

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2008159
BY WICKES PLC TO REGISTER A TRADE MARK
IN CLASSES 1, 17 AND 19**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER
No 43844 BY THE DOW CHEMICAL COMPANY**

TRADE MARKS ACT 1994

5 **IN THE MATTER OF Application No 2008159
by Wickes Plc to register a trade mark in
Classes 1, 17 and 19**

and

10 **IN THE MATTER OF Opposition thereto under
No 43844 by the Dow Chemical Company**

15 **DECISION**

On 19 January 1995 Wickes Plc applied to register a series of three marks. The third mark
was later deleted and the application proceeded for the following series of two marks, the first
20 of which is limited to the colours red and black:



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Application was made in three classes in respect of:

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| Class 1 | Chemical preparations for industrial use; adhesives; damp-proofing preparations; water sealants; creosote; antifreeze; preservatives; corrosion inhibitors for heating systems. |
| 40 | Class 17 Thermal insulating materials; adhesive tapes. |
| 45 | Class 19 Non-metallic building materials; windows and window frames; double glazing; posts and panels; timber; lintels, fencing and trellis, all being non-metallic; walling panels of wood; hardboard, plywood, hardwood panelling for use in building; doors made from moulded or pressed wood, chipboard or from wood fibres; non-metallic shower stalls; |

rainwater pipes, soil pipes, gutters, all made from plastics; flooring tiles, walling tiles, all made of ceramics or of plastic; non-metallic roofing sheeting; ruberoid mastics for use in building; swimming pools; conservatories; sheds; cement.

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On 8 January 1996 The Dow Chemical Company filed opposition to this application. The grounds of opposition are:-

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1. The opponent is the proprietor of the following trade mark registrations:

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No	Trade Mark	Class	Specification
1166524	WALLMATE	17	Insulating materials made of plastics foam, for use in walls.
1166523	FLOORMATE	17	Plastics foam for use as insulation material in floors.
867544	ROOFMATE	17	Expanded plastics for use as insulation materials in roofs and roof deckings.
1532689	DECKMATE	17	Plastics in the form of sheets, blocks and rods, being for use in further manufacture; materials for packing, stopping or insulating; all included in Class 17.
1166525	PERIMATE	17	Insulation materials made from plastics foam, for use in construction and in buildings.
1407713	AGMATE	17	Liquified [Liquefied??] gases for use in industry; natural and artificial culture supports and substances, earth, mould, peat, compost and humus; all included in Class 1.

2. The opponent says all of the above marks are used in relation to insulating materials in the United Kingdom and on the basis of such use the opponent claims to have acquired a substantial reputation and goodwill in these marks.

3. The opponent contends that because of their family of -MATE marks especially those conveying the idea of building (WALLMATE, FLOORMATE and ROOFMATE) BUILDERS MATE would be seen to be

similar to their earlier trade marks and has been applied for in respect of goods which are identical with or similar to those for which the opponent's earlier marks are protected. This being the case the opponent contends that there exists a likelihood of confusion and/or association on the part of the public with their earlier marks. This is taken to be an objection under Section 5(2)(b) of the Act.

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4. The opponent further requests that the Registrar exercise any discretion he may have and refuse application No 2008159. In the alternative the opponent asks that insulating materials and any goods similar to insulating materials be specifically excluded from the specification of goods covering Classes 17 and 19.

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I add here, however, that under the Trade Marks Act 1994 the Registrar does not have any discretion to refuse an application as he did under the old law. An application can only be refused if it fails to comply with the requirements of the Act and Rules in one or more respects. It is of course possible to restrict the application if the opponent succeeds and the applicant agrees to such restriction.

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- 20 The applicant filed a counter statement admitting paragraph 1 of the grounds of opposition, but putting the opponents to proof of the statements made in paragraph 2, and denying the ground of opposition in paragraph 3.

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

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Both sides filed evidence in these proceedings and the matter came to be heard on 13 March 1998 when the applicants were represented by Mr N K Howick of Carpmaels & Ransford, their trade mark attorneys and the opponents by Mr J B Pennant of D Young & Co, their trade mark attorneys.

