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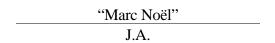
# REASONS FOR JUDGMENT OF THE COURT (Delivered from the Bench at Montréal, Quebec, on March 11, 2008)

### 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
appella	nts had failed to meet their burden of establishing that the "HMC Design" and "HD &
Hyund	ai Design" trade-marks were abandoned. There was no palpable or overriding error in this
regard.	

[3] The appeal will be dismissed with costs.



### 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:** 

Mr. François Grenier FOR THE APPELLANTS

(APPLICANTS)

Mr. Scott Fairley FOR THE RESPONDENT

Mr. Jeffrey Brown (RESPONDENT)

**SOLICITORS OF RECORD:** 

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Toronto, Ontario (RESPONDENT)