

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NUMBER 2180538
IN THE NAME OF PARETO SERVICES LIMITED TO
REGISTER A TRADE MARK IN CLASS 35**

AND

**IN THE MATTER OF OPPOSITION THERETO
UNDER NUMBER 50533
BY PARETO PARTNERS (A PARTNERSHIP)**

TRADE MARKS ACT 1994

**IN THE MATTER OF Application Number 2180538
in the name of Pareto Services Limited to
register a Trade Mark in Class 35**

and

**IN THE MATTER OF Opposition thereto
under Number 50533
by Pareto Partners (a Partnership)**

BACKGROUND

1. On 26 October 1998 Pareto Services Limited applied to register a trade mark in Class 35. Following examination the application was accepted for the following services:-

"Business consultancy services; telemarketing services; direct mail services; promotional services; recruitment services; marketing services; market research services; advertising services; provision of commercial and business information via a database; human resource development services; business process improvement services; marketing and promotional services via new media; incentive and motivation services to improve businesses."

2. The trade mark applied for is as follows:-



3. The application is numbered 2180538.

4. On 20 December 1999 Markforce Associates on behalf of Pareto Partners, (a Partnership) filed a Notice of Opposition. They say they are the proprietors of the following registered mark:

No.	Mark	Class	Journal	Specification
1491955	PARETO	36	5987/5128	Investment services; investment advice services; investment management

services; unit trust management; pension services; financing, provision and arranging of loans; underwriting services; guarantee services; corporate finance services; brokerage services; banking services; credit services; money exchange services; assurance services; all included in Class 36.

Objection is said to arise under Sections 5(2) and 5(4) of the Act.

5. The applicants filed a counterstatement denying the above grounds.

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

7. Both sides filed evidence in these proceedings. The matter came to be heard on 20 September 2001 when the applicants were represented by Mr Desmond Emery and the opponents by Mr Mark Engleman of Counsel, instructed by Markforce Associates.

Opponents' Evidence

8. The opponents filed a statutory declaration by Mr Daniel W Lass, the Managing Director of Pareto Partners - Marketing and Client services for Europe and the Middle East. He explains that the partnership is a specialised institutional investment management firm with particular expertise in Currency Overlay, Fixed Income and Alternative Investment strategies. Further information regarding the partnership is provided at Exhibit DL1 entitled 'Profile and Investment Philosophy'.

9. Mr Lass refers to Exhibit DL2 which comprises a copy of their UK Trade Mark Registration certificate (Reg. No. 1491955 filed on 24 February 1992) and renewal certificate for the mark PARETO in Class 36. The mark was first used by the partnership in 1991 and has been used extensively throughout the UK (and other countries) ever since. Mr Lass provides details of the partnership's global activity and as a result claims that the mark PARETO has gained substantial recognition throughout the world. At Exhibit DL3 Mr Lass provides copies of trade mark registration certificates in other countries.

10. Mr Lass states that the partnership has used the mark PARETO continuously in the United Kingdom for approximately nine years in relation to services of a specialist institutional investment manager. Exhibit DL4 provides descriptions of the product range. He states that it is important to realise that each product is tailor-made to suit the individual client with the assistance of specialist investment strategies. It is claimed that this specialist service has been a major factor which has served to build the strong reputation and goodwill in their mark PARETO. A description of their key investment strategies is provided at Exhibit DL5 and at Exhibit DL6 an editorial discussing the implications of 'Artificial Intelligence' strategies - a tool in certain investment strategies used by the opponents' Research Team. Mr Lass goes on to

ay that the partnership is therefore in a very unique position in a niche market. Both their Research Director and Chief Investment Officer have international reputations for their expertise.

11. Mr Lass claims that the opponents have acquired significant distinctiveness and reputation over the years in the mark PARETO in respect of the services covered by their registration. A table of Currency Overlay Managers dated September 1999 is provided at Exhibit DL7 which shows the opponents to be in the number one position by funds under management. Evidence of the use of PARETO in the financial services, investment and pension fund market place is generally provided by press cuttings - a sample of which are provided at Exhibit DL8. Mr Lass firmly believes that on seeing the applicants' mark people will or are likely to wonder why the opponents are diversifying into other areas. He claims that this is likely to or will result in confusion, or is likely to or actually will result in damage to their reputation which has taken so many years, investment and expertise to acquire. Mr Lass states that the opponents' mark and name has acquired a substantial reputation in relation to the services provided under the mark, in part due to the qualifications and experience of their funding members, directors and employees.

12. At Exhibit DL9 is a copy of the Collins English Dictionary definition of Vilfredo Pareto. Mr Lass maintains that the opponents' mark is distinct from the Italian sociologist and economist (1848 - 1923) who anticipated fascist principles of government in his "Mind and Society" (1916).

13. The turnover figures in respect of the services provided under the opponents' mark are set out below.

YEAR	ANNUAL TURNOVER (US\$)
1993	In excess of \$6.5 million
1994	In excess of \$9.8 million
1995	In excess of \$15.5 million
1996	In excess of \$21 million
1997	In excess of \$27 million
1998	In excess of \$31 million
1999	In excess of \$33 million
2000	Budget estimates in excess of \$36 million

(The figures provided are gross and the Partnership's report their financial information in US Dollars and not in GB Sterling).

14. Mr Lass states the opponents have assets under management in excess of US \$30 billion and are recognised as one of the world's leading institutional management firms.

15. A list of the opponents' major clients is provided at DL10. Mr Lass states that the opponents offer products throughout the UK and in other countries. The UK office is the operational headquarters which implements the strategies and manages client assets.

16. Mr Lass explains that advertising is not widespread in the institutional fund management industry. However, their reputation in the mark PARETO has been acquired over the years by means of such activities as research and development (including external research and other activities with academic and research institutes), conferences and seminars. The opponents also rely heavily on publicity from financial journalists. Mr Lass explains that the opponents have become very closely identified with Currency Overlay Management globally and at Exhibit DL11 he provides an article from "Global Pensions" which emphasises that "interest in currency overlay is starting to gather momentum in the UK".

17. Mr Lass states that the opponents are a founding member of the Pension Investment Forum (an organisation set up in the UK to promote discussion on issues facing the industry) and a member of Inquire (Institute for Quantitative Investment Research) in the UK and Europe. A copy of a recent Roundtable programme is provided at Exhibit DL12 together with copies of research papers. Mr Lass claims that through association with academia the mark PARETO is recognised as a leading force in financial research for the institutional investor industry. Editorials and commentaries in newspapers and relevant financial publications regarding the opponents are provided at Exhibit DL13.

18. Mr Lass states that the opponents' clients (actual and potential) and those of the applicants are or are likely to be identical or similar in nature. He goes on to say that use by the applicants of the mark PARETO and device in relation to the services applied for does or is likely to cause confusion and damage to the opponents' reputation. In conclusion, Mr Lass believes that through their activities the opponents have established a strong brand in PARETO which would be severely damaged by use of the mark PARETO and device in respect of all the services covered by the application.

Applicants' Evidence

19. This consists of a witness statement by Desmond Emery. Mr Emery submits that 'Pareto' is a generic name or word used to describe the phenomenon known as the "80/20" rule. He goes on to explain that the name of the political economist, Vilfredo Pareto (1848 - 1923), whose work "Cours d' economie politique" published in 1896-7 first identified the phenomenon, has become inextricably linked to it. Vilfredo Pareto's works are now largely restricted to the world of academia. Mr Emery states that the effect was originally noticed to occur in the distribution of incomes and wealth in society, although its most common use today is probably in the field of sales and marketing where it is a recognised phenomenon that 80% of business is transacted by 20% of customers. The phenomenon is known variously as the "Pareto Principle", the "Pareto Effect" or "Pareto's Law". He submits that the word 'Pareto' alone is a generic term in too common usage to be sufficiently capable of distinguishing goods and services of one organisation from those of another to enable it alone

to be used as a trade mark. Mr Emery believes that the Court of Appeal has ruled (Bach Flower Remedies Ltd v Healing Herbs Ltd) that according to Section 1(1) and 3(1)(a) of the Trade Marks Act 1994 signs which were not capable of distinguishing goods and services from those of another "shall not be registered" as trade marks. Thus, current and future applications using the word 'Pareto' should be distinguishable. Mr Emery points out that the application features the word in a distinguishable, close - spaced font and a device, a segmented triangle, giving reference to the 80/20 rule or Pareto Principle.

20. Mr Emery submits that Exhibits DL10 and DL12 submitted by the opponents contain a hard copy of a presentation slide that features the more distinguishable "Pareto Partners" logo as the header or footer rather than the single word "Pareto", as does the opponents' headed notepaper at Exhibit DL1. He goes on to state that the opponents have registered their mark in Class 36 and documented business activities in the field of Class 36 services which relate to financial services. However, the application in suit is in Class 35 and relates to a substantially different field of activity in another industry, that is, sales and marketing and associated activities. Mr Emery submits that the credentials of the business known as "Pareto Partners" is not in question but the documentation submitted by the opponents demonstrates that the success of this enterprise is attributable to the knowledge, skills and experience of the partners rather than the use of the generic term 'Pareto'.

