

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100927

Docket: A-460-09

Citation: 2010 FCA 247

**CORAM: NADON J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

MAPLE LEAF FOODS INC.

Appellant

and

CONSORZIO DEL PROSCIUTTO DI PARMA

Respondent

Heard at Toronto, Ontario, on September 27, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on September 27, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20100927

Docket: A-460-09

Citation: 2010 FCA 247

**CORAM: NADON J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

MAPLE LEAF FOODS INC.

Appellant

and

CONSORZIO DEL PROSCIUTTO DI PARMA

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 27, 2010)

SHARLOW J.A.

[1] We are all of the opinion that we have no basis for intervening in the decision of Justice Simpson (2009 FC 1035) to dismiss the appellant's application for judicial review on the basis that it was not commenced on a timely basis. It is not necessary for us to express an opinion on whether the application could also have been dismissed as an abuse of process.

[2] We note that the appellant's design trade-mark application is still pending before the Registrar. If that application is refused because, among other things, of the "official mark" that was the subject of the section 9 notice in 1998 recognizing the respondent as a "public authority in Canada", it will be open to the appellant to appeal that refusal, and in that appeal to raise the issue of the validity of the respondent's "official mark" in light of the decision of this Court in *Canada Post Corp. v. United States Postal Services*, 2007 FCA 10 (affirming *Canada Post Corp. v. United States Postal Service (F.C.)*, [2006] 3 F.C.R. 28, 2005 FC 1630).

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

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-460-09

**(APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE SIMPSON
OF THE FEDERAL COURT, DATED OCTOBER 15, 2009, IN DOCKET NO. T-1057-08)**

STYLE OF CAUSE: MAPLE LEAF FOODS INC. v.
CONSORZIO DEL PROSCIUTTO
DI PARMA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 27, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, SEXTON & SHARLOW
JJ.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

James Buchan FOR THE APPELLANT

Brian D. Edmonds FOR THE RESPONDENT
Daniel Glover

SOLICITORS OF RECORD:

Gowling LaFleur Henderson LLP FOR THE APPELLANT
Barristers & Solicitors
Toronto, ON

McCarthy Tetrault LLP FOR THE RESPONDENT
Barristers & Solicitors
Toronto, ON