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TRADE MARKS ACT 1994

IN THE MATTER OF

TRADE MARK REGISTRATION 2383090

**IN THE NAME OF JAMES FRASER (MR)
OF THE FOLLOWING TRADE MARK (SERIES OF TWO) IN CLASSES 3 & 5:**



AND

**AN APPLICATION (NO. 500110) BY NORDIC CARE SERVICES LTD
TO REVOKE THE REGISTRATION ON GROUNDS OF NON-USE**

Background and pleadings

1. Mr James Fraser (“the proprietor”) is the registered proprietor of trade mark registration no. 2383090 (“the registration”) for a series of two marks as follows:



2. The trade mark was filed on 28 January 2005 and became registered on 22 July 2005 in respect of the following goods:

Class 3: Cleaning preparations; cleaning preparations containing sterilising substances; household detergents having disinfectant properties; soaps; disinfectant soap, disinfectant soap solutions; wipes incorporating cleaning preparations; non-medicated preparations impregnated into wipes; deodorants, anti-perspirant deodorants, body deodorants, deodorants for the feet; deodorant preparations, sprays and sticks for personal use; roll-on deodorants; deodorant soap.

Class 5: Disinfectants; disinfectant preparations and solutions, disinfecting agents, disinfectants impregnated into tissues and cloths, disinfectants for household purposes, disinfectants for hygiene purposes, disinfectants for industrial purposes; sterilising agents, preparations, solutions and substances; biocidal preparations; impregnated paper articles for sterilising; impregnated wipes and cloths for sterilising; sterilising preparations and solutions for use in hygiene; wipes for hygienic purposes.

Background

3. On 10 June 2013 Nordic Care Services Ltd (“the applicant”) applied for revocation of the registration under cancellation number 500067. The application did not specify a five year period which non-use was claimed. The registry subsequently wrote to the applicant on 26 June 2013 requesting an amended form to be filed by 17 July 2013.

4. On 29 July 2013 the registry received Form TM8 and counterstatement from the proprietor. The registry did not receive a response from the applicant by the date given and so wrote to the parties on 30 July 2013 advising that the claim would be struck out. The applicant responded on 31 July 2013 advising that they believed a

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response had been filed; nevertheless they would file a new application for revocation.

5. On 31 July 2013 the applicant filed a new revocation application. On 2 September 2013 the parties were advised that cancellation no. 500067 was closed, and this cancellation action (no. 500110) would proceed.

6. The proprietor was advised that since their TM8(N) was filed prior to the notice of revocation being served, the registry could not accept the form as filed. Therefore, a new TM8(N) and counterstatement were required from the proprietor by 4 November 2013. Neither the form TM8(N) nor counterstatement was filed. Accordingly, a decision revoking the registration was issued on 13 February 2014 with an effective date of revocation being 30 July 2013.

7. The decision was appealed to the Appointed Person. It became apparent from the notice of appeal that the proprietor had not received the registry emails since there was a communication service failure. Therefore, under Rule 43(3) of the Trade Marks Rules 2007 (as amended) the registry decided to set the revocation decision aside and this application for revocation will proceed.

8. The background is relevant since a large volume of documentation submitted for the appeal has been used in this revocation action.

Applicant's statement of grounds

9. Revocation is sought under Section 46(1)(b) of the Trade Marks Act 1994 ("the Act"). They claim that the proprietor has not made genuine use of their registration between 30 July 2008 and 29 July 2013. Therefore, under section 46(1)(b) of the Act they request revocation from 30 July 2013¹.

Proprietor's counterstatement

10. The proprietor filed a counterstatement which read as follows:

"The defendant has continued to use Steri-x orally and on the internet/web in support of its range of products, now primarily branded under steri-7, steri-x and steri-7xtra. The mark and brand steri-x is inherently linked and associated with the overall brand, established goodwill and reputation and mark steri-7 together with the full range of its products. Steri-x and steri-7xtra has always been and remains an inherent part of the brand and has been used during the relevant period."

