

**TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2166643
BY CONNECTOLOGY LIMITED**

AND

**IN THE MATTER OF OPPOSITION THERETO UNDER No 49666
BY THOMAS INTERNATIONAL LIMITED**

TRADE MARKS ACT 1994
IN THE MATTER of Application No 2166643
by Connectology Limited

and

IN THE MATTER OF Opposition thereto under No 49666
by Thomas International Limited

BACKGROUND

1. On 13 May 1998 Connectology Limited applied under the Trade Marks Act 1994 to register the trade mark shown below in respect of a specification of goods which reads:

Class 9

Computer hardware and software.

Class 37

Computer network and cabling installation services.

Class 42

Maintenance and design of software, programming services.



2. The application is numbered 2166643.

3. The application was accepted and published and on 19 April 1999 Thomas International Limited filed notice of opposition to the application. Various grounds of opposition were pleaded in the statement of grounds however, some of these were withdrawn in the opponents' statutory declaration of 9 November 1999. Thus, at the time of the Hearing the only remaining grounds of opposition were under the following sections of the Act:

- (a) under section 5(2)(b) of the Trade Marks Act 1994 in that it is submitted that the applicants' mark is similar to the earlier trade marks (shown in an Annex to this decision) and is to be registered for goods and services that are identical with or similar to those for which the earlier trade marks are protected and there exists a likelihood of confusion on the part of the public; and

- (b) under section 5(4) of the Act in that the opponents have made substantial use of their marks and in so doing have accrued significant goodwill and reputation.

4. The applicants filed a counterstatement denying the grounds of opposition. Both sides seek an award of costs. Further, in a letter dated 24 December 1999, the opponents stated that their opposition was only directed to the goods in Class 9 of the applicants' specification.

5. The matter came to be heard on 22 March 2001. The applicants were represented by Mr Piers Acland of Counsel instructed by Shoemiths Solicitors. The opponents were represented by Mr Simon Walters of Trade Mark Consultants Company.

Opponents' Evidence

6. The opponents' evidence consists of a single statutory declaration dated 9 November 1999 by Mr Simon Malvin Walters, an associate of Trade Mark Consultants Co., the opponents' representatives in this matter. Mr Walters states that he is authorised to make this declaration on behalf of the opponents as the relevant information is in his possession and he is familiar with the trade mark considerations involved. He states that all the facts and matters set out within his statutory declaration are within his personal knowledge, derived from a study of his files or are derived from records made available to him by his client.

7. Mr Walters refers to an earlier trade mark application by the applicants, No. 2138297. He provides information as to actions taken by his client in respect of that application and he notes that this application was subsequently abandoned. Mr Walters makes various submissions as to why this application was abandoned, however, these are assumptions and I can give them no weight and need not summarise them.

8. Mr Walters then refers to the trade mark the subject of the application, again he makes various assumptions as to why this trade mark was deemed to be acceptable to the registrar. He states that the applicants in his opinion saw a disconnected jigsaw piece as the essential feature that it wished to protect and in the second application added its limited company name Connectology to try to make the mark as a whole distinctive. Mr Walters goes on to make various comparisons between the trade mark the subject of the application and his clients' jigsaw trade marks. As these are submissions I need not summarise them but will deal with them as part of my decision.

9. In paragraph 14 of his statutory declaration Mr Walters sets out the use that has been made of the earlier trade marks. He states that his client has used its jigsaw trade marks on computer software since 1989, throughout the world. As an example of that use, he exhibits at SM1 D a photocopy showing two computer disks. The labels on these two disks show Thomas International together with a jigsaw device. Mr Walters states that the opponents' trade marks are used in 42 countries and computer software is offered to 3000 clients which include 300 multinationals. He says that this is shown in documents E to G of Exhibit SM1. All of these documents are undated. Document G refers to the "Thomas Personal Profiling System" and states that the system is "highly effective in many areas of human resources". It also provides a list of the organisations already using the system in one or more countries.

The other documents provide a list of countries in which Thomas International provide services.

