

**TRADE MARKS ACT 1938 (AS AMENDED)
AND TRADE MARKS ACT 1994**

**IN THE MATTER OF APPLICATION NUMBER 1549451
IN THE NAME OF T.I.G.E.R. SERVICE LIMITED**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 42525 BY EXXON CORPORATION**

**TRADE MARKS ACT 1938 (AS AMENDED)
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**IN THE MATTER OF application number 1549451
in the name of T.I.G.E.R. Service Limited**

AND

**IN THE MATTER OF opposition thereto
under number 42525 by Exxon Corporation**

Background

On 2 October 1993, T.I.G.E.R Finance Limited (now T.I.G.E.R. Service Limited) filed a trade mark application to register a trade mark in Class 36 in respect of the following services:

Credit services; credit and debit card services; insurance, guarantee and indemnity services; deposit taking; money lending; pawnbroking; all included in Class 36.

The application, numbered 1549451 is for the following trade mark:



On 1 June 1995, Exxon Corporation filed notice of opposition to this application, in which they say that their United Kingdom subsidiaries have made extensive use of a variety of images of tigers, both as trade marks and as part of their corporate identity. This has primarily been in relation to motor fuel and lubricants, but also in relation to activities such as oil field exploration and development, petroleum refining, fuel and lubricant development, environmental issues and the production and sale of end products. They say that they have also used the image of a tiger to promote the use of a charge card. The grounds of opposition are in summary:

1. **Under Section 11** Because the opposed marks would be likely to deceive or cause confusion.
2. **Under Section 17** Because the applicant is not the bona fide proprietor of the trade mark and at the time of filing had no bona fide intention to use, and has not used the mark in relation to the services covered by the application.

The opponents ask that the Registrar exercise her discretion and refuse to register the mark and that an award of costs be made in their favour.

The applicants filed a Counterstatement in which they deny the grounds of opposition. They ask that the opposition be rejected and that they be awarded costs.

Both sides filed evidence in these proceedings. The matter fell to be heard on 11 December 2000, when the applicants were represented by Mr Broughton, Manager Director of T.I.G.E.R Services Limited, the opponents were represented by Mr Jeremy Pennant, of D Young & Co, their trade mark attorneys.

By the time this matter came to be determined, the Trade Marks Act 1938 had been repealed in accordance with Section 106(2) and Schedule 5 of the Trade Marks Act 1994. These proceedings having begun under the provisions of the 1938 Trade Marks Act must continue to be dealt with under that Act, in accordance with the transitional provisions set out in Paragraph 17 of Schedule 3 of the 1994 Act. Accordingly, all references in this decision are references to the 1938 Trade Marks Act.

Opponents' evidence in Chief

The opponents' evidence in chief consists of a Statutory Declaration dated 20 September 1996, and comes from Peta Lesley Finch, Assistant Company Secretary of Esso Petroleum Company Limited, who confirms that she has been with the company for 37 years and has full access to the relevant documents from which, and her personal knowledge, the facts set out in the Declaration have been derived.

Ms Finch says that her company has offered charge cards, credit and other financial services since as early as 1983, and that in February 1992 they launched a nationwide service called Agencylink using their electronic point of sale systems to enable customers to pay for fuel using free credit and debit cards. She says that the tiger was used as a trade mark and in the marketing of this service. Ms Finch says that at the end of 1991 prior to the launch of Agencylink, her company produced a brochure, details of which and other items of printed matter are shown at exhibit PLF1 and PLF2, which includes:

- S an undated sheet headed "link into a nationwide network" and the image of a tigers head and side-on view of a tiger running,
- S brochures, stationery and promotional material relating to Agencylink and DART, some showing the side-on view of a tiger, on a charge card or on the foot of the

pages. The cover of a brochure is endorsed "end 91 for launch Feb 92".

5 S directory of Esso service stations, the cover endorsed 1994/1995. Cover shows a side-on view of a tiger, on a charge card and on the foot of the front and back pages, and an ESSO charge card..

 S A sheet giving details of credit and debit cards which may be accepted at Esso service stations, including the Agencylink and DART cards.

10 Ms Finch sets out the advertising costs for the Agencylink service for the years 1992 to 1996, which for 1992 and 1993 amounts to £64,198 and £134,223 respectively, although given that the relevant date is 2 October 1993 it is not possible to say what, if any of the expenditure for 1993 can be taken into account.

