

Federal Court



Cour fédérale

Date: 20241211

Docket: T-245-23

Citation: 2024 FC 2017

Ottawa, Ontario, December 11, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ARMOUR TRANSPORT INC

Plaintiff

and

2098763 ALBERTA LTD. DBA ARMOUR  
TRUCKING OF EDMONTON, MANPREET  
DHILLON, AND JOBANBIR LEHAL

Defendants

**JUDGMENT AND REASONS**

I. Overview

[1] Armour Transport Inc. [Armour or Plaintiff], brings this motion in writing pursuant to rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], to remove the Statement of Defence from the Court file and to grant default judgment against the Defendants, with costs.

[2] The Defendants, although served, have not responded to this motion nor requested any extension of time to do so.

[3] In a separate Order and Reasons, having neutral citation 2024 FC 2006, the Court ordered the removal of the Statement of Defence from the record [Removal Order] and indicated that costs would be dealt with in connection with the disposition of the motion for default judgment.

[4] Having considered the Plaintiff's motion record, including written submissions, I find that the Plaintiff has satisfied the applicable tests for the granting of default judgment against the corporate Defendant only. For the reasons below, the Plaintiff's motion will be granted in part as against the corporate Defendant but dismissed as against the individual Defendants.

## II. Background

[5] Because the Plaintiff's motion is undefended, the only evidence of record is the affidavit of Kyle Power [Power Affidavit], in-house legal counsel with the Seaboard Transport Group of Companies which includes Armour. The factual findings in these reasons are based largely on the Power Affidavit, including attached exhibits.

### A. *The Parties*


[6] The Plaintiff was incorporated under the laws of New Brunswick and operates primarily in Atlantic Canada. It provides commercial transportation services, including long-haul trucking,





logistics, warehousing, courier services, and freight brokerage, and offers transportation and logistics solutions across Canada and into the United States.

[7] The corporate Defendant, 2098763 Alberta Ltd. dba Armour Trucking of Edmonton [AlbertaCo or corporate Defendant], was incorporated under the laws of Alberta. Its registered business or trade name is “Armour Trucking.” The individual Defendants, Manpreet Dhillon and Jobanbir Lehal, are the directors and operating minds of AlbertaCo. The Defendants provide trucking services, including the transportation of goods by truck and local delivery trucking to the public in Canada. The majority of their business is in Edmonton, Alberta and Mississauga, Ontario.

B. *Armour’s Trademarks*

[8] Armour owns the following Canadian registered trademarks:

Trademark	Application and Registration Numbers	Goods and Services
 <p>(The drawing is lined for the colours red and blue which colours are claimed as features of the mark.)</p>	<p>Application No.: 0860049            Registration No.: TMA511627</p>	<p>Transportation of goods by truck; provision of terminal facilities, namely for the on loading and off loading of goods; the provision of warehousing services.</p>

Trademark	Application and Registration Numbers	Goods and Services
 <p>(The drawing is lined for the colours red and blue which colours are claimed as features of the mark.)</p>	<p>Application No.: 0860050 Registration No.: TMA511626</p>	<p>Transportation of goods by truck; provision of terminal facilities, namely for the on loading and off loading of goods; the provision of warehousing services.</p>
 <p>(The word ARMOUR and the upper stripe are red. The words TRANSPORT and INC. and the lower stripe are blue. The colours red and blue are claimed as features of the trade-mark.)</p>	<p>Application No.: 0872043 Registration No.: TMA519007</p>	<p>Transportation of goods by truck; provision of terminal facilities, namely for the on loading and off loading of goods; the provision of warehousing services.</p>
	<p>Application No.: 1237323 Registration No.: TMA701712</p>	<p>Envelopes. Courier services, local delivery trucking, warehousing.</p>
 <p>(Colour is claimed as a feature of the mark. The trade-mark consists of the letters ACS in</p>	<p>Application No.: 1237328 Registration No.: TMA701713</p>	<p>Envelopes. Courier services, local delivery trucking, warehousing.</p>

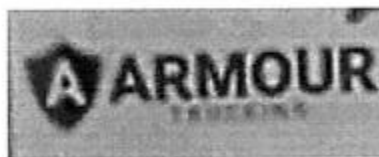
Trademark	Application and Registration Numbers	Goods and Services
red with a blue triangle above the letter 'A' and four blue lines parallel to the left side of the letter 'A'. Below the foregoing are the words ARMOUR COURIER SERVICES in blue.)		

[9] Although unregistered, the Plaintiff has used the word mark ARMOUR TRANSPORT throughout Canada since at least 1989.

[10] I refer in these reasons to the above trademarks, both registered and unregistered, as the "Armour Marks."

C. *Events Preceding Armour's Legal Action*

[11] Armour discovered the Defendants' use of the trade name Armour Trucking with the design marks depicted below [Impugned Branding] upon seeing a truck with the Impugned Branding on Highway 401 in Ontario in late 2021.



[12] In a phone discussion between the Plaintiff's general counsel and the individual Defendant, Jobanbir Lehal in December 2021, Mr. Lehal indicated that the Defendants were not willing to stop using or to change the Impugned Branding.

[13] The Plaintiff's Canadian counsel in this matter sent a cease and desist letter to the Defendants in January 2022. Receiving no response, the Canadian counsel sent a follow up letter to the Defendants in April 2022. Again receiving no response, Canadian counsel sent a draft Statement of Claim to the Defendants in January 2023 by registered mail, stating that it would be filed in February 2023 if the Defendants did not respond to the earlier letters. Canadian counsel received no response and filed the claim.

[14] As early as August 2022 and subsequently, incidents of actual confusion among Armour's existing and potential customers came to its attention.

D. *Armour's Legal Action, including Procedural History*

[15] Armour started this action on February 7, 2023 against the Defendants for passing off, trademark infringement, and depreciation of goodwill under sections 7, 19, 20, and 22 of the *Trademarks Act*, RSC 1985, c T-13 [*TMA*]. See Annex "A" below for applicable legislative provisions.

[16] Among other things, Armour seeks corresponding declarations, injunctions restraining the Defendants' use of the Armour Marks, monetary relief, including interest, and an order

requiring the Defendants to change their registered business name and remove infringing marks and branding from their vehicles. Armour also seeks its costs.

[17] A week after it was filed, Armour served the Statement of Claim on the individual Defendants who did not defend the action. Armour encountered difficulties, however, serving the corporate Defendant, necessitating in turn an extension of time, an order for substituted service, and an order validating service, all of which the Court granted in succession to the Plaintiff.