21. In the opponents' exhibits Mr Emery argues that the majority of references to the organisation by third parties are initially to "Pareto Partners" rather than the single word 'Pareto'. When the word 'Pareto' is used in isolation it is after an introduction. When 'Pareto' is used in a headline reference is drawn to 'Pareto Partners'. He goes on to say that where the opponents author the article, reference is made to 'Pareto Partners' in the footer - presumably to identify the authors because of financial regulations. Mr Emery claims that it is clear that the business is identified to the world at large as 'Pareto Partners' rather than the generic term 'Pareto'. He states that to argue that confusion and damage to reputation will result from the term being used by other organisations does not follow. Mr Emery goes on to say that the term is already in common use outside the opponents' business and is in current use worldwide by trading organisations. Examples are as follows:-

Pareto Associates Inc.	-	USA
Pareto Consulting	-	UK
Pareto for Excel	-	a product of Baran Systems
Pareto Golf	-	UK
Pareto Law Plc	-	UK
Pareto Marketing	-	Eire & Northern Ireland

22. Mr Emery submits that other organisations may wish to use the generic term 'Pareto' in trade mark registration applications and if the application in suit were to be rejected, it would set a precedent for rejection to any applicant, in all other classes.

Opponents' Evidence in Reply

23. This consists of a further statutory declaration by David W Lass dated 23 April 2001. Mr Lass explains that his second statutory declaration is in reply to the applicants' evidence. He

states that the mark PARETO is not descriptive of financial services although it may call to mind the 80/20 rule or allude to Vilfredo Pareto's economic or socialist theories. He submits that the BACH FLOWER case can be distinguished from the present case since the term BACH FLOWER REMEDIES was held to be generic whereas PARETO has never been descriptive of or a common term for financial services.

24. At Exhibit DL1 Mr Lass provides articles referring to the opponents as PARETO both in the heading and text of the articles as opposed to PARETO PARTNERS. Also, provided at Exhibit DL2 are further examples of the single name PARETO. He confirms that the name PARETO PARTNERS and/or PARETO PARTNERS LOGO is used on the partnership headed paper and other material because this usage is in accordance with partnership law and reflects the partnership's formal partnership name.

25. Mr Lass refers to his earlier statutory declaration in which he explained that there is actual and/or potential confusion between financial and business services. He argues that the clients or potential clients of both services may be the same and they may believe that the services of the applicants are an extension of the services of the opponents. He states that the services provided by the applicants are inextricably linked to the financial services and aspects of a company in the sense that their only value is to increase the profits of a company. Mr Lass goes on to say that it is PARETO'S reputation in the market place that has enabled the firm to attract high calibre people and keep them. He believes that a client or potential client of the opponents would regard use of PARETO in the field of business and/or finances as referring to them.

26. Mr Lass explains that the partnership actively police the mark PARETO and investigate other businesses using the mark PARETO. None of the businesses/products listed by the applicants as containing the word PARETO represent a problem to the opponents. However, Mr Lass states that the partnership have challenged the use of PARETO by 'Pareto Latin America Partners Inc.' and 'Pareto Partners Inc.' If a new firm wishes to register a name with PARETO in the title and it comes under consulting, advisory or any other activity close to their own, the opponents have taken a hard line in preventing registration.

27. That completes my review of the evidence.

DECISION

28. As a preliminary point, the opponents maintained that the applicants had not sought explicitly to deal with the allegations set out in their Statement of Grounds. In keeping with the Civil Procedure Rules, the question arose as to whether the applicants' defence in their Counterstatement was inconsistent with the allegations made by the opponents and, if so, the allegations were consequently admitted. However, it is accepted that the Rules of the Supreme Court have "no part to play before the Registrar" (ST. TRUDO trade mark (1995) FSR 345). Furthermore, in my view, point 6 in the applicants' Counterstatement where they asked "for the opponents to be overruled" should be construed as a somewhat elliptical and oblique denial.

29. I now turn to the ground of opposition under Section 5(2). As identical marks are not involved the objection must be based on 5(2)(b). This reads:-

"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."

30. An earlier right is defined in Section 6, the relevant parts of which state:

"6.-(1)

- (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,"

31. I take into account the guidance provided by the European Court of Justice (ECJ) in *Sabel BV v Puma AG* [1998] E.T.M.R. 1, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] E.T.M.R. 1, *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 of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel 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 Kaisha 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.

