

## MARLBORO

Philip Morris is the leading cigarette manufacturer in the United States with "globally recognized cigarette brands", including the brand MARLBORO. MARLBORO cigarettes are one of the most popular brands worldwide.

A representative Philip Morris U.S. trade-mark registration and its packaging is reproduced on the slides.

In Canada, however, the trade-mark MARLBORO is not owned by Philip Morris but rather by a non-related company, due to an acquisition years ago.

A Canadian company owns Canadian trade-mark registration TMDA55988 MARLBORO and has used it in association with various packaging designs including one which displays a maple leaf and the word Canadian in conjunction with the brand MARLBORO.

During this time, Philip Morris owned the Canadian registered marks shown on the slides and sold MATADOR brand in Canada in limited quantities together with its "roof top" design.

In 2006, Philip Morris launched cigarettes and packaging bearing a "roof top" design and a crest, but no word mark. The Philip Morris packaging also bore the legends, "World Famous Imported Blend" and "Come to Where the Flavour is".

This product introduction provoked the Canadian company to sue for infringement on the theory that the no name packaging conveyed the idea of MARLBORO. Philip Morris in turn, challenged the validity of the Canadian company's MARLBORO registration on the basis of non-distinctiveness.

At trial, neither party prevailed.

On appeal, Philip Morris again was unsuccessful; however, the Court of Appeal found favour with the Canadian company's argument that Philip Morris' new packaging was marketed to cause confusion.

The Court accepted that there could be a mental association between the roof top design and the brand Marlboro, given the combination of elements used by Philip Morris on its packaging. In other words, there were enough clues on the packaging to link the no name brand to Marlboro in the mind of the mythical purchaser.

Philip Morris sought leave to appeal to the Supreme Court of Canada but was denied.

It remains to be seen what impact this case will eventually have.

The last slide shows a recent advertisement for new MARLBORO packaging by the Canadian company -- a clear indication that the Canadian company has no interest in relinquishing its right to the mark MARLBORO Canada.

**Marlboro Canada Limited v.  
Philip Morris Products S.A.**

The image shows a chalkboard with several mathematical derivations. The most prominent one is the definition of the derivative:

$$y'_0 = \frac{g(x+h) - g(x)}{(x+h) - x} = \frac{g(x+h) - g(x)}{h}$$

Below this, there are more complex derivations involving limits and functions:

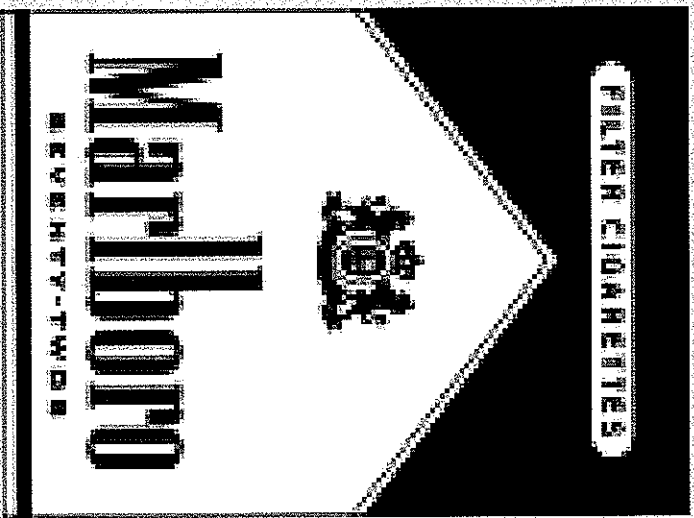
$$\lim_{h \rightarrow 0} \frac{g(x+h) - g(x)}{h} = \lim_{h \rightarrow 0} \frac{2xh + h^2}{h} = \lim_{h \rightarrow 0} (2x + h) = 2x$$

Other visible text includes:

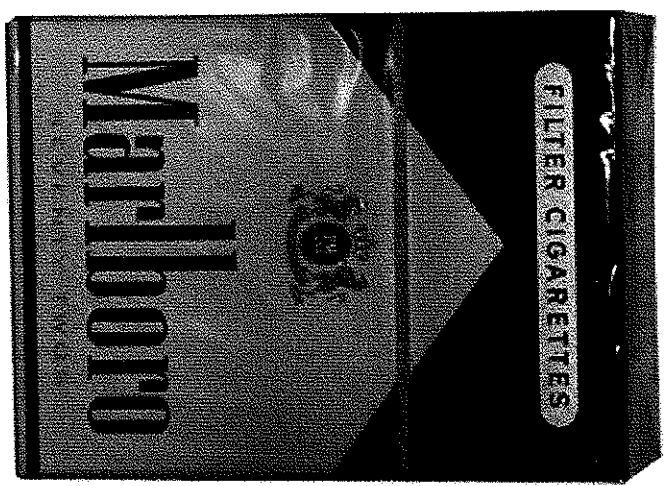
- $f(x) = \frac{1}{2}$
- $f'(x) = -\frac{1}{4x^2}$
- $f'(a) = -\frac{1}{4a^2}$