10. Mr Walters gives figures for UK turnover specifically on software rounded to the nearest £1,000 as follows:

1 November 92 to 31 October 93	91,000
1 November 93 to 31 October 94	1,052,000
1 November 94 to 31 October 95	1,201,000
1 November 95 to 31 October 96	1,378,000
1 November 96 to 31 October 97	1,805,000
1 November 97 to 31 October 98	2,174,000

11. Mr Walters concludes by stating that advertising equates to around 5% of turnover.

Applicants' Evidence

12. The applicants' evidence consists of a single statutory declaration dated 7 February 2000 by Mr Jonathan William Wagstaffe, the Managing Director of Connectology Limited, the applicants in this matter.

13. Mr Wagstaffe states that Connectology have used the mark applied for since 1994 throughout the United Kingdom in respect of the goods and services applied for in Classes 9, 37 and 42. This use has, he says, included use of the mark in advertising in the computer trade press, the general press, mail shots and marketing campaigns. He gives the following sales figures and advertising expenditure for 1994 - 1998:

Year	Advertising £	Sales £
1994	2000	200000
1995	3000	800000
1996	10000	1700000
1997	30000	2150000
1998	45000	4240000

14. Mr Wagstaffe states that from these figures it can be seen that the Connectology business has expanded at a considerable rate. He says that Connectology is currently ninth in the Sunday Times Virgin Atlantic Fast Track 100 league table which identifies Britain's fastest growing unquoted companies based on average growth on sales over 3 years. He says that with this growth their expenditure on promoting their goods and services, which always include the mark applied for, has also been increased. He states that he believes that the Connectology brand is now a well recognised player in the relevant industries and in fact already enjoyed this position by the time the application for the trade mark was made.

15. At JWW1 he provides various exhibits which he says show Connectology's widespread use of their trade mark. These include:

- Copy sample invoices issued by Connectology between January 1996 and May 1997, which he states are in respect of computer software and hardware. He notes that the lower part of the jigsaw device has not copied well however he confirms that the whole mark would have appeared on each of the original documents.
- Copy sample quotes provided by Connectology between July 1994 and May 1999, which he states are in respect of the supply of computer software and hardware, IT Consultancy and Network installation and maintenance.
- Copy sample network diagrams showing computer hardware supplied and installed by Connectology in 1997.
- A marketing brochure from 1997 reporting Connectology's change of office and setting out the types of goods and services which it provides.
- A copy of a job advertisement from the Bucks Herald on 8 May 1996 for Junior Network Engineers which explains that Connectology provides "services and products in the design, implementation, project management and support of network computer services".
- Copies of three sample manuals which demonstrate the software and hardware products supplied and installed for three clients in 1996/1997.
- A copy of the front page and page 5 of the programme for a football match between Wickham Wanderers and Milwall on 3 December 1996 which was sponsored by Connectology.
- A t-shirt provided for the football match on 3 December 1996 which bears the mark applied for on the sleeve.
- A copy of a photograph of the Thames Boys Football Club sponsored by Connectology.

16. Mr Wagstaffe says that the fact that Connectology has been using the trade mark extensively since 1994 has been drawn to the opponents' attention. Mr Wagstaffe comments on the likelihood of confusion and notes that he has been Managing Director of Connectology for the whole time during which the trade mark the subject of the application has been used. He states that the period is now almost 6 years and he is not aware of any actual confusion between the opponents' mark and their mark. As Managing Director he says that he would expect any such incidents to have been brought to his attention. In the absence of such evidence and in the light of the fact that the marks have co-existed in the IT sector without actual confusion occurring for almost 6 years, he finds it impossible to comprehend how the marks could be said to be confusingly similar. Mr Wagstaffe also notes that despite the opponents' threatening letters no proceedings have ever been issued against Connectology by the opponents or the owner of the marks, Microsoft Corporation.

17. Mr Wagstaffe notes that the opponents' evidence is provided by Mr Walters, rather than a

declaration made by someone in the relevant position in the company who would be aware of the day to day running of the business and in particular any instances of confusion. Mr Wagstaffe concludes by stating that he believes that Connectology has clearly established its widespread use of the trade mark since 1994. In these circumstances he does not believe that the opposition should succeed and would respectfully ask the registrar to allow the application to proceed in all Classes.

