

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

**IN THE MATTER OF APPLICATION NO. 1509530  
BY HOLTON MACHINERY LIMITED  
TO REGISTER THE MARK  
HOLTON CONFORM IN CLASS 7**

**AND**

**IN THE MATTER OF OPPOSITION THERETO  
UNDER NO. 44717 BY BWE LIMITED**

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by Holton Machinery Limited  
to register the mark  
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**IN THE MATTER OF Opposition thereto  
under No. 44717 by BWE Limited**

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**DECISION**

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On 13 August 1992 Holton Machinery Limited of Poole, Dorset applied under Section 17 of the Act to register the mark HOLTON CONFORM for a specification of goods which reads:

“Machines and machine tools; all for use in continuous forming processes of metal and metal containing compositions; all included in Class 7”

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The application is numbered 1509530.

On 10 June 1996 BWE Limited of Ashford, Kent filed notice of opposition to this application. The grounds of objection are in summary:

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(i) under Section 11 by reason of the opponents’ use of and reputation in the mark CONFORM

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(ii) under Section 12 by reason of the opponents’ registration of the mark CONFORM (no. 1491498) in Class 7 for “machines for the continuous extrusion of materials” (Journal 6065/1347). The opponents note that the application in suit has been published under the honest concurrent use provisions of Section 12(2) but deny that the applicants’ use was other than as licensees of the United Kingdom Atomic Energy Authority (UKAEA), the previous proprietors of the mark

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(iii) under Section 17 in that the applicants cannot claim to be the true proprietors of the mark

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They also ask the Registrar to refuse the application in the exercise of his discretion.

The applicants filed a counterstatement containing an extensive and detailed rebuttal of the opponents' claims including a commentary on the history of the dispute. I will deal with this as part of the evidence summary. There is also much in the counterstatement which is in effect an attack on the circumstances surrounding the registration and use of the opponents' mark and the position in relation to licencing arrangements etc. I understand that the current applicants have separately filed an application for removal of registration no. 1491498. However, no request has been made to stay the proceedings before me pending determination of this other action. I also take the view that by virtue of Section 46 of the Act "the fact that a person is registered as proprietor of the trade mark shall be prima facie evidence of the validity of the original registration of the trade mark and of all subsequent assignments and transmissions thereof." Whilst it may, therefore, be necessary to touch on claims made by the applicants in relation to the opponents' mark I do not think I should be drawn into consideration of issues surrounding the validity of the registration that underpins this opposition. That is a matter which will need to be decided on the basis of whatever evidence is filed in the separate proceedings between the parties.

Both sides have asked for an award of costs. In fact I note that the applicants ask for costs and damages on an indemnity basis reflecting their belief that the opposition is vexatious. Both sides filed evidence but neither party has requested a hearing. Acting on behalf of the Registrar and after a careful study of the papers I give this decision.

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

#### Opponents' evidence

The opponents filed a Statutory Declaration dated 25 March 1997 by Dan Hawkes, the Managing Director of BWE Ltd. He describes his background initially as a control systems engineer at Babcock Wire Equipment Ltd, a subsidiary of Babcock International Ltd and subsequent position as operations director at BWE Ltd when the latter was formed as a management buy-out operation. During the period of his employment he says that Babcock Wire Equipment Ltd and, latterly, BWE Ltd have sold in excess of fifty CONFORM continuous extrusion machines approximating to half of the worldwide market in the machines.

The early history of the mark is not, so far as I can see, disputed. Mr Hawkes describes it as follows:

"The CONFORM continuous extrusion machine and process for the continuous extrusion of metals, particularly aluminium and copper, were developed by the United Kingdom Atomic Energy Authority (UKAEA) in the early 1970s. The first patent application directly relevant to the machine and process was lodged in 1971 and was granted as GB patent 1,370,894.

In early 1975 Babcock Wire Equipment Limited were the first of various companies licensed by the UKAEA to manufacture continuous extrusion machines using the process, but most of these other companies have now withdrawn from any active sales. Worldwide only two companies are now actively marketing CONFORM continuous extrusion machines.

In 1975 the main activities of Babcock Wire Equipment Limited comprised designing and building various forms of machinery for working wire and were located in Rochester and Bolton. In 1975 a design office was set up in Bournemouth to develop the UKAEA design of their CONFORM continuous extrusion machine. In 1981, the Bournemouth design office was closed and the design effort and team transferred to Ashford. At Ashford development of the design of the CONFORM continuous extrusion machine was and is the main activity.