[18] In granting the validation order, then Associate Judge Duchesne was satisfied, based on Armour's evidence in the motion for such order, that the corporate Defendant was evading service. Pursuant to the validation order, the permitted service of the claim on the corporate Defendant by mail was effected as of August 11, 2023. In addition, the order validated the previous service in February 2023 on the individual Defendants.

[19] Prior to the corporate Defendant's deadline for filing a Statement of Defence, the Plaintiff's Canadian counsel was contacted by lawyers with two different law firms who indicated they were consulted or might be retained by the Defendants. The Plaintiff's Canadian counsel did not receive any confirmation of retainer, however, from either lawyer.

[20] Mr. Lehal subsequently contacted the Plaintiff's Canadian counsel seeking consent to represent the corporate Defendant. He was informed that Armour would not consent to that request. In response to a later request for an extension of time (two days after the deadline),

Armour consented to an extension until September 15, 2023 for the corporate Defendant to file its Statement of Defence, noting that it must be filed in accordance with rule 120 of the *Rules*.

[21] While AlbertaCo filed a Statement of Defence, it did not comply with rule 120, and was accepted erroneously by the Registry. The individual Defendants have not filed any defence.

[22] Notwithstanding Armour's refusal to consent to self-representation, the Statement of Defence was signed by Jobanbir Lehal acting on behalf the corporate Defendant. Although Mr. Lehal's signature was accompanied by an attestation by a lawyer, there is an added note that reads: "Only signatures attested, The [sic] lawyer does not take any responsibilities for the contents NO LEGAL ADVICE GIVEN."

[23] In addition, the Statement of Defence was accompanied by a "Resolution to Appoint Jobanbir Lehal as Signing Authority and File a Statement of Defence on Behalf of Armour Trucking." The Resolution is on "Armour Trucking" letterhead and specifically authorizes Mr. Lehal "to review, prepare, and file a statement of defence on behalf of Armour Trucking in response to the statement of claim..."

[24] Further to the Plaintiff's motion, the Court issued an order under subrule 74(2) of the *Rules* inviting the parties to make submissions about whether the Statement of Defence should be removed from the record pursuant to subrule 74(1) [Show Cause Order]. The Show Cause Order specifically notes that "the Statement of Defence is irregular; its acceptance for filing was made in error; and the Defendants have taken no steps to remedy the non-compliance with rule 120 or



to seek an extension of time for doing so, despite the proper service of the Plaintiff's motion record."

[25] Having considered the parties' submissions in response to the Show Cause Order, the Court determined the Removal Order would issue and that the Court would dispose of the balance of Armour's motion for default judgment separately.

### III. Issues

[26] I determine that the present motion raises the following issues:

- A. Should the Court grant default judgment against the Defendants, in particular:
  - (1) Are the Defendants in default?
  - (2) Has Armour established its claims under the *TMA*?
- B. Are the individual Defendants personally liable for the corporate Defendants' conduct?
- C. To what remedies, if any, is Armour entitled?
- D. To what costs, if any, is Armour entitled?

[27] I deal with each issue in turn.

### IV. Analysis

[28] I find that the Defendants are in default and that the Plaintiff has established its claims in part, thus warranting default judgment in its action on the terms outlined below.

A. *The Court grants default judgment against the corporate Defendant*

[29] Armour asks the Court to grant default judgment against the Defendants pursuant to rule 210 of *Rules*. The present motion does not seek relief for passing off.

[30] On a motion for default judgment, the plaintiff must establish that: (a) the defendant did not file a defence within the prescribed timeline; and (b) the plaintiff has demonstrated its claim on a balance of probabilities. All allegations in the statement of claim are deemed to be denied: *Trimble Solutions Corporation v Quantum Dynamics Inc*, 2021 FC 63 at para 35 [*Trimble*].

[31] Default judgment is discretionary, and the Court must scrutinize a plaintiff's evidence with care. A plaintiff must provide "sufficiently clear, convincing and cogent evidence" to establish its claim on the civil standard: *McDowell v A Drip of Honey*, 2024 FC 453 at para 22; *Trimble*, above at paras 36-37.

[32] Rule 211 of the *Rules* provides that default judgment shall not be granted where service of the statement of claim was effected pursuant to substituted service, unless the Court is satisfied that default judgment is just in the circumstances. The Court must be satisfied that the defendant is aware of the action; the Court may also consider a defendant's willingness to engage with the court process and its failure to comply with the *Rules*: *Kaira District Co-operative Milk Producers' Union Limited v AMUL Canada*, 2021 FC 636 at paras 43-44.

(1) Are the Defendants in default?

[33] The short answer to this question is yes.

[34] Pursuant to paragraph 204(1)(a) of the *Rules*, the individual Defendants were required to file a defence within thirty days after being served with the Statement of Claim. Because they failed to file a defence by March 17, 2023, I find that they are in default.

[35] With respect to AlbertaCo, Armour submits that it has not provided a reasonable explanation for its failure to file a Statement of Defence that complies with the *Rules*. Armour alleges that AlbertaCo had actual knowledge of the claim by February 14, 2023. I agree on both points; hence, the Removal Order. Further, because the individual Defendants are the sole directors of AlbertaCo, it cannot be said, in my view, that the corporate Defendant was unaware of the claim at any material time since at least February 2023 when the individual Defendants were served.

[36] Although rule 211 cautions against rendering judgment against a defendant in default where service of the claim was effected through substituted service, I determine that it is just to do so in the particular circumstances here. The corporate Defendant was found to have evaded service. The individual Defendants (i.e. the corporate Defendant's sole directors) were timely served, however. I thus am satisfied that the Statement of Claim came to the corporate Defendant's attention: *Canada (Citizenship and Immigration) v Rubuga*, 2015 FC 1073 at para

48. More to the point, I note that none of the Defendants has responded to Armour's motion for default judgment, with which they properly were served.

(2) Has Armour established its claims under the *TMA*?

[37] Leaving aside the passing off claims under paragraphs 7(b) and 7(c) of the *TMA*, for which Armour does not seek relief on this motion, I find that Armour otherwise has established its claims for trademark infringement and depreciation of goodwill on a balance of probabilities in respect of the following registered Armour Marks but only as against the corporate Defendant: ARMOUR & Design, registration No. TMA511627; ARMOUR TRANSPORTATION SYSTEMS & Design, registration No. TMA511626; and ARMOUR TRANSPORT INC & Design, registration No. TMA519007 [Infringed Armour Marks].

