

Federal Court



Cour fédérale

Date: 20140414

Docket: T-1237-13

Citation: 2014 FC 359

Toronto, Ontario, April 14, 2014

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**PATTERNED CONCRETE INDUSTRIES,
INC. AND PATTERNED CONCRETE
ONTARIO INC.**

Plaintiffs

and

JOSE LUIS HORTA

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Plaintiffs have brought a motion in writing, *ex parte*, for judgment against the Defendant, no Defence or other document has been filed by the Defendant.

[2] Service on the Defendant, an individual person, was effected by Registered Mail. The record indicated that the Defendant signed a receipt thus service was effected under Rule

128(1)(e). Further the record contains a letter from the Defendant sent by Registered Mail to the Plaintiffs' solicitors stating:

“To clarify matters, all business cards and any other advertisements for Peel Concrete with the wording, patterned concrete, have been destroyed and in the future will never be used again.”

[3] In view of the foregoing there is no basis for an injunction or delivery up.

[4] As to damages the Plaintiffs have filed the Affidavit of Guido which only speculates as to damages, and speaks only in general terms. No actual damages have been proven. The fact that another Judge may have given damages of \$24,000.00 in a similar case is not a basis for seeking similar or greater damages here. That Judge may have had a different record. Damages must be proved, generalizations are insufficient. I will award nominal damages of \$1,000.00.

[5] I will award costs in the amount requested as the record satisfies me that they are appropriate.

JUDGMENT

UPON *EX PARTE* MOTION by Patterned Concrete Industries, Inc. and Patterned Concrete Ontario Inc. (Plaintiffs) for judgment against Jose Luis Horta (Defendant):

AND FOR THE REASONS GIVEN;

THIS COURT’S JUDGMENT is that:

1. This Court grants a declaration that the Defendant has infringed the Plaintiffs’ rights in the registered trade-mark PATTERNED CONCRETE, registration no. TMA256184;
2. This Court grants damages in the amount of \$1,000.00 for trade-mark infringement, depreciation of the goodwill in the registered trade-mark PATTERNED CONCRETE and activity contrary to Section 7(b) of the *Trade-marks Act*;
3. This Court grants the costs in the proceeding in the amount of \$1,954.95.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1237-13

STYLE OF CAUSE: PATTERNED CONCRETE INDUSTRIES, INC. AND
PATTERNED CONCRETE ONTARIO INC. v.
JOSE LUIS HORTA

**REASONS FOR JUDGMENT
AND JUDGMENT:** HUGHES J.

DATED: APRIL 14, 2014

APPEARANCES:

**REASONS FOR JUDGMENT AND JUDGMENT WITHOUT PERSONAL
APPEARANCE OF THE PARTIES**

SOLICITORS OF RECORD:

Michael Adams
RICHES, McKENZIE & HERBERT LLP

FOR THE PLAINTIFFS

N/A
Self-Represented

FOR THE DEFENDANT
(Self-Represented)