11. The proprietor filed evidence in these proceedings which is summarised below. The applicant filed written submissions which mainly consisted of criticisms of the proprietor's evidence. They shall be referred to where necessary.

12. No hearing was requested, and so this decision is taken following a careful perusal of the papers.

¹ Section 46(6)(b) of the Act

Evidence

13. The proprietor's evidence consists of two witness statements, both in the name of Mr Keith Robert Lobo who is a solicitor of St John Legal (professional representatives for the proprietor). He does not state how long he has been in this position or the extent of which he has access to the proprietor's records and information.

Witness statement of Mr Lobo dated 11 March 2014

14. The witness statement mainly focussed on the appeal outlined above². Mr Lobo also claims that there have been instances of confusion in the marketplace, though no evidence to this effect has been provided.

15. Exhibit KRL1 predominantly comprises of forms and correspondence between the proprietor and the Registrar.

16. Mr Lobo makes the following statement regarding use of the mark:

“27....The marketing material relates to Steri-7's extra strength biocidal cleaner sachets utilising the Steri-x brand and the underlying Mark.”

17. The exhibit includes the following representations:



² Paragraphs 3 - 8

STERI-7 Xtra Strength Sachet

High Level Multi-function Biocidal Cleaner/Disinfectant
Utilising Reactive Barrier Technology

For high level cleaning /disinfection, pour 1 litre of water into a clean container. Cut corner of STERI-7 Xtra sachet and pour carefully into container. Stir thoroughly.

When cleaning surfaces, use a clean, damp cloth or spray bottle. spray/wipe surface evenly. Allow to dry.

For general cleaning/disinfection, pour 5 litres of water into a clean container. Cut corner of STERI-7 Xtra sachet and pour carefully into container. Stir thoroughly.

When you need to clean walls and floors, use with mop and bucket, or scrubbing machine. Use a clean, damp cloth on walls. Clean heavily soiled areas first then spread evenly over the surface and leave to dry.

Fogging: High Level: 2x sachet per 5lt
General: 1 x sachet per 5lt
STERI-7 ULV Biomist: 2 x 50ml sachets per 5 ltrs of tap water

Power washers: 1 x 50ml sachets per 5 ltrs of tap water

Here is a small selection of our test results:

Bacteria
Pseudomonas MRSA
Vancomycin-Resistant Enterococci (VRE)
E.coli
Staphylococcus E.coli
Salmonella typhimurium
Salmonella enteritidis
Salmonella cholerae suis
Proteus Vulgaris
Legionella
Listeria Monocytogenes
Mycobacterium
Mycobacterium fortuitum (H)
Mycobacterium Fortuitum
Spores
Bacillus subtilis
Bacillus cereus
Clostridium difficile
Clostridium perfringens
Yeasts
Candida albicans
Fungi
Aspergillus niger
Viruses
SARS
Hep C
Influenza A H1N1 (Swine Flu)
HIV
Norovirus

Key benefits:

Kills: Bacteria, Viruses including NOROVIRUS, Spores, Influenza A H1N1 (Swine Flu), SARS, Mycobacterium, Fungi, Yeasts.
Reactive Barrier Technology (RBT) keeps on killing effectively between cleans. Independently tested and verified.
Can reduce cleaning time by at least 33%.
No rinsing required (just leave to dry).
Fast acting.
Multipurpose usage. Classified as non hazardous to the environment.
Low-foaming. Food Safe.
Non-toxic (EPA Risk report).
Non-irritant (SCD 10893).
Non-corrosive (AMS 1451 A&E).
Non-bleach based. Unpermeated and Scented (Lemon Burst).
Non-Chlorine based.

Complies to:
ISO 13485 BS EN 13697
ASTM E 1052/2003 BS EN 13704
BS EN 1040 BS EN 13727
BS EN 1275 BS EN 14347
BS EN 1630 BS EN 14348
BS EN 16823 BS EN 14348

STERI-7 The biocidal cleaner which out-performs all others.
info@steri-7.com



18. The exhibit also contains a quotation dated 12 July 2012 from PrimePac Solutions in Ebbw Vale, South Wales to Richard Fraser. The quotation makes no reference to Steri-X (or even Steri-7). Subsequent to this is an invoice dated 7 May 2013. The invoice is to Steri-7 Limited from Primepac Solutions Limited for 12000 “Steri-7 50ml Disinfectant Sachet”. In relation to the quotation and invoice, Mr Lobo states:

28...The marketing material is for the Steri-x sachet project that began in 2012 and is developing further...Steri-x under that project was paid for in May 2013 for which the relevant invoice and original quote are attached (pages 53-54) i.e. within the relevant period now alleged under the current application. It further demonstrates the continued use of Steri-x and the associated Mark and brand.”

Witness statement of Mr Lobo dated 13 November 2014

19. The witness statement makes numerous references to the Steri-7 brand and portfolio, and in paragraph 7 it is stated that:

“The Steri-x and Steri7Xtra names and branding continue to be used and marketed (page 1 of KRL2) and the Mark is an inherent part of that project. I am instructed and it has been confirmed to me that the Mark will continue to be used...”

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20. Exhibit KRL2 consists of six pages. These are duplicated at Annex A to this decision.

- Page one is undated and shows the mark STERI-7 XTRA. There is no reference to Steri-x.
- Page two of the exhibit is a marketing leaflet dated 1 January 2012. It shows the mark "Steri-x" in the body of the text and on a spray bottle. The product is described as "a unique sterilizer with a zero tolerance for bacteria." It goes on to state that the steriliser "is ideal for schools and other educational establishments where it can be safely applied to all surfaces including walls, floors, tables, chairs, food trays, toilets, shower trays, doors and even curtains and fabrics. It is available in 500ml trigger spray bottles for easy application, as well as 5lt and 25 lt containers for conventional mop and bucket cleaning of larger areas." There is no indication in the witness statement (or exhibit itself) as to how many of these leaflets have been distributed and to what extent.
- Page three is another marketing leaflet headed "Just how clean is your clean Care Home?". It is dated 16 November 2011. Further, it refers to "STERI-X, a specialist broad-spectrum biocidal cleaner"
- Page four is undated. It is headed "Hygiene Schedule" and has STERI-X in the top left hand corner.
- Mr Lobo states that page five of the exhibit is the "front page of a brochure used by Steri-7 during the material period". It is undated.
- Page six is a document headed "MRSA R.I.P." and contains a picture of a spray bottle which has the mark "Steri-x" on the front. It is not dated and Mr Lobo states that "Although the date of its actual creation is uncertain I am instructed that the Steri-7 sales team and agents have undoubtedly used the document and therefore utilised the Mark during the relevant period it is alleged that non-use took place."

21. Mr Lobo goes on to state at paragraphs 10 and 11 the following:

"Similarly and prior to that in November 2011 and May 2010 (pages 3-6) the Steri-x name and the mark were utilised on marketing and promotional material used by the sales team and Ster-7 agents worldwide. The Steri-x "hygiene schedule" at page 4 was created in and used since May 2010. It uses the Steri-x name and branding across the products referred to.

At the same time other marketing and promotional material used by the Steri-7 sales team and its agents utilised the Mark. At page 5 is the front page of a brochure used by Steri-7 during the material period in conjunction with other promotional material. Under the heading "THE LAUNCH OF A SUPERBUG STERILISER" the Mark is utilised as the main feature of the document."

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Legislation

22. Section 46(1) of the Act states that:

“The registration of a trade mark may be revoked on any of the following grounds-

(a).....

(b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;

(c).....

(d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) An application for revocation may be made by any person, and may be made to the registrar or to the court, except that –

(a) if proceedings concerning the trade mark in question are pending in the court, the application must be made to the court; and

(b) if in any other case the application is made to the registrar, he may at any stage of the proceedings refer the application to the court.

