

IN THE MATTER OF AN OPPOSITION  
by R.J. Reynolds Tobacco Company  
to application No. 584,567 for the  
trade-mark PREMIER CHOIX filed by  
Giant Tiger Stores Limited

On May 22, 1987, the applicant, Giant Tiger Stores Limited, filed an application to register the trade-mark PREMIER CHOIX for "cigarette tobacco and tobacco products" based on use in Canada since May 20, 1987. The application was advertised for opposition purposes on September 21, 1988.

The opponent, R.J. Reynolds Tobacco Company, filed a statement of opposition on February 20, 1989, a copy of which was forwarded to the applicant on March 10, 1989. The opponent was subsequently granted leave to amend its statement of opposition pursuant to Rule 42 of the Trade-marks Regulations. The grounds of opposition include, among others, that the applied for trade-mark is not registrable pursuant to Section 12(1)(b) of the Trade-marks Act because it is either clearly descriptive or deceptively misdescriptive in the French language of the character or quality of the applied for wares.

The applicant filed and served a counter statement. As its evidence, the opponent filed the affidavit of Sarah F. Llewellyn. The applicant filed the affidavit of Kendra Preston-Brooks. Neither party filed a written argument and no oral hearing was conducted.

As for the ground of opposition based on Section 12(1)(b) of the Act, the opponent did not include any supporting allegations of fact in its statement of opposition. However, in the present case, I am prepared to infer the necessary supporting allegations of fact since they are readily apparent from the ordinary meanings of the words comprising the applicant's trade-mark. Furthermore, it is apparent from the record that the applicant fully understood the basis of the opponent's ground.

The material time for considering the circumstances respecting the ground pursuant to Section 12(1)(b) of the Act is as of the applicant's filing date. Furthermore, the onus or legal burden is on the applicant to show that its trade-mark is registrable. Finally, the test to be applied in assessing the issue arising under Section 12(1)(b) is the immediate impression of an everyday user of the applicant's wares.

In the present case, the evidence of record provides dictionary definitions for the words PREMIER and CHOIX. It is apparent from those definitions that the combination PREMIER CHOIX is the French language equivalent of the English phrase "first choice." The word PREMIER has been recognized as being descriptive and laudatory: see Lake Ontario Cement Ltd. v. Registrar of Trade Marks (1976), 31 C.P.R. (2d) 103 at 109 (F.C.T.D.). It would seem equally plausible to find that the phrase PREMIER CHOIX is descriptive and laudatory when used with any wares. Thus, I find that the opponent has met its evidential burden and the applicant has not satisfied the legal burden on it to show that its mark does not offend the provisions of Section 12(1)(b) of the Act. That ground of opposition is therefore successful and the remaining grounds need not be considered.

In view of the above, I refuse the applicant's application.

DATED AT HULL, QUEBEC, THIS 31st DAY OF July, 1991.

David J. Martin,  
Member,  
Trade Marks Opposition Board.