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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206212
Party	Plaintiff Carefusion 2200, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL
BOARD**

IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332

DATE OF PUBLICATION: May 29, 2012

CareFusion 2200, Inc.,	:	
	:	
Opposer,	:	
	:	
v.	:	Combined Opposition No.: 91206212
	:	
Entrotech Life Sciences, Inc.,	:	
	:	
Applicant.	:	

OPPOSER’S REPLY BRIEF

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OPPOSER'S REPLY BRIEF

At bottom, this is a very straightforward case. Opposer's CHLORAPREP mark is conceptually and commercially strong, Applicant is seeking to use the dominant portion of the mark – CHLORA – on identical goods that would be directly competitive with Opposer's goods sold under its CHLORA-formative marks, and that are intended for use by the same group of end users. Should Applicant ever get a product to market, confusion would be manifest.

The conclusion of Applicant's Trial Brief lists several bullet points which summarize its argument that Opposer has failed to establish likelihood of confusion under the *DuPont* factors. Opposer will reply to these points in turn.¹

A. Applicant states “Opposer’s CHLORAPREP and CHLORASHIELD marks are weak marks and entitled to only narrow protection” and “There is extensive third party use of the terms CHLOR, CHLORA, and CHLORO to indicate a product’s antiseptic qualities in the marketplace.”

1. Opposer’s CHLORAPREP and CHLORASHIELD Marks are Suggestive Marks and Conceptually Strong

Applicant's attack on the strength of the CHLORAPREP and CHLORASHIELD marks is based on the mistaken premise that CHLORA is a descriptive term, and that CHLOR, CHLORA and CHLORO are functionally equivalent. Indeed, four pages of its brief are devoted to charts of various third party registrations and common law uses that purport to show that there is an “established naming convention” for using these prefixes interchangeably to indicate “the presence of chlorhexidine or chlorine in their respective products.” Brief at 11. In fact, Applicant has presented no evidence whatsoever that users of these antiseptic products see these terms as interchangeable, much less as part of an “established naming convention”. Moreover,

¹ Two of Applicant's points deserve only the briefest response. The CHLORAGARD cancellation has only recently been filed; thus there has been no discovery as to whether there has been any confusion. Moreover, the Chloragard catheter product is not so closely related a product to Opposer's ChloraPrep and ChloraShield products as are Applicant's products under the opposed marks. Finally, Opposer has not asserted that it has a CHLORA family of marks; only a ChloraPrep family of products.

unlike CHLOR or CHLORO, CHLORA has no dictionary meaning. As noted in the Merriam-Webster online Medical Dictionary at <http://www.merriam-webster.com/dictionary/chlor>, the prefix chlor- means the following:²

chlor-

Definition of CHLOR-

- 1: green <chlorine> <chlorosis>
- 2: chlorine : containing chlorine <chloroprene>

Variants of CHLOR-

chlor- or chloro-

However, there is no dictionary definition for the term CHLORA. It is not an abbreviation for chlorine. Opposer uses the CHLORA-formative on its chlorhexidine antimicrobial product for use on humans. And as Opposer noted in its Trial Brief at pp 10-12, there are no other federal registrations of a CHLORA-formative mark for a chlorhexidine antimicrobial product for use on humans – far from being a crowded field, Opposer’s CHLORAPREP and CHLORASHIELD marks stand alone.

Applicant’s reliance on third-party registrations is also misplaced. The Board has long recognized that third-party registrations are of little weight in determining likelihood of confusion. “They are not evidence of use of the marks shown therein and they are not proof that consumers are familiar with such marks so as to be accustomed to the existence of similar marks in the marketplace.” *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); see also *AMF Inc. v. American Leisure Products, Inc.*, 474 F.2d

² The Board can take judicial notice of dictionary definitions pursuant to TBMP 704.12(a). *Rocket Trademarks Pty. Ltd. v. Phard S.p.A.*, 98 USPQ2d 1066, 1075 n.17 (TTAB 2011)

1403, 177 USPQ 268, 269 (CCPA 1973). Applicant has presented no evidence that the products identified in the submitted third-party registrations are in use, much less used by persons who are familiar with Opposer's products.³ On the other hand, Opposer presented substantial evidence and testimony that its actual competitors for antimicrobial skin prep products use names that do not employ Applicant's so-called "established naming convention", and that the third-party CHLORA- formative marks cited by Applicant are used on products that are wholly unrelated to Opposer's CHLORAPREP and CHLORASHIELD products.⁴

