

## TRADE-MARKS

### INFRINGEMENT

Infringement action, application for relief in application of *Industrial Design Act*, R.S.C., 1985, c. I-9—Plaintiffs claiming infringement of industrial designs corresponding to double wall glasses—Defendant, by counterclaim, seeking declaration that industrial designs invalid—Main issues whether defendant infringing industrial designs; whether industrial designs validly registered—Pursuant to Act, s. 11, glasses infringed if defendant's glasses not differing significantly from industrial designs in question—Court having to determine applicable legal test to compare industrial designs, defendant's glasses—Plaintiffs claiming that Court having to analyse issue from point of view of consumer, apply three-part test developed in England, stated in *Valor Heating Co. v. Main Gas Appliances Ltd.*, [1972] F.S.R. 497—Defendant stating that test should be carried out from point of view of aware consumer—S. 11 containing element of "fraudulent imitation" before amendment in 1993—Doctrine seeming to support position that test to determine whether infringement occurring different since amendment—Without ruling on issue, Court noting that three-part test developed in *Valor Heating Co.* raising questions about its relevance, considering amendment of s. 11—Expressions "*consommateur averti*", "*consommateur informé*" having same meaning, could be considered synonyms of English expression "informed consumer"—Infringing product must be analysed by Court from point of view of informed consumer—Defendant's glasses not having features of configuration of industrial designs in question—Industrial designs not meeting criteria entitling them to registration, expunged from patent register—Infringement action dismissed; counterclaim allowed.

BODUM USA, INC. V. TRUDEAU CORPORATION (1889) INC. (T-735-07, 2012 FC 1128a\*, Boivin J., judgment dated September 26, 2012, 46 pp.)

\* Please note that the proper neutral citation for this decision is 2012 FC 1128. The "a" has been added to differentiate this digest from the decision that is reported in full in the *Federal Courts Reports*, [2013] 3 F.C.R. 372.