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Copyrighting 'Mr. Batmobile'

Please accept as fact that copyright protection does not extend to utilitarian articles. If something is purely practical, and has no artistic aspect that is "conceptually severable" from its utilitarian workings, copyright is not the right legal protection to be sought.

It may be patentable if it meets the patent law requirements, but the work is not copyrightable. (Think of a basic thermometer or a bicycle.)

It is this truth that underlined the attempts by Mark Towle to build and sell replicas of two versions of the Batmobile without obtaining permission from DC Comics, the owner of the Batman franchise.

Towle was sued by DC Comics for copyright infringement because of his activities, and his defense, understandably, was that the Batmobile is a car, a utilitarian object, and thus cannot be copyrighted.

Towle had built and sold replicas of the Batmobile as it appeared in the 1966 television show "Batman" starring Adam West as well as the somewhat different version that appeared in the 1989 film "Batman" starring Michael Keaton. The movie version incor-

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porated changes from the earlier TV version, which was also a part of Towle's defense; the two car designs were different.

DC Comics figured out a way that it might get around this basic utilitarian truth, and using a very creative argument, it disagreed. It contended that its Batmobile is really a character used in Batman stories and thus, like Batman himself, eligible for copyright protection.

The 9th U.S. Circuit Court of Appeals hears a great deal of copyright cases — that is understandable, since California is within its jurisdiction and California is an entertainment industry center.

On appeal to the 9th Circuit, the court ruled that despite what Towle may have thought, the Batmobile is indeed a character — even though it might also be a car.

It is thus eligible for copyright protection whether or not some may believe it is a utilitarian object.

Applying its previously ruled tests to determine whether the Batmobile is "sufficiently delineated," displays "consistent, widely identifiable traits" and contains some unique elements of expression, so that it is not simply a stock character such as might appear in many different works, the court ruled that the Batmobile is an "especially distinctive" character and therefore, like some comic book characters, is copyrightable.

It further ruled that the changes in design between the 1966 and 1989 versions were like "costume changes" that might be undergone by a character.

The court went on to note that the Batmobile's status as a "highly interactive vehicle, equipped with high-tech gadgets and weaponry used to aid Batman in fighting crime" has not changed, even though its appearance has.

According to the court, as long as the various Batmobile depictions "promote its character as Batman's crime-fighting super car that can adapt to new situations as may be necessary to help Batman vanquish Gotham City's most notorious evildoers," they deserve copyright protection.

I wonder whether Popeye's can of spinach is next.