

Intellectual Property Update



Star Wars: Episode II

In September 2008 we updated you on a claim by Lucasfilm (the American film production company founded by George Lucas) and others against Mr Andrew Ainsworth and his company. The claim arose out of the production of the first Star Wars film, "Star Wars Episode IV - A New Hope", back in 1977.

As is true with all motion pictures, the Star Wars movie required an array of props, including the now iconic "Stormtrooper" helmets. A Mr McQuarrie created drawings of the Stormtroopers and Mr Ainsworth was asked to produce a final three dimensional version of a Stormtrooper's helmet based on these drawings. Incorporating his own amendments, Mr Ainsworth produced a final version of the helmet which was subsequently used en masse in the film.

As we all know, the Star Wars franchise has been a momentous success from the date of that first film and has legions of devoted fans, with "Jedi" now a recognised religion in the census. In 2004 Mr Ainsworth rediscovered in his home one of the moulds he used to create the Stormtrooper helmets and realised the potential commercial value of the finding. Mr Ainsworth and his company used the mould to create replica helmets, of which over 2000 have been sold to date.

When Lucasfilm became aware of this it sued Mr Ainsworth and his company for copyright infringement. For a successful claim, the mould used to create the helmet needed to be classed as either a "sculpture" or a "work of artistic craftsmanship" within the meaning of the Copyright Designs and Patents Act 1988. As we reported in 2008, the High Court held that the prototype fell under neither heading. Accordingly, it did not enjoy copyright protection and Mr Ainsworth was free to make the replica helmets.

Lucasfilm appealed against the High Court's decision that the mould for the helmet was not a "sculpture". If successful, it would enjoy copyright protection in the prototype for seventy years from the death of the author. It would also have the potential to make huge amounts of money during that time in the sale of replica helmets.

Lucasfilm made the following arguments: Firstly, the definition of "sculpture" should depend on how the object is made, rather than the artistic quality of the object. If an object is sculptured by a physical process, the end result is a sculpture. Secondly, the helmets "were designed to project to the audience for the film a representation of a fictional soldier whose character could be derived from the image of the design itself", that is, "they were designed to be highly visual and embody a considerable level of artistic skill and design".

The judges sitting in the Court of Appeal rejected these arguments. In doing so, they likened the helmet to a soldier's helmet: "most people would not regard a soldier's helmet as a sculpture...its essential functionality as such is to take it outside any reasonable use of that term". In the judges' opinions, that view of a helmet would not be altered if it was used as a prop in a film. That is, the context in which the helmet was used would make no difference. Further, this particular helmet has "a function within the confines of the film as the equipment of the Stormtrooper." Therefore, the Stormtrooper helmets are no different to any real helmets used in films.

The effect of the above is that functional props in motion pictures and theatre productions may not be protected by the laws of copyright if, like the Stormtrooper helmets, they are not capable of protection as sculptures or as works of artistic craftsmanship. In such circumstances, those props can be legally reproduced by someone other than the author. The entertainment industry has criticised this decision, and Lucasfilm intends to appeal against it.

The case continues to Episode III...

Ref: Lucasfilm v Ainsworth [2009] EWCA Civ 1328

If you would like any further information on the content of this update, or other information on how to protect your intellectual property rights please do not hesitate to contact one of the intellectual property team.



Matthew Talbot

Matthew Talbot specialises in Intellectual Property litigation including disputes involving infringement of trade marks, copyright, design rights, patents and domain names. He has made numerous UK and European trade mark applications on behalf of organisations wishing to protect their company names, trading names and branded products. He has successfully acted on behalf of claimants against Northern Foods, Kraft Foods plc, Nestle and Adams Childrenswear and in defending clients in cases brought by Adidas, Puma, Lacoste and Microsoft.

matthew.talbot@howespercival.com



Hannah Steggles

Hannah Steggles trained with Howes Percival LLP and qualified into commercial litigation in 2005. Hannah specialises in Intellectual Property and has gained considerable experience in both contentious and non-contentious Intellectual Property matters.

hannah.steggles@howespercival.com



Jenna Bruce

Jenna Bruce joined the Howes Percival Commercial Litigation team in 2008; having qualified as a solicitor in-house with ITV PLC. Jenna specialises in Intellectual Property, and is experienced in both contentious and noncontentious matters.

jenna.bruce@howespercival.com

Contact Us

No.1 Bede Island Road
Bede Island Business Park
Leicester
LE2 7EA
Tel: 0116 2473500

252 Upper Third Street
Grafton Gate East
Central Milton Keynes
MK9 1DZ
Tel: 01908 672682

Oxford House
Cliftonville
Northampton
NN1 5PN
Tel: 01604 230400

The Guildyard
51 Colegate
Norwich
NR3 1DD
Tel: 01603 762103

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