32. Turning to the marks, the applicants' is not identical to that of the opponents and has a prominent device element. In my view, the chevron device (as referred to by the opponents) does contribute to the overall character of the mark. However, the word PARETO is the most dominant and memorable element. Words usually talk in trade marks and in my view that is most certainly the case here. The applicants' mark self evidently incorporates the whole of the opponents' earlier trade mark and in my view clearly captures the distinctive character of that mark notwithstanding the presence of the chevron device. It seems to me that someone who was familiar with the opponents' mark and who subsequently encounters the applicants' mark used in relation to similar services might reasonably think they were in some way related or perhaps that the opponents were now using an additional device element with their word mark. I regard that as being no less true simply because the services are aimed at a professional/specialist market.

33. The opponents' mark is the word PARETO. It is well established (*Sabel v Puma* paragraph 24) that 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. The distinctiveness of the opponents' mark has been raised as an issue by the applicants in their pleadings and evidence. They claim that PARETO is a generic name used to describe the phenomenon known as the "80/20 rule" first identified by the political economist Vilfredo Pareto (1848-1923), and the name is in too common usage to be capable of distinguishing the services of one organisation from those of another. The applicants provide examples of trading organisation using the word PARETO.

34. The alleged generic nature of the opponents PARETO mark is not at issue in these proceedings. The opponents' registration enjoys a prima facie presumption of validity as a result of Section 72 of the Act which reads:

"72. In all legal proceedings relating to a registered trade mark (including proceedings for rectification of the register) the registration of a person as proprietor of a trade mark shall be prima facie evidence of the validity of the original registration and of any subsequent assignment or other transmission of it."

35. However, the distinctiveness of the mark is clearly a factor in deciding its scope of protection. In the evidence before me there was nothing to suggest that the term was meaningful or directly described any characteristic of the services provided by the opponents. Therefore, I do not believe that the mark is only deserving of a narrow penumbra of protection. Furthermore, the opponents filed evidence in support of the opposition and this evidence was directed to establishing a reputation in the trade mark. The turnover during the years 1993 - 1999 ranged from \$ 6.5 million - \$ 33 million respectively. These figures relate to worldwide turnover and there is no indication in the evidence filed of the UK market share. However, Mr Engleman drew my attention to a number of press articles/features in the opponents' exhibits that evidenced reputation of the company in the United Kingdom. He went on to explain that in accordance with institutional business practice advertising is not widespread in the institutional fund management industry.

36. Mr Emery argued that, based on the opponents' evidence, it did not seem credible for the opponents to imply that the word PARETO rather than PARETO PARTNERS as an organisation solely identified their business to the public and members of the financial industry. However, I agree with Mr Engleman that the opponents' evidence does provide examples of use of the trade mark PARETO solus.

37. Given the very high level of turnover across a number of years, together with the exhibits showing use of the trade mark in the UK, the evidence is in my view sufficient to establish a reputation in the trade mark PARETO at the relevant date. However, the fact that I have found such a reputation does not in my view entitle the opponents to claim a reputation for PARETO in relation to all the services covered by the registration. The use that is shown in my view covers specialist institutional investment management and therefore I find that the reputation in PARETO extends only to this activity which clearly encompasses some but not all of the services covered by the registration. Thus, even taking into account the opponents' reputation for specialist institutional investment management, I do not think they can be in any better position than considering notional and fair use across the full range of services for which the trade mark is registered. There is no evidence that the applicants' mark is in use and I must also assume notional and fair use of the applicants' mark (REACTOR [2000] RPC at page 288).

38. I now go on to take into account the services covered by the specifications of the respective marks. In doing so I have regard to the decision by Jacob J in *British Sugar Plc v James Robertson & Sons* ["TREAT" (1996) RPC 281] In that case the court stated:

"The following factors must be relevant in considering whether there is or is not similarity:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of services;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in particular 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;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors."

Whilst I acknowledge that in view of the CANON-MGM judgment by the European Court of Justice (3-39/97) the TREAT case may no longer be wholly relied upon, the ECJ said the factors identified by the UK government in its submissions (which are listed in TREAT) are still relevant in respect of a comparison of goods. Suitably adapted, the same is true of services.

