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PROCEEDINGS

Utah Federal Court Rejects Copyright Lawsuit Challenging Advertisers' Right to Freely Use "Digitized" Vehicle Images

By Brian D. Wassom

Take a look at the next automotive print advertisement you see. Chances are that the car "pictured" there is a digital creation instead of a photograph. Photo-quality digital images allow advertisers to adjust color, lighting, model-year variations, and animation without entirely new photo shoots. Recently, however, a digital imaging company tried to throw a wrench in this system by claiming to own copyrights in some of those pictures. But a federal judge in Utah rejected the company's lawsuit, upholding advertisers' right to make free use of the rough digital data underlying these images.

Saatchi & Saatchi North America creates ads for Toyota Motor Sales U.S.A. Saatchi commissioned Farmington Hills-based Grace & Wild to provide digital images of several Toyota vehicles. Grace & Wild subcontracted Utah-based Meshwerks to make the initial digital scans of the vehicles. This involves laying intersecting rows of tape on actual vehicles, mechanically measuring the intersections of the tape, then fine-tuning that data in a computer to create a "wire-frame" image.

After Grace & Wild modified some of the images to reflect updates in the 2004 model designs, however, Meshwerks sued all three companies for copyright infringement.

Judge Tena Campbell rejected Meshwerks's claims, because the digital scans were not "original," as copyright law uses that term, and hence cannot be copyrighted. Copyrights protect creativity, not hard work. An unoriginal creation cannot be copyrighted, no matter how much skill or toil went into making it. A work is not "original" for copyright purposes if the work is intended merely to copy as near

as possible an existing object. Cases following this principle have rejected copyright claims in (a) topographical site plans, (b) hand-drawn recreations of catalog photos, (c) a plastic version of a metal toy, (d) costumes based on Disney characters, and (e) AutoCAD drawings of existing buildings, to name a few.

Everyone agreed that Meshwerks exercised significant skill, time, effort to digitize the Toyota vehicles. Judge Campbell even acknowledged that in colloquial, everyday language, one might call this a "creative" process. Nevertheless, Meshwerks's only role in the overall creation of the final digital images was to recreate the shapes of the vehicles as near to photo-realistically as possible. Meshwerks did not intentionally add anything to the wire-frame measurements. Indeed, nothing other than a photo-realistic depiction would have been usable for Saatchi's advertising campaign. All of the "creative" elements, such as lighting, texture, color, and animation, were added later by Grace & Wild.

Copyright law does not require a great deal of originality for a work to be copyrightable. As Judge Campbell noted, this means that drawing the line between "sublime expression" and "simple reproduction" is sometimes difficult. But the distinction is important. If someone could claim a copyright in the image of an object, such as an automobile, without having added anything to that image, then for all intents and purposes, that person becomes the owner of *every* image of that automobile. Even a conventional, two-dimensional photograph, for example, cannot be copyrighted if it merely reproduces an object without adding any creative element (such as distinct lighting

or pose) to the picture—that is, if it is more of a *photocopy* than a *photograph*.

Judge Campbell's decision has practical ramifications throughout the automotive and advertising industries. As digital imagery becomes an increasingly convenient means to depict real-world objects, advertisers must have certainty as to who owns the rights to those images. A contrary result in the *Meshwerks* case could have cast a shadow over the entire digital imaging enterprise. Judge Campbell's decision applied longstanding copyright principles to the digital arena, drawing a line between mechanical reproduction and genuine creativity. ?

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Calendar of Events

February 8, 2007

Council Meeting at 9:30 a.m.*

March 8, 2007

Council Meeting at 9:30 a.m.*

March 19, 2007

IPLS Meeting and Spring Seminar
Kellogg Center, East Lansing

April 12, 2007

Council Meeting at 9:30 a.m.*

May 10, 2007

Council Meeting at 9:30 a.m.*

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Council Meeting at 9:30 a.m.*

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