

Date: 20080311

Docket: A-311-07

Citation: 2008 FCA 98

**CORAM: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.**

BETWEEN:

**CROSS-CANADA AUTO BODY SUPPLY (WINDSOR) LIMITED,
CROSS-CANADA AUTO BODY SUPPLY (WEST) LIMITED
and
AT PAC WEST AUTO PARTS ENTERPRISE LTD.,**

**Appellants
(Applicants)**

and

**HYUNDAI AUTO CANADA, A DIVISION OF
HYUNDAI MOTOR AMERICA,**

**Respondent
(Respondent)**

Heard at Montréal, Quebec, on March 11, 2008.

Judgment delivered from the Bench at Montréal, Quebec, on March 11, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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(Respondent)**

**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on March 11, 2008)**

NOËL J.A.

[1] Given the question that was put to the applications judge by counsel for both parties, i.e. whether the trade-marks in issue were distinctive of the seller, Hyundai Canada, to the exclusion of the manufacturer, Hyundai Korea, or vice versa, we are satisfied that the trial judge committed no palpable or overriding error in concluding that the trade-marks were distinctive of Hyundai Canada.

[2] Similarly, we see no basis for intervening in the applications judge's conclusion that the appellants had failed to meet their burden of establishing that the "HMC Design" and "HD & Hyundai Design" trade-marks were abandoned. There was no palpable or overriding error in this regard.

[3] The appeal will be dismissed with costs.

"Marc Noël"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-311-07

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE
TREMBLAY-LAMER DATED JUNE 1, 2007, DOCKET NO. T-1005-05.**

STYLE OF CAUSE: CROSS-CANADA AUTO BODY
SUPPLY (WINDSOR) LIMITED
ET AL v. HYUNDAI AUTO
CANADA, A DIVISION OF
HYUNDAI MOTOR AMERICA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 11, 2008

REASONS FOR JUDGMENT OF THE COURT BY: DESJARDINS J.A.
NOËL J.A.
TRUDEL J.A.

DELIVERED FROM THE BENCH BY: NOËL J.A.

APPEARANCES:

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Mr. Scott Fairley FOR THE RESPONDENT
Mr. Jeffrey Brown (RESPONDENT)

SOLICITORS OF RECORD:

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