[38] In light of the Removal Order and the resultant absence of any validly filed Statement of Defence by the Defendants, the Court must treat the allegations in the Statement of Claim as denied. Further, Armour bears the burden of leading evidence that permits the Court to determine, on a balance of probabilities, that infringement and depreciation of goodwill have occurred: *Louis Vuitton Malletier SA v Yang*, 2007 FC 1179 at para 4.

(a) *Infringement Legal Principles and Analysis*

[39] Under section 19 of the *TMA*, a trademark owner has the exclusive right to use its registered trademark throughout Canada in respect of the goods and services listed in the registration. That right is deemed infringed, according to section 20, by a person who sells,

distributes, or advertises goods or services in association with a confusing trademark or trade name.

[40] Subsections 6(2) and 6(4) of the *TMA* contemplate respectively confusion between two trademarks, and confusion between a trademark and a trade name, if the use of both in the same area would be likely to lead to the inference that the goods or services associated with the business carried on under the trademark, or the trade name as the case may be, and those associated with the trademark are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.

[41] More granularly, subsection 6(5) of the *TMA* guides the confusion analysis with reference to the following five non-exhaustive factors to consider, in the context of “all the surrounding circumstances”: (a) the inherent distinctiveness of the trademarks or trade names and the extent to which they have become known; (b) the length of time the trademarks or trade names have been in use; (c) the nature of the goods, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trademarks or trade names in appearance or sound or in the ideas suggested by them.

[42] The test to be applied in assessing these factors, on a balance of probabilities, is one of first impression in the mind of a casual consumer somewhat in a hurry who has no more than an imperfect recollection of the prior trademark and who does not stop to consider the differences and similarities between the marks or names in issue. The Supreme Court further guides that the

confusion analysis exercise is fact- and context-specific in each situation: *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 [*Veuve*] at para 20.

[43] Bearing these principles in mind, I turn to a consideration of the subsection 6(5) factors.

(i) Paragraph 6(5)(e) – Degree of Resemblance

[44] I find that this factor unequivocally favours the Plaintiff in respect of the Infringed Armour Marks.

[45] It generally is appropriate to begin the analysis with the degree of resemblance under paragraph 6(5)(e). If the marks or names do not resemble one another, it is unlikely that even a strong finding on other factors would lead to a determination of likelihood of confusion. In other words, other factors are only significant if the marks are identical or very similar: *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 49; *1196278 Ontario Inc (Sassafras) v 815470 Ontario Ltd (Sassafras Coastal Kitchen & Bar)*, 2022 FC 116 at para 30.

[46] Here, the common and dominant element of the Infringed Armour Marks and the Impugned Branding is the identical word ARMOUR. To the extent that the attention of a casual, hurried consumer would be drawn to the word ARMOUR in the parties' marks, this would contribute significantly, in my view, to the resemblance of their marks in sound, appearance and in the ideas suggested. I determine this is less so, however, in the case of the Plaintiff's two registered Armour Marks that are dominated by the initialism ACS and relate to courier services,

namely, the Armour Marks which are the subject of registration Nos. TMA701712 and TMA701713.

[47] Further, the colour red is a significant feature of both parties' design marks, thus enhancing, in my view, the degree of their resemblance in appearance.

(ii) Paragraphs 6(5)(a) and (b) – Inherent Distinctiveness, Extent to which Known, and Length of Time in Use

[48] I determine that inherent distinctiveness is a neutral factor, while the extent known and length of time in use clearly favour the Plaintiff.

[49] The inherent distinctiveness of both parties' marks resides in the word ARMOUR. The Plaintiff's evidence is that Armour was founded by the late Gordon Armour in the 1940s, who lived from 1910-1996. Although the surname significance of the word "Armour" diminishes (in the sense of weakens) the inherent distinctiveness of the marks, I find such diminishment is offset in part by the primary alternative meanings of the word as shown by the Plaintiff's evidence, that is a defensive covering for the body and a suit of mail. In my view, these meanings are not descriptive or suggestive of transportation or trucking services (and related services) *per se*.

[50] More significantly, I find that any weakness in the inherent distinctiveness of the Infringed Armour Marks is further offset by the extent to which they have become known and the length of time they have been in use in Canada, which factors favour the Plaintiff.

[51] While the Power Affidavit describes the Plaintiff's sales as "substantial," the affidavit is lacking in any sales figures. I am prepared to infer, however, that a business "providing services across Canada and into the United States with nearly 2,000 employees, 24 terminals, 4,000 pieces of equipment, and 700,000 square feet of warehousing," represents a sizeable enterprise. In add, however, that in my view, Armour's participation in industry trade shows and job fairs, as well as the number of "followers" and "likes" on social media platforms, without any contextual evidence, do not in themselves corroborate that the Plaintiff's business is substantial.

[52] Further, the business has received many industry and customer accolades and recognition, spanning the last two decades. According to Mr. Power, "the Plaintiff is consistently recognized in Today's Trucking list of the Top 10 Carriers in Canada." Armour performs its transportation services in trucks displaying the design mark registered under registration No. TMA511626 as follows:



[53] The Defendants similarly display the Impugned Branding on their trucks as follows:





[54] Mr. Power deposes that the Defendants only started using the Impugned Branding in 2018 as contrasted with the Plaintiff's expansion by 1966 to 10 trucks and 11 employees associated with the "Armour brand." Although the Power Affidavit could have been clearer about what use was made of the Armour Marks in the early days, I note that registration Nos. TMA511627, TMA511626 and TMA519007 (i.e. the Infringed Armour Marks) all are based on use of the trademarks in Canada since at least as early as 1989, which substantially predates 2018.

(iii) Paragraphs 6(5)(c) and (d) – Nature of Goods, Services or Business, and Channels of Trade

[55] I agree with the Plaintiff that although it offers a broader range of services than the Defendants, that range encompasses the very services offered by the Defendants. Further, they both operate in the transportation (particularly by truck) and logistics space. In other words, these factors also favour the Plaintiff.

[56] Having considered and weighed the above factors, I am satisfied that the Plaintiff has established a likelihood of confusion between its design marks registered under registration Nos. TMA511627, TMA511626 and TMA519007 (i.e. the Infringed Armour Marks), and the Impugned Branding, such that the Plaintiff has made out its claim for infringement under section 20 of the *TMA*. While not necessary, this finding nonetheless is reinforced by the instances of actual confusion described in the Power Affidavit (see *Venngo Inc v Concierge Connection Inc (Perkopolis)*, 2017 FCA 96 at para 73, leave to appeal refused, 2017 CanLII 78708 (SCC)) and discussed in connection with the issue of depreciation of goodwill addressed below.