18. That concludes my review of the evidence.

DECISION

19. As stated above the opponents' grounds of opposition pursued at the Hearing were in respect of section 5(2) and section 5(4) of the Trade Marks Act 1994. The relevant provisions read as follows:

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

- (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or
- (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."

"5.-(4) A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented -

- (a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or
- (b) by virtue of an earlier right other than those referred to in subsections (1) to (3) or paragraph (a) above, in particular by virtue of the law of copyright, design right or registered designs.

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of an "earlier right" in relation to the trade mark."

20. The term 'earlier trade mark' is defined in section 6 of the Act as follows:

"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,”

21. All three of the trade marks on which the opponents’ seek to rely, set out in the Annex to this decision, are earlier trade marks within the meaning of section 6. The opponents’ are not the proprietors of the three trade marks but that is of no consequence, there is no requirement that the opponents are the proprietor of the earlier trade marks for an opposition based on section 5(2); per Mr Geoffrey Hobbs Q.C. sitting as the Appointed Person in *Balmoral Trade Mark* [1999] R.P.C. at page 299 line 35. Nor does it appear that there is any requirement that the opponents should be the proprietors of the earlier right for an opposition based on section 5(4); per Mr Hobbs Q.C. in *Wild Child* [1998] R.P.C. 455 at page 458 line 53. The proprietor of all three registered trade marks is shown as Microsoft Corporation. Mr Walters submitted that his clients are the sole licensees for these trade marks; indeed, the statement of grounds contains a statement to the effect. However, there is nothing before me in the evidence to show that this is the case. That said, I do not think that anything turns on this point.

22. I will deal first with the ground of opposition under section 5(2)(b). Indeed, Mr Walters acknowledged that his ground of objection under section 5(2)(b) represented his clients’ strongest ground of opposition and that if he could not succeed under that ground he would be in no better position under section 5(4)(a). In determining the question under section 5(2), I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v. Puma AG* [1998] R.P.C. 199, *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *Lloyd Schufabrik 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* page 224;
- (b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v. Puma AG* page 224, 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 of them he has kept in his mind; *Lloyd Schufabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* page 84, 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* page 224;
- (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* page 224;
- (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 Kaisha v. Metro-Goldwyn-Mayer Inc* page 7, 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* page 8, 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* page 224;
- (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* page 732, 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* page 9 paragraph 29.

23. Mr Walters maintained the opposition under this section based on all three of the trade marks shown in the Annex. However, the main thrust of his submissions was directed to Community Trade Mark (CTM) 922,733. Whilst the other two trade marks cover goods in Class 9, he noted that the specification of the CTM covers goods which are identical to those covered by the specification of the application in suit. Mr Acland did not argue otherwise and agreed that the CTM represented the opponents' best prospect of success. Thus, I shall proceed to consider the question under section 5(2) based on the CTM. For ease of reference, I reproduce the applicants' trade mark and CTM 922,733 below. As the opposition is directed to Class 9 of the applicants' specification I have only listed the goods in that Class. There is no opposition to the services in Class 37 & 42.

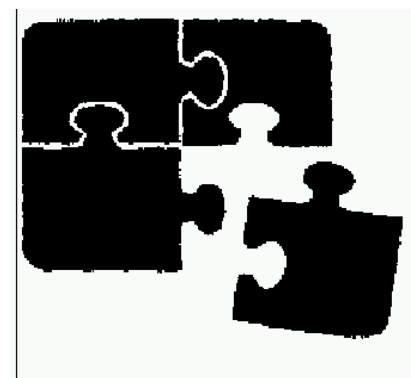
Applicants' trade mark



Class 9

Computer hardware and software

Opposition based on CTM 922,733



Class 9

Computer installations, apparatus and instruments; computer hardware; computer software; apparatus and instruments for use with computers; parts and fittings for all the aforesaid goods.