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Opponent's Evidence (Rule 13(3))

The opponent's evidence consists of a Statutory Declaration by Mr Laurie Stokes. Mr Stokes is the Industry Manager for the Fabricated Products Group of Dow Construction Products, a division of Dow Chemical Company Limited which is a wholly owned subsidiary of The Dow Chemical Company, the opponents. Mr Stokes states that he is authorised to make the declaration on behalf of his Company and does so from his own knowledge and his Company's records to which he has full access.

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- 40 Mr Stokes says that his Company has been involved in the business of producing insulating materials since at least as early as 1976. Since that time his Company has produced a wide range of materials to aid and assist in thermal insulation problems. These include thermal insulation for pitched roofs, cavity wall insulation, thermal insulation for floors, combined insulation and drainage elements for basements and cold storage insulation. He says that
- 45 extruded polystyrene foam boards are used in a variety of ways to provide insulation. To this end he says his Company produces a range of insulating materials sold under various trade

marks, which include ROOFMATE, WALLMATE, FLOORMATE, PERIMATE and AGMATE. He says that each of these marks has been used for a number of years and that the following table indicates the date of first use in each case:

5	ROOFMATE	1976 (possibly earlier)
	WALLMATE	1983
	FLOORMATE	1985
	PERIMATE	1985
	AGMATE	1992

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Under Exhibit LS1 Mr Stokes provides information in the form of technical information sheets and promotional material showing use of the above mentioned trade marks. All appear to be dated 1995/6. A Press Coverage booklet dated 1993 refers to use of the marks ROOFMATE and FLOORMATE.

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Mr Stokes states that the Dow Chemical Company has registered each of the above mentioned trade marks in the United Kingdom and exhibits (LS2) full details of the registrations. He also notes that the trade mark DECKMATE has been registered under No 1532689.

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Mr Stokes says that his Company has sold considerable quantities of thermal insulation materials under each of the above mentioned trade marks over a period of many years. The value of goods sold under these trade marks has, for each of the seven years preceding the date of the present opposition, been in excess of £7m, with an annual average in excess of £8m. Use therefore by both his Company and The Dow Chemical Company of the aforesaid trade marks with the suffix -MATE in relation to thermal insulation materials has, he says, been considerable, and over a period of many years has generated an enormous amount of goodwill together with a reputation known throughout the whole of the construction industry in the United Kingdom.

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Mr Stokes says that his Company has also spent considerable sums on advertising the trade marks ROOFMATE, WALLMATE, FLOORMATE, PERIMATE and AGMATE. For the years 1992-1995 (inclusive) between £16,000 and £19,000 per annum has been spent in advertising thermal insulation products under the aforementioned trade marks. Such advertisements have appeared in numerous publications, including the following:

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Architects Journal
Building Products
Building Design Magazine
40 Riba Journal
Whats New in Building.

Examples of such advertisements are exhibited under Exhibit LS3.

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Mr Stokes says that his company has also exhibited products under the aforementioned trade marks at a number of trade shows including INTERBUILD (1983/85/87/89) and

SCOTBUILD (1984 and every two years thereafter, through their Scottish distributor). He confirms that these are the leading and best attended building materials trade shows in the United Kingdom. He adds that such sales have been made throughout the length and breadth of the United Kingdom.

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Mr Stokes says that, by reason of the very extensive use which his Company and The Dow Chemical Company have made of trade marks with the suffix -MATE in relation to thermal insulation materials over a period of many years, it is his opinion that such marks would, within the trade and to the relevant purchasing public, be regarded as originating from his Company and/or The Dow Chemical Company rather than any unrelated third party. He believes that such -MATE marks have, through use, come to distinguish his Company's or The Dow Chemical Company's products from those originating from other sources and that any use of a -MATE trade mark by a third party in relation to thermal insulating materials would be liable to cause confusion or deception. He says that to the best of his knowledge he is not aware of any other insulation material which is offered for sale in the United Kingdom under a trade mark which consists of the word or contains the suffix -MATE.

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Applicant's Evidence (Rule 13(5))

The applicant's evidence consists of two Statutory Declarations by Keith Stokes-Smith dated 18 February 1997 and Anne Wong dated 19 February 1997.

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Keith Stokes-Smith, Company Secretary of Wickes Plc, says he has responsibility, among other things, for the trade mark matters of his Company.