[57] Success on a claim for infringement under section 19 of the *TMA*, however, requires a plaintiff to establish that the marks in issue are identical: *Sandhu Singh Hamdard Trust v Navsun Holdings Ltd*, 2019 FCA 295 [*Hamdard Trust*] at para 20; *Bean Box, Inc v Roasted Bean Box Inc*, 2022 FC 499 at paras 18-19. I find that Plaintiff's evidence here does not show the requisite identicalness.

(b) *Depreciation of Goodwill Legal Principles and Analysis*

[58] I am satisfied that Armour has shown the corporate Defendant's activities likely, if not actually, depreciate the value of the goodwill attached to the Infringed Armour Marks.

[59] Section 22 of the *TMA* provides that no one can use the registered trademark of another in a way likely to depreciate the value of the goodwill attached to the trademark.

[60] To succeed in a claim for depreciation of goodwill, a plaintiff must meet the applicable four-part, conjunctive test: (i) the defendant has used the claimant's registered trademark with goods or services, regardless whether they are competitive, with those of the claimant; (ii) the claimant's registered trademark is sufficiently well known to have a significant degree of goodwill attached to it, although there is no requirement that the trademark be well known or famous; (iii) the defendant's use of the trademark was likely to have an effect on that goodwill (in other words, there was a linkage); and (iv) the likely effect is to depreciate or cause damage to the value of the goodwill: *Veuve*, above at para 46.

[61] It is not a requirement that the challenged trademark be identical to the registered trademark: *Veuve*, above at para 48. That said, goodwill and depreciation are not defined in the *TMA*. *Veuve* addresses these gaps (at paras 50, 63) by guiding that “[i]n ordinary commercial use, [goodwill] connotes the positive association that attracts customers towards its owner’s wares or services rather than those of its competitors,” while the ordinary dictionary meaning of “depreciate” means to “lower the value of,” as well as to “disparage, belittle, underrate.”

[62] In addition, a trademark’s value can be lowered when different users bandy it about, or when their actions cause “blurring” (i.e. “whittling away” the trademark’s ability to distinguish the owner’s products and attract consumers) or “dilution,” resulting in lesser distinctiveness: *Veuve*, above at paras 63-64; *H-D USA, LLC v Varzari*, 2021 FC 620 [*Varzari*] at para 49.

[63] Put another way (paraphrasing from *Clairol* to align more closely with *Veuve*), section 22 prohibits a competitor’s use of the owner’s trademark for the purpose of appealing to the owner’s customers in an effort to weaken their habit of buying what they have bought before or the likelihood that they would buy the owner’s goods or whatever binds them to the owner’s goods so as to change their buying habits: *Clairol International Corp et al v Thomas Supply and Equipment Co et al*, 1968 CanLII 1280 (CA EXC), 2 Ex CR 552 at 575.

[64] Non-exhaustive factors to consider in assessing the existence of goodwill include the degree of recognition of the mark within the relevant universe of consumers, the volume of sales and the depth of market penetration of products associated with the claimant’s mark, the extent and duration of advertising and publicity accorded the claimant’s mark, the geographic reach of

the claimant's mark, its degree of inherent or acquired distinctiveness, whether products associated with the claimant's mark are confined to a narrow or specialized channel of trade, or move in multiple channels, and the extent to which the mark is identified with a particular quality: *Veuve*, above at para 54.

[65] In addition, the Court must consider the effect on goodwill or linkage from the perspective of the "somewhat-hurried consumer;" absent linkage, there can be no impact, whether positive or negative, on goodwill: *Veuve*, above at para 56. Rooted in the linkage concept is the way a trademark operates; trademarks work as a purchasing decision shortcut and, thus, perform an important function in the market: *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 21.

[66] The Power Affidavit describes one of its vendors becoming concerned about doing business with the Plaintiff after mistaking the bad credit of "Armour Trucking" for that of the Plaintiff.

[67] Mr. Power also recounts instances of actual confusion involving a customer in Quebec, Kruger Products Inc., that loaded the corporate Defendant's trailers on multiple occasions, mistaking them for Armour's trailers. According to Mr. Power, even after the error is discovered, Kruger will dispatch the Armour Trucking (i.e. AlbertaCo) trailers to perform the work that otherwise would be entrusted to the Plaintiff because of the time and cost involved in offloading and reloading the Plaintiff's trailers, resulting in lost business.

[68] Mr. Power further attests to a complaint by a manager at a recipient of a Kruger shipment in the US delivered by AlbertaCo, when the Plaintiff had no shipments to that facility at that time. The complaint involved a gate apparently damaged by AlbertaCo.

[69] While the Power Affidavit shows negative comments received online by AlbertaCo, in my view it is speculative to argue that individuals will mistake the corporate Defendant for the Plaintiff by reason of the online negative comments alone, without something more. In other words, I am not convinced the Plaintiff has established the necessary linkage described in *Veuve* insofar as the negative comments received by AlbertaCo are concerned.

[70] That said, considering the totality of its evidence, I find that the Plaintiff also has made out a likelihood of depreciation of goodwill.

[71] First, I find the Impugned Branding, while not identical, is “sufficiently similar” (per *Veuve*, above at para 38) to the Infringed Armour Marks having registration Nos. TMA511627, TMA511626 and TMA519007 depicted above; further, there is substantial overlap between the Plaintiff’s transportation services and the Defendants’ trucking services.

[72] Second, I determine that the Infringed Armour Marks are sufficiently well known to have a significant degree of goodwill attached to them. Here, I have taken into account my findings regarding the subsection 6(5) factors in the context of likely confusion which can have a bearing on the depreciation of goodwill analysis, notwithstanding the different tests: *Hamdard Trust*, above at paras 47-48.

[73] Third, I find the Defendants' use of the Impugned Branding was (and is) likely to have an effect on that goodwill by evoking in customers of the parties' services a mental association between the Impugned Branding and the Infringed Armour Marks (in other words, there was – and is – a linkage).

[74] Fourth, I conclude that the likely effect is to depreciate or cause damage to the value of the goodwill attached to the Infringed Armour Marks.

B. *The individual Defendants are not personally liable for the corporate Defendants' conduct*

[75] Contrary to the Plaintiff's arguments, I am not persuaded that the individual Defendants' conduct in this matter rises to a level that demands the lifting of the corporate veil.