24. Mr Walters referred to three earlier registry decisions concerning oppositions launched by his clients. Two, Employee Advisory Resources Limited (SRIS O/094/98) and Integrated Security Group (SRIS O/117/98) were under the Trade Marks Act 1938. The third, Tazaki Consultants Limited (SRIS O/108/01) was under the current law. Mr Walters referred to the findings in these decisions, however, other than setting out the relevant tests to be applied under the respective Trade Marks Acts, I do not find them to be of much assistance in deciding this case. The test that I must apply is as set out above, and the likelihood of confusion must be appreciated globally.

25. Before considering this question I should first deal with some submissions made by both parties as to the evidence filed in these proceedings. The applicants filed a substantial amount of evidence purporting to show use of their trade mark on the goods in Class 9 for which registration was sought. Mr Walters subjected this evidence to careful analysis and argued that the evidence did not in fact show any use of the trade mark on the goods in Class 9. He submitted that the evidence showed use in respect of the service of installing and maintaining computer hardware and computer software. He pointed out that the invoices and plans submitted by the applicants showed that the hardware listed carried other trade marks such as Compaq, whilst the software appears under trade marks such as Microsoft. Mr Acland conceded that 'technically' there had been no use by the applicants of the trade mark in respect of the goods listed in Class 9.

26. In my view Mr Acland was right to make that concession. The applicants' evidence seems to me to show that they provide an installation and maintenance service for computer hardware and software for a wide range of clients. In so doing, they provide computer hardware and software but I agree with Mr Walter's submissions that the computer hardware and software is sold under its own trade marks and badges of origin, such as Compaq and Microsoft.

27. Equally, Mr Acland was critical of the quality and nature of the opponents' evidence of use. In his view, the figures given were too imprecise to go anywhere near supporting a claim to an enhanced reputation through use. He noted that the evidence was from Mr Walters, the opponents representative, not from the opponents themselves. Many of Mr Acland's criticisms were well made. Mr Walters explains the origin of the information but in my view, if the opponents had sought to argue that they were entitled to an enhanced reputation in respect of the trade mark, then clear details showing the nature, extent, duration and date of use of the trade mark in respect of computer hardware and software should have been submitted. Further, the opponents' evidence does not show any use of the trade mark in respect of computer hardware. The use that is shown in respect of computer software is at exhibit SMW1 D and consists of a photocopy of two computer discs bearing the CTM together with the name THOMAS INTERNATIONAL. The product is listed as "Supersoft for Windows". From the other exhibits, the opponents' use on software appears to be in relation to software for "Human Resources".

28. Thus, from the evidence submitted by the opponents' I am unwilling to find that any inherent distinctiveness that their trade mark may possess would have been enhanced by the use that has been made of it. In addition, Mr Acland submitted that whilst the opponents' trade mark had some inherent distinctiveness it was not highly distinctive and so its level of protection should not be enhanced. He argued that the use of a jigsaw device in respect of

computer software and computer hardware was a reference to the way such parts may be interconnected. It seems to me that the CTM is distinctive for the goods in question, whether it is merely distinctive or highly distinctive will not in my view determine my finding under section 5(2).

29. Having analysed the evidence submitted by both parties to these proceedings I have reached the view that it does not assist me in deciding the question of the likelihood of confusion under section 5(2). The applicants cannot seek to rely on their use of the trade mark since 1994 in relation to installation and maintenance services to show that there is no likelihood of confusion if the trade mark was used in respect of computer hardware and software. Their evidence does not show use on the goods the subject of the application in Class 9 and the opponents' evidence does not show use on computer hardware; although some use is shown in respect of computer software. Mr Acland did seek to argue that by virtue of the applicants' use on related services (installing and maintaining computer hardware and software), one might have expected some confusion to have occurred against the opponents' use on computer software and hardware. However, that presupposes that the opponents' have been using the trade mark on computer hardware and on a full range of computer software. As stated, that is not the case here. Therefore, taking all these matters into account, I reach the view that I should approach this matter on the basis of notional and fair use of both trade marks in respect of the goods for which they are applied for and registered; *Reactor* [2000] R.P.C. at page 288.

