

O-111-10

TRADE MARKS ACT 1994

IN THE MATTER OF AN APPLICATION UNDER NO 2473421  
BY EURO CAR PARTS LIMITED

AND

OPPOSITION THERETO UNDER NO 97587  
BY ENERGY INTERNATIONAL SYSTEMS LIMITED

## TRADE MARKS ACT 1994

IN THE MATTER OF an application  
under no. 2473421 by  
Euro Car Parts Limited and opposition  
thereto under no. 97587 by  
Energy International Systems Limited

### **Background**

1. On 27 November 2007 (“the relevant date”), Euro Car Parts Limited (“ECP”) filed an application for registration of the following mark:



2. Following publication in the *Trade Marks Journal*, the application was subject to an amendment in respect of the goods for which registration is sought. They now read:

#### Class 2

Ultra violet detection dyes for use in automotive air conditioning systems

#### Class 4

Lubricating oils for automotive air conditioning systems

#### Class 7

Parts and fittings for engines (other than for land vehicles); radiators; radiator caps; cooling radiators for motors; electric fans for engines all in relation to automotive air conditioning systems

#### Class 8

Hand tools and hand-tool sets for automotive air conditioning; tool for removing vehicle service valves

#### Class 9

Thermostats; temperature switches, all for use in automotive air conditioning systems

#### Class 11

Filters for air conditioning, refrigerant condensers and gas condensers for automotive air conditioning systems, automotive air conditioning flushing equipment

Class 12  
Fan couplings for vehicles

Class 17  
O-rings

3. Notice of Opposition to the application was filed by Energy International Systems Limited (“EIS”) and is founded on grounds under sections 5(2)(b), 5(3) and 5(4)(a) of the Act. In support of its opposition under sections 5(2) and (3), EIS relies on its earlier registration no 2454596. In support of its opposition under section 5(4), it relies on use of the mark EIS since 2006 in relation to “Thermal technology products and processes including thermal technologies used in the generation of energy which supplies heating, cooling, electricity and other forms of output; solar thermal cooling systems; metal clad vacuum super insulation panels; rapid access thermal storage devices and processes for producing coated foil”.

4. ECP filed a counterstatement denying the claims made and putting EIS to proof of its claim under section 5(3) of the Act.

5. Both parties filed evidence with ECP’s evidence being accompanied by written submissions. Neither party requested to be heard but instead both indicated they were content for a decision to be made from the papers. I therefore give this decision on the basis of all the material before me.

### **EIS’s evidence**

6. This takes the form of a witness statement, dated 8 March 2009, from Fred Best who is EIS’s Managing Director. Mr Best states that EIS was incorporated as a private limited company on 20 May 1996 and, at E1, exhibits an extract from the Companies House register in support. Mr Best goes on to explain that EIS is part of Energy International Systems Group Limited. This is a holding company for a group of ethical companies which was incorporated on 21 October 2003 (see E2). Their aims are to improve the environment through the application of green and renewable technologies.

7. Mr Best states that EIS has traded commercially since its incorporation and in support, at E3, exhibits six invoices. These date from the earliest of 30 June 1999 to the latest of 17 September 2008. Whilst these invoices show EIS’ company name, none of them show the earlier mark relied on but simply show the letters EIS within a sun device. Mr Best explains that invoices issued prior to 1999 have been lost during a move of premises.

8. Mr Best states that since its incorporation, EIS has secured almost £2 million of funding to support development of its technologies, two of which were European Craft grants. At E4 and E5, Mr Best exhibits documents intended to show EIS’s involvement in these projects. The first, headed “Joule Craft Project-Contact No-Joe 3 CT98-7020” bears a date of 30/07/99, the second, headed “Craft Project-Contact No-CRAF-1999-70921 (SACPEH)” bears a date of 23/06/04 though both also bear a reference to these proceedings which suggest they may have been printed at a later date. On both documents EIS is shown amongst a list of other firms though no

explanation is given of the source of these documents or the relevance of the information they contain. Mr Best also states that its funding success included the award of a DTI Smart Award in 2002.