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Mr Stokes-Smith says that he has read the declaration of Laurie Stokes, and notes that Mr Stokes asserts that the use made by his Company of "such marks" (by which he presumes that Mr Stokes means -MATE suffix marks) would, within the trade and to the relevant purchasing public, be regarded as originating from his Company and/or The Dow Chemical Company rather than any unrelated third party. Mr Stokes-Smith says he disagrees with that assertion and also with the implication in Mr Stokes' evidence that if WILKES Plc were to sell insulating materials under the mark BUILDERS MATE, the trade and relevant purchasing public would believe the goods came from Mr Stokes' Company or a company within that group. He says he does not believe that the trade and purchasing public would be confused in that way.

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It is said by Mr Stokes-Smith that Mr Stokes' assertion and the implications of it, are not borne out by what has taken place. Mr Stokes-Smith says that his Company has run a business extensively in the United Kingdom for many years under the BUILDERS MATE name, selling under that mark a wide range of building materials including insulating materials, and he is not aware of any instance of confusion with the marks listed by Mr Stokes.

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Under Exhibit KSS1 Mr Stokes-Smith provides a BUILDERS MATE catalogue from the end of 1993 showing the locations of BUILDERS MATE depots in the UK and an illustration of the goods sold which include insulating materials (page 41), roofing materials (pages 11-12)

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and flooring materials (page 18). He says that the substantial size and geographical spread of the BUILDERS MATE business is evident from the catalogue.

Mr Stokes-Smith says that his Company already owns several BUILDERS MATE registered trade marks which he lists as follows (I have added the goods):

	No	Class	Goods
10	1561040	2	Paints, varnishes, enamels and lacquers; coatings in the nature of paints; paint thinners; preservatives against rust and against deterioration of wood; putty; all included in Class 2.
15	1515223	3	Bleaching and cleaning preparations; scouring and abrasive preparations; soaps and sugar soap; paint stripping preparations; white spirit, turpentine substitutes; sand paper and finishing sand paper; green aluminium oxide paper; all included in Class 3.
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25	1515224	6	Building elements; hardware of metal; window frames; tubes and pipes; roofing; fencing materials; nails; non-electric locks, padlocks, pallets, hinges, lintels, catches; door fittings; window fittings; doors for buildings; garage doors; pipe fittings for plumbing and sanitary purposes; gutters and rainwater pipes; all made wholly or principally of common metal; screws and double glazing; all included in Class 6.
30			
35	1515225	11	Installations for lighting, heating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; lamps and lanterns; light fittings; all included in Class 11.
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45	1515226	19	Windows and window frames; swimming pools; conservatories; sheds; double glazing; posts and panels; timber; lintels; fencing and trellis; hardboard, plywood, hardwood panelling; doors and fittings made from moulded or pressed wood, chipboard or wood fibre; non-metallic shower stalls; rainwater pipes, soil pipes, gutters; flooring tiles, wall tiles; non-metallic roofing; parts and fittings for all the aforesaid goods; paving, bricks, blocks, glass and plasterboard; all included in Class 19.

1515227

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Loading or transport pallets made of non-metallic materials; work surfaces; furniture; mirrors; shelving; parts and fittings for all the aforesaid goods; all included in Class 20.

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Exhibit KSS2 is a bundle of copies of the registration certificates for the above registrations.

Mr Stokes-Smith says that Dow Corning Corporation (which he believes is related to the opponents) previously had registrations of BUILDERS MATE in Classes 1 (Nos 1021592 and 1305582), 2 (No 1305583), 17 (No 1305584) and 19 (No 1305585) but these registrations were all revoked by his Company with effect from 1 February 1995 on the basis of non-use in the United Kingdom during the previous five years. He exhibits (KSS3) a copy of each revocation decision.

Mr Stokes-Smith says he is confident that BUILDERS MATE which has been used extensively by his Company has coexisted with the opponent's trade marks listed by Mr Stokes without confusion, and that no confusion is likely to arise in future between BUILDERS MATE and the trade marks of the opponents.

In her declaration Anne Wong states that she is a Trade Mark Attorney of Carpmaels & Ransford, agents for the applicants. She is authorised to make the declaration on behalf of her Company and the information given in the declaration is given from the files of her Company.