Finally, Applicant's repeated reliance on a purported reference by a non-lawyer, non-employee consultant that in his (non-legal) opinion the CHLORAPREP mark is "descriptive" is misleading, inaccurate, and irrelevant. It is not an admission or evidence, much less a finding, that the CHLORAPREP mark is merely descriptive. Rather, the marketing consultant was retained by CareFusion in 2009 to do a preliminary analysis of the overarching brand structure of the new company and its legacy brands. The opinions the consultant expressed in the presentation were his alone, and in many cases, Mr. Creidenberg disagreed with them. Indeed, the recommendations proposed by the consultant were never adopted by CareFusion.⁵ One non-lawyer's opinion on the "descriptiveness" of a trademark, not based on any legal investigation or analysis, is simply that – a personal opinion that is not supported by any legal reasoning.

³In fact, Applicant's President, Mr. McGuire was completely unaware of the uses for any of the products identified in Applicant's Exhibit 17, "Chlor Third Party Registrations", even though he claims that Applicant conducted a search prior to filing the opposed applications.

⁴ See Opposer's Trial Brief at pp. 15-16, citing Opposer's Notice of Reliance [dkt. 49] and the Trial Testimony of Jennifer Raeder-Devens at 43:18-47:22, and Opposer's Notice of Reliance [dkt. 50] and Raeder-Devens Trial Testimony at 37:6-12; 38:15-18.

⁵ Criedenberg Deposition Testimony at 190:3-11.

2. Opposer has submitted significant, un rebutted evidence of the commercial strength of the CHLORAPREP mark.

Applicant attempts to whittle away at the significant amount of evidence that Opposer has submitted which demonstrates the commercial strength of the CHLORAPREP mark by belatedly challenging the admissibility of much of that evidence. In particular, Applicant seeks to strike Opposer's evidence of the increasing brand awareness over the years of ChloraPrep products, as measured by Awareness and Usage ("A&U") studies conducted periodically by Opposer, and summarized in several PowerPoint presentations. Applicant also seeks to strike the testimony of Jan Creidenberg with respect to his personal observations of the advertising activities of Opposer vis a vis its competitors. However, Applicant did not object to this evidence or testimony at the time it was offered; accordingly, its objections are waived. TBMP Section 707.03(a).⁶

The A&U studies, as summarized in the PowerPoint presentations, unquestionably show that brand awareness and approval of ChloraPrep products has increased greatly over the years; consequently, sales have grown substantially. Opposer has presented the testimonial evidence of Opposer's Vice President of Sales and Marketing for its Infection Prevention business unit, Jan Creidenberg, who has been personally involved in the marketing and promotion of ChloraPrep products since 2007, and who testified at great length and detail, based on his personal knowledge, about the promotion and marketing of ChloraPrep products through the years. Opposer presented evidence compiled from CareFusion records at Mr. Creidenberg's request that showed Opposer's marketing spend on CHLORAPREP products from Fiscal Year 2010 through the budgeted spend for 2015. These figures reflect spending on ChloraPrep products only, not,

⁶ Opposer will address this issue at greater length in its response to Applicant's Objections set forth in its Appendix B.

as Applicant suggests, spending on other CareFusion products.⁷ All of this evidence, both documents and testimony, show the remarkable commercial success of ChloroPrep products, and extensive name recognition among end users. Clearly, the CHLORAPREP mark is commercially strong and entitled to broad protection against nearly-identical marks intended for use on directly competitive products.

B. Applicant states “The Parties’ marks are materially different in appearance, sound, connotation and commercial impression, especially given the weakness of Opposer’s marks.”

