[GB] Making Star Wars Helmets Does not Amount to Copyright Infringement

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In 1976, Lucas Films invited Andrew Ainsworth to create the helmet and armour to be worn by the Stormtrooper characters in the Star Wars films. Lucas Films gave Mr Ainsworth two drawings of the Stormtroopers and a prototype helmet. Moulds were made to produce the helmets and the armour.

The moulds were kept and in 2004 Ainsworth set up a website to sell helmets and armour made using the moulds. Most of the sales were made in the USA, although Ainsworth was resident in the UK.

Lucas Films sued for infringement of copyright in California. They won the action, were awarded $10 million and now sought to enforce the judgment (focusing on the helmets) in the English courts.

Lucas Films argued that the helmets were protected under the Copyright, Designs and Patents Act 1988 (CDPA), Section 4, being an artistic work, specifically a 'sculpture' (a term which includes "a cast or model made for the purposes of sculpture").

The defence relied on Section 51 of CPDA, which provides: "It is not an infringement of any copyright in a design document …for anything other than an artistic work …to make an article to the design ….."

Upholding the decision by the High Court, the Court of Appeal ruled that the helmets were not "artistic" works of sculpture: "the prototype helmet was not protected by copyright as an artistic work as it was not a sculpture. To be a sculpture a work must be created primarily for the purpose of visual appeal in the sense that it might be enjoyed for that purpose alone. A purely functional item could not be a sculpture. The prototype helmet was utilitarian and lacked any artistic purpose."

Further, the Court of Appeal refused to enforce the US Californian, judgment, on the ground that to do so would require a significant presence in that country. Ainsworth's presence was only via his website: merely advertising, marketing and selling goods in a country are inadequate to amount to someone being "present" in that country.

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LucasFilm Limited v Andrew Ainsworth [2009] EWCA Civ 1328, 16 December 2009

http://www.bailii.org/ew/cases/EWCA/Civ/2009/1328.html

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