

Logaras & Associates

Intellectual Property
IP protection of the shape of a car

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Intellectual Property

Can the design of a car be protected under copyright law?

In case of the legendary Ferrari Scaglietti 250 GTO, the Court of Bologna said, for the first time, yes! This may be of particular importance to carmakers, especially after judgments of the General Court in cases T-209/18 and T-210/18, involving the 1963 Porsche 911 design.

When it comes to protection of the design of a car, or other vehicles, manufacturers typically rely on national or EU laws on industrial designs or, more rarely, trademarks. With respect to industrial designs, protection is granted when the design is new (e.g. it has not been disclosed in the past), has an “individual character”, and is time limited (e.g. 25 years for registered Community designs). On the other hand, trademarks’ protection can be

indefinite, however trademarks must have, amongst others, “distinctive character”, which, in case of three-dimensional trademarks for car shapes, has been proven very challenging. Both IP rights are restricted to the territory for which the relevant certificate is valid.

However, in case of iconic cars, whose value and recognition increases over time, right holders may have interest in seeking broader protection, both in terms of territory and duration, with less formalities. This is when copyright and the Berne Convention for the Protection of Literary and Artistic Works (1886), which currently applies in 177 contracting states, come in to play. According to a basic principle of the Berne Convention, works originating in one of the contracting states, must be given the same protection in each of the other contracting states, as the latter grants to the works of its own nationals (principle of “national treatment”). In other words, if a work is copyright protectable in the country of origin (the country where it was first published), it must be protectable in all contracting states, with no formalities.

In the Ferrari case, when an Italian company announced its plans to produce “modern replicas” of the iconic Scaglietti 250 GTO, the Maranello based manufacturer filed a preliminary injunction claiming infringement of its EU three-dimensional trademark and copyright. In June 2019, the Court of Bologna, trying in second instance, acknowledged that the historical car met the requirements of “creative character” and “artistic value”, necessary for an industrial design to be awarded copyright protection under the Italian copyright law. The Court emphasized on the artistic value of the car, based on its uncontested recognition over the time, through numerous prizes, press coverage and depictions in other forms.



Interestingly, the above decision came shortly after judgement of the General Court in case T-209/18 (and relevant judgment T-210/18), which upheld EUIPO’s decision **rejecting Porsche’s application** dated 2010 for a Community design of series 991 of Porsche 911 model, **due to lack of novelty and individual character**. EUIPO had compared said application with earlier Porsche’s registrations of 2008 and 2007 of Community design, namely for series 997 of Porsche 911 model, and came to the conclusion that **the differences in the overall impression created between the designs in question in the eyes of an informed user, were not sufficient to meet the requirements of novelty and individual character** of Regulation (EC) No 6/2002 on Community designs (see appendix for designs). Porsche has appealed General Court’s judgments, which, however, clearly demonstrate the legal challenges in the protection of car shape designs.

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