Opposer’s Reply: As noted above, and in Opposer’s Trial Brief, Opposer’s CHLORA-formative marks are not weak. With that in mind, Applicant’s argument on this issue is unavailing. Unlike HIB, which is the generic prefix for Haemophilus influenza type b, or CHIRO or THERM, which are abbreviations of the words chiropractor and thermal, CHLORA is neither generic nor an abbreviation. Clearly, the CHLORA portion of the marks at issue is the predominant and common element and the one most likely to be remembered by consumers. *Edom Laboratories Inc. v. Lichter*, 102 USPQ2d 1546, 1551 (TTAB 2012), citing *Presto Products Inc. v. Nice-Pak Products, Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) (the first part of a mark “is most likely to be impressed upon the mind of a purchaser and remembered”). As the Board noted when comparing the marks CHIRO-KLENZ and SUPER CHIRO TEA, both of which were herbal tea products, “the overall similar commercial impressions created by the common presence of CHIRO in both marks creates a similar commercial impression that is not significantly changed by the addition of the terms SUPER and TEA in applicant’s mark and the term KLENZ in opposer’s mark. In fact, consumers may believe that SUPER CHIRO TEA and

⁷ See OX 50 to the Trial Testimony of Jan Creidenberg.

CHIRO-KLENZ are different varieties of the CHIRO line of tea.” *Edom Laboratories, supra*, 102 USPQ2d at 1551-52.

Not surprisingly, that is precisely the commercial impression that Applicant’s (and Opposer’s) CHLORA- formative marks have when compared to Opposer’s well-known CHLORAPREP mark. As Carol Schultz, a registered nurse who has worked extensively in the infection prevention arena testified:⁸

Q. If you saw other products in the surgical setting, say something like a -- something called ChloraShield or ChloraDrape or ChloraBond in a surgical setting, what would your first thought be?

A. Cool, ChloraPrep branched out.

Q. Why would you say that?

A. Because it's Chlora.

Q. Does that automatically in your mind mean ChloraPrep?

A. Um-hum.

The purported weakness of Opposer’s CHLORAPREP mark is further belied by the evidence of actual confusion between ChloraPrep and a competitive product manufactured by PDI called ChloraScrub which ultimately resulted in PDI changing the ChloraScrub name to Prevantics.⁹ See Opposer’s Trial Brief at pp. 13-14. Ms. Schultz recalled her confusion at the time when the two products were on the market:¹⁰

Q. Have you heard of a product called Chlorascrub?

A. Yes.

Q. What do you know about Chlorascrub?

A. It's made by PDI.

Q. Was that on the market at the same the ChloraPrep was?

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⁸ Rebuttal Testimony of Carol Schultz [dkt. 75] at 30:10-19. Although Applicant relies extensively on Ms. Schultz’s testimony in its Trial Brief, it inexplicably seeks to strike her testimony from the record as improper rebuttal. Opposer will address this issue at greater length in its response to Applicant’s Objections set forth in its Appendix B.

⁹ Applicant notes that in an earlier lawsuit between Opposer’s predecessor, MediFlex, the court denied MediFlex’s motion for a preliminary injunction against PDI over use of ChloraScrub in 2006. AX1. However, that lawsuit predated the instances of confusion testified to by Mr. Creidenberg, which happened in the 2007-2009 time frame, Creidenberg Trial Testimony at 45-47; 109-110, OX 40, and which ultimately resulted in PDI changing the name of the Chlorascrub product pursuant to a 2009 settlement agreement. Creidenberg Trial Testimony at 213:13-215:4 and OX 76.

¹⁰ Rebuttal Testimony of Carol Schultz at 29:21-30:15.

A. I don't know when it was on the market. I do know that the PDI rep had shown me Chlorascrub when he came to show me the PDI Sani-Cloth Wipe.

Q. What was your first reaction when you saw the Chlorascrub?

A. When did ChloraPrep get PDI?

Q. And you thought that ChloraPrep had acquired PDI?

A. Um-hum.

C. Applicant states “*The Parties’ marks are advertised in different and distinguishable manners and channels.*”

Opposer’s Reply: Applicant’s statement is simply not the law. There are no limitations or restrictions in Applicant’s trade channels or methods of marketing. Applicant does not have a market-ready product. It has done no advertising. It is well settled that because the respective products are identical, and there are no limitations in either parties’ goods description as to channels of trade, the Board will presume that the goods will “travel in the same channels of trade, and be sold to the same class of purchasers.” *In re Smith and Mehaffey*, 31 USPQ2d 1531, 1532 (TTAB 1994). Moreover, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Clearly, there is nothing that would prevent Applicant from marketing its identical

¹¹ Halsey Deposition Testimony at 24:25-26:11

¹² Halsey Deposition Testimony at 26:7-27:3. See Exhibits 39-42 for an outline of the more traditional marketing plan proposed by Mr. Halsey.

products in the same manner and to the same class of users as Opposer. *Edom Laboratories, Inc. supra*, 102 USPQ2d at 1550-51.