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –

(a) the date of the application for revocation, or

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(b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

Relevant case law

23. In *Stichting BDO v BDO Unibank, Inc.*, [2013] EWHC 418 (Ch), Arnold J. stated as follows:

“51. Genuine use. In *Pasticceria e Confetteria Sant Ambroeus Srl v G & D Restaurant Associates Ltd* (SANT AMBROEUS Trade Mark) [2010] R.P.C. 28 at [42] Anna Carboni sitting as the Appointed Person set out the following helpful summary of the jurisprudence of the CJEU in *Ansul BV v Ajax Brandbeveiliging BV* (C-40/01) [2003] E.C.R. I-2439; [2003] R.P.C. 40 ; *La Mer Technology Inc v Laboratoires Goemar SA* (C-259/02) [2004] E.C.R. I-1159; [2004] F.S.R. 38 and *Silberquelle GmbH v Maselli-Strickmode GmbH* (C-495/07) [2009] E.C.R. I-2759; [2009] E.T.M.R. 28 (to which I have added references to *Sunrider v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) (C-416/04 P) [2006] E.C.R. I-4237):

(1) Genuine use means actual use of the mark by the proprietor or third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely token, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Sunrider* [70]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods

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and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] -[23]; *Sunrider*, [70]–[71].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no de minimis rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25]; *Sunrider*, [72]”.

24. Although minimal use may qualify as genuine use, the CJEU stated in Case C-141/13 P, *Reber Holding GmbH & Co. KG v OHIM* (in paragraph 32 of its judgment), that “*not every proven commercial use may automatically be deemed to constitute genuine use of the trade mark in question*”. The factors identified in point (5) above must therefore be applied in order to assess whether minimal use of the mark qualifies as genuine use.

25. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

Decision

What has been filed by the proprietor to demonstrate use?

26. The vast majority of evidence filed relates to the appeal which does not assist the proprietor in proving genuine use of the mark. The only evidence filed which attempts to prove use is as follows:

1) Marketing leaflets showing use of the mark in the following formats:

STERI-X





- 2) An invoice purchasing 12000 “Steri-7 50ml Disinfectant Sachet. Mr Lobo’s witness statement states that the disinfectant sachets go into the Steri-x sprays, bottles, etc.

27. The proprietor has submitted pictures of the mark and made various submissions with regard to use. I am mindful that when considering the proprietor’s evidence, it is a matter of viewing the picture as a whole, including whether individual exhibits corroborate each other. In Case T-415/09, New Yorker SHK Jeans GmbH & Co. KG v OHIM, in relation to the need to get a sense from the overall picture of the evidence, notwithstanding that individual pieces may not, of themselves, be compelling, the General Court (“GC”) stated in paragraph 53:

“In order to examine whether use of an earlier mark is genuine, an overall assessment must be carried out which takes account of all the relevant factors in the particular case. Genuine use of a trade mark, it is true, cannot be proved by means of probabilities or suppositions, but has to be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (COLORIS, paragraph 24). However, it cannot be ruled out that an accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see, to that effect, judgment of the Court of Justice of 17 April 2008 in Case C-108/07 P Ferrero Deutschland v OHIM, not published in the ECR, paragraph 36).”

28. If undated evidence and submissions contribute to creating an overall picture of use, I may take them into consideration. In this instance, the marketing leaflet is not supported with any corroboratory evidence or explanation to demonstrate how many people the leaflet went to, where it was distributed or when. Therefore, it does not assist in creating a picture of overall use of the mark. With regard to the invoice, this related to “Steri-7” goods. Therefore, the exhibits do not corroborate one another. Further, the witness statement has been provided by the proprietor’s representative rather than themselves. Assertions in the witness statement that the mark has been used should be considered as hearsay.

Section 4 of the Civil Evidence Act 1995 permits hearsay evidence in civil proceedings but provides the following guidance as to the weight to be accorded to such evidence:

“Considerations relevant to weighing of hearsay evidence.

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(1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following -

(a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.”