In or around 1982 Mr Brian Maddock, previously senior design engineer with Babcock Wire Equipment Limited at the Bournemouth design office, set himself up as a supplier of aluminium extrusions utilising a Babcock Wire Equipment Limited built CONFORM continuous extrusion machine supplied to him at the time of his leaving their employ. He formed Alform Alloys Limited and subsequently took a licence from the UKAEA to set up as a machine supplier.”

Arising from the above Mr Hawkes says:

“In all discussions and correspondence between the UKAEA and Babcock Wire Equipment Limited (and subsequently BWE Limited) the licence was referred to as the CONFORM licence.

The trade mark CONFORM appears to have been first used by the UKAEA around 1973 and appeared universally in papers delivered by personnel of the UKAEA at conferences of learned bodies and other occasions as denoting the UKAEA continuous extrusion machine and process.

It was fully accepted by Babcock Wire Equipment Limited (and subsequently BWE Limited) that all of their designs of continuous extrusion machines fell within the terms of the claims of one or more of the UKAEA patents. Since Holton Machinery Limited took a licence from UKAEA, I infer that they also were of the opinion that the Holton Machinery Limited continuous extrusion machines also fell within the terms of the claims of the UKAEA patents.

The public dealing with the purchase and operation of continuous extrusion machines is small and highly specialised. It is my experience from discussions at conferences and exhibitions that those involved are fully aware of the origin of the design as the UKAEA and the use of the trade mark CONFORM to denote the UKAEA design.

Whilst I am aware of at least one sale by UKAEA of a CONFORM continuous extrusion machine in the UK, it was always the case that the UKAEA promoted

licences under the patents to obtain an income from lump sum payments and from running royalties.

5 Thus, at all times, in my experience, CONFORM has denoted to the relevant purchasing public the UKAEA concept of a continuous extrusion machine and process which was comprehensively protected by patent coverage and, in general, sold by licensees of the UKAEA.

10 In 1996, the UKAEA indicated that it had been decided to dispose of that part of the business associated with the trade mark CONFORM together with the relevant patents. As a result of negotiations, BWE Limited purchased the trade mark and patent rights on 28 March 1996.”

15 He goes on to describe contacts with Holton Machinery following BWE’s acquisition of the trade mark and his views on Holton’s own trade mark application. He says he was not aware that Holton had used the trade mark in the course of trade in the UK other than perhaps by virtue of their patents licence from the UKAEA. He adds that:

20 “In view of the status of Holton Machinery Limited as a licensee of the UKAEA, in the course of the negotiations with the UKAEA I undertook on behalf of BWE Limited to grant licences to Holton Machinery Limited on similar terms as those they held from UKAEA under the patents. I was also prepared to grant a licence under appropriate terms under the trade mark rights.”

25 Finally, Mr Hawkes comments on the content of the applicants’ counterstatement. I do not propose to review these comments in detail as it seems to me that a number of ownership and related issues arose there as a result of the timing of the assignment and the recordal thereof. However, he expresses the view that it is not fair business practice or good faith for a licensee to seek to register a trade mark originated and used by the licensor. Therefore he says whilst  
30 in paragraph 3 of the counterstatement it is stated that “UKAEA” was aware of the extent and nature of the use of the marks CONFORM and HOLTON CONFORM this is not in his view detailed and he suggests that if the UKAEA were so aware the use would be taken as use by virtue of the licence. Insofar as it is claimed that permission exists for Holton to use the mark he suggests that it is likely to be linked to the existence of the licence.

35 Applicants’ evidence

The applicants filed a Statutory Declaration by Nicole Tizard, the Company Secretary of Holton Conform Ltd. Ms Tizard expands on the position touched on in Mr Hawkes’  
40 declaration dealing with the circumstances surrounding the setting up of Alform Alloys Ltd and Alform Machinery Ltd (later to become Holton Conform Ltd). She says:

45 “In 1978 Alform Alloys Limited (Registered Company no. 1367824), one of the applicant’s predecessors in title, was formed for the purpose of manufacturing extruded metal products using a continuous forming process developed by the United Kingdom Atomic Energy Authority (UKAEA). All extruded products

manufactured by Alform Alloys Limited were sold as having been made using the CONFORM process on a CONFORM machine.