Ms Wong states that, on 17 February 1997 she conducted a search of the Trade Mark Register for trade marks with the suffix -MATE in Classes 17 and 19 which revealed several marks in the name of different proprietors, and exhibits (AW1) Trade Marks Journal details of trade marks revealed in the search. I summarise the details below:

	No	Class	Mark	Registered Proprietor
	1401212	19	TRENCHMATE	Trenchform Ltd
	1126537		CORNER-MATE	Hardigg Industries, Inc.
	1061961	17	SILMATE	General Electric Company
35	1454623	19	TIMBERMATE	Nickerson Investments Limited
	1418145	19	SLATE-MATE SLATEMATE	Maxview Limited
	1228244	19	GROW-MATE	Andrew MacIntyre
	1072054		DOWELMATE	Mastercraft Tools Limited
40	1066223		MIXAMATE	Mixamate Limited
	1024474		JOINTMATE	Mastercraft Tools Limited
	1126538		SKID-MATE	Hardigg Industries, Inc.
	1515226	19	BUILDERS MATE	Wickes plc
	1532689	17	DECKMATE	The Dow Chemical Company
45	1490506	17	SOLIMATE	The Dow Chemical Company
	1407713	17	AGMATE	The Dow Chemical Company

	1166525		PERIMATE	The Dow Chemical Company
	1166524		WALLMATE	The Dow Chemical Company
	1166523		FLOORMATE	The Dow Chemical Company
	867544		ROOFMATE	The Dow Chemical Company
5	852114		ROOFMATE	The Dow Chemical Company
	1432991	19	TRADE MATE	Dow Corning Corporation
	1258644	17	PAINTERS MATE	Dow Corning Corporation
	1258645	19	PAINTERS MATE	Dow Corning Corporation

10 Opponent's Evidence in Reply (Rule 13(6))

The opponents filed reply evidence which is in the form of five Statutory Declarations, all dated 18 August 1997, by Jacqueline Margaret Lake and one Statutory Declaration dated 18 August 1997 by David William Lake. Mr and Ms Lake both state in their declarations
15 that they are directors of Farncombe International Limited, and that they make the declarations on behalf of their Company.

The Lakes say that their Company received instructions from D Young & Co dated 20 March 1997 to conduct commercial investigations to establish whether certain trade marks listed in
20 the Statutory Declaration of Anne Wong were in use in the United Kingdom and if so, the precise goods on which the trade marks are used. Each declaration recites the details of the investigation they conducted and ends with the following conclusions:

25 **TRENCHMATE** Mr Lake concludes that TRENCHMATE was registered by Trenchform Limited as a precautionary measure, to protect the name TRENCHMASTER, and has never been used.

30 **CORNER-MATE** Ms Lake concludes that Hardigg Industries, Inc. applied their trade mark CORNER-MATE to a shock absorption product used for packaging. Although this product was discontinued six months ago the US company still has some limited stock. Moulded Packaging Limited are the authorised UK distributors for CORNER-MATE. However no evidence was found that this product has been sold in the United Kingdom.

35 **JOINTMATE & DOWELMATE** Ms Lake concludes that Mastercraft Tools Limited is a subsidiary of Spear & Jackson Plc. Spear & Jackson Plc currently apply the trade mark JOINTMATE to dowelling which is marketed in the United Kingdom. Spear & Jackson Plc do not currently market any product under the name
40 DOWELMATE; however this name was used for one of their products which was discontinued some three or four years ago.

45 **SILMATE** Ms Lake concludes that General Electric Company currently apply their trade mark SILMATE to silicone rubber for form-in-place gaskets which is available for sale in the United Kingdom.

GROW-MATE Ms Lake concludes that Andrew MacIntyre trading as Backwoodsman Horticultural Products applied the trade mark GROWMATE to a pyramid greenhouse system which is marketed in the United Kingdom and has been since at least 1986.

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PAINTERS MATE Ms Lake concludes that Dow Corning Corporation apply their trade mark PAINTERS MATE to a flexible acrylic filler which is freely available throughout the United Kingdom.

10 No indication is given in the opponent's reply evidence as to why these particular trade marks were chosen for investigation or whether investigations were conducted on the other trade marks listed in the applicants evidence in the Statutory Declaration of Anne Wong.

15 That completes my review of the evidence and I now go on to consider the grounds of opposition.

I deal firstly with new objections introduced at the hearing by Mr Pennant. He said that the evidence provided by the applicant did not show use of the mark applied for as a trade mark and suggested objections under Sections 1(1), 3(1)(a) and 3(6). Mr Pennant also mentioned retail services and referred to use of the mark BUILDERS MATE as a "retail mark" in Exhibit KSS/1 of the Statutory Declaration of Keith Stokes-Smith.

