

**Date: 20080828**

**Docket: T-898-05**

**Citation: 2008 FC-974**

**BETWEEN:**

**HYUNDAI AUTO CANADA CORP.**

**Plaintiff**

**and**

**CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED,  
CROSS CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED,  
AT PAC WEST AUTO PARTS ENTERPRISE LTD.,  
1619059 ONTARIO INC. o/a TRI-KAP, IL HEE CHUNG, MARTIN KIM,  
POB CORPORATION, MOTOR IMPACT OF KOREA o/a  
MOTOR IMPACT OF CANADA**

**Defendants**

**ASSESSMENT OF COSTS – REASONS**

**Johanne Parent**  
**Assessment Officer**

[1] By order dated December 18, 2006, the Court dismissed with costs the plaintiff's motion for interlocutory injunction to prevent the defendants from using a trade mark of the plaintiff, namely Hyundai, and from causing confusion in Canada between the defendants' automotive wares, services or businesses and the wares, services or business of the plaintiff. A timetable for written

disposition of the assessment of the defendants' bill of costs was issued by the Senior Assessment Officer on May 20, 2008.

[2] In the representations supporting their bill of costs, the defendants refer to Rule 400(3)(k)(i) and (ii) as to whether any step in this proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution. In support, the defendants provide the Supreme Court decision in *RJR – Macdonald Inc. v. Canada (Attorney General)* 1994 1 S.C.R. 311 to argue that the plaintiff had failed to meet its onus on the motion to prove both irreparable harm and the balance of convenience. I do not think that not meeting the “test” in *RJR* makes a matter necessarily improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution. Moreover, in the balance of convenience analysis, the decision on the interlocutory injunction does not mention specifically that the delay on the part of the plaintiff indicates that the motion was both unnecessary and taken through mistake on the part of the plaintiff.

[3] Under Tariff B of the *Federal Court Rules*, the defendants claim as assessable services seven units for the preparation of responding materials to plaintiff's motion (Item 5) and three units for the two hours appearance on the motion (Item 6). Considering the factors in Rule 400(3) and my reading of the file, five units will be allocated for the preparation of this motion and two units for each of the four hours contesting the motion in Court on December 5, 2006.

[4] With regard to Item 7, I cannot find any proof of discovery of documents in this matter within the meaning of Section 222 and subsequent of the *Federal Court Rules* regarding the

disclosure of documents in an action. This assessment of costs dealing specifically with costs on a motion, no units will therefore be allocated for this item.

[5] The defendants claim the high end of column III for the preparation of cross-examinations of both Peter Renz and Peter Sepetanc (Item 8). I will allow four units for the cross-examination of Mr. Renz but will only allow two units for the cross-examination of Mr. Sepetanc. I agree with the plaintiff's solicitor that the preparation for the cross-examination of the opposing party requires more effort than the preparation of one's own witness.

[6] Considering the relative complexity of this file, the attendance at cross-examination of Peter Renz and Peter Sepetanc (Item 9) will both be allocated two units. This number of units will be multiplied by two hours for the duration of the cross-examination of Mr. Sepetanc. Referring to the affidavit of Sandra McIntyre sworn July 15, 2008, these units will be multiplied by two hours for the duration of the cross-examination of Peter Renz.

[7] Items 10, 11 and 13 are all claimed at the high end of Column III in the defendants' bill of costs. These items will not be allowed as the sub-heading in the Table of Assessable Services of the *Federal Court Rules* claims it properly "Pre-trial and pre-hearing procedures", items 10 to 13 refer to procedures taking place prior the trial or hearing as referred under the sub-heading E of this same Table and not to procedures taking place prior to a motion.

[8] I will allow item 25 for services after judgment as claimed.

[9] The four units claimed for assessment of costs will be allowed as not contested by the plaintiff.

## **DISBURSEMENTS**

[10] The transcription costs (\$572.50), photocopies done at outside copyhouses (\$1697), Court filing fee (\$50) and on-line computer charges (\$577.01) are substantiated by affidavit or in counsel's representations and will be allowed as claimed.

[11] I am satisfied that the telephone charges (\$24.77), facsimile charges (\$53) and courier charges (\$45.79) as substantiated in the affidavit of Nadine McMillan sworn January 24, 2008 were all charges necessary to the conduct of this matter and will therefore be allowed as considered reasonable.

[12] On the defendants' claim of \$447.25 for photocopies, the plaintiff submits that there is no support that would explain the in-house photocopy disbursements more particularly where it appears that outside printing houses were utilized. At this point, I would like to refer to the following excerpt from *Diversified Products Corp. v. Tye-Sil Corp.* (1990), 41 F.T.R. 227 (T.D.), 34 C.P.R. (3d) 267 (T.D.):

*... The item of photocopies is an allowable disbursement only if it is essential to the conduct of the action. Therefore, this is intended to reimburse a party for the actual out-of-pocket cost of the photocopy. The \$.25 charge by the office of plaintiffs' counsel is an arbitrary*

*charge and does not reflect the actual cost of the photocopy. A law office is not in the business of making a profit on its photocopy equipment. It must charge the actual cost and the party claiming such disbursements has the burden to satisfy the taxing officer as to the actual cost of the essential photocopies.*

[13] The plaintiff makes further reference to *Janssen-Ortho Inc. and Daiichi Pharmaceutical Co., Ltd v. Novopharm Limited*, 2006 FC 1333 where the Court said:

*In this regard , the comments of this Court in Diversified Products Corp. v. Tye-Syl Corp, 1990 F.C.J. No. 1056 (QL) are appropriate in stating that the sum of \$0.25 per page is not simply an amount that can be charged without more. When an in-house service is used, the assessment officer must be advised as to the actual costs.*

Notwithstanding the meagre evidence found in the affidavit of Nadine McMillan sworn January 24, 2008, I still think that actual photocopy expenses were necessary in the conduct of this proceeding. Nevertheless, in light of the jurisprudence mentioned above, I am not ready to allow the amount as claimed and for these reasons, I will allow a reduced amount of \$200 as a reasonable disbursement for photocopy expenses.

[14] The bill of costs is allowed at \$7,060.07 plus GST (\$420.60) for a total amount of \$7,430.67.

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“Johanne Parent”  
Assessment Officer

Toronto, Ontario  
August 28, 2008

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

**DOCKET:** T-898-05

**STYLE OF CAUSE:** HYUNDAI AUTO CANADA CORP. v. CROSS CANADA AUTO BODY SUPPLY (WEST) LIMITED, CROSS CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED, AT PAC WEST AUTO PARTS ENTERPRISE LTD., 1619059 ONTARIO INC. o/a TRI-KAP, IL HEE CHUNG, MARTIN KIM, POB CORPORATION, MOTOR IMPACT OF KOREA o/a MOTOR IMPACT OF CANADA

**ASSESSMENT OF COSTS IN WRITING WITHOUT PERSONAL APPEARANCE OF THE PARTIES**

**REASONS FOR ASSESSMENT OF COSTS:** JOHANNE PARENT

**DATED:** AUGUST 28, 2008

**WRITTEN REPRESENTATIONS:**

Jeffrey Brown FOR THE PLAINTIFF

Timothy M. Lowman FOR THE DEFENDANTS

**SOLICITORS OF RECORD:**

THEALL Group LLP FOR THE PLAINTIFF  
Toronto, ON

Sim, Lowman, Ashton & McKay LLP FOR THE DEFENDANTS  
Toronto, ON