5 In 1981 Alform Alloys Limited formed a company (Registered Company no. 1540585) called Alform Machinery Limited, as a joint venture between Alform Alloys Limited and Metal Box Plc., (who had been using the trade mark CONFORM since about 1978 to refer to the continuous forming process developed by the UKAEA and to continuous forming machines). Alform Machinery Limited was formed for the purpose of manufacturing and selling CONFORM machine tools and continuous forming machines under a manufacturing licence from the UKAEA. In 1981 Alform Machinery Limited changed its name to Holton Machinery Limited. Holton Machinery Limited have used the trade mark CONFORM continuously since 1981 and HOLTON CONFORM since about 1987 in respect of machine tools and in particular in respect of continuous forming machines which they manufactured. Exhibits attached hereto and referred to later show examples of such use.

20 In 1988 Alform Alloys Limited formed a company (Registered Company no. 2219140) called Alform Extrusions Limited for the purpose of carrying on the extrusion business, and in 1991 this company was sold by Alform Alloys Limited. Generally the products were referred to as having been made by the CONFORM process using a CONFORM machine.

25 In March 1993 as part of the group's reorganisation, Alform Alloys Limited changed its name to Holton Machinery Limited and Holton Machinery Limited (Registered Company no. 1540585) changed its name to Holton Conform Limited. At that time, Holton Machinery Limited (Registered Company no. 1367824) continued to trade under the trading style "HOLTON CONFORM" and has traded as such ever since.

30 The applicant and its predecessors in title (Alform Alloys Limited and Alform Machinery Limited) have used the mark CONFORM continuously since at least 1978 and the applicant has used the mark HOLTON CONFORM since at least 1981 without any hindrance or objections by the UKAEA."

35 I comment in passing that there appears to be a slight discrepancy between the parties respective accounts as to when Mr Maddock left Babcock to establish Alform, but so far as I can see nothing turns on the point. Arising from the above Ms Tizard says that although UKAEA granted a manufacturing licence to the applicants in 1981 the UKAEA has never licensed or controlled the use by the applicants of the trade marks CONFORM or HOLTON CONFORM. Moreover, it is said that UKAEA has in fact acquiesced in such use which was, therefore, concurrent with UKAEA's. She adds that UKAEA do not make or sell machine tools. However, she exhibits (NTO) a copy of a letter from AEA Technology, a division of UKAEA showing their intention to appoint the applicants as a registered user of the trade mark CONFORM. I will return to this letter later in my decision.

45 Ms Tizard then turns to the applicants' use of their mark. For the sake of completeness a summary of the evidence is at Annex A. She goes on to comment on why the applicants

declined to take a trade mark licence from UKAEA. This relates in part to a classification issue which I will touch on in my decision. The applicants were also of the view that UKAEA did not use or propose to use their mark because it was in respect of research and development of an extrusion process and they were not in any case empowered by statute to trade in machine tools. Again I approach these claims with some caution as they presumably form part of the separate action between the parties.

Finally, Ms Tizard comments at some length on Mr Hawkes' declaration. I do not need to record all of her points, but in summary:

- she questions references by Mr Hawkes to a licence and suggests that it was a manufacturing and patent licence rather than a trade mark licence
- she says that Mr Hawkes cannot speak for the UKAEA. Therefore inferences he draws about the latter's position should be disregarded as "hearsay"
- she disputes that her company's use of their mark was not in accord with fair business practice
- she says that Mr Hawkes has not substantiated that any alleged agreement with UKAEA allowed the opponent to sub-licence Holton Machinery. The undertaking referred to by Mr Hawkes has not been identified. He makes no mention of negotiations with the applicant.

That completes my review of the evidence.

I propose to deal with the matter first under Section 17, the relevant part of which reads:

"17. - (1) Any person claiming to be the proprietor of a trade mark used or proposed to be used by him who is desirous of registering it must apply in writing to the Registrar in the prescribed manner for registration either in Part A or in Part B of the register."

The opponents say that the applicants are not the true proprietors of the mark as their use can only have been under licence from UKAEA. This issue is fundamental to the proceedings as a whole and bears directly on the other grounds of opposition considered later in this decision.

It is possible to draw certain conclusions from the evidence that has been filed

- CONFORM was the name given to a process for the continuous extrusion of metal originally devised by UKAEA
- UKAEA took out various patents in relation to the process and equipment associated with the process

- there is conflicting evidence as to whether UKAEA themselves produced machines using the technology. Mr Hawkes refers to “at least one sale by UKAEA ... in the UK” whereas Ms Tizard says that UKAEA was debarred by statute from such activity

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- a number of companies have at various times been licensed under the patents to produce extrusion machines. It seems that only two companies continue to do so (this must, therefore, mean the parties to this action).