[76] For there to be personal liability in the context of intellectual property infringement, “there must be circumstances showing that the individual's purpose was not just ordinary course business activity ‘but the deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it’”: *Vachon Bakery Inc v Racioppo*, 2021 FC 308 [*Vachon*] at para 120, citing *Mentmore Manufacturing Co, Ltd et al v National Merchandising Manufacturing Co Inc et al*, 1978 CanLII 2037 (FCA), 89 DLR (3d) 195 [*Mentmore*] at 204-205

[77] The kind of participation in the acts of a corporation that would give rise to personal liability involve a “degree and kind of personal involvement by which the director or officer

makes the tortious act his own”: *Petrillo v Allmax Nutrition Inc*, 2006 FC 1199 [*Petrillo*] at para 30, citing *Mentmore*, above. This principle applies not only to large corporations but also to small, closely held companies: *Petrillo*, at para 31. As observed by the court in *Mentmore*, “[t]here is no reason why the small, one-man or two-man corporation should not have the benefit of the same approach to personal liability merely because there is generally and necessarily a greater degree of direct and personal involvement in management on the part of its shareholders and directors.” [Emphasis added.]

[78] The Court of Appeal for Ontario later clarified that there must be “some conduct on the part of those directing minds that is either tortious in itself or exhibits a separate identity or interest from that of the corporations such as to make the acts or conduct complained of those of the directing minds”: *Petrillo*, above at para 29, citing *Normart Management Ltd v West Hill Redevelopment Co Ltd.*, 1998 CanLII 2447 (ONCA), 155 DLR (4th) 627 [*Normart*]. This Court recently has held that personal liability on the part of an individual who owns or controls a company will not arise even if the individual was the one who decided the company would undertake the alleged misconduct: *Vachon*, above at paras 120-122. See also *Zero Spill Systems (Int’l) Inc v 614248 Alberta Ltd*, 2009 FC 70 [*Zero Spill*] at para 19.

[79] Further, it is not enough for a plaintiff to plead personal liability on the part of an officer or director in a statement of claim in the hope that evidence to support the allegation will be uncovered during discovery: *Zero Spill*, above at para 20.

[80] Here, there is only one paragraph in Armour's Statement of Claim devoted to the individual Defendants, Manpreet Dhillon and Jobanbir Lehal, who are described as the directors and the principal controlling minds of AlbertaCo. The claim asserts that these individuals directed, ordered, authorized, aided and abetted the conduct of the corporate Defendant, about which the Plaintiff complains, and that they have done so with full knowledge and reckless disregard for Armour's rights, for the purpose of deceiving the average Canadian consumer and securing profits which rightfully belong to Armour.

[81] I find, however, that there is insufficient evidence that the individual Defendants participated in any act, including permitting or authorizing the corporate Defendant to use the Impugned Branding, that rises to the level of conduct described in *Mentmore* and *Normart* that would attract personal liability and warrant lifting the corporate veil. I arrive at this conclusion even though the individual Defendants were made aware of the Plaintiff's objections to their Impugned Branding, possibly as early as December 2021 when the Plaintiff's general counsel and the individual Defendant, Jobanbir Lehal spoke, but certainly by the time of receipt of the Plaintiff's first cease and desist letter sent in January 2022: *Vachon*, above at para 123.

C. *Armour is entitled to some of the remedies it seeks*

[82] I am satisfied that Armour is entitled, under section 53.2 of the *TMA*, to compensatory and punitive damages as against the corporate Defendant, as well as a permanent injunction and other relief related to the cessation of use of the Impugned Branding. See *BBM Canada v Research In Motion Limited*, 2011 FCA 151 at paras 23-24.



(1) Compensatory Damages

[83] That Armour has not provided proof of the actual quantum of damages it has suffered because of the infringement of, and the depreciation of goodwill attached to, the Armour Marks, does not disentitle Armour to a minimum or nominal compensatory damages award: *Mars Canada Inc v John Doe #1 (King Tuts Cannabis)*, 2022 FC 1193 at para 50; *Varzari*, above at paras 54-56.

[84] Further, difficulty in assessing damages, does not relieve the Court from doing the best it can in assessing them: *Ragdoll Productions (UK) Ltd v Jane Doe*, 2002 FCT 918 at para 40, citing *Aluminum Co of Canada Ltd et al v Tisco Home Building Products (Ontario) Ltd et al* (1977), 33 CPR (2d) 145 (FCTD) at 163-164.

[85] While Armour requests nominal damages in the amount of \$20,000 per Defendant, I determine that a just and proportionate total award of damages in the circumstances is \$20,000, in light of my finding that the individual Defendants are not liable personally.

(2) Punitive Damages

[86] Punitive damages may be awarded in exceptional cases of high-handed, malicious, arbitrary or highly reprehensible misconduct that represents a marked departure from ordinary standards of decent behaviour: *Bell Helicopter Textron Canada Limitée v Eurocopter, société par actions simplifiée*, 2013 FCA 219 at para 163, citing *Hill v Church of Scientology of*

*Toronto*, 1995 CanLII 59, [1995] 2 SCR 1130 at para 196; *Whiten v Pilot Insurance Co*, 2002 SCC 18 at para 36.

[87] Punitive damages also may be warranted where compensatory damages may be viewed as little more than a “licence fee” to disregard the rights of others: *TFI Foods Ltd v Every Green International Inc*, 2021 FC 241 [*TFI Foods*] at para 68.

[88] While I am not persuaded that the Defendants’ conduct was high-handed, malicious, arbitrary or highly reprehensible, I am satisfied that the amount of compensatory damages awarded in this matter represent little more than a licence fee, especially taking into account the five years during which infringement occurred before the Plaintiff commenced its action. Further, when confronted with the Plaintiff’s concerns in December 2021, the Defendants indicated that they were unwilling to stop using or to change the Impugned Branding; they continued their course of conduct which included plans for expansion, and evasion of service of the Plaintiff’s claim necessitating substituted service.

[89] Although the Plaintiff has requested punitive damages of \$25,000 per Defendant, I determine that a just and proportionate total award of punitive damages in the circumstances is \$25,000, in light of my finding that the individual Defendants are not liable personally, with a view to accomplishing the objectives of retribution, deterrence and denunciation: *TFI Foods*, above at para 68.

(3) Injunctive and Related Relief

[90] As mentioned, the Defendants have not responded to this motion and the corporate Defendant's Statement of Defence has been removed from the record. I determine that a permanent injunction flows from the Court's findings of infringement and depreciation of goodwill in respect of the Infringed Armour Marks by the corporate Defendant.

[91] The corporate Defendant also will be required to withdraw or cancel the trade name registration for "Armour Trucking" (TN20987723), and to remove "Armour" and "Amour Trucking" from all trucks, vehicles, equipment, websites, etc. In addition, the corporate Defendant will be required to notify clients, customers and employees of the name change.

