TRADE MARKS ACT 1994
IN THE MATTER OF APPLICATION No 2149720
BY G1 GROUP PLC

AND

IN THE MATTER OF OPPOSITION THERETO UNDER No 50048
BY SAJAHTERA INC

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IN THE MATTER OF Opposition thereto under No 50048
by Sajahtera Inc

Background

1. On 31 October 1997, King City Leisure Ltd applied under the Trade Marks Act 1994 to register the trade mark shown below. Following a change of name the application now stands in the name of G1 Group plc. Following amendment, the specification of services reads:

> Class 41
>
> Nightclub and discotheque services; live performances; television and radio broadcasting production services; rental and production of sound recordings; casino and competition services.

2. The application is numbered 2149720.

3. The application was accepted and published and on 5 August 1999, Sajahtera Inc, filed notice of opposition to the application. The statement of grounds accompanying the notice of opposition set out various grounds of opposition, however, only one was pursued at the hearing and this can be summarised as follows:

> under section 5(2)(b) of the Trade Marks Act 1994 in that the trade mark the subject of the application is similar to the opponents' earlier Community Trade mark POLO LOUNGE and in so far as it covers nightclub and discotheque services; live performances; and casino and competition services, is to be registered for services similar to the services for which the earlier trade mark is protected. [No objection was taken to the terms 'television and radio broadcasting production services; rental and production of sound recordings' appearing in the applicants' specification..]

4. The applicants filed a counterstatement denying the grounds of opposition. Both sides seek an award of costs. The matter came to be heard on 24 July 2001. The applicants were

represented by Mr Giles Fernando of Counsel, instructed by Murgitroyd & Company, the opponents were represented by Mr Andrew Norris of Counsel instructed by Nabarro Nathanson.

Evidence

5. Both parties filed evidence in the proceedings. The opponents filed two statutory declarations. The first dated 7 April 2000 is by Ms Louise Philippa Gellman a solicitor at Nabarro Nathanson, the opponents' representatives in this matter. The second is dated 7 April 2000 and is by Mr Riccardo Obertelli, CEO Vice-President of operations of The Dorchester Group Limited, a member of the same group of companies as Sajahtera Inc, the opponents. Much of the content of both declarations concern submissions as to the similarity of the trade marks and the similarity of the services covered by the opponents' earlier registration and the application in suit. I need not summarise the submissions and will refer to the evidence where necessary as part of my decision.

6. The applicants filed four witness statements. The first is dated 9 October 2000 and is by Ms Martine Frances King, a director of G1 Group plc. Ms King states her views on a comparison the trade marks in suit and also on the lack of similarity between the services covered by the respective trade marks. Much is again submission and I will refer to the evidence where necessary as part of my decision. The applicants' second witness statement is again dated 9 October 2000 and is by Mr Stefan King, a director of G1 Group plc. Mr King explains how the applicants' chose the trade mark. The opponents' are not pursing their ground of objection under section 3(6) and so I need not summarise this evidence.

7. The applicants also filed a statement by Mr John Batters, a solicitor specialising in Licensing Law particularly in Scotland. This is in reply to statements made in the evidence of Ms Gellman concerning licensing law in England and Wales, I need not summarise this here. The applicants' final witness statement is by Mr Norman Pattullo, a Patent and Trade Mark Attorney with Murgitroyd & Company Limited, the applicants' representatives. This is dated 10 October 2000 and refers to an extract from the Trade Marks Registry's Guide on Cross Searching of Trade Marks. Mr Pattullo also gives evidence as to his personal experience when visiting concert halls, cinemas and theatres. I should note that Ms King states in her evidence that the applicants' started using the trade mark in 1996.

8. In reply to the applicants' evidence, the opponents filed a statutory declaration dated 8 January 2001 by Eesheta Shah a solicitor at Nabarro Nathanson. This statutory declaration makes various comments concerning the content of the applicants' evidence, these are submissions and I need not summarise it. However, from the evidence, it should be noted that the opponents' have not shown any use of their trade mark. In the evidence of Eesheta Shah it is stated that the opponent has not to date opened up a bar or restaurant in the United Kingdom.