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- UKAEA filed their trade mark application, No 1491498, on 20 February 1992. The registration secured as a result of that application is under attack in separate proceedings

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- there is no evidence of formal licensing of trade mark rights by UKAEA.

In addition to the above points it will be useful to say a few words (based on the evidence filed) about the nature of the industry because I find that this too has a bearing on my decision. It is reasonable to assume from the fact that the technology was developed within the UKAEA that this is a highly specialised industry. There have only ever been a small number of manufacturers of the machines worldwide so it is also a very concentrated and close-knit industry. Whilst there may well have been developments of the original technology and process over the 25 years (approximately) that have elapsed since it was first conceived there seems to be an acknowledgement of UKAEA’s continuing role. Thus to take an example from 1992 (the year that both UKAEA and Holton filed their trade mark applications) the press release included in Ms Tizard’s Exhibit NT14 includes statements such as

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“AEA Technology and Holton Machinery have signed an exclusive deal on the future development of Conform, the continuous extrusion process. The agreement, which covers technical development and support for Conform machine manufacture and sales, creates a formidable partnership. AEA Technology, who pioneered the technology, retains unrivalled technical expertise in the area, and Holton Machinery - one of only two Conform machine manufacturers worldwide - has an extensive international market-base.”

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35

and

“We are very confident that the deal will produce major advances in Conform Technology,” adds Keith Slater, Manager of Conform at AEA Technology. “... AEA Technology will continue to provide technical support and applications development for Conform users worldwide.”

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It will also be apparent from the sales figures referred to in Annex A that the machines involved are very expensive items which appear to sell for sums in excess of £½ million each. Not surprisingly the number of machines sold in any given year is quite small (usually single figure numbers). I, therefore, draw the conclusion that the customer base is also very

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specialised and highly knowledgeable about sources of supply and technical matters. In short this is an industry where suppliers and customers are well known to one another. I would be very surprised if customers, actual or potential, were not familiar in broad terms at least with the history of the process.

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I accept the applicants' view that a distinction must be drawn between the various types of intellectual property associated with the process and machines concerned. The evidence indicates that UKAEA recognised as early as 1971 the need to secure patent protection. It is not entirely clear when CONFORM was adopted as a name but it appears to have been from a very early date. My impression is that CONFORM may have originally been used principally in relation to the process bearing in mind the conflicting views as to UKAEA's own position in relation to producing and selling the machines themselves. However it was probably inevitable and logical that machines designed to produce metal extrusions using UKAEA's CONFORM process were referred to as CONFORM machines. The precise extent of UKAEA's control over such use of the mark and whether it was in effect licensed use is difficult to determine from the evidence before me. Subsequently in February 1992 UKAEA sought to protect CONFORM as a trade mark for the machines concerned. The applicants say that they were granted a manufacturing licence by UKAEA in 1981 but do not point to any discussions with UKAEA about use of the mark CONFORM. They do, however, say that its use was not formally licensed or controlled by UKAEA and the latter have, therefore, acquiesced in its use.

I have difficulty with the applicants' position in this respect for a number of reasons. For the reasons I have set out above in relation to the nature of the industry there must in my view have been an overwhelming association of the mark CONFORM with UKAEA as originator of the process and licensor of the technology used to produce the machines to exploit that technology. Whilst UKAEA may have been somewhat slower to secure trade mark protection for the mark CONFORM I do not think this means that they could not claim common law rights in relation thereto. The alternative reading of the position would be that, by failing to protect CONFORM as a mark or control its use, UKAEA allowed the word to become a generic description which should, therefore, have been free for all manufacturers of CONFORM machines to use. That is not a proper matter for me to consider in the context of this opposition action but may arise in the separate proceedings. However I cannot see that either approach to the matter would further Holton's claims to ownership of a mark containing the element CONFORM (so far as I am aware no disclaimer has been offered in respect of this part of the mark).

A further matter which in my view has a bearing on the ownership issue is the letter of 21 July 1992 (Exhibit NT0) from AEA Technology's Commercial Manager to Holton's Sales and Marketing Director. The full text is as follows:

40           “‘CONFORM’ NAME

45           Following our conversation regarding the use of the CONFORM name, I consulted the AEA Head of Patents, Mr Marcus Lofting. He is preparing a Registered Users Agreement for Holton Machinery. Due to holidays and other commitments it may

take a few weeks to get the agreement to you. In the meantime please accept this letter as authority to use the word CONFORM in your business name.”