9. Mr Best states that since its incorporation, EIS has become recognised as an “expert in the development of heat transfer applications and efficient generation of electricity”. At E7 he exhibits an article which he says was published in the Autumn 2008 edition (and therefore after the relevant date) of The Journal for Science, Engineering and Technology in Wales” and which relates to developments in solar energy.

10. Mr Best’s witness statement also contains submissions which I do not intend to summarise but do take into account and will refer to as necessary in this decision.

### **ECP’s evidence**

11. This consists of two witness statements. The first is from Sukhbir Singh Kapoor who is the supply chain and marketing director of ECP. Mr Kapoor states that he is the officer responsible for purchasing, marketing and brand development at ECP, a company he joined in 2007.

12. Mr Kapoor states that ECP sells parts for vehicles, replacement parts for vehicles and consumables and equipment for vehicles and vehicle repair. It sells parts, equipment and consumables under its own EIS mark in addition to those of others. Mr Kapoor states that ECP has used its mark since the third quarter of 2005 in relation to parts and equipment for replacement, repair and servicing of automotive air-conditioning systems and, at SSK1, exhibits a eurocarparts brochure. The brochure is dated 2009 and therefore post-dates the relevant date in these proceedings. At SSK2, Mr Kapoor exhibits a copy of his company’s “star offers” brochure. As far as I can see the brochure is not dated however I note that a company vehicle pictures on page 2 bears a registration plate which would suggest it dates from no earlier than 2008.

13. Mr Kapoor states that ECP’s goods are sold through its stores, by mail order and through its website. Stores are said to be located in many (named) towns and cities throughout all areas of the UK. Mr Kapoor states that ECP’s customers are made up, in small part, of individual vehicle owners but most sales are made to mechanics and garages due to the specialised nature of the repair of automotive air-conditioning systems.

14. Mr Kapoor exhibits two further documents (at SSK3 and 4). The first of these is said to be a list of part numbers along with a description of the corresponding branded product. The second is said to be a page of data taken from company records relating to sales of some of those parts and showing customer identities. This latter exhibit shows the various products were sold for between £2.30 and £157 mostly to those in the car repair industry.

15. The second witness statement is from Dave Garratt, who, for five years, has been Chief Executive of the Garage Equipment Association Limited. Mr Garrett states that his company has an aim of acting as a single focal point for its members

and represents their interests within the automotive industry and in liaison with other professional bodies and government organisations. Its members are all said to manufacture, service or distribute garage equipment and are subject to conditions of membership to observe a code of practice aimed at promoting high standards and best industry practice. Companies have to have been trading successfully for a year before they are eligible to join as a member. Mr Garratt states that ECP became a member some two years ago (his witness statement is dated 15 July 2009) after expanding its business from motor vehicle parts, to one that also supplies garage equipment.

16. Mr Garratt states that he has always worked in the motor and garage equipment industry and that prior to taking up his current post he previously worked for Volkswagen and Volvo in their training departments and for Crypton who manufacture garage equipment. He states that during his time in the industry he has never come across solar energy panels in connection with his profession nor has he encountered any garage equipment that would use such devices. He indicates that he has not heard of, nor has he come into contact with, EIS during the course of his professional life.

17. That completes my review of the evidence to the extent I consider it necessary.

## **The law**

18. I will deal first with the ground of opposition brought under the provisions of section 5(2)(b) of the Act which states:

5.- (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.

6.-(1) In this Act an "earlier trade mark" means -

- (a) a registered trade mark, international trade mark (UK) or Community trade mark which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,
- (b) a Community trade mark which has a valid claim to seniority from an earlier registered trade mark or international trade mark (UK), or

- (c) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was entitled to protection under the Paris Convention or the WTO agreement as a well known trade mark.

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.

(3) A trade mark within subsection (1)(a) or (b) whose registration expires shall continue to be taken into account in determining the registrability of a later mark for a period of one year after the expiry unless the registrar is satisfied that there was no *bona fide* use of the mark during the two years immediately preceding the expiry.

6A (1) This section applies where-

- (a) an application for registration of a trade mark has been published,
- (b) there is an earlier trade mark in relation to which the conditions set out in section 5(1), (2) or (3) obtain, and
- (c) the registration procedure for the earlier trade mark was completed before the start of the period of five years ending with the date of publication.