Decision

9. The ground of opposition pursued at the hearing refers to section 5(2)(b) of the Trade Marks Act 1994. The relevant provision reads as follows:

"5.- (1) .....

(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."

10. 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,"

11. 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] R.P.C. 117, *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V.* [2000] F.S.R. 77 and *Marca Mode CV v. Adidas AG* [2000] E.T.M.R. 723. It is clear from these cases that:-

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v. Puma AG* 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 Schuhfabrik 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 132, 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 133 paragraph 29.

12. The opponents' Community Trade Mark 347393 is an earlier trade mark within the definition of section 6 of the Act. For convenience, I reproduce the opponents' and applicants' trade marks below:

Opponents' trade mark	Applicants' trade mark
POLO LOUNGE	
Class 42	Class 41
Restaurant and bar services	Nightclub and discotheque services; live performances; television and radio broadcasting production services; rental and production of sound recordings; casino and competition services.

13. The likelihood of confusion must be appreciated globally taking into account the various factors listed above.

Inherent Distinctiveness/Reputation of the Opponents' Earlier Trade Mark

14. The opponents' trade mark has not been used in the United Kingdom and Mr Norris did not seek to rely on any enhanced level of recognition amongst the relevant public. Mr Fernando suggested that as such, the opponents' mark should have a narrow penumbra of protection. That said, the mark is of itself in my view inherently distinctive for the services for which it is registered and this is one of the factors that I must take into account.

15. Equally, although there is some evidence of use of the applicants' trade mark it does not cover the full range of services for which the applicants seek registration. This is a case where I must consider notional and fair use of both the opponents' and applicants' trade marks in relation to the services for which they are registered and for which registration is sought; *Reactor* [2000] R.P.C. at page 288.

Similarity of Services

16. There was some disagreement between counsel as to the approach I should take when assessing the question of the similarity or otherwise of the services in question. Mr Fernando argued that I should adopt a threshold test. In his view the services in question are either similar or they are not and if not then the opposition under section 5(2)(b) must fail. Mr Norris suggested that I should adopt the single composite test propounded by Mr Hobbs, Q.C., sitting as the Appointed Person *Balmoral Trade Mark* [1998] R.P.C. 297 at page 301, he found that section 5(2) raised a single composite question. Adapted to this case it can be stated as follows:

> Are there similarities (in terms of marks and services) which would combine to create a likelihood of confusion if the opponents' trade mark POLO LOUNGE and the applicants' trade mark POLO LOUNGE & DEVICE were used concurrently in relation to the services for which they are respectively registered and proposed to be registered?

17. Both counsel are in my view correct. It seems to me that it is a requirement under section 5(2)(b) that the goods or services in question must be identical or similar. However, once that has been established, by evidence if necessary; *Canon* paragraph 22, then the degree of similarity between the marks or goods and services are factors to be taken into account when assessing the likelihood of confusion; *Canon* paragraph 17. As Mr Hobbs Q.C., sitting as the Appointed Person in *Raleigh International* (SRIS O-253-00) stated:

> "Similarities between marks cannot eliminate differences between goods or services; and similarities between goods or services cannot eliminate differences between marks. So the purpose of the assessment under section 5(2) must be to determine the net effect of the given similarities and differences."

18. How is that similarity to be assessed. Mr Fernando referred me to the test used by Mr Justice Jacobs in *British Sugar Plc v James Robertson & Sons Ltd* [1996] R.P.C. 281 at page 296. Adapted to the instant case they can be stated as:

(a) the uses of the respective services;
(b) the users of the respective services;
(c) the physical nature of the services;
(d) the trade channels through which the services reach the market;
(e) [not relevant]
(f) the extent to which the respective services are competitive. This inquiry may take into account how those in trade classify services, for instance whether market research companies, who of course act for industry, put the services in the same of different sectors.