29. Further, in *Dosenbach-Ochsner AG Schuhe und Sport v Continental Shelf 128 Ltd* ('CATWALK'), BL O/404/13, Mr Geoffrey Hobbs QC, sitting as the appointed person, stated in paragraphs 21 and 22 that:

“The assessment of a witness statement for probative value necessarily focuses upon its sufficiency for the purpose of satisfying the decision taker with regard to whatever it is that falls to be determined, on the balance of probabilities, in the particular context of the case at hand. As Mann J. observed in *Matsushita Electric Industrial Co. v. Comptroller- General of Patents* [2008] EWHC 2071 (Pat); [2008] R.P.C. 35:

[24] As I have said, the act of being satisfied is a matter of judgment. Forming a judgment requires the weighing of evidence and other factors. The evidence required in any particular case where satisfaction is required depends on the nature of the inquiry and the nature and purpose of the decision which is to be made. For example, where a tribunal has to be satisfied as to the age of a person, it may sometimes be sufficient for that person to assert in a form or otherwise what his or her age is, or what their date of birth is; in others, more formal proof in the form of, for example, a birth certificate will be required. It all depends who is asking the question, why they are asking the question, and what is going to be done with the answer when it is given. There can be no universal rule as to what level of evidence has to be

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provided in order to satisfy a decision-making body about that of which that body has to be satisfied.

When it comes to proof of use for the purpose of determining the extent (if any) to which the protection conferred by registration of a trade mark can legitimately be maintained, the decision taker must form a view as to what the evidence does and just as importantly what it does not 'show' (per Section 100 of the Act) with regard to the actuality of use in relation to goods or services covered by the registration. The evidence in question can properly be assessed for sufficiency (or the lack of it) by reference to the specificity (or lack of it) with which it addresses the actuality of use."

30. In view of the above, the witness statement has limited weight. Notwithstanding this, in accordance with section 100 of the Act and the relevant legislation outlined above dictates that a mere statement that the registration has been used is far from sufficient.

31. To summarise, the only evidence provided are leaflets and an invoice (referring to "Steri-7") together with hearsay submissions.

What has not been filed to demonstrate use?

- i) There are no turnover figures
- ii) There are no advertising figures
- iii) There are no invoices to consumers or evidence of sales to end users
- iv) No corroboratory evidence or information on the extent of which the marketing material was issued
- v) Geographical extent of use

32. The list of evidence which could have been filed to demonstrate use is not exhaustive. There is an array of evidence which could have been filed to support the proprietor's general contention that the registration has been put to genuine use. The proprietor has not submitted sufficient evidence or pleaded a defence of proper reasons for non-use. Accordingly, I find that the proprietor has not demonstrated genuine use of the mark in the relevant period.

Use in a differing form

33. Mr Lobo's witness statements make numerous references to "Steri-7" rather than the registration. Therefore, it appears appropriate to address whether use of "Steri-7" could be considered use of the registration. Before doing so, it is important to confirm that even if I were to consider use of "Steri-7" as being use of the registration, the evidence as a whole is far from sufficient to prove genuine use of the registration.

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34. Nevertheless, I shall address whether use of the mark “Steri-7” should be considered as use of the registration. In *Nirvana Trade Mark*, BL O/262/06, Mr Richard Arnold Q.C. (as he then was) as the Appointed Person summarised the test under s.46(2) of the Act as follows in paragraphs 33 and 34:

“... The first question [in a case of this kind] is what sign was presented as the trade mark on the goods and in the marketing materials during the relevant period...”

The second question is whether that sign differs from the registered trade mark in elements which do not alter the latter’s distinctive character. As can be seen from the discussion above, this second question breaks down in the sub-questions, (a) what is the distinctive character of the registered trade mark, (b) what are the differences between the mark used and the registered trade mark and (c) do the differences identified in (b) alter the distinctive character identified in (a)? An affirmative answer to the second question does not depend upon the average consumer not registering the differences at all.”

35. See also *Remus Trade Mark* – BL O/061/08 (Appointed Person) & *AO Alfa-Bank v Alpha Bank A.E.* - 2011 EWHC 2021 (Ch) and *Orient Express Trade Mark* - BL O/299/08 (Appointed Person).

36. Although these cases were decided before the judgment of the Court of Justice of the European Union (“CJEU”) in *Colloseum Holdings AG v Levi Strauss & Co.*, Case C-12/12, they remain sound law so far as the question is whether the use of a mark in a different form constitutes genuine use of the mark as registered. The later judgment of the CJEU must also be taken into account where the mark is used as registered, but as part of a composite mark.

