

EVIDENCE SUMMARY SHEET s44(3)(a)

Honest Concurrent Use

Application Number: 1709795

Application Filing Date: 30 July 2015

Citation(s): Filing date:

629697 13 May 1994

Evidence Summary

Comment on the following:

1. Degree of likely confusion:

High, earlier mark being solely STONEBRIDGE, substantially identical and carries same meaning to STONE BRIDGE, a major feature of the present mark. "WINES OF CLARE VALLEY" purely descriptive material on goods claimed. Shared element is not commonplace, has a high degree of adaptation to distinguish..

While evidence supplied shows some usage, not sufficient to show that there is a low chance of confusion given earlier mark's age and goods claimed.

2. Has confusion occurred:

Declarant states that "We have never had anyone common or compare us to them".

3. Honesty of concurrent use:

Declarant states that "We were not aware of the 'Stonebridge Estate' trademark".

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

Declarant states:

- o that first use of TM for goods claimed is Nov 2005 (while planting and producing since 1996, first wine sale stated Nov 2005).
- o Grown to a [REDACTED]
- o Listed in "Halliday's Wine Companion" since 2008 (Halliday's is a well known wine/winery related annual publication and website) as a 4.5 star winery.
- o Cellar door opened in 2008.
- o Wine produced and soled in bottle, in bulk and also to contact.

o [REDACTED]

[REDACTED]

- o Advertising through Facebook, website, plus a range of printed publications, wine events, directories, signs.

Should be noted that examples supplied are sparse, while clearly showing on bottle do not show how mark is seen by consumers in marketing/promotion of goods in question apart from on site or road sign. No actual examples of applicant's marketing has been supplied.

5. Relative inconvenience to respective parties:

While clear that the business in question has grown considerably, and given STONE BRIDGE was the name of the property before it was purchased by applicant and before wine production and preparation therefore commenced, non-acceptance of this mark would create an in convenience, at this stage that is not sufficient to outweigh the inconvenience to the registrant of the cited mark. Priority date 1994, 11 years before first use.

Examiner's Recommendation s44(3)(a)	<input checked="" type="checkbox"/> Not applied
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Examiner's Reasons:

Honesty of adoption and continual use clearly addressed. Clear that [REDACTED], and relative inconvenience to applicant would be high, and has been considered. However given lack of actual examples of promotion and marketing, Part 28.3.4 of manual has not been satisfactorily addressed. Despite declarant's listed statements, it is unclear how/where potential consumers actually come into contact with the mark or one that so nearly resembles it.

Consulted with EL1 Belinda Saunders who agreed with my assessment of evidence.

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

Further examples of marketing/advertising, examples of use in wine shows and their associated promotion, distribution figures of marketing, example of listings in wine companions and local tourist guides, should be supplied. All from first use through to filing date where applicable.

Examiner : James McPhail

Date: 25 November 2016

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**