5 Holton had by their own admission been using CONFORM since 1978 and HOLTON  
CONFORM since 1981. If they felt that they had a genuine claim to ownership (for instance  
because other manufacturers were using different marks for their otherwise comparable  
machines) then it is curious that the above letter did not provoke a strong response. It would  
10 have been useful in my view to see what correspondence preceded or developed from this  
letter not least because one must exercise some caution before placing too great a store by a  
single short letter written some years ago. Nevertheless it has been filed by the applicants  
ostensibly in support of their own case. In fact the letter suggests, if anything, that AEA did  
15 not consider that their own claim to ownership of the mark was likely to be in doubt. The  
reference to a proposed registered user agreement reflects the fact that UKAEA had by that  
time filed their own application to register CONFORM and were thus seeking to formalise  
licensing arrangements presumably under Section 28 of the Act. I note that the letter also  
gave interim authority for Holton to use CONFORM “in your business name”. It would seem  
that the business name HOLTON CONFORM was subsequently adopted in March 1993.

20 The applicants have made a number of comments in their counterstatement about trade mark  
licensing arrangements (or the absence thereof) in respect of the mark CONFORM. They  
refer in particular to the McGregor trade mark case 1979 RPC 36. This was a rectification  
action where it was found that use by a licensee, which did not comply with the conditions  
and restrictions to which the registrations were subject, was not “permitted use” and in the  
25 absence also of use by the proprietors themselves the registration was open to rectification  
under Section 26(1)(b). I do not find that case to be of particular assistance in determining  
the issues before me in these opposition proceedings. There are, however, aspects of the  
licensing position that I should briefly touch on. In her declaration Ms Tizard says

30 “The reasons why the Applicant declined to become a Trade Mark licensee included  
that Trade Mark No. 1,491,498 had been applied for in respect of Class 9 goods and  
not the Class 7 goods of this our Application, whereas the goods that my Companies  
and the Applicants in particular deal in are undoubtedly in Class 7, that the UKAEA  
subsequently replaced the Class 9 specification by a Class 7 specification, under the  
Trade Marks Act 1938 (which only permitted one Class per application), and did so  
35 apparently successfully, and that the UKAEA filed the then Application No. 1,491,498  
in their own name.”

40 It seems that when UKAEA filed their own application they correctly identified the goods of  
interest but specified the wrong Class number for those goods under the International  
Classification system (the Nice Classification). The point was presumably picked up by the  
Registry during the course of the examination process and the correct Class number was  
substituted (Class 7 and not Class 9). Given that Holton had been working with UKAEA for  
some 14 years by that time and were a licensee under the latter’s patents I find it scarcely  
45 credible that they were not aware of the goods of interest to UKAEA or failing this and  
pending resolution of the classification issue that they did not seek to clarify the position with  
UKAEA. More importantly perhaps Ms Tizard’s comments suggest that Holton recognised

that they might need to become a licensee of UKAEA in respect of the machines of interest to them. Certainly it is difficult to reconcile these statements with Holton's claim to ownership of a mark incorporating the element CONFORM.

5 For all of the above reasons I find that the applicants cannot claim to be the proprietors of the mark and the opposition under Section 17 succeeds.

I go on to consider the position under Sections 11 and 12 which read as follows:

10 "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.

15 12. (1) Subject to the provisions of subsection (2) of this section, no trade mark shall be registered in respect of any goods or description of goods that is identical with or nearly resembles a mark belonging to a different proprietor and already on the register in respect of:-

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

The reference in Section 12(1) to a near resemblance is clarified by Section 68(2B) of the Act which states that references in the Act to a near resemblance of marks are references to a resemblance so near as to be likely to deceive or cause confusion.

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

35 **(Under Section 11)** Having regard to the user of the mark CONFORM, is the tribunal satisfied that the mark applied for, HOLTON CONFORM, if used in a normal and fair manner in connection with any goods covered by the registration proposed will not be reasonably likely to cause deception and confusion amongst a substantial number of persons?

40 **(Under Section 12)** Assuming user by the opponents of their mark CONFORM normal and fair manner for any of the goods covered by the registration of that mark, is the tribunal satisfied that there will be no reasonable likelihood of deception amongst a substantial number of persons if the applicants use their mark HOLTON CONFORM normally and fairly in respect of any goods covered by their proposed registration?

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It is clear that identical goods are involved. Having regard also to the accepted tests for comparing marks (particularly the principles set down in *BULOVA ACCUTRON 1969 RPC 102*) I consider that confusion and deception would be likely to arise.

5 The applicants have I think accepted this to be the case by electing at the examination stage to file evidence to establish a claim under Section 12(2).