15 Ms Finch goes on to refer to exhibit PLF3 which consists of various items of printed matter, one depicting cards which may/may not be accepted at Esso service stations (including the Agencylink and ESSO charge cards referred to earlier), promotional leaflets endorsed 1994 for the said charge card, and a pack of stationery relating to ESSO charge cards endorsed as dating from 1991/1994. Most bear the image of a tiger or a tiger cub. Ms Finch says that the Agencylink card (which bears the representation of a tiger) is accepted at every service station and concludes that this demonstrates use throughout the United Kingdom.

25 Ms Finch says that her company first used the image of a tiger to promote its products in 1953. She refers to the slogan "put a tiger in your tank" which was first used in 1962, and to an advertising campaign associated with this slogan which took place in the United States in 1964. She introduces exhibit PLF4 which consists of two advertisement said to date from 1953 and which depict a tiger side and front on. Underneath the advertisement is the statement "Two examples of the "ferocious" Tiger as used by Esso in 1953 - 12 years before the appearance of our "whimsical" hero in the UK", which seems to place their first use of the image of a tiger in the United Kingdom as being 1965. She refers to exhibit PLF5 which consists of a photograph of a petrol pump with the head of a tiger on the top, the legs and lower body beneath the dials. In the background it can be seen that the window of the service station is decorated with the same tiger head beneath the slogan "put a tiger in your tank".

35 Ms Finch continues saying that during 1965 more that 30,000 European Esso service stations featured the tiger on their forecourts in a range of promotional goods such as paper hats, toys, matches, kites, face masks, piggy banks, stickers, badges and tiger tails. She refers to market research which showed that within months of this promotion, 70% of all European motorists identified the tiger with Esso, this figure rising to 80% the following year. Ms Finch says that the phrase "put a tiger in your tank" was mentioned in the House of Commons in 1965.

45 Ms Finch refers to the launch of the tiger campaign in the United Kingdom, which took place on 11 April 1965, saying that by the end of that year some 9.880,000 promotional items had been distributed to the public, exhibit PLF6 containing examples of the advertisement placed as part of the campaign. The exhibit consists of a photograph of the pits in a motor racing circuit with mechanics working on a racing car, with text underneath in the form of news headline "they put a tiger in Jimmy Clarke's tank!". The advertisement also bears the slogan "put a tiger in your

tank” placed above the image of a TIGER’S head. Ms Finch next goes to exhibit PLF7 which consists of three cartoons depicting either a tiger’s head and/or the phrase “put a tiger in your tank” which at least in one case is a clear reference to Esso. Ms Finch says that these appeared in the Daily Mail in May 1965 and in the Evening Standard.

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Ms Finch goes on to quote from a report by an advertising agency which she says reported “...as a communications vehicle - on awareness and recognition, on association with Esso brand, on interest and penetration - the Tiger continues as far and away the most effect campaign in its field”. She concludes his Declaration saying that since the 1960's her company has made continuous use of the device of a tiger in relation to all goods and services which they offer, and gives her views on the association the public will make and the consequences should another party use such a trade mark.

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Applicants’ evidence

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This consists of a Statutory Declaration dated 21 May 1997, and comes from Alan Frederick Broughton, the managing Director of T.I.G.E.R Finance Limited (now T.I.G.E.R. Services Limited), the applicants.

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Mr Broughton explains that his company was established in 1993 and principally carries on the business of providing credit for customers of electrical retail businesses. He says that he has been employed in electrical retailing since 1968, and lists the businesses with which he has been involved. Mr Broughton refers to an association formed in 1980 called The Independent Group of Electrical Retailers, which they used in the abbreviated form T.I.G.E.R. in advertisements and shop displays, the operation of the co-operative being undertaken by Combined Independents (Holdings) Limited, and to exhibit AFB1 which consists of an advertisement from the November 17 edition of the Daily Mirror. The advertisement is headed “When it comes to SERVIS value TIGER doesn’t pussyfoot around” placed above the image of a TIGER’S head, and promotes a range of “white goods” available from a group of electrical retailers described as TIGER stores/dealers. The advertisement explains that TIGER is an abbreviation, as described above.