30. The average consumer of the goods in question, would, taking into account notional and fair use, include members of the public and businesses seeking computer software or computer hardware. The case law tells us that I must take into account the fact that members of the public are unlikely to see the two trade marks side by side but instead must carry around an imperfect picture of them kept in their minds. With that in mind I go on to consider the visual, aural and conceptual similarities between the two trade marks, taking into account the fact that a lesser degree of similarity between the marks may be offset by a greater degree of similarity, or identicality as is the case here, between the goods.

31. Visually, on a side by side analysis of the two trade marks, there are clear differences between the two marks. The applicants' consists of two pieces of a jigsaw and the word CONNECTOLOGY, the CTM consists of a jigsaw device, with three pieces of the jigsaw in place and the fourth piece disconnected. However, as noted above, I must consider the fact that the two trade marks are unlikely to appear side by side. The CTM clearly strikes the eye as a jigsaw device. The applicants', as a jigsaw device with the word CONNECTOLOGY. Mr Acland warned me against breaking the applicants' trade mark into its two parts and then comparing the two jigsaw elements. Indeed, the guidance given above states that the average consumer tends to perceive a mark as a whole.

32. Even on a comparison of the two jigsaw devices Mr Acland argued that they were visually different. He suggested that the opponents' trade mark was a disconnected jigsaw, whilst the applicants' trade mark consisted of two jigsaw pieces. I do not agree with Mr Acland on this point. In my view, the applicants' and the opponents' jigsaw devices are confusingly similar. Both strike the eye as jigsaw devices and would be referred to as such. Taking into account imperfect recollection it would in my view, be unrealistic to expect the average consumer to remember the particular orientation and layout of the pieces in the two devices. Thus, I find

that the jigsaw elements of the two marks are confusingly similar. However, the applicants' trade mark also contains the word CONNECTOLOGY. What is the impact of the applicants' trade mark, taken as a whole?

33. The guidance given by the ECJ in *Lloyd* indicates that visual, aural and conceptual similarity of the marks in question, should be based on the overall impression created by the trade marks, bearing in mind, in particular, their distinctive and dominant components; *Lloyd* at page 84 paragraph 26. Thus, it seems to me that despite my finding that the applicants' jigsaw device is confusingly similar to the opponents' it does not necessarily follow that I should find that the trade mark the subject of the application should be refused. The test must take into account the distinctive and dominant components of the two trade marks.

34. I suggested to Mr Walters' that there must come a point where so much could be added to the jigsaw device that, taking a global view and considering the marks as a whole, there could be no likelihood of confusion. He accepted that proposition but argued that the word CONNECTOLOGY was insufficient to avoid the likelihood of confusion between the applicants' and opponents' trade marks. Mr Acland submitted that the jigsaw element of the applicants' trade mark was a small part of the mark and that CONNECTOLOGY was the dominant element. As there is a colour claim on the applicants' trade mark of blue and yellow, Mr Acland submitted that the jigsaw device would be seen as decoration and not as a trade mark. I do not agree. Visually, the trade mark the subject of the application strikes the eye as a jigsaw device with a word. The presence of colour in the jigsaw device would not in my view lead the average consumer to view it as a decorative element as opposed to carrying trade mark significance. The jigsaw element of the applicants' trade mark seems to me to be a distinctive element of the applicants' mark. Therefore, visually I find that the jigsaw element would have a prominent impact on the mind of the average consumer and thus has an effect on the visual similarity between the two trade marks.

35. Mr Walters argued that a consumer on seeing the applicants' trade mark used on computer hardware or software, could have cause to believe that the jigsaw device and word CONNECTOLOGY showed some licence or link with the opponents (Point (i) above). This in my view is the high point of the opponents' case.

36. Orally, the applicants' trade mark would I think be referred to as CONNECTOLOGY, the opponents' as a jigsaw device. Here there is less similarity between the marks as I believe that the presence of the word in the applicants' mark would lead to the jigsaw element being overlooked in oral use.

37. Conceptually both contain jigsaw devices. I do not consider the jigsaw element or the word CONNECTOLOGY to have more impact than the other, but I am of the view that the applicants' name CONNECTOLOGY does have some conceptual link to the jigsaw element. Pieces of a jigsaw are connected together. As such I find that there is some conceptual similarity between the two trade marks.