37. The distinctive character of the registration is based on the combination of “STERI” and “X”. Both are within an oval shaped ring, one coloured purple and the other black. The mark is registered for, *inter alia*, class 3 (cleaning preparations, etc) and class 5 (disinfectants, etc.). In my view, the average consumer for these goods is likely to view “steri” as an abbreviation of “sterilise”. Therefore, the distinctive character of “steri” is at the lower end of the spectrum for the registered goods, but increased when used in conjunction with “x”.

38. The evidence makes reference to and shows the mark as including the suffix “7” rather than “x”. This difference, in my view, does alter the distinctive character of the mark to the extent that it would be recognised by the average consumer.

39. Therefore, I find that use of “Steri-7” in the various forms does not constitute use of the registration.

40. As previously stated, even if I were to conclude that “Steri-7” should be considered as use of the registration, the evidence is still far from sufficient to prove genuine use.

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Outcome

41. The application for revocation succeeds. The registration is revoked from 30 July 2013 under section 46(6)(b) of the Act.

COSTS

42. The applicant for revocation has been successful and is entitled to a contribution towards its costs. In the circumstances I award the applicant for revocation the sum of £1100 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Preparing a statement and considering the other side's statement £300

Considering the other side's evidence and preparing submissions £600

Official fee £200

43. I therefore order Mr James Fraser to pay Nordic Care Services Ltd the sum of £1100. The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 29th day of April 2015

MARK KING
For the Registrar,
The Comptroller-General

Annex A (exhibit KRL2)

Page one



ZERO TOLERANCE

The problem with bacteria control is all too familiar. There are products available with less than 100% killing ability on bacteria. Others kill bacteria 100%, but as soon as the solution has dried (often within minutes) it has no effect on new bacteria. Bacteria will migrate and re-colonize if you do not eliminate it 100%.

STERI-X™ is a unique sterilizer with a zero tolerance for bacteria. Tests at the Rowett Institute have confirmed that STERI-X™ has a 100% kill within a minute on the MRSA superbug, E.coli(0157H), Salmonella, enteritidis, Klebsiella pneumoniae and Candida albicans. And it continues to be 100% effective for at least 7 days after application. Its proven effectiveness has also been confirmed by several independent specialists and Public Health Laboratories*. STERI-X™ conforms to BS EN 1276 :1997 and is even AMS1452A certified for use in aircraft*.

STERI-X™ is ideal for schools and other educational establishments where it can be safely applied to all surfaces including walls, floors, tables, chairs, food trays,

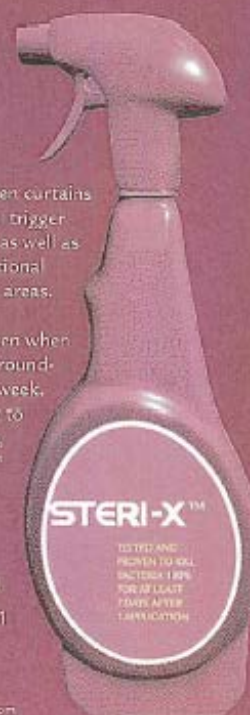
toilets, shower trays, doors and even curtains and fabrics. It is available in 500ml trigger spray bottles for easy application, as well as 5l and 25l containers for conventional mop and bucket cleaning of larger areas.

STERI-X™ will continue to work even when your staff are off duty, ensuring a round-the-clock protection for at least a week. So if you haven't the right product to begin with in your cleaning regime, you can now depend on STERI-X™ for a zero tolerance, 100% kill on bacteria.

For more information about STERI-X™ or to place an order call

0800 587 0098 quoting ED1
or visit www.sentinelint.com

* Reports available to view on www.sentinelint.com



STERI-X™ is marketed and distributed by SENTINEL INTERNATIONAL LIMITED, Unit 1, Batsworth Road, Mitcham, Surrey CR4 3BX, England.