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Mr Broughton next goes to exhibit AFB2 which consists of reports headed TIGER REPORT, for March 1985, February 1987, July 1987 and September 1987 which detail various local and national promotional and advertising activities carried out under the TIGER name. Exhibit AFB3 is a Report of the Directors and financial statement of Combined Independents (Holdings) Limited, showing, inter alia, a turnover of £1,805,140 and £1,990,856, and an expenditure on advertising and sales promotion of £216,065 and £482,769, for the years 1986 and 1987 respectively. Mr Broughton says that the advertising and promotion figures do not include contributions made locally.

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He refers to exhibit AFB4 which consists of an order form for TIGER sweaters, which he says were worn by shop staff although does not give any other details.

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Mr Broughton next mentions a credit charge card, TIGERCARD which was provided to TIGER customers through an arrangement with Lombard Tricity Finance Limited. He refers to exhibit AFB5 which consists of a memo dated 22 July 2000 relating to a mail shot to 10,000 TIGERCARD and ARISTOCARD cardholders, and to a further mailing to be done in November.

Exhibit AFB6 consists of a brochure dated 21 September 1987, from which TIGER dealers could order goods. The brochure refers to the availability of credit facilities, inter alia, via a TIGERCARD, showing this to bear the name T.I.G.E.R and the image of a tiger's head. Mr Broughton notes that this exhibit pre-dates the launch of the opponents' agency card in February 1992.

Mr Broughton next refers to various promotional items which are shown in exhibit AFB7 which consists of printed matter relating to a promotion run by Lombard Tricity Finance Limited to encourage use of, inter alia, TIGERCARD. Each page bears a representation of a TIGERCARD as described above, the first page referring to the promotion as running from 1 May to 31 August 1989. Exhibit AFB8 consists of the 1991-92 directory of members of the TIGER association, the back page showing details of the availability of credit under, inter alia, TIGERCARD.

Mr Broughton goes on to refer to exhibit AFB9 which gives details of the formation of a European co-operative, EURONICS in 1991, and which includes a reference to T.I.G.E.R using the name and the image of a TIGER'S head. He says that so as not to lose the image a company called T.I.G.E.R Finance Limited was formed to provide finance to members of the TIGER retailers. Mr Broughton says that prior to the formation of the company a search was carried out at Companies House, the results of which are shown as exhibit AFB10. He next recounts a contact with a collector of tiger memorabilia and illustrations, Details of the collection are shown as exhibit AFB11 and show numerous examples of the image of a tiger being used on business stationery.

Mr Broughton refers to a search of the United Kingdom trade marks register, noting that the opponents do not have a registration for the image of a tiger in Class 36. He says that his company stationery, examples of which are shown as exhibit AFB12, clearly shows that they provide finance for members of the T.I.G.E.R association. Mr Broughton next refers to exhibit AFB13 which consists of the results of a search of the MARQUESA database on 19 May 1997 which he says shows trade marks registered for representations of tigers in Class 36, all owned by different proprietors. All but one of the representations is clearly not of a tiger.

Mr Broughton next refers to exhibit AFB14 which gives details of the turnover for T.I.G.E.R. Services Limited attributable to the use of the TIGER head device and word TIGER in the period 29 July 1993 through to 31 March 1997, of which all but around two months is later than the relevant date.

Mr Broughton points out that the style of TIGER image used by the opponents on their Agencylink card is a running tiger, referring to literature he was sent relating to the Esso card (exhibit AFB15).

Mr Broughton gives outline details of communications between the respective parties which included tentative proposals to settle the proceedings by limiting the specification, the applicants suggesting an exclusion in respect of the petroleum industry and products (exhibit AFB16), the opponents indicating that they were thinking along the lines of an exclusion in respect of vehicles. He refers to exhibit AFB17 which consists of a request for an extension of time, noting that in the reasons the opponent's state that there is scope for reaching an amicable settlement.

Following the admittance of an amended Statement of Grounds, Mr Broughton filed a second Statutory Declaration. This is dated 28 January 1999 and answers the allegations which relate to the ground under Section 17.

5 Mr Broughton says that he believes his company has the necessary bona fides to apply for registration of the trade mark, and refers to a Statutory Declaration to be filed by Michael Gardiner, who is credited with the creation of the trade mark applied for. Mr Gardiner did not file a Declaration.

