payne, the Finance Director of H & R Johnson Tiles Limited, the opponents, also provides a further Statutory Declaration, dated 30 March 1998 in which he states first of all that it is not surprising, as suggested by Mr Warner in his Statutory Declaration, that there has not been an instance of confusion in the market place between the respective parties trade marks and products. He is not aware of any use by the applicants of their trade marks in the United Kingdom. Insofar as confusion between the respective products in other markets is concerned Mr Payne states that his company does not sell ceramic tiles under the trade marks JOHNSON and H & R JOHNSON in the United States of America or Canada, what they have sold in these countries is encaustic ceramic tiles for use in public buildings such as State and Federal buildings ie. courts and civic halls. These are tiles produced by a special process and currently the opponents are the only company producing these in the world. The situation is completely different within the United Kingdom, where the opponent sells encaustic ceramic tiles and ceramic tiles under both the JOHNSON and H & R JOHNSON trade marks, as well as other products. Mr Payne goes on to provide details of the company's turnover and advertising spend.

Mr Payne considers that the applicants' trade marks JOHNSONITE and JOHNSONITE COLORMATCH offend against the provisions of Sections 11 and 12 of the Act. In doing so he also comments upon the similarity of the respective trade marks and he believes that all of the applicants' goods can either be made of ceramic material or can be substituted by products made from ceramic nature, he exhibits a number of items of promotional literature which set out the products produced by the opponent which he believes show that the goods covered by the applicants' applications are identical in terms eg mastic resins, epoxy compounds, all being adhesives, can be used with ceramic and other floor coverings. From his own knowledge he is able to confirm that retailers tend to sell adhesives alongside the ceramic tiles or rubber and vinyl flooring products with which they are to be used, thus the same trade channels are used by both the applicants and the opponents.

5 Finally, Mr Payne comments upon the opponents' objections under Section 11 and refers to the Statutory Declarations filed by Marina Stephanides and David Watkins from which he believes that there is a real danger of confusion on the part of architects and architectural technicians, surveyors and engineers specifying for building projects and also the builders and contractors for such products.

10 At the start of the Hearing Mr Krause on behalf of the applicants applied to have additional evidence admitted into the proceedings under the provisions of Rule 13(2) of the Trade Marks Rules. The opponents, through Mr Kinsey, indicated that they had no objection to this evidence being admitted and would not seek an adjournment to file any evidence in reply. In those circumstances, and despite the fact that I was not wholly satisfied that the criteria set out by Mr Justice Laddie in Swiss Miss [reference] were met, I admitted this late evidence.

15 This evidence consists of a Statutory Declaration dated 6 May 1999 by Mr James Clifford Setchell a Trade Mark Attorney employed by the applicant's Trade Mark Agents, Haseltine Lake Trademarks. This exhibits a copy of a Statutory Declaration dated 13 April 1999 and filed with the Trade Marks Registry in other proceedings between the parties. The copy Declaration and its exhibits seek to show that the word Johnson (and its derivatives) is a well known surname and a name which is used by many businesses.

20 That concludes my review of the evidence, insofar as I consider it relevant.

## DECISION

25 I shall deal first with the objections based upon Sections 9 and 10 of the Act which state:

9.-(1) In order for a trade mark (other than a certification trade mark) to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars:-

- 30
- (a) the name of a company, individual, or firm, represented in a special or particular manner;
  - (b) the signature of the applicant for registration or some predecessor in his business;
  - (c) an invented word or invented words;
  - (d) a word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;
  - (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph
- 45 except upon evidence of its distinctiveness.

5 (2) For the purpose of this section "distinctive" means adapted, in relation to the goods in respect of which a trade mark is registered or proposed to be registered, to distinguish goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally, or where the trade mark is registered or proposed to be registered subject to limitations in relation to use within the extent of the registration.

10 (3) In determining whether a trade mark is adapted to distinguish as aforesaid the tribunal may have regard to the extent to which -

(a) the trade mark is inherently adapted to distinguish as aforesaid; and

15 (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact adapted to distinguish as aforesaid.

20 10.-(1) In order for a trade mark to be registrable in Part B of the register it must be capable, in relation to the goods in respect of which it is registered or proposed to be registered, of distinguishing goods with which the proprietor of the trade mark is or may be connected in the course of trade from goods in the case of which no such connection subsists, either generally or, where the trade mark is registered or proposed to be registered subject to the limitations, in relation to use within the extent of the registration.

25 (2) In determining whether a trade mark is capable of distinguishing as aforesaid the tribunal may have regard to the extent to which -

(a) the trade mark is inherently capable of distinguishing as aforesaid; and

30 (b) by reason of the use of the trade mark or of any other circumstances, the trade mark is in fact capable of distinguishing as aforesaid.

