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## OLD CARS IN LAW

# THE CASE OF THE "GHOSTED GT"

There are some collector cars whose lines are so distinctive and classic that their outline alone can bring a rush of recognition, appreciation, and excitement to the observer. Most collectors probably would agree that the innovative 1965 Mustang belongs in that category.

The Ford Motor Company apparently shared that belief. In 1961, Ford purchased from the Electric Autolite Company, a major manufacturer of automobile repair parts and a primary supplier for Chrysler, the "Autolite" trade name, as well as various facilities and other assets. In 1966, Ford, in connection with its Autolite brand, created a logo design consisting of a blurred image of a 1965 Mustang GT, referred to as the "Ghosted GT." Ford advertised the "Autolite" name and the Ghosted GT image together.

Unfortunately for Ford, because of antitrust violations, a court ordered Ford to divest itself (i.e., cease its ownership) of Autolite, including the Autolite name.

Obedying that court order, Ford transferred the assets of Autolite to the Bendix Corporation. However, Ford retained the Ghosted GT image, thereafter using it with the "Motorcraft" parts line it had created to replace Autolite. Ford used the Ghosted GT as a vehicle (so to speak) to bridge the two brands, apparently hoping that the good will customers associated with the Autolite name would carry

over to the new "Motorcraft" line.

Several years later, Ford apparently received information that the Altran Corporation was allegedly involved in the counterfeiting of Ford parts. Ford sued Altran and others in federal court, alleging Altran had infringed Ford's copyright and trademark rights. Specifically, Ford claimed that Altran was involved in the sale of parts manufactured by others but packaged with a picture that closely resembled or was almost identical to the Ghosted GT.

In response, Altran claimed, among other things, that Ford had no right to bring such a claim, because the Autolite divestiture order had divested Ford of its rights to the Ghosted GT. Specifically, Altran alleged that the orders requiring Ford to give up "all improvements, betterments, replacements and additions" referred to additions to the Autolite name, and that the Ghosted GT was just such an addition. Altran also claimed that Ford fraudulently concealed its retention and use of the Ghosted GT after the order, violating federal law. Ford moved to dismiss Altran's counterclaim. The trial court granted that motion. Altran appealed this ruling.

In its decision of April 8, 1991, the United States Court of Appeals for the Third Circuit affirmed the dismissal of Altran's counterclaim against Ford.

The appellate court noted that the dispute between Altran and Ford regarding the divestiture order was

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one of interpretation. The appellate court noted the general rule that court orders must ordinarily be interpreted by examining only the order itself, if possible. However, where the order is ambiguous or unclear, a reviewing court may consider other evidence that was before the court that issued the order to determine exactly what that court decided. The key is to understand the intention of the court that issued the order, as opposed to the intention of the parties.

Reviewing the order, the appellate court concluded that the document alone did not resolve the question. Indeed, no provision in the order specifically covered the Ghosted GT.

Because the order was ambiguous on this point, the appellate court therefore was free to examine the circumstances surrounding the drafting of the order to help determine the scope of the "additions" language. Unfortunately, this examination "produced mixed signals." However, the appellate court focused on evidence that the divestiture court knew of Ford's use of the Ghosted GT with the "Autolite" brand. Significantly, despite this knowledge, nothing in the order had specifically mentioned the Ghosted GT. The appellate court concluded that the divestiture court's failure to mention "something so material and vivid" as the Ghosted GT suggested that the court intended to divest Ford of only the Autolite name and not the Ghosted GT image.

Thus, although there was some evidence favoring Altran's position, the appellate court ruled that, on balance, the evidence favored a finding that the order did not require Ford to divest the Ghosted GT. The appellate court noted that this ruling followed the general rule that ambiguities and omissions in orders should be construed in favor of those accused of disobeying such orders.

The present case, which involved many more issues and claims than we have discussed here, clearly emphasizes the value that a distinctive and recognizable visual image — including, as here, the outline of a collector car — can have. No doubt Ford executives heaved a huge corporate sigh of relief when the court confirmed that Ford did not have to "give up the Ghost[ed GT]."

*Lawrence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.*

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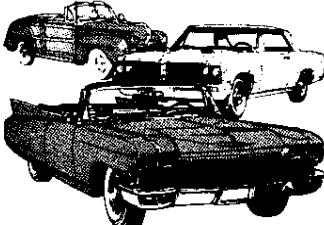
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