39. The mark in suit has a specification of:-

Class 35:

"Business consultancy services; telemarketing services; direct mail services; promotional services; recruitment services; marketing services; market research services; advertising services; provision of commercial and business information via a database; human resource development services; business process improvement services; marketing and promotional services via new media; incentive and motivation services to improve businesses."

whereas the opponents' mark has a specification of:

Class 36:

"Investment services; investment advice services; investment management services; unit trust management; pension services; financing, provision and arranging of loans; underwriting services; guarantee services; corporate finance services; brokerage services; banking services; credit services; money exchange services; assurance services."

40. Mr Engleman contended that on the basis that, the opponents' services can be crystallised into "the provision of financial services," the services offered by the applicants, namely "business consultancy services, field sales services, database services, business process improvement services" (the core services) directly overlap as possessing financial service related implications. The remaining services, namely "telemarketing services, direct mail services, recruitment services, marketing services; market research services; advertising services, human resource development services, new media services, incentive and motivation services" constitute those non-core services which the consumer would also assume to be associated with the opponents' business.

41. Mr Engleman sought to establish an overlap between the services. His submission was based on the premise that the users of the respective services are going to be business users and business by definition can be very wide; business consultancy services, by their very nature, have financial aspects to them. Mr Engleman went on to say that nothing in the scope of the applicants' services preclude it from offering its consultancy services to financial institutions, the respective trade channels are identical and the respective services are in competition as demonstrated by the fact that terms such as "consultancy", "management", "consultants" etc in relevant trade publications are common to both the applicants and the opponents. Mr Emery argued that the respective services were dissimilar, the opponents operating in such a narrow field.

42. It seems to me that, when comparing two of the applicants' core services - namely "business consultancy services; provision of commercial and business information via a database", - to the opponents' registration in Class 36, there is a clear overlap between business and financial services. In my opinion the uses, users and the channels through which the respective services reach the market are likely to be the same. Whilst the respective services are not in competition, they are in my view complementary. For example, one might find such services being integral parts of business acquisitions/ventures or being advertised side by side in newspapers such as the Financial Times. Accordingly, I find that these services and the specification of the opponents' registration cover similar services.

43. The "non-core" services (and promotional services and business process improvement services) present rather more difficult issues. I find myself in the position of having to strike a balance between not unduly restricting the potential meaning of terms within the respective specifications whilst at the same time not stretching their natural meaning beyond the essential characteristics of those services. In this connection I must bear in mind Jacob J's remarks in *Avnet Incorporated v Isoact Limited*, (1998) RSR 16, to the effect that:

"..... definitions of services are inherently less precise than specifications of goods. The latter can be, and generally are, rather precise, such as "boots and shoes".

In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributable to the rather general phrase."

44. On that basis and taking account of the opponents' reputation for specialist institutional investment management it seems to me that overall:-

- a) "business consultancy services; provision of commercial and business information via a database;" must be similar to and be in conflict with the opponent's services (particularly 'corporate finance services'; and 'investment advice services'); and
- b) "business process improvement services; telemarketing services, direct mail services, promotional services; recruitment services; marketing services; market research services; advertising services; human resource development services; marketing and promotional services via new media; incentive and motivation services to improve businesses", are different in kind to the opponents' services. In reaching that view I do not discount the possibility that some people encountering the applicants' mark may be reminded of the opponents' mark. But, as was noted in *Sabel v Puma* (paragraph 26) mere association in the sense that the later mark brings the earlier mark to mind is not sufficient for the purpose of Section 5(2). I will deal with the consequences of this below after a brief diversion to the opponents' claim under Section 5(4).

45. Mr Engleman also sought to rely on his ground of opposition under Section 5(4)(a). He acknowledged that "if we do not succeed under Section 5(2)(b) then we do not succeed under Section 5(4) either". I think he was right to make this concession and I do not therefore need to consider the Section 5(4) case any further.

46. The consequences of the above finding under Section 5(2) is that the application will be allowed to proceed to registration if, within 28 days of the end of the appeal period, the applicants file a Form TM21 restricting their specification as follows:

Class 35

"Business process improvement services; telemarketing services; direct mail services; promotional services; recruitment services; marketing services; market research services; advertising services; human resource development services; marketing and promotional services via new media; incentive and motivation services to improve business."

If the applicants do not file a Form TM21 restricting their specification in this way the application will be refused in its entirety.

47. As both sides have achieved a measure of success I do not propose to make a costs award in favour of either party. If the applicants do not restrict their specification as set out above and the application is refused, then the opponents will be entitled to ask for a supplementary decision in relation to the consequence as to costs.

Dated this 30 day of October 2001

DAVID C MORGAN
For the Registrar
the Comptroller-General