38. What I must consider is whether taking the visual, aural and conceptual similarities between the two trade marks, is there a likelihood of confusion within the meaning of section 5(2)? Mr Acland posed the question thus, has the applicant captured the distinctive character of the earlier trade mark; per Mr Hobbs in *Balmoral* at page 302 line 43.

39. Having considered all the factors and not without some hesitation, I reach the view that the applicant has captured the distinctive character of the earlier trade mark. Whilst not discounting the possibility that there may be some direct confusion if the trade marks were used in respect of the goods for which they are respectively registered and proposed to be registered, I find that there is a likelihood that use of the applicants' trade mark on the goods in Class 9, could lead to an association between the two trade marks such that the public would wrongly believe that the respective goods come from the same or economically linked undertakings. As such I find that there is a likelihood of confusion within the meaning of section 5(2)(b) of the Trade Marks Act 1994 and accordingly, the opposition succeeds under that section in respect of the goods listed in Class 9 of the application.

40. The application may proceed for the services in Class 37 and 42. Therefore, the applicant should, within one month of the end of the appeal period, file Form TM21 requesting the amendment of the specification by the removal of Class 9. If such a request is not made within the time period specified then the whole application will be deemed withdrawn.

41. Mr Walters did not withdraw his clients' ground of opposition under section 5(4) but he did not pursue it with any vigour. As I have found for the opponents under section 5(2)(b), I need not consider this ground of opposition. However, I should state that in my view the opponents' ground of objection under this section was considerably weaker than under section 5(2). I have dealt with the criticism of the opponents' evidence in my finding under section 5(2). In addition, the evidence that was submitted showed use of the opponents' trade mark with the trade mark THOMAS INTERNATIONAL. That would have been a factor that I would have taken into account when considering the opponents' case under section 5(4). Further, in my view, the evidence did not show any reputation in respect of computer hardware and only limited use in respect of a specialised area of computer software.

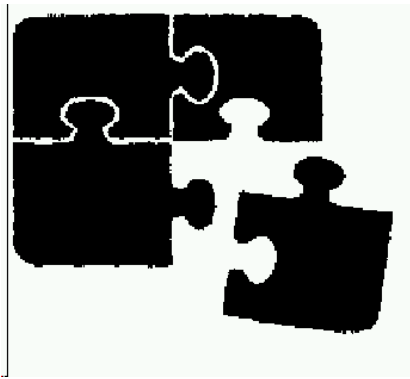
42. The opponents have been successful in their opposition to registration in Class 9 and are entitled to a contribution towards their costs. I order that the applicants pay the opponents the sum of £835 as a contribution towards their costs. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 26th day of June 2001

**S P Rowan
For the Registrar
the Comptroller General**

ANNEX

CTM 922,733

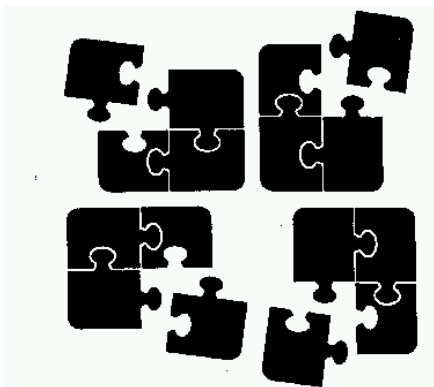


Class 9

Computer installations, apparatus and instruments; computer hardware; computer software; apparatus and instruments for use with computers; parts and fittings for all the aforesaid goods.

1372190

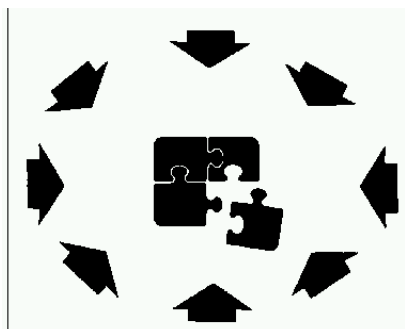
This is a series of four individual marks



Class 9

Computer software included in class 9

1386551



Class 9

Computer software included in Class 9.