(2) In opposition proceedings, the registrar shall not refuse to register the trade mark by reason of the earlier trade mark unless the use conditions are met.

(3) The use conditions are met if-

- (a) within the period of five years ending with the date of publication of the application the earlier trade mark has been put to genuine use in the United Kingdom by the proprietor or with his consent in relation to the goods or services for which it is registered, or
- (b) the earlier trade mark has not been so used, but there are proper reasons for non-use.

(4) For these purposes-

- (a) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and

(b) use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(5) .....

(6) Where an earlier trade mark satisfies the use conditions in respect of some only of the goods or services for which it is registered, it shall be treated for the purposes of this section as if it were registered only in respect of those goods or services.

(7)....”

19. The mark relied on by EIS is an earlier mark by virtue of section 6 of the Act. It has a registration date of 18 January 2008 and, given the applications were published just three months later on 18 April 2008, it is not subject to the proof of use requirements of section 6A of the Act.


20. In determining the question under Section 5(2)(b), I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel v Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] F.S.R 77 and *Marca Mode CV v Adidas AG* [2000] E.T.M.R.723. It is clear from these cases that:

- (a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors: *Sabel BV v Puma AG*, paragraph 22;
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question: *Sabel BV v Puma AG*, paragraph 23, who is deemed to be reasonably well informed and reasonably circumspect and observant –but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen B. V.* paragraph 27;
- (c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details: *Sabel BV v Puma AG*, paragraph 23;
- (d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*, paragraph 23;
- (e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki v Metro-Goldwyn-Mayer Inc*, paragraph 17;

- (f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma Ag*, paragraph 24;
- (g) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*, paragraph 26;
- (h) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG*, paragraph 41;
- (i) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, paragraph 29.

**Comparison of marks**

21. For ease of reference, I set out the respective marks below:

ECP's mark	EIS's mark
	<p>EIS ThermoTech</p>

22. When assessing the similarity of the marks, I must do so with regard to their visual, aural and conceptual similarities bearing in mind their dominant and distinctive components (*Sabel BV v Puma AG*, para 23).

23. The mark applied for consists of a number of elements. There is a snowflake device placed above the “I” of the letters EIS, with these letters being above the word GERMANY. The letters EIS and word Germany are in upper case and each appear on a separate black, quadrilateral background with the former being larger in size than the latter.

24. In his witness statement Mr Best, on behalf of EIS, refers to some of these elements and submits:

“The “GERMANY” text merely serves as a geographical indication and the snowflake graphic is descriptive of cooling and refrigeration, which is a major feature of many of the goods listed in the opposed application for registration. Thus, the “EIS” element is the main distinguishing element of the mark being opposed.



The “EIS” text is also the dominant element within the device in view of its central location within the device and the size of the “EIS” lettering, which is three and a half times bigger than the “GERMANY” text, and more than one and a half times bigger than the snowflake symbol.

Thus, the “EIS” element of the mark being opposed is both the main distinctive element as well as the dominant element of the mark, which is identical to the acronym EIS by which Energy International Systems Ltd is known. It is also identical to the “EIS” element of the Opponent’s registered mark “EIS Thermotech”.

25. Whilst the letters EIS may well be the acronym by which Mr Best’s company is known, this is not something that would be obvious without education on this point and there is nothing within the mark that would indicate the meaning of such an acronym. But regardless of whether or not these letters are used as an acronym, the fact remains that the same three letters appear in both marks. Although the mark applied for consists of a number of elements, none of which would be overlooked, the relative size and position of the letters EIS makes this the dominant element within the mark. This same element is the first element of the earlier mark. To the extent that both marks contain the letters EIS there is a degree of visual similarity between the respective marks. But the respective marks have significant visual differences due to the inclusion of the snowflake device and word GERMANY in the mark applied for and the words ThermoTech which appear in the earlier mark. Whilst it is well established that the first element of a mark may be of greater prominence due to its position, it must be remembered that I also have to take into account the relative distinctiveness of the various elements with regard to the marks as wholes.

