

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20131008**

**Docket: A-21-13**

**Citation: 2013 FCA 240**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
TRUDEL J.A.**

**Docket: A-21-13**

**BETWEEN:**

**BODUM USA, INC. and PI DESIGN AG**

**Appellants**

**and**

**MEYER HOUSEWARES CANADA INC.**

**Respondent**

Heard at Ottawa, Ontario, on October 8, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on October 8, 2013.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on October 8, 2013).**

**SHARLOW J.A.**

[1] The appellants Bodum USA, Inc. and PI Design AG (collectively, “Bodum”) are the licensee and owner, respectively, of the registered trade-mark “French Press” (TMA 475,721). In 2009, they commenced an action in the Federal Court against the respondent Meyer Housewares Canada Inc. for infringement, passing off, and depreciation of goodwill, contrary to the *Trade-marks Act*, R.S.C. 1985, c. T-13. Meyer Housewares denied the claim and counterclaimed for a

declaration of invalidity of the mark and for expungement of its registration. In a judgment dated December 10, 2012, Justice Mosley dismissed all of Bodum's claims and allowed the counterclaim (2012 FC 1450). Bodum now appeals to this Court.

[2] Justice Mosley said, at paragraph 23 of his reasons, that this is essentially a distinctiveness case. That was and remains undisputed.

[3] Justice Mosley's reasons contain a comprehensive and correct summary of the relevant legal principles, as well as a lengthy critical analysis of the evidence, which was voluminous and at times contradictory. His key conclusions are summarized as follows at paragraph 149 of his reasons.

...I agree with Meyer Housewares that "French press" is and was at all relevant times a common name for the type of non-electric coffee making device at issue in these proceedings, and the method of brewing coffee using such a device. The term was not distinctive when the application for registration was filed, when it was completed or when proceedings bringing the validity of the registration into question were commenced. The registration is invalid because the term was and is in ordinary and *bona fide* commercial use as a generic term.

[4] Justice Mosley's decision must stand unless it is based on an error of law or a palpable and overriding factual error.

[5] Having carefully considered the written and oral submissions of counsel, we are not persuaded that Justice Mosley's distinctiveness analysis contains any error in law or fact warranting the intervention of this Court. For that reason, this appeal will be dismissed with costs.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-21-13

**STYLE OF CAUSE:** BODUM USA, INC. AND PI  
DESIGN AG v. MEYER  
HOUSEWARES CANADA INC.

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** OCTOBER 8, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW J.A.  
DAWSON J.A.  
TRUDEL J.A.

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

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