



A-234-96

CORAM: DENAULT J.A.
MacGUIGAN J.A.
DÉCARY J.A.

BETWEEN:

SIM & McBURNEY

Appellant

- and -

BUTTINO INVESTMENTS INC./
LES INVESTISSEMENTS BUTTINO INC.
- and -
THE REGISTRAR OF TRADE-MARKS

Respondents

Heard at Ottawa, Ontario, on Tuesday, September 30, 1997.

Judgment rendered from the Bench at Ottawa, Ontario, on Tuesday, September 30, 1997.

REASONS FOR JUDGMENT OF THE COURT: MacGUIGAN J.A.



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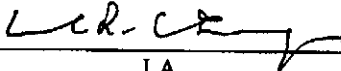
REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench, at Ottawa, Ontario, Tuesday, September 30, 1997.)

MacGUIGAN J.A.

Although the Trial Judge may perhaps have been under a misapprehension that it was possible for the appellant to have presented evidence in a s. 45 proceeding under the *Trade-marks Act*, nevertheless she was entitled to accept the conclusion of the Registrar of Trade-marks that the evidence was sufficient to establish use of the trade-mark under s. 45. This is not a case like *Marcus v. Quaker Oats* (1988), 20 C.P.R. (3d) 46, since the assignment in the case at bar was found to have been made before the s. 45 challenge.

We are all agreed that the Trial Judge did not fall into any relevant and reviewable error of law. The appeal must therefore be dismissed with costs.



J.A.