19. It follows from what has been stated above that although these factors will not necessarily determine the result under section 5(2), they are a useful guide to assessing the similarity or otherwise of the respective services; this was accepted by the ECJ in *Canon* at paragraph 23.

> "23. In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary."

20. The opponents' registration covers "restaurant & bar services", those parts of the applicants' specification under opposition cover "nightclub and discotheque services; live performances; casino and competition services". I will consider them in that order.

21. Mr Norris acknowledged that the terms used in both the opponents' and applicants' specifications were broad. He noted that there are many different types of "bar services" ranging from "ye Olde" type bar to a more contemporary bar. He submitted that within that wide range there would be those that offered music and dancing and that many would also offer a restaurant services. Turning to look at the applicants' specification, he submitted that nightclub and discotheque were the same term; a submission which I understood Mr Fernando to accept. He argued that within the term nightclub there would be a range of venues. These would offer bar services and sometimes restaurant services as part of the nightclub. Whilst there may be some "hardcore" clubs at which bar and restaurant services were ancillary, he suggested that there would be others where these services would be an integral part of the nightclub or discotheque service.

22. To support his submissions, Mr Norris referred to the exhibits filed with the opponents' evidence. In particular he took me through exhibit LPG2. This consists of pages giving information on five London night spots. He noted that the first "Down Mexico Way" describes itself as "THE BEST LATIN NIGHT OUT IN LONDON". The sheet states that the establishment is "...three floors of the best Latin food, music, entertainment and dancing.... the Ground Floor has a cocktail bar and night-club. It is open from 0500pm until 3.00am daily except Sunday. Our DJs play the best of Latin music every night of the week ...". The first floor is a room, "aimed at smaller groups" and on the third floor there is room that offers set menus only with a cocktail bar, dance floor and live Latin entertainment.

23. The second page of LPG2 consists of a print out from "LondonTown.com 'restaurants'". It features the "Dover Street Restaurant & Bar" the text states:

> "French/Modern European cuisine. Mayfair's only dining, dancing and live music restaurant featuring jazz, blues and swing. Probably the greatest party atmosphere in town."

24. The third exhibit relates to "Tiger Tiger" it is said to have "5 different environments under one roof, you can eat, drink, talk and dance until three in the morning." It states the opening times as follows, "Deli 8am, Restaurant and bars: 12 noon-3am, Nightclub (closed Sunday) 9pm-3am". The door charges are listed as: "FREE ADMISSION BEFORE 10pm, Mon-Wed £3 after 11pm; Thursday £5 after 10pm; Friday £8 after 10pm." I will return to the issue of door prices below. The fourth extract relates to Bar Madrid it is referred to as "London's wildest Latin nightclub", but the information also refers to menus and entertainment.

25. There are others examples at exhibit LPG4. Mr Norris referred to the 'LondonTown.com' page for Legends Nightclub which is listed under restaurants. He noted that the extract states that Legends is:

> "....split over two floors.....The club is open Thu-Sat from 10.30pm and attracts a flamboyant party crowd, VIP tables are available, music policy is funky house....During the day, Legends bar area operates a Maze Restaurant Mon-Fri 12-3pm serving modern British cuisine...."

26. The page for the "Roof Gardens" which is listed under nightclubs states:

> "An oasis in the sky....the roof gardens comprises one and a half acres of themed gardens. Available for private hire and open as a restaurant and nightclub on Thursdays and Saturdays."

27. There are other examples in the exhibits such as "Motcombs Club" which is described as a "hot night spot with a licensed bar and dancing until 3am", there is also a restaurant.

28. In contrast Mr Fernando whilst acknowledging that nightclub services probably represented the opponents' best case, maintained that in most cases the services were not similar. He went through the test propounded by Mr Jacob. In his view the uses were different, restaurants and bar services involved the consumption of food and drink, nightclub services concerned the provision of dancing and lighting. He argued that whilst there was no doubt that many users of nightclubs might also be users of bars and restaurants this was inevitable. He suggested that one might as well say that those who frequent bars and restaurants might also frequent greyhound racing and so the users of both could not act as a basis for establishing the necessary similarity of services. In Mr Fernando's view the services were not competitive and the trade channels were different.