10 It has also been established that in appropriate cases Section 12(2) can be utilised to overcome a finding as to possible confusion under Section 11 (see *CHELSEA MAN 1989 RPC 111* at page 121 lines 41 et seq). In these circumstances I do not propose to consider the Section 11 position in detail save to say that whilst the origins and early history of the mark appear to be undisputed the opponents' case would have benefitted from fuller substantiation of the precise nature and extent of UKAEA's use (or use under their control).

15 Section 12(2) reads:

“12(2) In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper so to do, the court or the Registrar may permit the registration by more than one proprietor in respect of:-

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

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

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The main matters for consideration under Section 12(2) were laid down by Lord Tomlin in the *PIRIE* case. They are:

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- (i) the extent of use in time and quantity and the area of trade;
- (ii) the degree of confusion likely to ensue from the resemblance of the marks, which is, to a large extent, indicative of the measure of public inconvenience;
- 40 (iii) the honest of the concurrent use;
- (iv) whether any instances of confusion have been proved;
- 45 (v) the relative inconvenience which would be caused if the mark in suit was registered, subject if necessary to any conditions and limitations.

5 I think it is apparent from the information contained in Annex A that the applicants can claim significant levels of sales which have been sustained over a number of years. It is more difficult to assess what customers understand by use of the word CONFORM for reasons which go to the heart of this dispute. However, it seems to me that this issue is somewhat academic in the light of my findings on the facts before me in this case.

10 The applicants have failed to persuade me that they can claim to be the true proprietors of the mark so any use which they have made of it as a trade mark of their own cannot be honest. As honesty of use is central to the provisions of the Act and the criteria laid down by Lord Tomlin it follows that the applicants cannot benefit from the provisions of Section 12(2). Nor can I see any other circumstances which suggest that discretion should be exercised in favour of the applicants.

15 As the opposition has been successful the opponents are entitled to a contribution towards their costs. I order the applicants to pay the opponents the sum of £635.

Dated this 7 day of JANUARY 1999

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25 M REYNOLDS  
For the Registrar  
the Comptroller General

**ANNEX A**

Summary of the applicant's use based on Ms Tizard's evidence.  
Turnover figures for the United Kingdom are said to be:

<b>Year</b>	<b>£</b>	<b>Number of Machines Sold</b>
1986	1,194,990	3
1987	1,624,600	4
1988	3,787,100	6
1989	3,865,300	7
1990	2,204,700	4

[A footnote says that "the above monetary figures are calculated at the ex-factory price/retail price/wholesale price etc". It is not clear what is meant by this as, presumably, each calculation would produce a different figure.]

Worldwide sales for the years 1991 to 1996 are as follows:

	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>June 1995</b>
<b>Orders £'000</b>					
<b>Holton Conform Machines No.</b>	3283 5	5015 7	1413 3	5355 6	717 1
<b>Holton Conform Spares</b>		283	582	500	292
<b>Total Orders</b>	3283	5388	1995	5855	1009
<b>Sales £'000</b>					
<b>Holton Conform Machines No.</b>	3989 7	4877 8	3519 6	5355 6	- -
<b>Holton Conform Spares</b>	41	281	551	448	163
<b>Total Sales</b>	4030	5158	4070	5803	163
<b>No. Of Proposals</b>	80	78	86	48	11

Exhibits are supplied in support of the above showing examples of letter headed paper, magazine extracts, company brochures, technical reviews and photographs of the goods (NT1-10). Details of a seminar held with their partners Metal Base Plc in 1986 are at Exhibit NT11. Sales have been made throughout Scotland, England and Wales.

Promotional spend is shown as follows:

<b>YEAR</b>	<b>£</b>
1989	104,087
1990	108,424
1991	107,206

These figures relate to press releases, brochures, advertisements, literature and exhibitions.

Figures for the following years have been prepared on a slightly different basis but are:

		<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>
<b>Publicity £'000</b>					
<b>Exhibitions</b>	-	46.7	23.1	54.9	30.4
<b>Advertising</b>	-		3.1	2.3	2.7
<b>Sales Literature</b>	-	89.0	4.0	7.0	10.4
<b>Promotions</b>	-		0.8	3.0	0.7
<b>Public Relations</b>	-		7.9	0.7	1.1
<b>Video</b>	-	8.1	8.2	-	-
		143.8	47.1	67.9	45.3

In support of the above Ms Tizard exhibits a variety of material including orders and invoices with examples for each of the years 1990 to 1996 (NT12 to NT18).