D. *Armour is entitled to costs*

[92] Armour seeks a lump-sum costs award of \$100,000 from the Defendants, jointly and severally, for the action, including this motion. Because the action will be dismissed against the individual Defendants, however, I determine that an appropriate lump-sum costs award in the circumstances is \$35,000 (roughly one third of the proposed amount, and including costs for

responding to the Defendants' rule 120 motion). I exercise my discretion accordingly under rule 400 in making this award of costs.

V. Conclusion

[93] For the above reasons, the Plaintiff's motion will be granted in part, with default judgment awarded against the corporate Defendant but dismissed against the individual Defendants. The corporate Defendant has infringed and depreciated the goodwill attached to the Infringed Armour Marks, thus warranting injunctive and related relief, as well as compensatory and punitive damages. The corporate Defendant will pay the Plaintiff lump-sum costs in the amount of \$35,000, inclusive of costs for responding to the Defendants' rule 120 motion. Subject to sections 36-37 of the *Federal Courts Act*, RSC 1985, c F-7, the Plaintiff also is entitled to pre- and post-judgment interest on the terms outlined below.

**JUDGMENT in T-245-23**

**THIS COURT'S JUDGMENT is that:**

1. The Plaintiff's motion is granted in part as against 2098763 Alberta Ltd, dba Armour Trucking of Edmonton [corporate Defendant].
2. The corporate Defendant is declared to have:
  - a. infringed the following registered trademarks of the Plaintiff, contrary to section 20 of the *Trademarks Act*, RSC 1985, c T-13: ARMOUR & Design, registration No. TMA511627; ARMOUR TRANSPORTATION SYSTEMS & Design, registration No. TMA511626; and ARMOUR TRANSPORT INC & Design, registration No. TMA519007 [collectively, Infringed Armour Marks]; and
  - b. used the Infringed Armour Marks in a manner that is likely to have the effect of depreciating the value of the goodwill attaching to them, contrary to subsection 22(1) of the *Trademarks Act*.
3. The corporate Defendant by itself, and by its employees, partners, agents, officers, and directors, in such capacity, are enjoined permanently from, directly or indirectly, further:
  - a. infringing the Infringed Armour Marks;
  - b. depreciating the value of the goodwill attaching to the Infringed Armour Marks; and
  - c. using the words "Armour" and "Amour Trucking" including any and all words, phrases, logos, business names, trade names, or trade dress containing "Armour" or "Amour Trucking" and any other marks that could be deemed

confusingly similar to “Armour” or “Amour Trucking” and any other logos or branding comprising or containing “Armour” or “Armour Transport” used by the Plaintiff, as or in a trademark or trade name, or for any other purpose in a manner likely to infringe or to depreciate the value of the goodwill attached to the Infringed Armour Marks;

4. The corporate Defendant immediately shall: (a) withdraw or cancel the trade name registration for “Armour Trucking” (TN20987723); (b) remove or cause to be removed all reference to and use of the words “Armour” and “Armour Trucking” from all trucks, vehicles, equipment, websites, advertising, branding, merchandise, stationery, invoices, licences, and registrations; and (c) notify all of its existing clients, customers, and employees that the corporate Defendant no longer operates under the “Armour” or “Armour Trucking” brand.
5. The corporate Defendant shall pay to Plaintiff forthwith: (a) compensatory damages in the amount of \$20,000; and (b) punitive damages in the amount of \$25,000.
6. The Plaintiff is awarded lump-sum costs in the amount of \$35,000, for the action, including this motion, and for responding to the Defendants’ rule 120 motion, payable forthwith by the corporate Defendant.
7. The compensatory damages payable under this judgment shall bear pre-judgment interest at a rate of 3% per year from February 7, 2023, to the date of this Judgment.
8. All amounts payable under this Judgment shall bear post-judgment interest at a rate of 5% per year from the date of this Judgment.

9. This motion and the action are dismissed as against the individual Defendants,  
Manpreet Dhillon and Jobanbir Lehal.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

*Federal Courts Rules (SOR/98-106)*  
*Règles des Cours fédérales (DORS/98-106)*

<p><b>Removal of documents</b></p> <p><b>74 (1)</b> Subject to subsection (2), the Court may, at any time, order that a document be removed from the Court file if the document</p> <p style="padding-left: 20px;">(a) was not filed in accordance with these Rules, an order of the Court or an Act of Parliament;</p> <p style="padding-left: 20px;">(b) is scandalous, frivolous, vexatious or clearly unfounded; or</p> <p style="padding-left: 20px;">(c) is otherwise an abuse of the process of the Court.</p> <p><b>Opportunity to make submissions</b></p> <p><b>(2)</b> The Court may only make an order under subsection (1) if all interested parties have been given an opportunity to make submissions.</p>	<p><b>Retrait de documents</b></p> <p><b>74 (1)</b> Sous réserve du paragraphe (2), la Cour peut, à tout moment, ordonner que soient retirés du dossier de la Cour :</p> <p style="padding-left: 20px;">a) les documents qui n’ont pas été déposés en conformité avec les présentes règles, une ordonnance de la Cour ou une loi fédérale;</p> <p style="padding-left: 20px;">b) les documents qui sont scandaleux, frivoles, vexatoires ou manifestement mal fondés;</p> <p style="padding-left: 20px;">c) les documents qui constituent autrement un abus de procédure.</p> <p><b>Occasion de présenter des observations</b></p> <p><b>(2)</b> La Cour ne peut rendre une ordonnance en vertu du paragraphe (1) que si elle a donné aux parties intéressées l’occasion de présenter leurs observations.</p>
<p><b>Corporations or unincorporated associations</b></p> <p><b>120</b> A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.</p>	<p><b>Personne morale, société de personnes ou association</b></p> <p><b>120</b> Une personne morale, une société de personnes ou une association sans personnalité morale se fait représenter par un avocat dans toute instance, à moins que la Cour, à cause de circonstances particulières, ne l’autorise à se faire représenter par un de ses dirigeants, associés ou membres, selon le cas.</p>
<p><b>Defence</b></p> <p><b>204 (1)</b> A defendant shall defend an action by serving and filing a statement of defence within</p> <p style="padding-left: 20px;">(a) 30 days after the day on which of the statement of claim is served, if the defendant is served in Canada or the United States;</p> <p style="text-align: center;">...</p>	<p><b>Défense</b></p> <p><b>204 (1)</b> Le défendeur conteste l’action en signifiant et en déposant sa défense :</p> <p style="padding-left: 20px;">a) dans les trente jours après avoir reçu signification de la déclaration, si cette signification a été faite au Canada ou aux États-Unis;</p> <p style="text-align: center;">...</p>