10 Mr Broughton says that the evidence shows use of the trade mark applied for from a date earlier than the relevant date, and that the advertising undertaken by Combined Independent (Holdings) Limited was on behalf of member companies, his company being a member, the use of the TIGER logo mark being with the permission of Mr Gardiner.

15 **Opponents' evidence in reply**

This consists of a Statutory Declaration 15 June 1999, and comes from Jeremy Bankes Pennant, a registered trade mark attorney and partner in the firm of D Young & Co, the opponents' representatives in these proceedings.

20 Mr Pennant refers to exhibit JBP1 and JBP2, which consist of a report of the Directors for Combined Independent (Holdings) Limited for the years ending 31 March 1993 and 31 March 1994, and the Annual Return for the period ending 30 April 1999. He notes that Mr A W Broughton is shown as having resigned as a Director on 8 September 1992, that Tiger Finance Limited does not appear on the list of past and present members for the return of allotment of shares.

25 Mr Pennant highlights that exhibit JBP3 shows that the Independent Group of Electrical Retailers Limited was incorporated on 19 June 1995. He says that he understands that an earlier company had been formed in 1979 under this name, but changed its name to Select Electrical Retailers Limited in 1990, that company currently being dormant. Mr Pennant refers to exhibit JBP4 which he says endorses his conclusions that there does not appear to have been a company called The Independent Group of Electrical Retailers Limited during 1992 and 1993, the period in which Tiger Finance Limited was incorporated and the application in suit was filed

35 That concludes my review of the evidence insofar as it is relevant to these proceedings.

Decision

40 I will turn first to the grounds founded under Section 11 of the Act, which reads as follows:-

45 **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.

The established tests for objections under Section 11 is set down in Smith Hayden and Company Ltd's application (Volume 1946 63 RPC 101) later adapted by Lord Upjohn in the BALI trade mark case 1969 RPC 496. Adapted to the matter in hand, the test may be expressed as follows:-

5 Having regard to the opponents' user of the mark TIGER and/or the device of a TIGER, is the tribunal satisfied that the mark applied for, T.I.G.E.R and the device of the head of a TIGER, if used in a normal and fair manner in connection with any services covered by the registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

10 The test requires me to consider the user established by the respective parties at the relevant date, that is, the date of the application for registration of the trade mark under opposition, which in this case is 2 October 1993.

15 Looking first at the respective marks. In Pianotist companies application ([VOL 1906] 23 RPC at page 777) Parker J set out criteria for a comparison of trade marks which reads as follows:-

20 "You must take the two marks. You must judge of them both by their look and by their sound. You must consider the goods and services to which they are to be applied. You must consider the nature and kind of customer who would be likely to buy those goods or services. 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 or services 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 or services -then you may refuse the registration, or rather you must refuse the registration in that case."

30 The applicants are seeking to register a reasonably true to life drawing of a TIGER'S head, placed above the word TIGER, one serving to emphasise the other. Although the letters are separated by full stops this is a very well known word and would still be seen as and referred to as the word rather than letters. The opponents in turn have used various images of part or all of a TIGER, and less commonly, the word TIGER albeit usually in association with the image of a TIGER. It is likely that all of the respective marks will be seen as and referred to as TIGER marks, and to that extent they must be said to sound the same. Some of the images used by the opponents, such as the side-on view of the full body of an adult TIGER and a TIGER cub, clearly do not look the same as the image in the application. However, the opponents also use the image of the head of a TIGER which I would say bears a close resemblance to the image in the mark applied for, although given that both are close to true to life representations this is not surprising. Setting aside the question of the word, the only obvious difference between the respective TIGER'S head images is that the application is for a line drawing whereas the opponents use something akin to a photograph. This is, however, a distinction which would be lost should both be represented in black and white, such as in newsprint, or if the applicants were to show theirs in the usual TIGER colours, which they would notionally be entitled to do if the mark were to be registered.

The composite test set out in Pianotist requires not only a consideration of the similarity of the marks, but also all the surrounding circumstances, including what is notionally likely to happen if each is used in a normal way as a trade mark for the services of the respective owners of the marks.

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The opponents say that they first used the word and the device of a TIGER in the United Kingdom in 1965. The evidence shows this to be case as part of what can only be considered a substantial campaign to promote sales of their fuel and lubricants sold through their network of service stations. In my view the campaign and the extent of their subsequent use of various images of a TIGER has clearly established an association between the image of a TIGER and their motor fuels and lubricants business.

