The Lucasfilm Empire Fails to Stop Rebel British Designer

Today the Supreme Court handed down the long-awaited judgment in the 'Star Wars' case of *Lucasfilm v Ainsworth*. The Supreme Court unanimously found that British designer Andrew Ainsworth had not infringed the law of copyright in England by making and selling the Stormtrooper outfits and helmets made famous by the Star Wars movies.

The facts of the case are well known. Lucasfilm sued Mr. Ainsworth on a number of grounds including UK and US copyright infringement, misuse of confidential information, conversion, passing off and trade mark infringement. All of these except copyright were dropped before the appeal. The copyright infringement claim was based on the grounds that Lucasfilm owned the copyright in the design drawings for the Stormtrooper outfits and that by making and selling Stormtrooper helmets to these designs, Mr. Ainsworth had infringed their copyright. So far as UK copyright was concerned Mr. Ainsworth relied on the defences afforded by sections 51 and 52 of the Copyright, Designs and Patents Act 1988, which in some cases limit the scope of copyright where physical articles are made from design documents.

The key issue as to whether copyright subsisted depended upon whether or not the Stormtrooper helmet could be classed as a sculpture, which would have taken the case outside sections 51 and 52. Jonathan Sumption QC, appearing for Lucasfilm, argued that the helmet was indeed a sculpture, as it had no utilitarian function, its only use being its artistic appearance in the film. The Supreme Court unanimously rejected this, holding that "*the helmet was utilitarian in the sense that it was an element in the process of production of the film*". Thus, in light of the court's decision Mr. Ainsworth is free to continue making the Stormtrooper helmets and outfits in the UK.

Of potentially more legal interest was the other finding of the court that US copyright law is justiciable in English courts. The court held that where an English court has personal jurisdiction over a defendant, they could be sued in England for

foreign copyright infringement. The court rejected arguments that there was a policy reason for English courts not adjudicating on foreign territorial rights such as copyright.

Citing the Brussels I Regulation and the Rome II Regulation the court went on to say that the modern trend is in favour of enforcement of foreign intellectual property rights such as copyright. The court emphasises that the decision in *Lucasfilm* is in relation to copyright and is not necessarily, for example, applicable to patent infringement, particularly where validity is in dispute. This appears to be because copyright vests automatically and is not granted by a state in the same way a patent or trade mark is.

Nevertheless, the speeches of the Lords in this case clearly point towards a much larger jurisdiction for English courts in relation to foreign copyright law and potentially other intellectual property matters. This decision may well lead to forum shopping by claimants, though whether this happens only time will tell.

Alastair Wilson QC of Hogarth Chambers represented Mr. Ainsworth

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