26. Turning to the aural comparison, I do not consider that those who come across the applied for mark will attempt to articulate the snowflake device but instead will refer to the mark by way of the letters and words appearing within it. ECP submits that the combination:

“of the mark EIS with a SNOWFLAKE device ... reinforces the pronunciation of the mark EIS as ICE.”

27. Whilst I accept that there may be some people who will pronounce the letters EIS as ICE, particularly those with a knowledge of the German language, I am far from convinced, absent evidence, that the average consumer will do so. The letters EIS do not, as far as I am aware, form a word in the English language and this, coupled with the fact that the letters are presented in upper case leads me to the view that most people, on seeing the mark, will pronounce EIS as three separate letters. The same letters are the first element in the earlier mark and again, I am of the view that most people will pronounce them as three separate letters. Again, to the extent that the letters EIS appear in both marks there is a degree of aural similarity between them but there are also aural differences between them given the other words contained within each of the respective marks.

28. Given the word GERMANY appears in the mark applied for, those with a knowledge of the language of that country may recognise the letters EIS as meaning ICE, and this, coupled with the snowflake element may bring to mind something that

uses ice or something that cools. Given my finding that most people, on meeting the mark, will see EIS merely as three letters, I do not consider that for them, the mark will have the same immediate conceptual meaning, although the inclusion of the snowflake element may eventually lead to them towards it. As well as beginning with the letters EIS, which I have already found for most will be a meaningless grouping of non distinctive letters, the earlier mark contains the combining form Thermo with the abbreviation Tech which in my view would bring to mind thermal(i.e. heat related) technology. In my view, the word ThermoTech is the dominant and distinctive element of the earlier mark. To the extent that each of the respective marks brings to mind something to do with temperature there is a degree of conceptual convergence however there is also a marked degree of divergence given that coolness and heat suggest they are at opposite ends of the scale.

29. Taking all matters into account, I find the marks to be similar to a low degree.

**Similarity of goods**

30. For ease of reference I set out below the goods covered by each of the respective marks.

ECP's goods	EIS's goods
<p>Class 2 Ultra violet detection dyes for use in automotive air conditioning systems.</p> <p>Class 4 Lubricating oils for automotive air conditioning systems.</p> <p>Class 7 Parts and fittings for engines (other than for land vehicles); radiators; radiator caps; cooling radiators for motors; electric fans for engines all in relation to automotive air conditioning systems.</p> <p>Class 8 Hand tools and hand-tool sets for automotive air conditioning; tool for removing vehicle service valves.</p> <p>Class 9 Thermostats; temperature switches, all for use in automotive air conditioning systems.</p> <p>Class 11 Filters for air conditioning, refrigerant condensers and gas condensers for automotive air conditioning systems, automotive air conditioning flushing equipment.</p> <p>Class 12 Fan couplings for vehicles.</p> <p>Class 17 O-rings.</p>	<p>Class 7 Thermal technologies used in the generation of energy which supplies heating, cooling, electricity and other forms of output.</p> <p>Class 9 Thermal technologies used in the generation of energy which supplies heating, cooling, electricity and other forms of output.</p> <p>Class 11 Thermal technologies used in the generation of energy which supplies heating, cooling, electricity and other forms of output. Solar thermal cooling systems. Metal clad Vacuum Super Insulation. Rapid access Thermal Storage devices.</p>

31. The principles for determining the similarity of goods are well established and set out in the *Canon* case (supra) and *British Sugar Plc v James Robertson & Sons Ltd (Treat)* [1996] RPC 281. The criteria identified in the *Treat* case for assessing similarity were:

- (a) the respective uses of the respective goods;
- (b) the respective users of the respective goods;
- (c) the physical nature of the goods;
- (d) the respective trade channels through which the goods reach the market;
- (e) in the case of self-service consumer items, where in practice they are respectively found or likely to be found in supermarkets and in particular whether they are, or are likely to be found on the same or different shelves; and
- (f) the extent to which the respective goods are competitive, taking into account how the goods are classified in trade.