29. Turning to the opponents' evidence on this point, he accepted that it showed that some restaurants and bars offered dancing and that some nightclubs offered bar services and perhaps restaurant services. However, in his view there would be a small number of such

establishments and that the vast majority of restaurants and bars did not offer nightclub services. He suggest that the opponents' evidence was self serving and that it showed only a small number of establishments that offered a range of services. In his view, it was common knowledge that in any high street there would be many bars and restaurants that did not offer such services. My own experience tells me that there are bars and restaurants that will not offer nightclub services. However, the opponents' evidence does in my view show that there are a number of establishments that offer a range of services that could be described as bar, restaurant and nightclub services.

30. I do not find the opponents' evidence surprising in my view. My own experience tells me that there are a wide range of establishments that might be termed 'bars' or 'restaurants' some of which offer music and a dance floor. Equally, my experience tells me that nightclubs usually offer bar services, they may also offer a restaurant service. Mr Fernando suggested that one pays to enter a nightclub yet one would not expect to pay to enter a restaurant. Whilst the last of these statements is in my experience true, the first is not. Nightclubs may open early in the evening and not charge entry until later in the evening. An example is at LPG2 which refers to free entry before 10pm to 'Tiger Tiger'. Equally, some bars may charge an entry fee after a certain time in the night. It also does not take account of the fact that the evidence does show that some establishments offer all three.

31. To conclude on this point I reach the view, based on the opponents' evidence and my own experience that there is some similarity between bar and restaurant services and nightclub and discotheque services.

32. Now I turn to consider the term 'live performances'. Mr Norris again suggest that this was a term that covered a wide range of services, I would agree. As he noted, it could cover a concert at the Wembley arena where bar and restaurant services would not be a feature bringing in the custom. He also argued that it could cover categories of live performance where the bar and restaurant service would play a more significant role. In this category he suggested that the two services would overlap.

33. In support of his submission he referred to the opponents' evidence showing the use that the applicants were making of the mark in suit. He referred to page 6 of the report commissioned by the opponents and exhibited at LPG5. This states, "within the lounge is a bar referred to as the POLO PIANO BAR which features both a resident and guest singers and music." As such, Mr Norris argued that there was clear similarity between the services in question. He also referred to exhibit LPG 4 and the information relating to "Ronnie Scotts". This refers to live performances but also food and drink which is optional. One can also dance upstairs. This in his view showed live performances, bar, restaurant and nightclub services in one establishment. Mr Norris' submission is supported by the evidence referred to above relating to establishments such as the "Dover Street Restaurant & Bar" which refers to live music, dining and dancing.

34. In contrast, Mr Fernando noted that the uses of the two services were dissimilar, one relates to oral consumption, the other to listening or watching the live performance. Again, the users would be the same but that would be true of any entertainment, it was also his view that establishments that offered live entertainment would inevitably offer food and drink as it was necessary for humans to eat and drink when away from home. He suggested that the

nature of the services were different, one relating to the provision of food and drink, the other to the display of artistry, skill or creativity. Thus, although Mr Fernando accepted that there would be some restaurants that might offer live performances, this would be a narrow class and in general, the trade channels would be different.

35. Again, I find that the opponents' evidence supports my own view that it is not uncommon for restaurants or bars to offer live entertainment from time to time. As such there is some overlap and therefore similarity between the applicants' and opponents' specifications. Whilst I accept that this will not be across the full range of services that might fall within the term 'live performances' there will be some overlap. I reject Mr Fernando's submission that a bar tender would not be in competition with a live performer. The term live performances is in my view broad enough to cover the provision of a venue for live performances and would not be restricted to a live performer. As such, I find that there is some similarity between live performances and the services covered by the opponents' registration.

36. Finally, I turn to consider the terms 'casino and competition services'. Mr Norris again referred to his client's evidence. At LPG 6 they exhibit a number of brochures relating to casinos. The first is a brochure for the 'Stanley Glasgow Casio'. There is a Millennium Dining offer in the 'renowned Stanley restaurant' and a champagne buffet. Mr Norris placed emphasis on the 'renowned' restaurant but absent other evidence I consider it to be advertising puff and will not place too much weight on it. The 'Reading Sports Club' has a bar, a gaming room and a dining room. Ladbrooks Casino in Glasgow offers a bar, dining and gaming. There is no evidence that relates to competition services.

37. Mr Fernando suggested that casino and competition services had a different flavour. I would agree, they suggest mental agility, the playing of games for loss or gain. I would accept that the evidence shows that it would not be surprising to find restaurant and bar services being offered alongside casino services. In assessing the similarity between casino and restaurant and bar services, the question in my view is whether those services are an integral part of the services offered. I reach the view that in the case of casino services, the restaurant and bar services are incidental. They are not the primary attraction to the casino's customers. For every establishment that offers restaurant and bar services there will be those where the provision of these services are not the primary attraction; good examples are in my view shown at exhibit MFK1 to Ms King's witness statement showing amongst others, a golf, rugby, sailing and tennis club. Turning to competition services, this is a very broad term and no evidence has been presented to show any connection between this service and those of the opponents. Therefore, to conclude in relation to casino and competition services I find that they are not similar to the services covered by the opponents' specification. As such, they are outwith the provisions of section 5(2)(b).

Comparison of the Trade Marks

38. I will now consider the visual, aural and conceptual similarities between the trade marks by reference to the overall impression created by the marks but taking into account their distinctive and dominant components.

39. Visually, the opponents' earlier trade mark are the words POLO LOUNGE. The

applicants', consists of the words POLO LOUNGE together with the device of a crest which also contains the words THE POLO LOUNGE. Mr Fernando objected to the opponents' attempts to downplay the importance of the device element in the applicants' trade mark. It is certainly not 'instantly forgettable', but neither does it detract from the prominence of the words POLO LOUNGE which are clearly a dominant and distinctive part of the applicants' trade mark. It is that element of the applicants' trade mark which would in my view be remembered by the average consumer. Even taking into account the device element, there is in my view a high degree of visual similarity between the applicants' and opponents' trade marks.

40. Mr Fernando submitted, and I agree, that the visual impact of a sign for services will be an important factor. Services are often made available under the sign in question and services tend, by their very nature, to be personally selected. It seems to me that the visual similarities between the trade marks can only be strengthened if I take into account imperfect recollection where the average consumer may not attach prominence to the fact that the opponents' trade mark does not contain the device element.

41. Orally, the opponents' trade mark would be referred to POLO LOUNGE and the applicants' as POLO LOUNGE or THE POLO LOUNGE. The crest element would not form part of the oral use of the trade mark. Here, in oral use, the trade marks are identical or at least very similar. Although I found that the visual impact of a trade mark will be an important consideration, I do not discount the importance of oral confusion. Having regard to the nature of the services in question, it seems to me that oral use and oral recommendation would be an important factor.

42. Conceptually, both trade marks refer to POLO LOUNGE. As such they use elements with analogous semantic content, seeking to invoke favourable connections with the game of polo. As such, the two trade marks are conceptually similar.

Conclusions under section 5(2)(b)

43. When assessing the likelihood of confusion all the factors listed above must be taken into account, it is a global appreciation. In this opposition, the opponents' primary case was not that there would be direct confusion between the two trade marks. That said, in relation to use of the applicants' trade mark on nightclub and discotheque services I do not discount the possibility of direct confusion. Mr Fernando argued that the method of obtaining these services would mitigate against the risk of confusion. One would normally pay to enter a nightclub but not expect to make payment to enter a restaurant. In general that may be so but the evidence shows that some establishments offer all three services and charge an entrance fee. Mr Fernando also sought to rely on the use that the applicants make of their mark at present. I do not see how this can assist them here. The opponents' mark is not in use and although the applicants use the mark in relation to a particular nightclub in Glasgow, their specification is not limited in anyway.