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These Sections read as follows:-

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1.-(1) In this Act a "trade mark" means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.

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A trade mark may, in particular, consist of words (including personal names), designs, letters, numerals or the shape of goods or their packaging.

3.-(1) The following shall not be registered -

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(a) signs which do not satisfy the requirements of Section 1(1),

(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.

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Mr Pennant went on to refer to a notice issued by the Registrar about observations, which included comments made by Laddie J. in **The Patent Office v Chocoladefabriken Lindt**: "*At any time before the mark is on the register the Registrar can take note of material brought to his attention and to decide that the application should not proceed, subject, of course, to allowing the Applicant to argue against that course being adopted*" and said that decision entitled the Registrar to take account of the applicant's evidence in support of the opponent's case.

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I do not consider the comments of Laddie J. to be appropriate in the case of an opposition where the opponents have had the opportunity to set down their grounds of opposition and, if they so wish, seek amendment during the course of the proceedings, if circumstances change or new information comes to their attention. In this case it is clear that the applicant company carries on a substantial business as builders merchants and that they sell a wide range of branded goods. They issue a catalogue on a regular basis and operate from a number of premises, particularly in the London area. At the hearing it was put to me by Mr Pennant on behalf of the opponents that I must decide this case on the evidence before me and that I should not make assumptions based on my own knowledge. I am quite prepared to do this in relation to the dispute before me but I am not prepared to make such a concession in relation to new grounds which have been raised at such a late stage in the proceedings. It is well known that goods purchased from builders merchants may bear other trade marks but that surrounding the sale there will be use of the name of the store in advertisements, sales tickets and receipts. Such activity is in my view trade mark use and I am prepared to accept that the applicants have in fact used their mark in a trade mark way and that it would not be appropriate for me to raise objections, as suggested by Mr Pennant, following the outcome of these proceedings. Secondly, past use is not always a complete guide to future use, and it may be that the applicants will use their mark in a different way in the future eg own brand products.

I now turn to the essential ground of opposition. In their statement of case the opponents did not mention the sections of the Act upon which the opposition was based but it was clarified at the hearing that the essential ground of opposition is under Section 5(2)(b). This section reads as follows:-

“5.-(1)

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

(a)

(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.”

The opponent has a family of registered trade marks with the suffix -MATE, and in Exhibit LS1 to the Statutory Declaration of Laurie Stokes, brochures dated 1994/95/96 show that these marks are used in relation to thermal insulating materials of extruded polystyrene. From the wording in the brochures it appears that these materials are intended primarily for use in the construction industry. Mr Pennant drew my attention to the paragraphs in Mr Stokes' declaration where he states that his company has sold thermal insulation materials under the registered trade marks throughout the United Kingdom over a considerable number of years, ROOFMATE for more than twenty years and WALLMATE and FLOORMATE for

more than ten years; that in the seven years prior to the commencement of these opposition proceedings the annual value of goods sold under these trade marks was in excess of £7m; that considerable sums have been spent on advertising the marks, and that products sold under the marks have been exhibited at the two major building materials trade shows in the United Kingdom. Based on this evidence I am prepared to accept that the opponents have a family of marks with the suffix -MATE and that they have a reputation in such marks.

The applicant already owns registrations of the mark BUILDERS MATE in Classes 2, 3, 6, 11, 19 and 20, as listed above. The only evidence showing use of the mark is Exhibit KSS1 to the Statutory Declaration of Keith Stokes-Smith, which consists of an illustrated price list dated September-November 1993. The BUILDERS MATE trade mark appears on the front cover of the price list. Insulation materials appear on page 41 of the price list. The trade mark BUILDERS MATE appears on an illustration of a trade card in the bottom right hand corner of the page and in the legend "BUILDERS MATE FOR QUALITY BRANDS ... PRODUCTS THAT YOU CAN TRUST" which appears across the bottom of pages 40 and 41. It does not, as far as I can ascertain, appear on any of the goods listed or illustrated. The only trade mark used in proximity to the goods on page 41 appears to be the mark ROCKWOOL. Although Mr Howick, for the applicant, stated at the hearing that BUILDERS MATE operated as a builders' merchant and had a range of goods bearing the trade mark BUILDERS MATE in addition to branded goods, he did not draw my attention to any evidence of goods bearing the mark. It appears to me the best the applicant can argue is that its mark has been used in relation to insulation materials. There is certainly no evidence of any use on the actual goods themselves. It is also the case that any use to date has been in very specific circumstances. The applicant's sales of goods such as thermal insulation materials have only been through their own BUILDERS MATE stores. I have to assume that in relation to their application for registration they could actually brand thermal insulation materials with their BUILDERS MATE mark and that such goods would be sold through outlets owned by others where they would or could be sold side by side with the opponents goods.

