

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151028

Docket: A-24-15

Citation: 2015 FCA 232

**CORAM: NADON J.A.
TRUDEL J.A.
SCOTT J.A.**

BETWEEN:

ALLIANCE LAUNDRY SYSTEMS LLC

Appellant

and

WHIRLPOOL CANADA LP

Respondent

Heard at Montréal, Quebec, on October 28, 2015.
Judgment delivered from the Bench at Montréal, Quebec, on October 28, 2015.

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: TRUDEL J.A.

DISSENTING REASONS BY: SCOTT J.A.

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ALLIANCE LAUNDRY SYSTEMS LLC

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and

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REASONS FOR JUDGMENT

(Delivered from the Bench at Montréal, Quebec, on October 28, 2015).

NADON J.A.

[1] Before us is an appeal of a decision of Madam Justice Bédard of the Federal Court dated December 17, 2014 (amended on January 15, 2015)(2014 FC 1224) upholding a decision of the Registrar of Trade-marks (2013 TMOB 218) dated December 18, 2013 which confirmed the registration of the respondent's trade-mark at issue in association with the respondent's goods.

[2] In my view, the appeal should be allowed. I am satisfied that the evidence of Mr. English, the Director/Manager of Whirlpool Corporation, does not, even on a generous view of its contents, meet the low threshold of evidence required to show use of the trade-mark at issue in association with the respondent's goods.

[3] To conclude that Mr. English's evidence was sufficient to show use within the meaning of section 45 of the *Trade-marks Act*, R.S.C., 1985, c. T-13 is, in my respectful view, unreasonable.

[4] Thus the Judge below ought to have intervened. Her failure to do so constitutes a palpable and overriding error which justifies intervention on our part.

[5] I would therefore allow the appeal with costs, I would set aside the judgment of the Federal Court and rendering the judgment which ought to have been rendered, I would allow the appellant's appeal from the decision of the Registrar and I would modify that decision by expunging Registration Number UCA15837 for the trade-mark SPEED QUEEN in association with the respondent's goods. Finally, I would direct the Registrar to modify the register accordingly.

"M. Nadon"

J.A.

"I agree.

Johanne Trudel"

SCOTT J.A. (Dissenting Reasons)

[6] Essentially for the reasons given by the Federal Court, I would dismiss the appeal with costs.

[7] Considering that the case law is clearly to the effect that the burden of a registrant under section 45 of the *Trade-Marks Act* to prove use of its mark is not a heavy burden, I have not been persuaded that Madam Justice Bédard made a palpable and overriding error in her assessment of the evidence or that she erred in law in concluding that the decision of the Registrar of Trade-marks upholding the registration of the respondent's trade-marks at issue "SPEED QUEEN" in association with laundry washing machines and laundry dryers was reasonable.

"André F. J. Scott"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

STYLE OF CAUSE: ALLIANCE LAUNDRY SYSTEMS
LLC v. WHIRLPOOL CANADA
LP

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: OCTOBER 28, 2015

REASONS FOR JUDGMENT BY: NADON J.A.

CONCURRED IN BY: TRUDEL J.A.

DISSENTING REASONS BY: SCOTT J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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