

Federal Court



Cour fédérale

**Date: 20110201**

**Docket: T-942-10**

**Citation: 2011 FC 117**

**Ottawa, Ontario, February 1, 2011**

**PRESENT: The Honourable Mr. Justice Hughes**

**BETWEEN:**

**WONDERFARM BISCUITS &  
CONFECTIONARY SDN BHD**

**Applicant/  
Appellant**

**and**

**BORDEN LADNER GERVAIS LLP**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an appeal taken under section 56 of the *Trade-marks Act*, R.S.C. 1985, c. T-13 in respect of a decision of the Registrar of Trade-marks to expunge Canadian Trade-mark Registration No. 504,780 for all but a few wares. For the reasons that follow, I will restore that registration except for the wares “bread, pastries and spices.”

[2] The Trade-marks Office was dealing with a request made by the Respondent under section 45 of the *Trade-marks Act* that the Registrant, the Applicant/Appellant, furnish evidence as to the use of the trade-mark for the wares as registered. Evidence was filed which the Registrar's delegate found to be unsatisfactory, except for the wares "preparations made from cereals, namely biscuits, wafers and cookies". Accordingly, the balance of the registration, except as to these wares, was expunged by a decision dated April 16, 2010.

[3] The Applicant brought this appeal and provided substantial new evidence which satisfies me that the registration, as amended October 1, 2008, should be restored except for the deletion of wares being "bread, pastries and spices". The Respondent is in agreement.

[4] The law in respect of appeals such as this has been well summarized by the Chief Justice of this Court in his recent decision, *1459243 Ontario Inc. v. Eva Gabor International Ltd.* 2011 FC 18. I will not repeat that summary.

[5] Accordingly, Trade-mark Registration No. 504,780 will be restored, in part, such that the statement of wares should now read as follows:

*Preserved, dried, cooked and stewed fruits; canned mushrooms (preserved); coconut cream, coconut milk, coconut water, green grass jelly, grass jelly fruit juice, non-alcoholic, non-carbonated beverages; coffee, tea, preparations made from cereal, namely biscuits, wafers, cookies; mineral and aerated waters and other non-alcoholic drinks, namely teas, coffees, non-carbonated fruit based beverages and non-carbonated beverages made primarily of natural ingredients; fruit drinks, namely non-alcoholic and non-carbonated fruit based beverages.*

[6] I am satisfied that the Respondent is entitled to costs, particularly since the Appellant should have filed proper evidence in the Trade-marks Office and not undertaken an appeal in order to do so. Costs are fixed in the sum of two thousand (\$2,000.00) dollars.

**JUDGMENT**

**FOR THE REASONS PROVIDED:**

**THE COURT ORDERS AND ADJUDGES that:**

1. Canadian Trade-mark Registration No. 504,780 is restored in part such that the statement of wares is as follows:

*Preserved, dried, cooked and stewed fruits; canned mushrooms (preserved); coconut cream, coconut milk, coconut water, green grass jelly, grass jelly, fruit juice, non-alcoholic, non-carbonated beverages; coffee, tea, preparations made from cereal, namely biscuits, wafers, cookies; mineral and aerated waters and other non-alcoholic drinks, namely teas, coffees, non-carbonated fruit based beverages and non-carbonated beverages made primarily of natural ingredients; fruit drinks, namely non-alcoholic and non-carbonated fruit based beverages.*

2. The Respondent is entitled to costs fixed in the sum of two thousand (\$2,000.00) dollars.

"Roger T. Hughes"

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-942-10

**STYLE OF CAUSE:** WONDERFARM BISCUITS & CONFECTIONARY  
SDN BHD v. BORDEN LADNER GERVAIS LLP

**PLACE OF HEARING:** Ottawa

**DATE OF HEARING:** February 1, 2011

**REASONS FOR JUDGMENT:** HUGHES J.

**DATED:** February 1, 2011

**APPEARANCES:**

Robert MacDonald

FOR THE APPLICANT

Hafeez Rupani

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Gowling Lafleur Henderson  
Barristers & Solicitors  
Ottawa, Ontario

FOR THE APPLICANT

Borden Ladner Gervais LLP  
Barristers & Solicitors  
Ottawa, Ontario

FOR THE RESPONDENT