



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Citation: 2011 TMOB 152**  
**Date of Decision: 2011-08-01**

**IN THE MATTER OF AN  
OPPOSITION by Cheung's  
Bakery Products Ltd. to  
application No. 1,329,117 for the  
trade-mark SAINT HONORE  
CAKE SHOP & CHINESE  
CHARACTERS DESIGN in the  
name of Saint Honore Cake Shop  
Limited**

[1] It has been brought to my attention that the wares “candy” were omitted from paragraph 142 of my decision dated June 20, 2011. As I meant for these wares to be included, I hereby amend this paragraph.

[2] Paragraph 142 of my decision dated June 20, 2011 is amended to read:

[142] Pursuant to the authority delegated to me under s. 63(3) of the Act, I refuse the application for the Mark with respect to the wares “...wrapping, containers and bags for food; ... printed matter namely menus, advertising display boards of paper, advertising leaflets, posters and publications, namely, booklets and teaching materials in the field of food and drinks; ... coffee, tea, cocoa; bread, biscuits, cakes, cookies, moon cakes, pastry, candy, ice candy, chocolates, meat pies, egg cakes, New Year cakes, puddings, ice cream, edible oils and fats; egg rolls; rice glue balls; buns; dumplings; rice-based snacks, glutinous rice dumplings;

based snacks prepared from rice or cereals; sauces for cakes and pasta” and I reject the opposition with respect to the remainder of the wares pursuant to s. 38(8) of the Act [see *Produits Menagers Coronet Inc. v. Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 C.P.R. (3d) 492 (F.C.T.D.) as authority for a split decision].

[3] As I also meant to include the wares “candy” in paragraphs 113, 116, 117 and 128, these paragraphs are amended as well.

[4] Paragraph 113 of my decision dated June 20, 2011 is amended to read:

[113] I am satisfied that the parties’ wares overlap with respect to the wares belonging to the general class of “food products”, namely,

bread, biscuits, cakes, cookies, moon cakes, pastry, candy, ice candy, chocolates, meat pies, egg cakes, New Year cakes, puddings, ice cream, edible oils and fats; egg rolls; rice glue balls; buns; dumplings; rice-based snacks, glutinous rice dumplings; based snacks prepared from rice or cereals; sauces for cakes and pasta

[5] Paragraph 116 of my decision dated June 20, 2011 is amended to read:

[116] Based on the foregoing, this factor favours the Opponent with respect to the wares “...wrapping, containers and bags for food; ... printed matter namely menus, advertising display boards of paper, advertising leaflets, posters and publications, namely, booklets and teaching materials in the field of food and drinks; ... coffee, tea, cocoa; bread, biscuits, cakes, cookies, moon cakes, pastry, candy, ice candy, chocolates, meat pies, egg cakes, New Year cakes, puddings, ice cream, edible oils and fats; egg rolls; rice glue balls; buns; dumplings; rice-based snacks, glutinous rice dumplings; based snacks prepared from rice or cereals; sauces for cakes and pasta” and favours the Applicant with respect to the remainder of the Wares.

[6] Paragraph 117 of my decision dated June 20, 2011 is amended to read:

[117] The Applicant has not filed any evidence as to the nature of its trade. I note that the Applicant's application does not include any restriction on the channels of trade. Given the direct overlap between the parties' wares with respect to the wares "...wrapping, containers and bags for food; ... printed matter namely menus, advertising display boards of paper, advertising leaflets, posters and publications, namely, booklets and teaching materials in the field of food and drinks; ... coffee, tea, cocoa; bread, biscuits, cakes, cookies, moon cakes, pastry, candy, ice candy, chocolates, meat pies, egg cakes, New Year cakes, puddings, ice cream, edible oils and fats; egg rolls; rice glue balls; buns; dumplings; rice-based snacks, glutinous rice dumplings; based snacks prepared from rice or cereals; sauces for cakes and pasta" I find it reasonable to infer that there would also be an overlap in the nature of the trade with respect to these wares. With respect to the remainder of the Wares, however, I am not prepared to make such an inference in the absence of evidence of use of the Mark as there is no direct overlap in the nature of the parties' wares.

[7] Paragraph 128 of my decision dated June 20, 2011 is amended to read:

[128] Having considered all of the surrounding circumstances, in particular the overlap in the nature of the parties' wares and trade and the similarities in sound, appearance, and ideas suggested, I am not satisfied that the Applicant has discharged its burden of showing, on a balance of probabilities, that there is no reasonable likelihood of confusion between the Mark and the Opponent's trade-marks with respect to the following wares (hereinafter referred to as the Overlapping Wares):

...wrapping, containers and bags for food; ... printed matter namely menus, advertising display boards of paper, advertising leaflets, posters and publications, namely, booklets and teaching materials in the field of food and drinks; ... coffee, tea, cocoa; bread, biscuits, cakes, cookies, moon cakes, pastry, candy, ice

candy, chocolates, meat pies, egg cakes, New Year cakes,  
puddings, ice cream, edible oils and fats; egg rolls; rice glue balls;  
buns; dumplings; rice-based snacks, glutinous rice dumplings;  
based snacks prepared from rice or cereals; sauces for cakes and  
pasta

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Andrea Flewelling  
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