

EVIDENCE SUMMARY SHEET s44(3)(a)

Honest Concurrent Use

Application Number: 1699395

Application Filing Date: 3 June 2015

Citation(s): Filing date:

1042361 16 February 2005

Evidence Summary

Comment on the following:

1. Degree of likely confusion:

High. The present mark is a minor spelling variation of Super Shock. The goods are the also the same.

2. Has confusion occurred:

Applicant received a letter from the owner of 1042361 however they had not heard of this product nor were aware of any instances of confusion.

3. Honesty of concurrent use:

I am satisfied that the mark was created and used honestly.

4. Extent of use prior to filing (duration, area, volume, etc):

First use was in 2004. A timeline of the use can be seen on page 3 of the Shearn declaration. It appears the product started to gain significant momentum in 2012, Sale figures are as follows :



Use has been Australia wide and also internationally. Marketing and advertising materials are substantial and may be viewed in the Shearn declaration

5. Relative inconvenience to respective parties:

The relative inconvenience to the applicant would be extremely high if this application is not accepted. They have signed a number of supplier agreements and have invested heavily in the research and development of their 'supashock' branded goods.

Examiner's Recommendation s44(3)(a)	<input checked="" type="checkbox"/> Applied
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Examiner's Reasons:

The length of use outweighs the relatively low financial returns from 2004 - 2012. The applicant is very well known within the relative industry. Whilst not considered in the assessment of honest concurrent use the projected growth both nationally and internationally is significant. Use and market exposure since filing can not be ignored and I find it particularly relevant under s44(3)(b) other circumstances which I also intend to apply.

S44(3)(a) could be applied under the following conditions:

Examiner : Lachlan Freemantle

Date: 3 January 2017

REMINDERS:

- **Add Endorsement**
- **Send "ss44 Letter(s)" to cited owner(s) [except where there is no Australian address for service]**
- **Acceptance (or any conditional offer of) under the provisions of subsection 44(3)(a) / Regulation 4.15A(3)(a) should be discussed with your Team Leader**