<p><b>Motion for default judgment</b></p> <p><b>210 (1)</b> Where a defendant fails to serve and file a statement of defence within the time set out in rule 204 or any other time fixed by an order of the Court, the plaintiff may bring a motion for judgment against the defendant on the statement of claim.</p> <p><b>Motion in writing</b></p> <p><b>(2)</b> Subject to section 25 of the <i>Crown Liability and Proceedings Act</i>, a motion under subsection (1) may be brought <i>ex parte</i> and in accordance with rule 369.</p> <p><b>Affidavit evidence</b></p> <p><b>(3)</b> A motion under subsection (1) shall be supported by affidavit evidence.</p> <p><b>Disposition of motion</b></p> <p><b>(4)</b> On a motion under subsection (1), the Court may</p> <ul style="list-style-type: none"> <li><b>(a)</b> grant judgment;</li> <li><b>(b)</b> dismiss the action; or</li> <li><b>(c)</b> order that the action proceed to trial and that the plaintiff prove its case in such a manner as the Court may direct.</li> </ul>	<p><b>Cas d'ouverture</b></p> <p><b>210 (1)</b> Lorsqu'un défendeur ne signifie ni ne dépose sa défense dans le délai prévu à la règle 204 ou dans tout autre délai fixé par ordonnance de la Cour, le demandeur peut, par voie de requête, demander un jugement contre le défendeur à l'égard de sa déclaration.</p> <p><b>Requête écrite</b></p> <p><b>(2)</b> Sous réserve de l'article 25 de la <i>Loi sur la responsabilité civile de l'État et le contentieux administratif</i>, la requête visée au paragraphe (1) peut être présentée <i>ex parte</i> et selon la règle 369.</p> <p><b>Preuve</b></p> <p><b>(3)</b> La preuve fournie à l'appui de la requête visée au paragraphe (1) est établie par affidavit.</p> <p><b>Pouvoirs de la Cour</b></p> <p><b>(4)</b> Sur réception de la requête visée au paragraphe (1), la Cour peut :</p> <ul style="list-style-type: none"> <li><b>a)</b> accorder le jugement demandé;</li> <li><b>b)</b> rejeter l'action;</li> <li><b>c)</b> ordonner que l'action soit instruite et que le demandeur présente sa preuve comme elle l'indique.</li> </ul>
<p><b>Service pursuant to order for substitutional service</b></p> <p><b>211</b> Judgment shall not be given against a defendant who is in default where service of the statement of claim was effected pursuant to an order for substitutional service, unless the Court is satisfied that it is just to do so having regard to all the circumstances.</p>	<p><b>Signification substitutive en vertu d'une ordonnance</b></p> <p><b>211</b> Lorsque la signification de la déclaration a été faite en vertu d'une ordonnance de signification substitutive, aucun jugement ne peut être rendu contre le défendeur en défaut à moins que la Cour ne soit convaincue qu'il est équitable de le faire dans les circonstances.</p>

<p><b>Motions in writing</b></p> <p><b>369 (1)</b> A party may, in a notice of motion, request that the motion be decided on the basis of written representations.</p>	<p><b>Procédure de requête écrite</b></p> <p><b>369 (1)</b> Le requérant peut, dans l’avis de requête, demander que la décision à l’égard de la requête soit prise uniquement sur la base de ses prétentions écrites.</p>
<p><b>Discretionary powers of Court</b></p> <p><b>400 (1)</b> The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.</p>	<p><b>Pouvoir discrétionnaire de la Cour</b></p> <p><b>400 (1)</b> La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.</p>

*Trademarks Act (R.S.C., 1985, c. T-13)*  
*Loi sur les marques de commerce (L.R.C. (1985), ch. T-13)*

<p><b>Confusion — trademark with other trademark</b></p> <p><b>6(2)</b> The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.</p> <p>[...]</p>	<p><b>Marque de commerce créant de la confusion avec une autre</b></p> <p><b>6(2)</b> L’emploi d’une marque de commerce crée de la confusion avec une autre marque de commerce lorsque l’emploi des deux marques de commerce dans la même région serait susceptible de faire conclure que les produits liés à ces marques de commerce sont fabriqués, vendus, donnés à bail ou loués, ou que les services liés à ces marques sont loués ou exécutés, par la même personne, que ces produits ou services soient ou non de la même catégorie générale ou figurent ou non dans la même classe de la classification de Nice.</p> <p>[...]</p>
<p><b>Confusion — trade name with trademark</b></p> <p><b>(4)</b> The use of a trade name causes confusion with a trademark if the use of both the trade name and trademark in the same area would be likely to lead to the inference that the goods or services associated with the business carried on under the trade name and those associated with the trademark are manufactured, sold, leased, hired or</p>	<p><b>Nom commercial créant de la confusion avec une marque de commerce</b></p> <p><b>(4)</b> L’emploi d’un nom commercial crée de la confusion avec une marque de commerce lorsque l’emploi des deux dans la même région serait susceptible de faire conclure que les produits liés à l’entreprise poursuivie sous ce nom et les produits liés à cette marque sont fabriqués, vendus, donnés à bail ou loués, ou que les services liés à</p>

performed by the same person, whether or not the goods or services are of the same general class or appear in the same class of the Nice Classification.

### What to be considered

(5) In determining whether trademarks or trade names are confusing, the court or the Registrar, as the case may be, shall have regard to all the surrounding circumstances including

- (a) the inherent distinctiveness of the trademarks or trade names and the extent to which they have become known;
- (b) the length of time the trademarks or trade names have been in use;
- (c) the nature of the goods, services or business;
- (d) the nature of the trade; and
- (e) the degree of resemblance between the trademarks or trade names, including in appearance or sound or in the ideas suggested by them.

l'entreprise poursuivie sous ce nom et les services liés à cette marque sont loués ou exécutés, par la même personne, que ces produits ou services soient ou non de la même catégorie générale ou figurent ou non dans la même classe de la classification de Nice.

### Éléments d'appréciation

(5) En décidant si des marques de commerce ou des noms commerciaux créent de la confusion, le tribunal ou le registraire, selon le cas, tient compte de toutes les circonstances de l'espèce, y compris :

- a) le caractère distinctif inhérent des marques de commerce ou noms commerciaux, et la mesure dans laquelle ils sont devenus connus;
- b) la période pendant laquelle les marques de commerce ou noms commerciaux ont été en usage;
- c) le genre de produits, services ou entreprises;
- d) la nature du commerce;
- e) le degré de ressemblance entre les marques de commerce ou les noms commerciaux, notamment dans la présentation ou le son, ou dans les idées qu'ils suggèrent.

