

Intellectual Property Update

Star Wars: A New Hope for Ainsworth?

(1) Lucasfilm Ltd (2) Star Wars Productions Ltd (3) Lucasfilm Entertainment Co Ltd ("Lucasfilm") v (1) Andrew Ainsworth (2) Shepperton Design Studios

In a recent High Court decision the English courts have for the first time considered the issue of copyright protection in relation to props and costumes used in film production.

Mr Ainsworth was engaged by Lucasfilm's to manufacture helmets and armour for use in the original 1977 movie 'Star Wars IV – A New Hope'. The helmets and armour were based on drawings and models supplied by the film maker. They included the famous Stormtrooper helmet which became an iconic image of this movie. Using the original moulds Mr Ainsworth recently started selling replica versions of the helmets and armour to members of the public.

Lucasfilm brought an action against Mr Ainsworth claiming copyright infringement, passing off, breach of confidence and breach of contract. The Court was also asked to consider the issue of infringement of US Copyright and the enforceability of a default judgment obtained against Mr Ainsworth in the United States.

It was accepted that Mr Ainsworth had copied drawings of the helmets and armour in order to produce the 3D articles. The dispute arose as to whether the helmets and armour fell within the protection of the Copyright Designs and Patents Act 1988 as either sculptures or works of artistic craftsmanship. The Judge, Mr Justice Mann, found that the helmets and armour in dispute were a mixture of costume and prop and as such their primary function was utilitarian. This, in the Judge's opinion, did not give these items the necessary artistic creation so as to fall within the scope of 'sculpture'. Mr Justice Mann stated "*It is not that it lacks artistic merit; it lacks artistic purpose*" it did not therefore constitute a sculpture for the purposes of the Copyright Designs and Patents Act 1988. Furthermore, it was held that neither the helmets nor the armour fell within the definition of works of artistic craftsmanship, on the basis that their purpose was not to appeal to the aesthetic at all. It was solely to give a particular impression in a film.

Under section 51 of the Copyright Designs and Patents Act 1988, it is not an infringement of the copyright in a design documents to make an article to that design or to copy an article made to that design in relation to anything other than an artistic work. The Judge found that as neither the helmets nor the armour were sculptures or works of artistic craftsmanship the claim for infringement of English copyright failed.

The Judge further commented that even if the section 51 argument did not hold, Mr Ainsworth would have been entitled to continue reproducing the replica helmets as a result of section 52 of the Act. Section 52 shortens the period of copyright protection where an artistic work has been reproduced by way of an industrial process. Accordingly, in the present case, the court found that the copyright would have expired in any event.

The passing off claim also failed on the basis that Mr Ainsworth had not pretended that the goods were his or that he was licensed by Lucasfilms in relation to those goods. The claims in breach of confidence and breach of contract also failed.

Whilst the court decided that on the circumstances of the case it was not appropriate to allow the US judgment to be enforced in England, it was found that Mr Ainsworth had infringed US copyright. The consequences of this finding have been left to be determined at a further hearing.

It would seem that Mr Justice Mann did not perceive the case as a simple good vs evil; in challenging Mr Ainsworth's credibility, he commented that "*he has become somewhat obsessed with the present dispute*" with a tendency to view "*events through his own Ainsworth-tinted spectacles*".

Similarly, whilst remarking that "*Lucas is understandably sensitive to the impression that its apparent sledgehammer or steamroller approach might portray to the court*", he observed that "*What is quite clear is that Lucas is determined to stop Mr Ainsworth by whatever legitimate legal means are open to it*".

The battle may yet rage on with the possibility of an appeal on the horizon.

If you require any further information in relation to any of the above or have any intellectual property queries please do not hesitate to contact a member of the intellectual property team on 0116 2473500.

This article is designed to provide a basic summary of the subject matters covered. It should not be relied upon as comprehensive legal advice.