

BETWEEN:

J. K. SMIT & SONS OF CANADA  
Limited .....

} APPELLANT;

1946  
May 29  
—  
Aug. 30  
—

AND

THE REGISTRAR OF TRADE MARKS, RESPONDENT.

*Trade Mark—"Superset"—The Unfair Competition Act, 1932, Statutes of Canada, 1932, Chap. 38, s. 26 (1) (c)—Appeal from refusal of Registrar to register word mark.*

Appellant applied for registration of "Superset" as a word mark applied to drilling, cutting, grinding tools and appealed from the refusal of the Registrar of Trade Marks to grant such application. Appeal dismissed.

*Held:* That the tools in question are diamond industrial tools and the diamond must be firmly set if the tool is to perform its proper function and the word is therefore peculiarly descriptive of the character or quality of the wares in association with which it is used.

- 2. That the Registrar of Trade Marks was right in refusing the application because such registration is excluded by the provisions of section 26 (1) (c) of the Act.
- 3. That leave is granted to the appellant to proceed with its application under section 29 upon notice.

APPEAL by J. K. Smit & Sons of Canada Limited from the refusal of the Registrar of Trade Marks to register "Superset" as a word mark in association with diamond industrial tools.

The appeal was heard before the Honourable Mr. Justice O'Connor, at Ottawa.

*George H. Riches* for appellant.

*W. P. J. O'Meara, K.C.* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

O'CONNOR J., now (August 30, 1946) delivered the following judgment:

This is an appeal from the refusal of the Registrar to register the appellant's word mark "Superset" on the grounds that the mark is descriptive or misdescriptive of the character or quality of the wares in association with

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which it is used. The registration of which is excluded under the provisions of section 26 (1) (c) of The Unfair Competition Act, 1932.

The applicant has used the mark since June, 1943, in Canada on wares described as "manual and/or power operated drilling, cutting, grinding and dressing tools".

Webster's New International Dictionary gives these meanings:—

"Super" (adj.) means superfine, excellent, first rate.

"Set" means to place in a setting.

The tools in question are diamond industrial tools. It is obvious that the diamond must be firmly set if the tool is to perform its proper function, and the word is, therefore, peculiarly descriptive of the character or quality of the wares in association with which it is used.

The Registrar was right in my opinion in refusing the appellant's application, and the appeal from his decision is dismissed. The appellant also sought a Declaration of the Court under section 29 of the Act, but was not ready to proceed with the application on the return of the motion. Leave is granted to the appellant to proceed with the motion under section 29, upon notice in the usual manner.

*Judgment accordingly.*