

CHEQUERED FLAG TO FERRARI: COMPETITORS BACK TO THE DRAWING BOARDS AFTER FERRARI COPYRIGHT RULING

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Legal Briefings

In an unprecedented move, the Court of Bologna has acknowledged copyright for the legendary motor car Ferrari 250 GTO. Given that a collector's 250 GTO recently sold for more than £50 million, it comes as no surprise that Ferrari is keen to keep copycats out of the market.

BUSINESS IMPACT

The decision stands out from other copyright cases, because it is one of the few cases where a vehicle – so an industrial design – has been held to satisfy the “artistic value” requisite for copyright eligibility.

In Italy, a design may be protected by copyright, provided that it has creative character and artistic value. Creativity means that the design is a personal expression of the artist. Artistic value means that the design has an intrinsic representative and communicative value, that goes beyond the functionality of the object, it is the expression of artistic trends and cultural influences and it is acknowledged, as such, by cultural institutions (e.g. museums). Due to the artistic value requirement, only a few designs have been acknowledged as artworks by the Italian courts.

In the automotive sector, for example, Fiat group tried and failed to obtain copyright protection for their popular model “Alfa Romeo Giulietta SZ” and “Lancia D24”. In that case the Judge ruled that the two cars could not be considered artwork, because the manufacturer had not demonstrated their artistic value. The Judge explained that the evidence provided referred more to the automotive sector, than to the artistic sector, that the cars did not have a more predominant artistic value compared to the vehicle's utility and that the vehicles had never been marketed to or displayed for, the artistic market.

The wind may now be changing, because recently also the iconic Vespa LX had been recognised as having copyright protection. In that case, the Court of Turin and subsequently the Court of Appeal, had considered the iconic Vespa as an artwork thanks to, inter alia, the number of times the Vespa had received exceptional recognition by important cultural institutions, the presence in museums and its publication in well-known magazines as an iconic design.

THE FERRARI CASE

In the case before the Court of Bologna, Ferrari acted in response to Ares Design Modena s.r.l., an Italian car manufacturer, announcing their imminent launch of a new car on the market that replicated the same creative, artistic and very distinctive features of the 250 GTO. Ferrari applied for a preliminary injunction (PI) to prevent them from launching the new car on the market and from manufacturing and selling in Italy a car that Ferrari claimed was an exact copy of the Prancing Horse 250 GTO. That initial PI application was refused, but Ferrari went on to lodge a complaint against the lack of consideration for their claim of copyright infringement.

The Court assessed the compliance with the requirements for an industrial design product to be recognised as artwork and agreed that there was objective evidence that the vehicle indeed did have artistic value. In particular, the Court ruled that its artistic value was mirrored in the numerous prizes that the car had been awarded over time, the number of exhibitions where the vehicle was displayed to the public, the press coverage in mainstream (not just sector) press, the depiction of the car in other artistic forms (such as coins, sculptures), the famous Ferrari designer Sergio Scaglietti, as well as the limited models placed on the market and the resulting economic value of such limited vehicles.

In the Ferrari case (as well as in the Vespa case), the Court commented that consolidated case law had established that in order to benefit from copyright protection, an industrial design product has to satisfy the artistic value requisite, which is assessed by the Courts on a case-by-case basis in light of objective factors. In particular, the Specialised Court of Bologna ruled that there must be effective evidence of some of the following factors: recognition of the aesthetic and artistic qualities by cultural and institutional sources, exhibition in museums or galleries, publication in specialised press, awards, a high market value that is not related to functionality, as well as the creation by a well-known artist.

The Judge ruled that Ferrari had provided sufficient evidence to demonstrate the artistic value of 250 GTO as a real icon in the automotive sector. The Court ruled that the 250 GTO car also possesses creative character, as it is an expression of its well-known designer, Scaglietti.

In this case, the Court found that there was not a recognisable or significant re-elaboration of Ferrari's design and that the competitor had copied the features of the Prancing Horse, merely adding functional elements to their car, such as safety and technical features.

Will this open the floodgates for other car manufacturers to claim copyright? It is likely that manufacturers with iconic Italian cars and motorbikes may well try to seek this added protection, provided that they have artistic value and sufficient creative character. If they manage, then it might well force other designers to start thinking outside the box in pursuit of real innovation.

KEY CONTACTS

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