D. Applicant states “*The buyer class for the products are sophisticated medical professionals who purchase products according to time- and labor-intensive procedures*” and “*The products are expensive.*”

Opposer’s Reply: Trademark infringement under Section 32 of the Lanham act is use of a mark so similar to that of a prior user as to be “likely to cause confusion, or to cause mistake, or to deceive.” As Applicant is well aware, Section 32 was amended in 1962 from its original language, which defined infringement as use of a mark that would be "likely to cause confusion or mistake or to deceive *purchasers as to the source of origin* of such goods or services" to delete the terms “purchasers” and “source of origin”. Thus, for more than fifty years, “the likelihood of confusion with which the Lanham Act is concerned is not limited to confusion of products among purchasers.” *Arrowpoint Capital Corp. v. Arrowpoint Asset Management, LLC*, Case No. 14-3063 (3d Cir. 2015.); see also, *Meridian Mut. Ins. Co. v. Meridian Ins. Grp., Inc.*, 128 F.3d 1111, 1118 (7th Cir. 1997) (context of confusion "immaterial" because any injury to goodwill or loss of control over reputation is actionable); *Champions Golf Club, Inc. v. Champions Golf Club, Inc.*, 78 F.3d 1111, 1119-20 (6th Cir. 1996) (relevant evidence of confusion goes beyond purchaser confusion and includes "confusion among nonpurchasers" in order to "protect the manufacturer's reputation").

Here, there is no question that the actual end users of these products – medical professionals involved in surgical and vascular access procedures – would be confused by seeing an identical or closely-related antimicrobial product with a CHLORA-formative name. As Ms. Schultz said, “Cool, ChloroPrep branched out.” Moreover, these are not individually expensive products. They are disposable, single-use items that are purchased in bulk and stocked in

multiple units in operating rooms and other applicable care centers. The various-sized ChloroPrep applicator units range in price [REDACTED]¹³ Mr. McGuire testified that Applicant's ChloroDerm product would be priced [REDACTED]¹⁴ The surgical incise drape products would be in the [REDACTED]¹⁵ These products are not high-priced capital investments for a hospital – they are bulk items, and the decision of the hospital purchasing agent to purchase a particular brand is made on the basis of practitioner preference.¹⁶ That is why Opposer has put so much effort into marketing and promoting these items directly to health care professionals in settings such as trade shows, and in the education efforts of its ChloroPrep sales reps and the members of its Speaker's Bureau.¹⁷ Thus, confusion at the purchaser level is irrelevant – here, the concern is that there will be confusion by end users in the operating room.

E. Applicant states “Applicant acted in good faith in adopting each of its marks.”

Opposer's Reply: The relationship between the parties with respect to the failed development of the incise drape product, the undisputed fact that Applicant was aware that CareFusion intended to market the incise drape product as part of its ChloroPrep line of products, the fact that two of Applicant's marks (CHLORADERM and CHLORABOND) are for goods directly competitive to Opposer's ChloroPrep and ChloroShield products, and the timing of the filing of the applications all point to Applicant's bad faith in selecting the opposed marks. This is not a case where Applicant simply had knowledge of Opposer's CHLORAPREP mark. Applicant knew that there were no other products used in the surgical setting, other than

¹³ Creidenberg Trial Testimony at 129:4-130:24.

¹⁴ McGuire Trial Testimony at 103:11-21.

¹⁵ See OX 96; McGuire Trial Testimony at 154:14-15.

¹⁶ Creidenberg Trial Testimony at 82:1-83:4; Schultz Rebuttal Testimony at 8:14-25.

¹⁷ See Schultz Rebuttal Testimony at 10:14- 11:25 (“So normally people ask the infection control practitioner to get the studies and evaluate the studies in the Infection Control Committee with the infectious disease M.D., and that’s what I did. I called up our [ChloroPrep] rep and he brought the studies in.”)

ChloraPrep, that used the term CHLORA as part of their name.¹⁸ Applicant knew that Opposer was intending to expand its line of antimicrobial products, and that it intended to use CHLORA-formative marks to identify these products. With that inside knowledge, and only a few months after the incise drape development project came to an end, Applicant filed the four opposed applications for two identical and two potentially competitive products using CHLORA-formative names.