35 (3) A trade mark may be registered in Part B notwithstanding any registration in Part A in the name of the same proprietor of the same trade mark or any part or parts thereof.

40 In my view no evidence has been provided to show that the trade marks JOHNSONITE and JOHNSONITE COLORMATCH (the second element in that trade mark in each case carries a disclaimer under the provisions of Section 14, but nothing hangs on that fact), are not either adapted to distinguish, or capable of distinguishing, the applicants goods. Mr Kinsey submitted that the word JOHNSONITE consisted simply of the common surname JOHNSON with the suffix ITE added - ITE having the meaning of 'related to'. But, that, in my view, is not sufficient for me to displace or overturn the Trade Mark Examiner's judgment that the trade marks the subject of these proceedings meet the criteria  
45 for acceptance in part A of the Register and I decline to do so. The opposition based upon Sections 9 and 10 is therefore dismissed.

I turn to the grounds of opposition based upon Sections 11 and 12 of the Act which state:

5 11. It shall not be lawful to register as a trade mark or part of a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

10 12.-(1) Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of:-

- 15 a. the same goods
- b. the same description of goods, or
- c. services or a description of services which are associated with those goods or goods of that description.

20 (2) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the court or the Registrar may permit the registration by more than one proprietor in respect of:-

- 25 a. the same goods
- b. the same description of goods or
- c. goods and services or descriptions of goods and services which are associated with each other,

30 of marks that are identical or nearly resemble each other, subject to such conditions and limitations, if any, as the Court or Registrar, as the case may be, may think it right to impose.

35 (3) Where separate applications are made by different persons to be registered as proprietors respectively of marks that are identical or nearly resemble each other, in respect of:-

- 40 a. the same goods
- b. the same description of goods, or
- c. goods and services or descriptions of goods and services which are associated with each other,

45 the Registrar may refuse to register any of them until their rights have been determined by the Court, or have settled by agreement in a manner approved by him or on an

appeal (which may be brought either to the Board of Trade or to the Court at the option of the appellant) by the Board or the Court, as the case may be.

5 The established tests for opposition founded upon Sections 11 and 12 are set down in Smith Hayden & Co Ltd's application (1946 63 RPC 101) adapted by Lord Upjohn in BALI (1969 RPC 496). Adapted to the matter in hand the tests may be expressed as follows:

10 (a) **(under Section 11)** Having regard to the user of the trade mark JOHNSON and the term H R JOHNSON is the tribunal satisfied that the marks applied for JOHNSONITE and JOHNSONITE COLOURMATCH, if used in a normal and fair manner in connection with any goods covered by the registrations proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

15 (b) **(under Section 12)** Assuming user by the opponents of their mark JOHNSON in a normal and fair manner for any of the goods covered by the registration of that mark, is the tribunal satisfied that there will be no reasonable likelihood of deception among a substantial number of persons if the applicants use their marks JOHNSONITE and JOHNSONITE COLOURMATCH normally and  
20 fairly in respect of any goods by their proposed registrations?

I deal first of all with the grounds of opposition based upon Section 11 of the Act. The evidence shows that the opponents have used their trade mark on ceramic tiles (for walls and floors) and related ceramic products - step treads, edging strips, channels etc. This use is  
25 substantial in terms of volume and sales over a long period. The applicants have not yet used their trade marks in the United Kingdom but the opponents have provided some of the applicant's brochures from the United States of America which show that they, the applicants, produce the same goods but made from vinyl and rubber. Even where the goods are not the same or similar the opponents claim they could be associated with the opponents goods eg  
30 adhesives for products excluding ceramic tiles could nevertheless be associated with the opponents products, not least because, according to the evidence of Mr Payne, retailers sell the applicants and the opponents' goods alongside each other. This statement is not, I note, challenged by the applicants. Mr Krause sought to persuade me that because of the nature of the respective goods (and in particular the applicants) they would not be associated one with  
35 the other because each would be used by a specialist contractor rather than the man in the street, using only DIY skills. But I am not convinced that the evidence supports that submission. The brochures and sales material I have looked at do not seem to restrict the use and application of the respective goods to specialists. Therefore, as far as I can see the goods could be seen and purchased by the public at large.

40 It seems to me therefore that the applicants' floor coverings in Class 27 and the 'accessories' in Class 19 are likely to be regarded as similar to or associated with the opponents ceramic tiles and other ceramic goods. This, is because in a great number of situations one material ie vinyl could be replaced by the other, ceramic and, it seems to me that the opponents' claim that they  
45 are similar - or at least associated with each other is a reasonable one. I am not, however, persuaded that the applicants' adhesives will be assumed to be associated with the opponents tiles, not least because I am given no evidence on whether it is normal or usual for producers

of ceramic tiles to also produce adhesive for such. And in the absence of such evidence I am not able to infer that. Also, it seems to me that some care will be taken to ensure that the adhesive purchased is 'fit for purpose'. Thus I think it unlikely that anyone seeing the applicants trade marks on adhesives would associate those goods with the opponent's products. In any event any association is considerably weakened by the limitation of the applicant's specification.

