

Leave to Appeal to Supreme Court of Canada Denied to Philip Morris in Trademark Dispute

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The Supreme Court of Canada denied leave to appeal to Philip Morris from the Federal Court of Appeal's decision in *Marlboro Canada Limited, Imperial Tobacco Canada Limited v. Phillips Morris Products S.A., Rothmans, Benson & Hedges Inc.*, 2012 FCA 201. The decision held that Philip Morris' otherwise non-branded cigarettes that used the "ROOFTOP" design on its packaging, infringed Marlboro Canada's trademark rights in the "MARLBORO" trademark by causing confusion for consumers. (For further information on the FCA decision please read [Marlboro Man Dis-Guise Foiled by Federal Court of Appeal.](#))

In the 1930's, Philip Morris had sold its "MARLBORO" trademark rights in Canada to Imperial Tobacco. Subsequently, Philip Morris began selling cigarettes using a package bearing a design similar to its distinctive international Marlboro "ROOFTOP" design for which it held trademark registrations in Canada.

The FCA held that while Philip Morris' trademark registrations for the ROOFTOP design were valid, they caused confusion with the MARLBORO brand and thus infringed Imperial Tobacco's trademark rights. Philip Morris sought leave to appeal to the Supreme Court, which has been dismissed with costs.