

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110907

Docket: A-357-10

Citation: 2011 FCA 244

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

BETWEEN:

RON MATUSALEM & MATUSA OF FLORIDA INC.

Appellant

and

HAVANA CLUB HOLDING INC., S.A.

Respondent

Heard at Montréal, Quebec, on September 7, 2011.

Judgment delivered from the Bench at Montréal, Quebec, on September 7, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on September 7, 2011)

NADON J.A.

[1] This is an appeal of the decision of Martineau, J. of the Federal Court (the judge) dated July 27, 2010, 2010 FC 786. The judge dismissed the Appellant's appeal of a decision of the Registrar of Trade-marks which held that the Appellant's proposed trade mark, "The Spirit of Cuba", to be used in association with rum, was not registrable on the grounds that it was deceptively misdescriptive and that it lacked distinctiveness.

[2] We can detect no error in law in the reasons given by the judge in dismissing the Appellant's appeal of the Registrar's decision nor can we conclude that the judge made any palpable and overriding error in his appreciation of the evidence and in the application of the relevant principles to his findings of fact.

[3] What the Appellant is asking us, in effect, is to reassess the evidence available to the judge on the record before him. That, absent an error on the part of the judge, we cannot do.

[4] For these reasons, the appeal will be dismissed with costs.

“M. Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-357-10

**APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED JULY 27, 2010,
T-2145-09 (2011 FC 786)**

STYLE OF CAUSE: RON MATUSALEM & MATUSA
OF FLORIDA INC.
v. HAVANA CLUB HOLDING
INC., S.A.

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: September 7, 2011

REASONS FOR JUDGMENT OF THE COURT BY: NADON, TRUDEL,
MAINVILLE JJA.

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

Pavol Janura FOR THE APPELLANT

Greg Moore FOR THE RESPONDENT
Isabelle Jomphe

SOLICITORS OF RECORD:

Brouillette & Partners LLP FOR THE APPELLANT
Montréal, Quebec

Goudreau Gage Dubuc FOR THE RESPONDENT
Montréal, Quebec