Applicant's current claim that it wanted nothing to do with associating its products with Opposers' because "Opposer and its CHLORAPREP product were the subject of a highly-publicized DOJ investigation" is simply revisionist history¹⁹, and is being used as an excuse to attempt to insert into the record irrelevant and prejudicial evidence. See Appendix B to Opposer's Trial Brief at Section II, which is incorporated by reference herein.²⁰

II. CONCLUSION

On balance, considering all of the record evidence on all of the relevant *du Pont* factors, and giving each such factor its appropriate weight in the circumstances of this case, ELS's CHLORA-formative Marks so closely resemble CareFusion's prior used and registered CHLORAPREP and CHLORASHIELD Marks as to be likely, when used on or in connection with the goods described in the applications, to cause confusion, or to cause mistake, or to deceive, and hence, registration of its CHLORADRAPE, CHLORADERM, CHLORABSORB

¹⁸ McGuire Trial Testimony at 299:4-9.

¹⁹ The investigation occurred several years after Applicant filed the opposed applications, and thus was clearly not a factor in Applicant's decision to select the marks.

²⁰ To the extent Applicant is arguing that Opposer should not prevail in this Opposition because it has engaged in some type of wrongdoing with respect to the product bearing the trademark Opposer is seeking to protect, Applicant has not asserted a counterclaim for unclean hands, the issue has not been tried by consent, nor would such a counterclaim be cognizable in this case. *Warnaco Inc. v. Adventure Knits, Inc.*, 210 USPQ307 (TTAB 1981) ("the concept of unclean hands denying relief to a plaintiff is not intended to serve as a punishment for extraneous transgressions") *VIP Foods, Inc. v. V.I.P. Food Products*, 200 USPQ 105, 113 (TTAB 1978) ("misconduct in the abstract unrelated to the claim in which it is asserted as a defense does not constitute unclean hands").

and CHLORABOND applications should be refused under Section 2(d) of the Lanham Act; 15 U.S.C. §1052(d).

Respectfully submitted,



Date: October 20, 2015

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**OPPOSER’S RESPONSES TO APPLICANT’S OBJECTIONS TO CERTAIN
EVIDENCE OFFERED BY OPPOSER**

Applicant has raised a number of objections to certain of Opposer’s evidence, and seeks to have this evidence stricken from the record. These objections are inappropriate, as summarized below.

I. Trial Testimony of Carol Schultz

As the Board is well aware, it does not generally strike testimony on the basis of substantive objections, but weighs the testimony in light of the objections in its evaluation of the probative value of the testimony. *Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1755 (TTAB 2013), citing *Krause v. Krause Publications Inc.*, 76 USPQ2d 1904, 1907 (TTAB 2005).

As an initial matter, Applicant offers no explanation as to why it is proper for Applicant to rely on Ms. Schultz’s testimony in its Trial Brief, while claiming such testimony should be stricken from Opposer’s evidentiary submissions. On this basis alone, the testimony should be admitted in its entirety.

Furthermore, Ms. Schultz’s testimony is unquestionably proper rebuttal to many statements made by Mr. McGuire in his testimony deposition. Mr. McGuire, who is not a medical professional, offered many of his unsupported opinions about the recognition of the ChloroPrep product and brand among medical professionals in his testimony based partly upon hearsay from Mr. McGuire’s ex-wife. Ms. Schultz, a medical professional in the infection prevention space rebutted in their entirety:

McGuire Trial Testimony at 245:24-246:4:

[REDACTED]

[REDACTED]

Schultz Rebuttal Testimony at 22:10-23:4:

Q. Do medical practitioners, in your experience, do they recognize the name ChloroPrep?

MS. HICKEY: Objection.

BY THE WITNESS:

A. The nursing staff definitely does. At our institution some physicians do. Some physicians just ask for the skin prep.

BY MS. TRUE:

Q. Have you ever heard somebody ask for Chlorhexidine?

A. No.

Q. Have you ever heard a physician ask for CHG?

A. No.

Q. Do you hear -- Do you hear physicians ask for ChloroPrep ever?

A. Yes. But that's when they're being offered a different one sometimes. If I'm offering the DuraPrep or the clear one, they'll say the ChloroPrep.