**sim. polify**

# U.S. Registration and Packaging

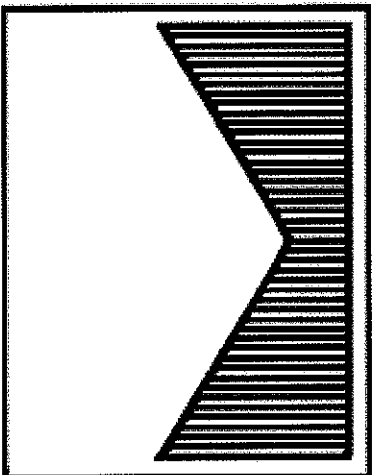


U.S. Trade-mark Registration 3533463

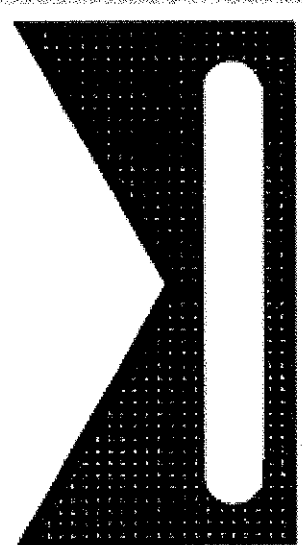


Packaging

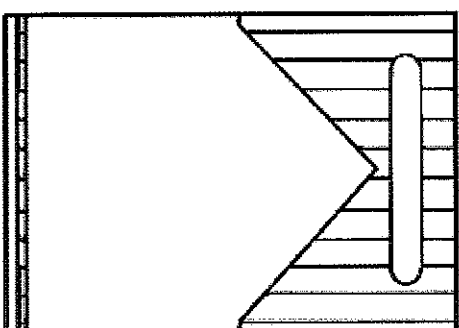
# Canadian Trade-mark Registrations



TMA254670



TMA465532



TMA252083



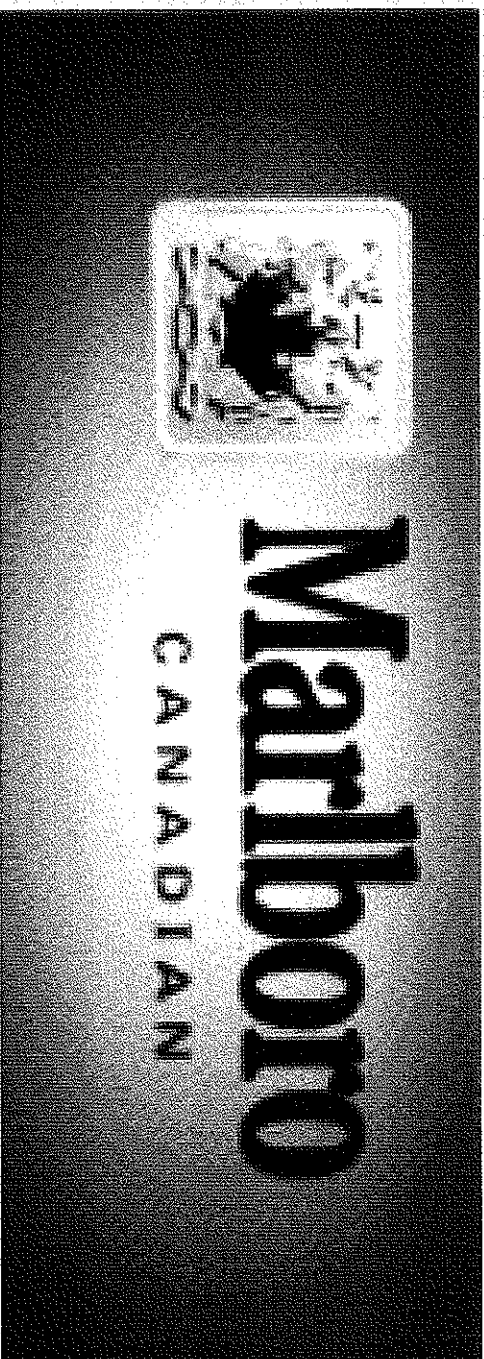
TMA111226

## MATADOR

TMA376541

# Canadian Trade-mark Application

Y<sub>1</sub>-Y<sub>2</sub>  
X<sub>1</sub>-X<sub>2</sub>



Application No. 1569740

Filed March 21, 2012