

7 March 2006

To whom it may concern

Dear Sirs

Mosquito Sound System

The Mosquito Sound System ("the Device") is manufactured by Compound Security Systems Limited ("the Company"). We have been asked to give a preliminary opinion as to whether the use of the Device by shops and other premises and by local police forces to discourage teenagers from loitering is in breach of the Human Rights Act 1998.

1. We have reviewed the test reports on the Device sent to us by the Company. To the best of our knowledge and belief no medical evidence exists that an individual's exposure to the sound emitted by the Device is likely to cause actual physical harm. The Device has been tested by the National Physical Laboratory which has stated that the volume of the Device is not enough to damage hearing. There are currently no regulations controlling the exposure of members of the public to sounds of any particular frequency. We would therefore propose that, within the framework of existing legislation, the Device should be considered merely as an irritant.

Furthermore, the Company has stated that the Device does not breach the requirements of the Control of Noise at Work Regulations 2005. In any event, these regulations do not apply to members of the public exposed to noise from their non-work activities or to low level noise which is a nuisance but which carries no risk of hearing loss.

2. As the transmission of the sound produced by the Device is directional and as high frequency wavelengths do not travel through solid objects, we do not consider that it is likely that the Device will cause a nuisance to neighbours of its users.

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Shakespeare House 42 Newmarket Road

Cambridge CB5 8EP

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3. We have considered the implications of the Human Rights Act 1998 on the use of the Device. As stated above, we do not consider, on the basis of evidence made available to us, that the sound emitted by the device is harmful or likely to cause a nuisance. The only people to be affected by the Device are those in its close proximity and they are free to move on.

4. In general, the Human Rights Act 1998 only applies where rights are being breached by a public body rather than by a private individual, so shopkeepers using the Device should not be directly subject to its requirements. However, a public authority may still be liable where it has failed to protect individuals from other individuals, in particular from breaches of Article 3 (see below).

5. The Human Rights Act 1998 is intended to balance one individual's rights against another's. This means that the rights of the storekeepers to pursue their trade must be taken into account as well as the rights of individuals affected by the sound of the Device. Furthermore, the wider interests of the community as a whole may be taken into account when considering the impact of any activity. Studies of the use of the Device have shown that members of the general public are more likely to come into areas where the Device is employed than they would if there were teenagers loitering there.

6. Article 3 of the European Court of Human Rights (incorporated into the Human Rights Act 1998) protects an individual from inhuman or degrading treatment or punishment. We have carried out preliminary searches on the case law which suggests that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. Case law suggests that in the case of interrogation of detainees, the level of noise is calculated to isolate detainees from communication; this is considerably more traumatic than the sound emitted by the Device. In any case, detainees cannot walk away from the sound whereas people near the device can. Furthermore, our preliminary searches have found no instances where exposure to a particular pitch of a sound, rather than its volume, constitutes degrading treatment.

7. Article 11 of ECHR provides a right to assemble with other people in a peaceful way. However, such assembly must be without violence or threat of violence. This is a qualified right which may be withdrawn to protect the rights and freedoms of others including the property owners where people are assembled. Having carried out preliminary searches we do not consider that this right includes the right of teenagers to congregate for no specific purpose, and therefore this right is not being infringed by the use of the Device. The Device is not preventing people from assembling, but rather discouraging them from loitering in any particular place. Young people who can hear the sound emitted by the Device are not restrained but are free to move elsewhere.

8. While Article 14 of the ECHR prevents discrimination against individuals and groups on various grounds, the grounds do not specifically include discrimination on the grounds of age. It is possible for the courts to find discrimination on grounds other than those specifically cited; we have performed preliminary searches but have found nothing to suggest that groups of young people have the characteristics of a group that can be discriminated against.

9. We do not believe that any human rights are breached the use of the Device. We believe that any claim that proper use of the Device contravenes human rights principles would be weak and vexatious. Notwithstanding this, interference with the rights granted under the Human Rights Act 1998 is permissible if it has its basis in law and is done to secure a permissible aim and is necessary in a democratic society. Our preliminary searches have found nothing to suggest that use of the Device is unlawful; its use is intended to secure a permissible aim (prevention of crime, protection of public order) and its use is not excessive but rather is carefully designed to meet the objective in question.

10. We would stress that the above opinions are given in the absence of any similar devices with which comparisons with the Device could be drawn. Accordingly, these opinions may change in the light of expert scrutiny of the relevant issues, new case law, an evolving regulatory framework or new scientific evidence. Accordingly, this letter is intended as guidance only and we accept no liability for reliance on any of the opinions expressed in this letter. The recipient is advised to take his own legal advice on these issues.

Yours faithfully

Hewitsons