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However, the application does not cover fuels and lubricants, nor the operation of filling or service stations, but rather a range of financial services some of which the opponents claim to have offered from 1983, although they do not say whether this involved use of TIGER (be it as a word or device) or whether this was in the United Kingdom. The evidence does show that at the end of 1991 they were making preparations to launch a credit card in the United Kingdom under the name AGENCYLINK with which customers would be able to pay for fuel purchases. The card is said to have been launched in February 1992 and as part of the promotion the opponents used several images of a TIGER, ranging from what I would regard as true to life images of a tiger cub, the head of tiger and most commonly, the side-on view of an adult tiger running. The brochure exhibited in the evidence show examples of an Agencylink card which, inter alia, bears the side-on view of a TIGER in conjunction with the words ESSO and ESSO CARD UK. Beyond an indication that the card may have been able to be used for non-fuel purchases in some ESSO forecourt shops, there is nothing in the evidence to establish what the take-up was or extent of its use.

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The applicants say that the word TIGER is an acronym for a cooperative marketing group, The Independent Group of Electrical Retailers, formed in 1980 and operated by a company known as Combined Independent (Holdings) Limited. The evidence shows that the mark applied for was being used by “an association of over 400 local dealers”, not as the name under which they traded, but as an indication that they belonged to the association and could pass on the benefits of this membership to customers. Amongst the evidence of use of the mark is an advertisement placed in a newspaper in November 1981 which show the mark applied for being used in respect of washing machines and spin dryers. Catalogues from which members could order stock show the association to be involved in domestic electrical apparatus, such as fridges, freezers, video recorders, audio systems, microwaves, televisions, vacuum cleaners, cookers, dishwashers, irons, kettles, coffee makers, food mixers, toasters, shavers, hair dryers and curling tongs. Other exhibits show that from at least as early as July 1987, the T.I.G.E.R association were offering a charge card service under the name TIGERCARD by which customers of members could purchase goods, and I consider it reasonable to infer that this would be in respect of the domestic electrical goods mentioned earlier.

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Section 1 of the 1984 Act defines a service mark as “a mark.... used or proposed to be used in relation to services for the purpose of indicating, or so as to indicate, that a particular person is connected, in the course of business, with the provision of those services...”. There is no doubt that the applicants’ name was used in association with TIGER and the TIGER’S head logo, but

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quite clearly only to indicate that they were part of an association of electrical retailers, each trading under their own name. Although the TIGERCARD may have been available to the applicants' customers and promoted at their retail outlet, there is nothing to connect the card with the applicants; it is not a store card bearing the traders name. The applicants say that they have the consent to use the T.I.G.E.R logo mark but there is nothing in the evidence which shows this to be the case. I do not, therefore, see how I can conclude that the use over the years will lead to the public to make the connection between the mark applied for and the applicants or that the applicants are in a position to take advantage of the use the T.I.G.E.R association has made of the mark, but this is not the end of the matter.

Whether or not the applicants can benefit from the use made by the association, the test above requires me to decide whether use of the mark in relation to the services applied for, would, because of the use the opponents have made of the mark, lead to deception and confusion amongst a substantial number of persons.

At the relevant date the opponents had been using the image of a TIGER, mostly a side-on view but also occasionally a TIGERS head for upwards of 18 months in connection with a charge card. Although they use a TIGER in the promotion of the card and on the card itself, there is no mention of the word TIGER, the card being known as AGENCYLINK and is promoted in conjunction with the ESSO corporate name.

The opponents are essentially a manufacturer and retailer of fuels and lubricants and although they have shops on their filling station forecourts, in my experience such retail outlets do not sell household electrical items, at least not of the kind sold by the T.I.G.E.R association and there is nothing in the evidence to contradict this. Both provide a charge card but in the case of the opponents this appears to be exclusively for use at filling stations, whereas the T.I.G.E.R association card appears to be exclusively for use in members shops. That said, the application covers a range of financial services which are not limited in any way, and notionally would include the same services as those provided by the opponents under their AGENCYLINK card, that is, a charge card that can be used in the purchase of fuels, lubricants and sundry items from filling station shops.