I go on to consider the respective trade marks and in doing so take account of the test propounded by Parker J in Pianotist Co's application [reference etc]

"You must take the two words. You must judge of them both by their look and by their sound. You must consider the goods to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods. In fact, you must consider all the surrounding circumstances; and you must further consider what is likely to happen if each of these trade marks is used in a normal way as a trade mark for the goods of the respective owners of the marks. If, considering all those circumstances, you come to the conclusion that there will be a confusion - that is to say - not necessarily that one will be injured and the other will gain illicit benefit, but that there will be a confusion in the mind of the public, which will lead to confusion in the goods - then you may refuse the registration, or rather you must refuse the registration in that case."

The trade marks are as follows:

<b>APPLICANTS</b>	<b>OPPONENTS</b>
JOHNSONITE	JOHNSON
JOHNSONITE COLOURMATCH	H R JOHNSON

Each of the applicants' trade marks include the whole of the principal element of the opponents' trade mark as the first two syllables, the only differences are the addition of the term ITE as the third syllable of the applicants trade marks and in addition the applicant's second trade mark has the word COLOURMATCH as its second element. It is well established that when comparing trade marks that consist of words the first or prefix elements are considered to be significant features. I refer to the guidance on the comparison of trade marks which is found in Kerly's Law of Trade Marks and Trade Names, 12th Edition at 7-13, page 445 which states:

**Importance of first syllable**

It has been accepted in several reported cases that the first syllable of a word mark is generally the most important. It has been observed in many cases that there is a tendency of persons using the English language to slur the termination of words'.

In this case I think both visually and aurally the respective trade marks are similar. The introduction of the third syllable ITE does not change to any significant extent the appearance

or sound of the applicants trade marks from those of the opponents. It is not therefore sufficient to distinguish the applicants' trade marks from those of the opponents, even where the latter also includes the word COLOURMATCH, which, as the applicants have acknowledged by the entry of the disclaimer, is not a distinctive term for the goods involved.

5 It seems to me therefore that the opponents have considerable use of their trade marks in relation to ceramic tiles or ceramic accessories also that some of the goods of the applicants are of a similar description in many respects to those of the opponents, and the respective trade marks are so similar that where this commonality exists confusion will occur. I am reinforced in this view by the evidence of Marina Stephanides and David Watkins both of whom are in relevant professional fields and whose views on the likelihood of confusion as between the applicants' and the opponents' trade marks must carry some weight.

15 In reaching this view I do not ignore the late filed evidence of Mr Setchell but the fact that the opponents' trade mark is a surname and others in the construction/building trades also use the word JOHNSON in their names does not, it seems to me, add much if any weight to the applicants case. Whether and how these businesses listed use their names and whether the use is as trade marks or signs by which their business is known I know not; what particular goods and services they supply is also unknown.

20 In the circumstances I hold that use by the applicants of their trade marks is likely to cause deception and confusion amongst a substantial number of persons where similar or associated goods are covered. The opposition based upon Section 11 therefore succeeds in relation to application Nos 1546849, 1552224, 1551652 but fails in respect of application No 1546848.

25 Insofar as the ground of opposition based upon Section 12(1) is concerned I do not reach a different finding from that in relation to the ground based upon Section 11. In particular I do not consider that the objection under this head extends to application No 1546848 which is in respect of "Mastic resins, epoxy compounds, all being adhesives ; all included in Class 1; but not including adhesives for ceramic tiles".

30 It seems to me that in the context of Section 12 and the guidance on the comparison of goods laid down by Romer J in PANDA (1946) 63 RPC 59 the nature and purpose of the applicants goods (adhesives) are completely different from those of the opponents (ceramic tiles). And whilst both may be sold in the same retail outlet that, in this case, is not sufficient to bring them together as goods of the same description. The remainder of the applicant's goods, for the reasons given above, are goods of the same description.

35 I hold therefore that registration by the applicants of their JOHNSONITE and JOHNSONITE COLORMATCH trade marks in respect of the goods covered by application Nos 1546849, 1552224 and 1551652 is likely to cause deception and confusion amongst a substantial number of persons. In respect of those applications the opposition based upon Section 12 is therefore successful. It fails in respect of application No 1546848.

45 In view of my findings above the effects of which are mandatory, it is not appropriate to or necessary for me to consider exercising the Registrar's discretion.

As the opponents have been successful in three out of four cases I order the applicants to pay to them the sum of £1500.

5     **Dated this 27 day of August 1999**

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15     **M KNIGHT**  
       **Head of Inter Partes Proceedings**  
       **For the Registrar**  
       **the Comptroller General**