STERI-X™

Just how clean is your clean Care Home?



Swab No. 8
Cleaned Support chair
 Staphylococcus: Not present
 Streptococcus: Not present
 E. coli: 10 colonies
Mould / Yeast: Heavy mould contamination Aspergillus, Penicillium and unknown mould



Swab No. 7
Clean Mattress
 Staphylococcus: Not present
 Streptococcus: Not present
 E. coli: 18 colonies
Mould / Yeast: Penicillium and unknown mould



Swab No. 9
Cleaned Commode chair
 Staphylococcus: Not present
 Streptococcus: Not present
 E. coli: 12 colonies
Mould / Yeast: Very heavy contamination 40+ colonies assorted species

These are some of the results of a series of swab tests carried out recently at a health care institution. Top left is a support chair that had been cleaned and sterilized earlier that day; the middle slide shows a mattress that had been washed, wrapped in plastic and stored away in a clean environment; and the last is a commode chair that had been given a thorough

dousing with recommended disinfectants.

Terrifying isn't it?

As a committed Care Home Manager, you know how vital it is to keep every room, floor, surface and piece of equipment absolutely spotless.

Especially in today's political climate where everyone is watching and waiting for the next outbreak of MRSA or C.Diff.

The problem is, most cleaning products on the market need to be used almost constantly to prevent re-infection - a time consuming and expensive process.

At Sentinel we believe that the only way to keep your business truly clean is to use STERI-X, a specialist broad-spectrum biocidal cleaner.

STERI-X uses a unique Residual Barrier Technology that keeps killing pathogens between cleans, protecting floors and surfaces 24/7.

STERI-X helps you save money, as well giving you the peace of mind that comes from knowing that your residents and staff have got the best biocidal protection on the market.

STERI-X™ HYGIENE SCHEDULE

TASK	PRODUCT AND DILUTION	TASK	PRODUCT AND DILUTION	TASK	PRODUCT AND DILUTION
Cutting Boards STERI-X Concentrate / RTU Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray.		Mops and Buckets STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water. Leave mop and bucket in soak for minimum 30 minutes.		Walls and Tiles STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.	
Mixers, Mixers and Vapour STERI-X Concentrate / RTU Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray.		Floors STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water.		Cell Rooms STERI-X Concentrate Dilute the STERI-X Concentrate with 50 parts water i.e. 4 plunges to 5 litres of water.	
Sinks, Choppers and Pouches STERI-X Concentrate / RTU Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray.		Stairway steps and Outside canopies STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Fridges and Freezers STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.	
Tables and Benches STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Outside and Windows STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water.		Dishwashers and Penetrators STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.	
Trolleys STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Waste Disposal Units STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water.		Pets and Pens/Enclosures STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.	
Bain Marie STERI-X Concentrate / RTU Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray.		Microwave Ovens STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Stainless Steel Surfaces STERI-X Concentrate / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.	
Walls and all hard surfaces STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water.		Toilet Cleaning STERI-X Concentrate / Lemon Burst / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		<p>KEY:</p> <ul style="list-style-type: none"> ■ Kitchen Hygiene ■ Housekeeping <p>TASK ROTATION:</p> <ul style="list-style-type: none"> ■ Weekly ■ Daily ■ As required ■ After every use 	
Baths, Showers and Tiles STERI-X Concentrate / Lemon Burst / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Mould and mildew moulds on tiles STERI-X Concentrate / Lemon Burst / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		<p style="text-align: right;">STERI-X™</p> <p>unit 1 t: +44 (0) 208 687 0567 betsworth road f: +44 (0) 208 640 9592 micham e: info@santinelint.com surrey sales@santinelint.com CR4 3BX w: www.santinelint.com england</p>	
Tables, Desks and Polished surfaces STERI-X Concentrate / Lemon Burst / RTU / Wipes Dilute the STERI-X Concentrate with 10 parts water i.e. 3 plunges to 750ml of water, or use Ready To Use trigger spray. STERI-X Wipes are also available for ease of use.		Floors STERI-X Concentrate / Lemon Burst Dilute the STERI-X Concentrate / Lemon Burst with 50 parts water i.e. 4 plunges to 5 litres of water.			