Setting aside the fact that the use of the mark applied for has not been exclusively by the applicants, that the T.I.G.E.R association and the opponents have used their marks concurrently for some considerable time without any apparent instances of confusion cannot be ignored, but I accept should be treated with some caution. In the Harrods case (21 RPC (1996) Millett LJ said:

Evidence of actual confusion is always relevant and may be decisive. Absence of such evidence may often be readily explained and is rarely decisive. Its weight is a matter for the judge. In the present case the judge found it "compelling". I would not have so described it myself; but it is not without significance. Had there really been confusion in the public mind, I would have expected some evidence of it to have manifested itself by the time of the trial.

That the respective marks have been in use in different areas may well account for the lack of any apparent confusion. Millett LJ went on to look at the absence of any common field of activity saying:

5 This is of particular significance in the present case. The judge correctly directed himself
as to the law; he cannot be faulted in the way he applied it. It is not merely that the
plaintiffs have never run a school and have no established reputation for doing so; or even
10 the nature of the parties' respective businesses are as dissimilar as can be imagined. It is
rather that the commercial reputation for excellence as a retailer which the plaintiffs enjoy
would be regarded by the public as having no bearing upon their ability to run a school.
Customers of the plaintiffs would be surprised to learn that Harrods had ventured into that
commercial theatre; they would, I think, be incredulous if they were told that Harrods had
opened a preparatory school.

15 The last two features must be taken together, for they reinforce each other. Nothing in
the judge's decision compels the conclusion that the defendants would have been
permitted to call their school "Harrods" or "Harrods School"; or that an enterprising
trader would be permitted to set up a retail shop under the name "The Harroddian". The
question is whether there is a real risk that members of the public will be deceived into
20 thinking that a school called "The Harroddian" School" (not written in distinctive Harrods'
script or livery) is owned or managed by Harrods or under Harrods' supervision or
control.

The opponents have undoubtedly built a substantial reputation in the image of a TIGER used in
25 connection with the retailing of fuels and lubricants, and probably, though to a much lesser extent,
other products sold through their garage forecourt shops although there is scant evidence of this.
They have provided financial services in the form of a charge card for at best upwards of eighteen
months prior to the relevant date, which is a short period of time to establish a reputation even
on good use, and in this case there is little or no evidence of use by which to gauge the likely
30 extent of any reputation the opponents may have built in respect of such services. They may well
have used the image of a TIGER in relation to financial services, but this has primarily been the
side-on view of the TIGER running, whereas the applicants are seeking to register the image of
a TIGERS head. The opponents almost exclusively use the image in conjunction with
AGENCYLINK, ESSO and/or ESSO CARD. The applicants' mark includes the word T.I.G.E.R.,
35 which I accept serves to emphasise the image, but also in my view moves the mark further away.

Taking all the above into account, it seems to me that the parties trade marks are different and that
the services provided under them are offered in different fields. Thus, from the opponents' user
I am not satisfied that the mark applied for, if used in a normal and fair manner in connection with
40 any services covered by the application will be likely to cause deception and confusion amongst
a substantial number of persons, and consequently, the ground founded under Section 11 fails.

The position with regard to the ground under Section 17 is rather similar. Although the applicants
cannot take advantage of the use made of the mark applied for to establish a claim to be the
45 proprietor of services covered by the application, neither in my view can the opponents say that
they have used a similar mark to an extent where they can claim to be the true proprietor of that
mark when used in relation to financial services. With respect to the assertion that the applicants

do not have a bona fide intention to use the mark in relation to all of the services covered by the application, I would agree that based solely on their past activities history would suggest this to be the case. However, the Act requires only that an applicant have an intention to use the mark, and in the absence of some fact or evidence to disprove this I do not see how I can say that they have do not have a bona fide intention to use the mark in respect of all of the services simply because they may not have done so in the past. The opposition based on Section 17 fails accordingly.

The opposition having failed on all grounds the applicants are entitled to a contribution towards their costs. Costs in proceedings before the Registrar have been set down in a scale which are not intended to meet the full costs incurred, although the Hearing Officer has the discretion to depart from the scale where there are exceptional circumstances. Mr Broughton made representations arguing that the facts of this case were such as to justify an award of costs more in line with those actually incurred in the prosecution of these proceedings. In this case I see nothing which would justify a departure from the usual custom of awarding costs from a scale. I order the opponents to pay to the applicants the sum of £635, the costs 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 3 day of April 2001

**Mike Foley
for the Registrar
The Comptroller General**