As noted in my summary of the evidence it was claimed by the applicant that third parties own other MATE marks in the building and construction industry. While this is still claimed by the applicant, it was accepted at the hearing that the opponent is the only user of MATE suffix marks in relation to thermal insulating materials.

In the light of the circumstances which I have set down here the opponent does not say that the applicant's mark BUILDERS MATE is confusingly similar to any one of its MATE marks. Rather it is argued that because of the reputation in its family of MATE marks in relation to thermal insulating materials the public would assume a connection with the opponent if the applicant commenced to use its mark in relation to such goods, and thus be confused as to origin.

In his submissions on this subject Mr Pennant referred me to the **Beck Koller** decision [1947] 64 RPC 76, and the following words from the final paragraph of that page:-

"Where all the marks in such a series belong to the opponent this is generally a circumstance adverse to an applicant for a mark containing the common feature, since the public might think that such a mark indicated goods coming from the same source as goods covered by the other marks ..."

Mr Pennant also argued that confusion was likely on the basis of imperfect recollection, and referred me to the following words from the headline of the **Accutron Trade Mark** decision, [1966] RPC 152:-

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“The Registrar found that although the marks viewed side by side or compared phonetically were not confusingly similar, nevertheless there was a reasonable probability of confusion taking into account imperfect recollection ...”.

10 In a reference to the **SABLE v PUMA** decision of European Court of Justice C251/95, Mr Pennant drew my attention to the statement at paragraph 24 that when comparing marks “in that perspective, the more distinctive the earlier mark, the greater will be the likelihood of confusion”.

15 Mr Howick argued against the likelihood of confusion. He submitted that **BUILDERS MATE** was and is a well known term, and that it is conceptually different from the opponent’s marks which consist of a descriptive word conjoined to the word **MATE**. He also referred to the fact that others use **MATE** marks in the building and construction industry at large.

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I have carefully considered the evidence filed in the proceedings and all the submissions made at the hearing. Taking the best view I can of the matter it appears to me that if the applicant commenced to use its **BUILDERS MATE** mark on thermal insulation materials a significant number of the public would assume a connection with the opponent, because of its reputation in a family of **MATE** marks, and thus be deceived as to origin. I therefore find that the opponent succeeds in its ground of opposition under Section 2(2)(b).

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As mentioned at the outset the applicant’s application covers a range of goods in a number of classes. The effect of the opponent’s successful opposition under Section 5(2)(b) in respect of some goods means that the applicant’s application can proceed for Class 1 and for restricted specifications in Classes 17 and 19 as follows:-

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Class 17 Adhesive tapes.

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Class 19 Non-metallic building materials; windows and window frames; double glazing; posts and panels; timber; lintels, fencing and trellis, all being non-metallic; walling panels of wood; hardboard, plywood, hardwood panelling for use in building; doors made from moulded or pressed wood, chipboard or from wood fibres; non-metallic shower stalls; rainwater pipes, soil pipes, gutters, all made from plastics; flooring tiles, walling tiles, all made of ceramics or of plastic; non-metallic roofing sheeting; ruberoid mastics for use in building; swimming pools; conservatories; sheds; cement; but not including thermal insulating products or materials.

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In the event that this decision is not appealed the applicant has a period of one month from the end of the appeal period to file a Form TM21 to restrict its application as proposed above.

5 As the opponent has been essentially successful in these proceedings it is entitled to a contribution to its costs. I hereby order the applicant to pay to the opponent the sum of **£985**.

Dated this 27th day of April 1998

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N A HARKNESS
Assistant Registrar
For the Registrar

15 the Comptroller-General