

## EVIDENCE SUMMARY SHEET s44(3)(a)

### Honest Concurrent Use

**Application Number:** 1749951

**Application Filing Date:** 3 February 2016

<b>Citation(s):</b>	<b>Filing date:</b>
368801	30 November 1981
368802	30 November 1981
368803	30 November 1981
475365	26 October 1987
475374	26 October 1987

### **Evidence Summary**

**Comment on the following:**

**1. *Degree of likely confusion:***

HIGH. Marks are deceptively similar on the basis of the shared word feature "CANON". There is a tangible danger that consumers would be caused to wonder whether the goods come from the same trade source; based on the similarities/differences of the marks and the nature of the goods claimed by the respective marks, the degree of confusion and subsequent public inconvenience is substantial.

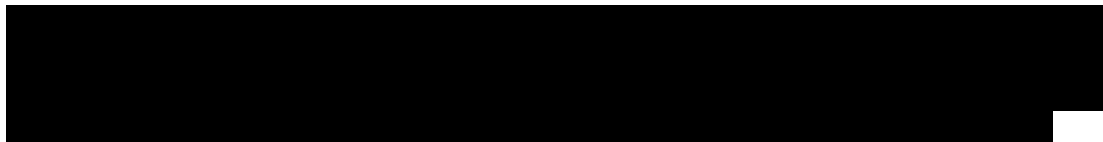
**2. *Has confusion occurred:***

Declarant states no instances of actual confusion arising.

**3. *Honesty of concurrent use:***

Declarant gives satisfactory account of adoption of the trade mark; no evidence of dishonesty.

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



**5. *Relative inconvenience to respective parties:***

Inconvenience to applicant relatively high based on the expenditure and use of the trade mark, along with the established reputation in the relevant trade.

**Examiner's Recommendation**  
s44(3)(a)

Applied

**Examiner's Reasons:**

Evidence provided does demonstrate use of the mark as badge of origin - mark promoted on newspaper advertisement and articles, magazine articles, television commercials, radio commercials, posters, point of sale advertisements, catalogues, pamphlets and social media; use of mark extends to all States and Territories in Australia; [REDACTED]; taking into consideration the use of the mark, high exposure and success of the business, reputation, long history and the relative inconvenience to the applicant if not allowed, appropriate in this instance to warrant acceptance of this mark in the face of the earlier cited marks.

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

**Examiner : Michael Yoon**

**Date: 1 May 2017**

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**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**