32. Aside from the specific “solar thermal cooling systems. Metal clad Vacuum Super Insulation and Rapid access Thermal Storage devices” specified in class 11, EIS’s registration covers “thermal technologies used in the generation of energy...” which is somewhat suggestive of the provision of a service. The term has, however, been registered in classes 7, 9 and 11 which are classes which cover goods. Whilst “thermal technologies” could be regarded as a somewhat vague term, it has been accepted for registration and I have to interpret it by reference to the normal meaning of the language. It seems to me that “thermal technologies used in the generation of energy...” means apparatus used in the production of energy in this case from renewable sources. I find support for this from Mr Best’s own evidence that:

- (a) his company is part of a group using “green and renewable technologies”
- (b) his company has received European grants to promote R&D into solar panels
- (c) invoices refer to work done in relation to solar panels as well as solar panel coatings (E3)
- (d) his company’s involvement in the development of solar energy (E7).

33. Bearing the factors set out at paragraph 31 above in mind, I do not consider ‘*Ultra violet detection dyes for use in automotive air conditioning systems*’, ‘*Lubricating oils for automotive air conditioning systems*’, ‘*electric fans for engines all in relation to automotive air conditioning systems*’, ‘*Hand tools and hand-tool sets for automotive air conditioning; tool for removing vehicle service valves*’, ‘*temperature switches, all for use in automotive air conditioning systems*’, ‘*Filters for air conditioning, refrigerant condensers and gas condensers for automotive air conditioning systems, automotive air conditioning flushing equipment*’ or ‘*Fan*

*couplings for vehicles*’ to be similar to any of the goods covered by the earlier mark. Both the users and uses will differ as will the trade channels. It may be that in some cases the physical nature of the goods may be similar (I simply do not know and there is no evidence on the point) but I do not consider that the respective parties’ goods are likely to reach the market through the same trade channels or be competitive with or complementary to each other in any way.

34. That leaves *‘Parts and fittings for engines (other than for land vehicles); radiators; radiator caps; cooling radiators for motors thermostats and O-rings* to be considered.

35. Taking each in turn, *Parts and fittings for engines (other than for land vehicles)* covers a range of goods but all are for use in an engine. Whilst an engine, by its very nature, generate energy, there is no evidence that an engine is used as a piece of “thermal technology”. Absent evidence, I do not consider these goods to be similar.

36. As regards *Radiators; radiator caps; cooling radiators for motors*, a radiator is something that radiates either to supply heat or to cool. A radiator cap is a part of a radiator. Registration of these goods is sought in class 7 of the International Classification of Goods and Services (“The Nice Classification”). That being the case, these are all items which may be used as part of a heating or cooling system used in engines or vehicles. As such, I do not consider them to be similar to any of the goods covered by the earlier mark. If I am wrong in this, then any similarity is low.

37. *Thermostats* are devices used as part of a cooling/heating system to control temperature. As applied for, these goods have not been limited in any way and could, therefore include thermostats for use in thermal technologies. These goods I find are identical to the goods in class 9 of the earlier mark.

38. *O-rings* are used in any number of applications which may include thermal technologies. These goods, as applied for, have not been limited in any way. Given that these goods are proper to class 17, I do not consider them to be identical to any of EIS’s goods in class 7, 9 or 11. However, as O-rings could form part of a thermal technology, I consider them to be similar, albeit to a low degree, to these goods.

### **The relevant consumer and the purchasing act**

39. The vast majority of the goods covered by ECP’s application are limited to those used in relation to automotive air conditioning systems in particular or to vehicles in general. These are relatively specialist items used in a variety of vehicles in the control of temperature and humidity. As to the remaining goods, I have noted that ‘thermostats’ and “O-rings” have not been limited in any way. In my view these are also goods which control temperature or create a seal within a piece of apparatus and, because of their technical application, are most likely to be fitted by specialists. Thus, all of the goods are such as are most likely to require specialist fitting, whether by e.g. a mechanic at a garage or by a more specialist fitter (such as a plumber or electrician in the case of a thermostat or O-ring) although I do not rule out that there may be some members of the public with the necessary skill or experience to self-fit. They are all goods which will be sold through specialist suppliers (whether face-to-

face, by phone or by mail order) with the purchaser taking a high degree of care to ensure that what he buys meets his particular needs and is compatible with his existing equipment. EIS's goods in classes 7 and 9 are all thermal technologies for use in the generation of energy. This term is also used to describe goods within class 11, which also contains more clearly specified goods. Each of EIS's goods is also a specialist one used to generate, or insulate against loss of, energy, is highly technical and likely to be installed by specialists and is bought with a great deal of care most likely following discussion or research particularly in view of its green and renewable slant.

