

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141104

Docket: A-404-13

Citation: 2014 FCA 255

**CORAM: NOËL C.J.
GAUTHIER J.A.
BOIVIN J.A.**

BETWEEN:

CORTEFIEL, S.A.

Appellant

and

GILDAN APPAREL (CANADA) LP

Respondent

Heard at Montréal, Quebec, on November 4, 2014.
Judgment delivered from the Bench at Montréal, Quebec, on November 4, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141104

Docket: A-404-13

Citation: 2014 FCA 255

CORAM: NOËL C.J.
GAUTHIER J.A.
BOIVIN J.A.

BETWEEN:

CORTEFIEL, S.A.

Appellant

and

GILDAN APPAREL (CANADA) LP

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on November 4, 2014).

GAUTHIER J.A.

[1] We have not been persuaded that Tremblay-Lamer J. of the Federal Court made a palpable and overriding error or an extricable error of law in concluding that the new evidence filed before her in the appeal pursuant to subsection 56(1) of the *Trade-marks Act*, R.S.C., 1985, c. T-13 would not have materially affected the decision of the Registrar of Trade-mark (the Opposition Board).

[2] It was thus proper for the judge to apply the reasonableness standard rather than engage in deciding the matter *de novo*.

[3] We agree with the appellant that the judge should not have relied on an alleged difference between an Examiner's finding and a Registrar's finding to conclude that there was no obligation to expressly consider the initial approval or disapproval of the appellant's application for publication (reasons reported as 2013 FC 1107 at paragraph 37).

[4] That said, the absence of this potentially relevant surrounding circumstance from the Registrar's confusion analysis is neither sufficient to render its outcome unreasonable in the present case nor the judge's application of the standard of review improper. We are satisfied that the judge made no error that would justify our intervention.

[5] The appeal will be dismissed with costs.

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-404-13

STYLE OF CAUSE: CORTEFIEL, S.A. v. GILDAN APPAREL (CANADA) LP

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: NOVEMBER 4, 2014

REASONS FOR JUDGMENT OF THE COURT BY: NOËL C.J.
GAUTHIER J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

Kenneth McKay FOR THE APPELLANT
CORTEFIEL, S.A.

Stéphane Richer FOR THE RESPONDENT
GILDAN APPAREL (CANADA)
LP

SOLICITORS OF RECORD:

SIM, LOWMAN, ASHTON & McKAY, LLP FOR THE APPELLANT
Toronto, Ontario CORTEFIEL, S.A.

BORDEN LADNER GERVAIS L.L.P. FOR THE RESPONDENT
Montréal, Quebec GILDAN APPAREL (CANADA)
LP