Mr. McGuire also offered his "medical" opinion on what he considered to be negative attributes of ChloroPrep, presumably to bolster his argument that there would be no likelihood of confusion because his products currently in development will be superior to ChloroPrep products.²¹ Again, Ms. Schultz rebutted these statements:

Schultz Rebuttal Testimony at 25:24-26:21

Q. And what I'm going to read to you from the testimony of Mr. McGuire who is a witness in this case.

[REDACTED]

Do you have any reaction to that? I mean, do you agree with his statement that there's a weak link in ChloroPrep because it takes forever to dry on the patient?

²¹ See McGuire Trial Testimony at 325:7-21.

A. I don't think that it takes forever to dry on the patient. I think that ChloroPrep dries pretty fast. I would think within a minute you got almost completely dry as opposed to other products that take a longer time, like Betadine.

Applicant also wants to strike the testimony Ms. Schultz provided regarding the similarity between the CHLORAPREP, CHLORASHIELD and CHLORASCRUB marks and the Applicant's CHLORA-formative marks as improper rebuttal, and as improperly going to the ultimate issue in the case. However, Ms. Schultz was simply providing her impressions, based upon her familiarity with the products, which also happened to contradict Mr. McGuire's non-expert testimony as to likelihood of confusion:

McGuire Trial Testimony at 259:25-260:15

[REDACTED]

Schultz Rebuttal Testimony at 30:10-19

Q. If you saw other products in the surgical setting, say something like a -- something called ChloraShield or ChloraDrape or ChloraBond in a surgical setting, what would your first thought be?

A. Cool, ChloraPrep branched out.

Q. Why would you say that?

A. Because it's Chlora.

Q. Does that automatically in your mind mean ChloraPrep?

A. Um-hum.

All in all, the Board is quite capable of determining the relative probative value of Mr. McGuire's testimony on these issues versus those of Ms. Schultz, a registered nurse and practitioner in the infection prevention field.

2. Trial Testimony of Jan Creidenberg at Opposer's Exhibits 18-22

Applicant objects to Mr. Creidenberg's testimony regarding Opposer's marketing spend viz a viz its competitors, and to the introduction of several PowerPoint summaries of CareFusion surveys showing, among other things, the name recognition and market share of ChloroPrep on the basis of improper foundation. However, Applicant raised no objections to this testimony and evidence at the time of Mr. Creidenberg's testimony; accordingly those objections have been waived *Nahshin v. Product Source International LLC*, 107 USPQ2D 1257 (TTAB 2013) ("As a general rule, objections that are curable must be seasonably raised, or they will be deemed waived. See authorities collected in TBMP Section 707.03(a) (3rd. ed., rev 1). Thus, in a deposition upon oral examination, an objection as to the authenticity of a document, to be seasonably raised, would have to be raised during the deposition, at a point where the witness could conceivably cure the problem. Fed. R. Civ. P. 32(d) (3) (A).").

3. Exhibit 79 and Opposer's Notice of Reliance re Third Party Registrations, dkt. 50

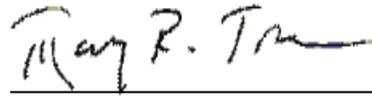
Exhibit 79 is chart that compares Applicant's products, as described in the goods descriptions submitted with the applications, with third party goods on the market with similar descriptions. Attached to Exhibit 79 are website printouts for these products, and the uses and characteristics for these products was further confirmed by the trial testimony of Jennifer Raeder-Devens, who had familiarity with the products based on her 25 years of professional experience with

antiseptic products. The chart, and accompanying documents, were not offered to for the purpose of showing third party competitors to Applicant's products – Applicant doesn't sell any products. Rather, the chart is a list of third-party competitive products to Opposer's ChlorPrep line of products, none of which use a CHLORA-formative mark. See Trial Testimony of Jennifer Raeder-Devens at 34:20-43:11. The same registrations were made of record in Opposer's NOR dkt. 50, and were submitted and relied upon to show that third-party registrations of CHLORA__ are not for goods similar to those of Opposer under its CHLORAPREP and CHLORASHIELD marks, and if they are, they do not contain chlorhexidine and/or are not for human use, as testified by Opposer's witness Jennifer Raeder-Devens in her Testimony Deposition on March 13, 2015.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following attorney of record for Applicant by electronic mail this 20th day of October 2015:

LMartens@sheppardmullin.com.

A handwritten signature in black ink, appearing to read "Mary R. True", written over a horizontal line.

Mary R. True