### **Distinctiveness of the earlier mark and enhanced distinctiveness**

40. The earlier mark has at least a reasonable degree of inherent distinctiveness. Evidence of use has been filed. Whilst a few invoices, totalling just over £11k, have been included within this evidence, none of them show the earlier mark as registered but instead show the letters EIS within a sunburst device. Furthermore, the invoices refer to charges for "consultancy services" or unspecified "remedial work" and no details have been given of what these services may have involved. The earlier mark is not registered in respect of "services", it is registered in respect of goods. As far as I can make out, only one invoice relates to a product (the invoice at page 5 of E3 which covers the sale totalling £36.36 to a company in Sweden of 1sq m of "Solmax" which, exhibit E7 explains, is a "highly selective coating" used on a solar panel). Whilst EIS has been the subject of an article in a specialist publication (E7), this was published after the relevant date in these proceedings. (Somewhat curiously, the article states that "EIS has been developing advanced thermodynamic systems for over 30 years" but Mr Best's evidence is that the company has been in existence only since 1996). No evidence is provided which allows me to determine, for example, what turnover has been generated under the earlier mark in relation to the goods covered by the registration or the extent of any advertising which may have been made. In short, I am unable to find, on the basis of the evidence before me, that the distinctiveness of the mark has been enhanced through use or that there is any reputation or goodwill in the mark.

### **Likelihood of confusion**

41. In reaching a decision on whether there is a likelihood of confusion, I must make a global assessment based on all relevant factors. I have found the respective marks to be similar only to a low degree and, with the exception of *thermostats* and *O-rings*, I have found the goods to be dissimilar. Thus, for all goods with the exception of thermostats and O-rings, the opposition under section 5(2)(b) fails.

42. I have found *thermostats* as applied for in class 9 to be identical to the goods covered by the earlier mark in class 9 and I have found *O-rings* to be similar to each of the thermal technology goods of the earlier mark. At paragraph 36 I also found that if I am wrong in my finding that *radiators; radiator caps; cooling radiators for motors* are not similar to any of the goods covered by the earlier mark, they would be similar only to a low degree. In respect of all of these goods therefore, there is a possibility of confusion with the earlier mark. Section 5(2)(b), however, requires me to consider whether there is a "likelihood" of confusion not just whether there is a "possibility". On a global appreciation, whilst these particular goods may be identical

or similar to those covered by the earlier mark, the low degree of similarity between the marks does not persuade me that I should elevate that “possibility” to a “likelihood”. The opposition under section 5(2)(b) also fails in respect of these goods.

43. The opposition under section 5(2)(b) fails in its entirety.

**The objections under section 5(3) and 5(4)(a)**

44. There are two other grounds of opposition, under section 5(3) and section 5(4)(a) of the Act. In view of my comments in paragraph 40 above in relation to the evidence filed by EIS and its insufficiency in establishing any reputation or goodwill in the mark, it follows that I do not see how it can be in any better position under these grounds and I dismiss each of them.

**Costs**

45. The opposition has failed on all grounds and ECP is entitled to an award of costs in its favour. I take into account that the evidence file by both parties was relatively limited and that no hearing took place. I make an award on the following basis:

Preparing a statement (TM8) and considering the other side’s statement (TM7):	£300
Preparing evidence and considering and commenting on other side’s evidence:	£500
<b>Total:</b>	<b>£800</b>

46. I order Energy International Systems Limited to pay Euro Car Parts Limited the sum of £800 as a contribution towards its costs. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 09 day of April 2010

**Ann Corbett  
For the Registrar  
The Comptroller-General**