THE LAUNCH OF A SUPERBUG STERILISER

STERI-X

THE ONLY BIOCIDAL SOLUTION
THAT ELIMINATES BACTERIA 24X7
AFTER 1 APPLICATION

MRSA R.I.P.

STERI-X™ is the world's first and only biocidal solution that's proven to kill the MRSA Superbug.

It is 100% effective against all known pathogenic bacteria including E. Coli (O157H), Legionella Pneumophila, Salmonella, Enteritidis, and Pseudomonas Aeruginosa. It remains 100% active for 7 days, after application, thanks to its Residual Barrier Technology (RBT™), preventing any treated surface from recolonisation.

This makes STERI-X™ ideal for use in clinics, hospitals, veterinary surgeries, food preparation areas, nursing

homes, kindergartens, dentists' and doctors' surgeries, public areas, etc. STERI-X™ can be safely applied to all surfaces including walls, floors, doors, desks, beds, toilets, curtains, telephones, food trays, air conditioning filters, and worktops.

STERI-X™ conforms to BS EN 1276 : 1997, IAMS 1452A certified for use in aircraft* and has been tested by independent specialists and public health laboratories*, in particular the Public Health Laboratory at Poole Hospital and the Rowlett Institute, and their reports testify to the proven effectiveness of STERI-X™.

STERI-X™ is marketed by Sentinel International Limited and will be available from 1st December 2004 in 500ml trigger spray bottles for easy application to surfaces and fabrics as well as a 5lt and 25lt containers for larger areas. So whatever your fears are, of MRSA or any pathogenic bacteria contamination in your work place, you can now lay them to rest with STERI-X™.

For more information about STERI-X™ or to

place an order call **0800 587 0054**
*Reports available on request



STERI-X™ THE ONLY BIOCIDAL SOLUTION THAT ELIMINATES BACTERIA 24x7 AFTER 1 APPLICATION

STERI-X™ KILLS THE FOLLOWING 100% 24x7

- BACTERIA**
 Bacillus cereus
 Bacillus coarchohemophilus
 Brovhabacterium animenagenis
 Chlamydia psittaci
 Corynebacterium diptheriae
 Deaullivibro deaullificans
 Enterobacter aerogenes
 Enterobacter cloacae
 Enterococcus faecium
 Escherichia coli (E157H)
 Klebsiella pneumoniae
 Klebsiella pneumoniae (MRKP)
 Legionella pneumophila
 Listeria monocytogenes
 Listeria monocytogenes
 Micrococcus lysodeikticus
 Mycobacterium smegmatis
 Mycobacterium tuberculosis
 Proteus mirabilis
 Proteus vulgaris
 Pseudomonas aeruginosa
 Pseudomonas fluorescens
 Salmonella
 Salmonella abortus equi
 Salmonella choleraesuis
 Salmonella Dublin
 Salmonella enteritidis
 Salmonella manhattan
 Salmonella Newport
 Salmonella panama
 Salmonella paratyphi
 Salmonella actinocoluelleri
 Salmonella typhi
 Salmonella typhimurium
 Salmonella marcescens
 Salmonella dysenteriae
 Salmonella flexneri
 Salmonella sonnei
 Staphylococcus aureus
 Staphylococcus aureus (MRSA)
 Staphylococcus epidermidis
 Staphylococcus agalactiae
 Strepococcus faecalis
 Strepococcus faecalis (MRSP)
 Strepococcus pyogenes
 Yersinia enterocolitica
- FUNGUS/ YEAST**
 Aspergillus niger
 Aspergillus versicolor
 Candida albicans
 Cladophium cladoasporioides
 Microsporum gypseum
 Penicillium glaucum
 Penicillium vitruosum
- ALGAE**
 Chlorella pyrenoidosa
 Chroococcoides
 Phormidium favolarum
 Phormidium mundaum (Black mould)
 Phormidium uncinatum
 Scenedesmus obliquus