44. Given the very close visual, aural and conceptual similarity of the marks and the similarity of the services involved, there would in my view be a likelihood of direct confusion if the applicants' trade mark was used on nightclub and discotheque services and the opponents' trade mark was used on restaurant and bar services.

45. Even if I am wrong on this point, that is not an end to the matter. I must also consider whether the public would wrongly believe that the services came from the same or economically linked undertakings. Mr Fernando argued that this type of confusion cannot occur if the relevant public are unaware of the opponents' trade mark. He argued that for the public to wrongly believe that there was a link between the applicants and opponents they must be aware of the opponents' use on restaurant and bar services. Absent such use there could be no confusion. I do not accept that submission. In my view, where there has been no use of the opponents' trade mark, section 5(2)(b) raises a notional and fair use test. I must assume that the opponents' trade mark is in use in relation to the services for which it is registered. Absent use, I cannot give it any enhanced level of recognition, but I must still assess the likelihood of confusion as if it was in use.

46. Assuming such use, I have little difficulty in reaching the conclusion, taking into account the similarity of the marks and the services, that use of the applicants' trade mark on nightclub and discotheque services would result in the public wrongly believing that the services were provided by the opponents or some economically linked undertaking. Restaurant and particularly bar services are an integral part of nightclub and discotheque services, they are not merely ancillary to those services and the public would in my view make a connection between the two.

47. With regard to the term within the applicants' specification 'live performances' I have stated my view that there is less similarity with the services covered by the opponents' specification. As identified by the opponents, there will be services that fall within the term live performances which are removed from the areas covered by the opponents' specification. However, the evidence does show that certain venues for live performances offer a bar and also restaurant services. In such cases, it seems to me that these services are not offered as merely ancillary to the live performance. They are part of the services offered by the venue. Indeed, in some venues, the evidence would suggest that the bar or restaurant is the primary service and the live performance is offered as part of the services offered to customers. Live performances clearly covers a broad spectrum of events, the nature of the bar and restaurant services provided will vary from event to event. The applicants' specification is not limited in any way. In those cases where restaurant and bar services, and live performances are all an integral part of the services offered by a venue then there will be overlap and similarity of services. As the applicants specification is not limited, I reach the view that use of the applicants' trade mark on such live performances would result in the public wrongly believing that the services came from the opponents or an economically linked undertaking. Therefore, I find that the opponents' case in respect of live performances under section 5(2)(b) has been made out.

48. Finally, I need not consider the likelihood of confusion in relation to casino and competition services as I have found these services to be dissimilar to those covered by the opponents' specification.

49. Under section 5(2)(b) I have found that the opponents have succeeded in part with their objection. The application is to be refused in respect of 'nightclub and discotheque services; live performances'. Therefore, the application may proceed in respect of the following specification in Class 41

> Television and radio broadcasting production services; rental and production of sound recordings; casino and competition services.

50. The applicants should file a Form TM21 within one month of the expiry of the appeal period from this decision, restricting their specification in Class 41 to the wording shown above. If no Form TM21 is filed, the application will be refused in its entirety.

51. In the main, the opponents have been successful. No objection having been taken to some of the terms within the applicants' specification it was open to them at any time to divide out those parts of the specification not subject to opposition. The opponents are entitled to a contribution towards their costs. In the event that the specification is limited as shown above, I order that the applicants pay the opponents the sum of £835-00 as a contribution towards their costs. In the event that no Form TM21 is filed and the application is refused in its entirety then I order that the applicants pay the opponents the sum of £1035-00. If there is no appeal, then the appropriate sum is to be paid within one month of the expiry of the period set for filing of the Form TM21. In the event of an appeal then the costs will be payable within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 22ND day of October 2001

S P Rowan
For the Registrar
the Comptroller General