

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110920

Docket: A-34-11

Citation: 2011 FCA 261

**CORAM: SHARLOW J.A.
LAYDEN-STEVENSON J.A.
STRATAS J.A.**

BETWEEN:

INTERACTIVE SPORTS TECHNOLOGIES INC.

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 20, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on September 20, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 20, 2011)

LAYDEN-STEVENSON J.A.

[1] The appellant manufactures and sells golf simulators. It appeals from the judgment of Madam Justice Simpson of the Federal Court (the judge) (2010 FC 1296) dismissing an appeal from a decision of the Registrar of Trade-marks (the Registrar). The Registrar refused to register the trademark HIGH DEFINITION GOLF (the Mark) because it was clearly descriptive of the character of the appellant's wares.

[2] On its appeal to the Federal Court, the appellant filed new evidence. The judge determined that the new evidence was neither substantial nor significant and that it would not have materially affected the Registrar's decision, which the judge found to be reasonable. The judge rejected the appellant's contention that the immediate impression conveyed by the Mark was a precision learning tool that analyzed a user's swing. Rather, the judge found it was reasonable for the Registrar to conclude that the Mark referred to a golf simulator that incorporated high definition technology. The clearly descriptive character or quality of the Mark precluded its registration.

[3] Despite the capable submissions of Mr. McKay, we are of the view that the appeal must be dismissed. The appellant has not demonstrated any error of principle or law or any palpable and overriding error warranting our intervention. We are in agreement with the judge's decision for the reasons that she gave.

[4] The appeal will be dismissed with costs.

"Carolyn Layden-Stevenson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-34-11

**AN APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE SIMPSON
OF THE FEDERAL COURT, DATED DECEMBER 16, 2010, IN DOCKET NO. T-1097-09.**

STYLE OF CAUSE: INTERACTIVE SPORTS
TECHNOLOGIES INC. v. THE
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 20, 2011

**REASONS FOR JUDGMENT OF
THE COURT BY:** (SHARLOW, LAYDEN-STEVENSON
& STRATAS JJ.A.)

**DELIVERED FROM THE
BENCH BY:** LAYDEN-STEVENSON J.A.

APPEARANCES:

Kenneth McKay FOR THE APPELLANT

Jacqueline Dais-Visca FOR THE RESPONDENT
Abigail Browne

SOLICITORS OF RECORD:

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MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada