

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20101130

Docket: A-163-10

Citation: 2010 FCA 326

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

BETWEEN:

WORLDWIDE DIAMOND TRADEMARKS LIMITED

Appellant

and

CANADIAN JEWELLERS ASSOCIATION

Respondent

Heard at Vancouver, British Columbia, on November 30, 2010.

Judgment delivered from the Bench at Vancouver, British Columbia, on November 30, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on November 30, 2010)

SHARLOW J.A.

[1] Despite the able submissions of counsel for the appellant, we have not been persuaded that Justice Kelen erred in law or misapplied paragraph 12(1)(b) of the *Trade-Marks Act*, R.S.C. 1985, c. T-13, when he determined (2010 FC 309) that the trade-marks in issue are clearly descriptive.

[2] Nor have we been persuaded that he failed to consider the trade-marks in their entirety when he accepted that the distinctiveness of a composite mark (that is, a mark composed of both words and a design element) may be tested by “sounding” the words if the design element is found not to be dominant.

[3] This appeal will be dismissed.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-163-10

STYLE OF CAUSE: WORLDWIDE DIAMOND TRADEMARKS
LIMITED v.
CANADIAN JEWELLERS ASSOCIATION

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 30, 2010

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

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Karen F. MacDonald
Michael D. Manson

FOR THE APPELLANT

No one appeared

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Smart & Biggar
Vancouver, British Columbia

FOR THE APPELLANT