

IN THE MATTER OF AN OPPOSITION by Maison Tarride Ledroit  
et Cie, une société à responsabilité limitée to application No. 546,996  
for the trade-mark LEE TAI PO filed  
by Lee Enterprises Limited

On July 31, 1985, the applicant, Lee Enterprises Limited, filed an application to register the trade-mark LEE TAI PO covering "wine", the application being accompanied by an application for registration of a person as a registered user of the trade-mark.

The opponent, Maison Tarride Ledroit et Cie, une société à responsabilité limitée, filed a statement of opposition on April 10, 1987 which was subsequently amended by the opponent. In its amended statement of opposition, the opponent alleged that the applicant's trade-mark is not registrable and not distinctive, and that the applicant is not the person entitled to its registration, in view of the registration and prior user by the opponent of its registered trade-mark LEE POO YEE, registration No. 231,218 covering "vin blanc de table".

The applicant served and filed a counter statement in which effectively denied the opponent's grounds of opposition.

The opponent filed as its evidence the statutory declaration of Philippe de Boisredon and a certified copy of registration No. 231,218, while the applicant filed as its evidence the affidavit of Ron Wood. As evidence in reply, the opponent submitted the affidavit of Robert Charbonneau.

The opponent alone submitted a written argument and the opponent alone was represented at an oral hearing.

The only issue for consideration in this opposition is whether there would be a likelihood of confusion between the applicant's trade-mark LEE TAI PO and the opponent's registered trade-mark LEE POO YEE as applied to the respective wares of the parties. In determining whether there would be a reasonable likelihood of confusion between the trade-marks at issue as of either the date of opposition (the material date in respect of the s. 12(1)(d) and non-distinctiveness grounds of opposition) or as of the filing date of the applicant's application (the material date in respect of the non-entitlement ground of opposition), the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in s. 6(5) of the Trade-marks Act. Further, the Registrar must bear in mind that the legal burden is upon the applicant to establish that there would be no reasonable likelihood of confusion between the trade-marks of the parties.

With respect to the inherent distinctiveness of the trade-marks at issue, both the applicant's trade-mark LEE TAI PO as applied to "wines" and the opponent's trade-mark LEE POO YEE as applied to "vin blanc de table" are inherently distinctive in that they would be perceived by the average English or French speaking consumer of wine as being coined terms.

The Boisredon statutory declaration establishes that there had been only minimal use of the opponent's trade-mark LEE POO YEE in Canada prior to the material dates in this opposition with sales of less than 2000 cases of the opponent's wine in this country prior to March of 1987. Further, while the applicant's application is based upon proposed use of its trade-mark LEE TAI PO, sales of its wine exceeded 3600 cases as of the date of opposition. Accordingly, I have concluded that the extent to which the trade-marks had become known does not favour either the applicant or the opponent to any measurable extent in this opposition.

The length of time that the trade-marks have been in use does favour the opponent to some extent in that the opponent has evidenced use of its trade-mark LEE POO YEE in Canada in association with wine since 1983.

As the wares of the parties are identical as would be the channels of trade associated with these wares, the only remaining criterion for consideration under s. 6(5) is the degree of resemblance between the trade-marks at issue in appearance, sounding and ideas suggested. In this regard, and while the trade-marks LEE POO YEE and LEE TAI PO bear little similarity in sounding, the trade-marks do convey the idea that they are oriental terms. However, when considered in their entirety as a matter of immediate impression and imperfect recollection, the trade-marks LEE TAI PO and LEE POO YEE are similar in appearance in that they each comprise three separate elements of two or three letters including the initial component LEE and the component POO or PO.

Having regard to the degree of similarity in appearance between the trade-marks at issue, and bearing in mind that the wares of the parties are identical and would therefore travel through the same channels of trade, I have concluded that the applicant has failed to meet the legal burden upon it of establishing that there would be no reasonable likelihood of confusion between its trade-mark LEE TAI PO and the opponent's registered trade-mark LEE POO YEE. Accordingly, the applicant's trade-mark is not registrable in view of the provisions of s. 12(1)(d) of the Trade-marks Act.

I refuse the applicant's application pursuant to s. 38(8) of the Trade-marks Act.

DATED AT HULL, QUEBEC THIS 30th DAY OF April, 1991.

G.W.Partington,  
Chairman,  
Trade Marks Opposition Board.