### Unfair Competition and Prohibited Signs Prohibitions

7 No person shall

- (a) make a false or misleading statement tending to discredit the business, goods or services of a competitor;
- (b) direct public attention to his goods, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his goods, services or business and the goods, services or business of another;

### Concurrence déloyale et signes interdits Interdictions

7 Nul ne peut :

- a) faire une déclaration fautive ou trompeuse tendant à discréditer l'entreprise, les produits ou les services d'un concurrent;
- b) appeler l'attention du public sur ses produits, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu'il a commencé à y appeler ainsi l'attention, entre ses produits, ses services ou son entreprise et ceux d'un autre;

<p>(c) pass off other goods or services as and for those ordered or requested; or</p> <p>(d) make use, in association with goods or services, of any description that is false in a material respect and likely to mislead the public as to</p> <ul style="list-style-type: none"> <li>(i) the character, quality, quantity or composition,</li> <li>(ii) the geographical origin, or</li> <li>(iii) the mode of the manufacture, production or performance of the goods or services.</li> </ul>	<p>c) faire passer d'autres produits ou services pour ceux qui sont commandés ou demandés;</p> <p>d) employer, en liaison avec des produits ou services, une désignation qui est fausse sous un rapport essentiel et de nature à tromper le public en ce qui regarde :</p> <ul style="list-style-type: none"> <li>(i) soit leurs caractéristiques, leur qualité, quantité ou composition,</li> <li>(ii) soit leur origine géographique,</li> <li>(iii) soit leur mode de fabrication, de production ou d'exécution.</li> </ul>
<p><b>Validity and Effect of Registration</b></p> <p><b>Rights conferred by registration</b></p> <p><b>19</b> Subject to sections 21, 32 and 67, the registration of a trademark in respect of any goods or services, unless shown to be invalid, gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of those goods or services.</p> <p><b>Infringement</b></p> <p><b>20 (1)</b> The right of the owner of a registered trademark to its exclusive use is deemed to be infringed by any person who is not entitled to its use under this Act and who</p> <ul style="list-style-type: none"> <li>(a) sells, distributes or advertises any goods or services in association with a confusing trademark or trade name;</li> <li>(b) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any goods in association with a confusing trademark or trade name, for the purpose of their sale or distribution;</li> <li>(c) sells, offers for sale or distributes any label or packaging, in any form, bearing a trademark or trade name, if</li> </ul>	<p><b>Validité et effet de l'enregistrement</b></p> <p><b>Droits conférés par l'enregistrement</b></p> <p><b>19</b> Sous réserve des articles 21, 32 et 67, l'enregistrement d'une marque de commerce à l'égard de produits ou services, sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l'emploi de celle-ci, dans tout le Canada, en ce qui concerne ces produits ou services.</p> <p><b>Violation</b></p> <p><b>20 (1)</b> Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne qui est non admise à l'employer selon la présente loi et qui :</p> <ul style="list-style-type: none"> <li>a) soit vend, distribue ou annonce des produits ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion;</li> <li>b) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des produits, en vue de leur vente ou de leur distribution et en liaison avec une marque de commerce ou un nom commercial créant de la confusion;</li> <li>c) soit vend, offre en vente ou distribue des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial alors que :</li> </ul>

(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name; or

(d) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, bearing a trademark or trade name, for the purpose of its sale or distribution or for the purpose of the sale, distribution or advertisement of goods or services in association with it, if

(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and

(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name.

### **Depreciation of goodwill**

**22 (1)** No person shall use a trademark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.

### **Action**

(2) In any action in respect of a use of a trademark contrary to subsection (1), the

(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion;

d) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial, en vue de leur vente ou de leur distribution ou en vue de la vente, de la distribution ou de l'annonce de produits ou services en liaison avec ceux-ci, alors que :

(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,

(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion.

### **Dépréciation de l'achalandage**

**22 (1)** Nul ne peut employer une marque de commerce déposée par une autre personne d'une manière susceptible d'entraîner la diminution de la valeur de l'achalandage attaché à cette marque de commerce.

### **Action à cet égard**

(2) Dans toute action concernant un emploi contraire au paragraphe (1), le tribunal peut

<p>court may decline to order the recovery of damages or profits and may permit the defendant to continue to sell goods bearing the trademark that were in the defendant's possession or under their control at the time notice was given to them that the owner of the registered trademark complained of the use of the trademark.</p>	<p>refuser d'ordonner le recouvrement de dommages-intérêts ou de profits, et permettre au défendeur de continuer à vendre tout produit portant cette marque de commerce qui était en sa possession ou sous son contrôle lorsque avis lui a été donné que le propriétaire de la marque de commerce déposée se plaignait de cet emploi.</p>
<p><b>Power of court to grant relief</b></p> <p><b>53.2 (1)</b> If a court is satisfied, on application of any interested person, that any act has been done contrary to this Act, the court may make any order that it considers appropriate in the circumstances, including an order providing for relief by way of injunction and the recovery of damages or profits, for punitive damages and for the destruction or other disposition of any offending goods, packaging, labels and advertising material and of any equipment used to produce the goods, packaging, labels or advertising material.</p>	<p><b>Pouvoir du tribunal d'accorder une réparation</b></p> <p><b>53.2 (1)</b> Lorsqu'il est convaincu, sur demande de toute personne intéressée, qu'un acte a été accompli contrairement à la présente loi, le tribunal peut rendre les ordonnances qu'il juge indiquées, notamment pour réparation par voie d'injonction ou par recouvrement de dommages-intérêts ou de profits, pour l'imposition de dommages punitifs, ou encore pour la disposition par destruction ou autrement des produits, emballages, étiquettes et matériel publicitaire contrevenant à la présente loi et de tout équipement employé pour produire ceux-ci.</p>

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-245-23

**STYLE OF CAUSE:** ARMOUR TRANSPORT INC v 2098763 ALBERTA LTD. DBA ARMOUR TRUCKING OF EDMONTON, MANPREET DHILLON, AND JOBANBIR LEHAL

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

**JUDGMENT AND REASONS:** FUHRER J.

**DATED:** DECEMBER 11, 2024

**APPEARANCES:**

Erin Best  
Manon Landry

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

Stewart McKelvey  
St. John's, Newfoundland

FOR THE PLAINTIFF