

THE CRESTED CADILLAC

Shortly before he passed on, my father achieved one of his long-time goals: owning a brand new Cadillac. His was a dark brown 1969 Sedan de Ville with a black interior and matching vinyl top. I can still remember his proud expression as he carefully drove his "Caddy" from and to our home in Brooklyn.

For generations, the Cadillac has stood as the symbol of success, the mark of having "made it." The Cadillac Motor Car Company (bearing the name of the founder of Detroit) was formed in 1902, using the "Cadillac" and distinctive "Cadillac crest" trademarks on and for its automobiles and related goods and services. In 1909, Cadillac became a division of General Motors. In 1925, GM registered the "Cadillac" and "Cadillac crest" marks.

Cadillac and GM have continued to use the marks in the automotive business and have licensed over 50 companies to sell "Cadillac" merchandise on non-automotive goods for over 20 years. Cadillac carefully selects and monitors the non-automotive licensees and merchandise that bear the Cadillac name and crest. GM has protected its mark by obtaining trademark registrations for such goods. Cadillac, since approximately 1967, has also published an annual gift catalog, which includes such items as "Cadillac" jewelry, clothing, luggage, playing cards, golf balls and tees, watches, sunglasses, perfume and atomizers, and hats and visors. It reportedly plans to extend its licensing activities into new areas such as chocolate and music and expand its current licensing activities in a number of the aforementioned areas. Cadillac is pursuing licensing its name and crest for use on a line of fragrances; the gift catalog has featured perfume attached to "Cadillac Crest" presentation cards and perfume atomizers bearing the "Cadillac Crest."

One of the less-than-desirable (but

all-too-common) indications that a trademark is successful is that others try to appropriate it for their own uses and products. Such allegations were presented in the recent case of *General Motors Corp. v. Cadillac Club Fashions, Inc.*, decided by the United States District Court for the Southern District of Florida.

According to the court, in 1986, Cadillac Club Fashions ("CCF"), a Florida corporation, applied for and received two federal registrations for a "Cadillac Club and Crest" mark for use on perfume, cologne and toilet water, and on men's, women's and children's clothing. CCF sold fragrances, watches and sunglasses under the "Cadillac Club and Crest."

GM sued CCF. On April 6, 1993, the court ruled in favor of GM on its trademark infringement and unfair competition claims.

The court applied the traditional "likelihood of confusion" test. Under this test, CCF would be liable for infringement and unfair competition if GM demonstrated that CCF's use of GM's trademark was likely to confuse consumers as to the source of the products involved. Courts follow a multiple-factor analysis to determine whether an allegedly infringing mark is likely to cause confusion. Such analysis requires considering: (1) the type of plaintiff's trademark; (2) the similarity of design between plaintiff's mark and that used by defendant; (3) the similarity of the products; (4) the similarity of retail outlets and purchasers; (5) the similarity of advertising media; (6) the defendant's alleged intent; and (7) any evidence of actual confusion.

Focusing on the first factor, the court noted that "Cadillac has become a highly recognized brand name throughout the United States and the

world." Moreover, "GM advertises extensively to promote 'Cadillac' products and therefore, constantly reinforces consumer recognition of GM as the exclusive source of Cadillac products." The court observed that the marks "are highly recognized and are associated with quality... Therefore, the 'Cadillac' and 'Cadillac Crest' are strong marks and as such should be widely protected."

The court further viewed as "beyond dispute, that the overall appearances of the GM and CCF Crests are very similar and that CCF's Crest incorporates the term 'Cadillac' in script virtually identical to the script used by Cadillac and GM since 1902." The court noted that both crests contained a shield divided into quarters (the first and fourth quarters containing identical bird silhouettes, the second and third further divided using contrasting colors and horizontal lines) and a coronet with pearls above the shield.

The court did, however, deny GM's request to cancel CCF's trademark registrations. (There was a genuine issue of fact regarding CCF's intent.) Although it preliminarily enjoined CCF from using the "Cadillac Club and Crest," it deferred for trial whether such injunction should be made permanent.

My family sold our Cadillac in 1971 to the family of one of my friends, with whom I eventually lost contact. I have no idea whether they still own the car, or even if it still exists. But every now and then I catch myself staring at the occasional older brown Cadillac that drives by, checking its lantern-ended fins as it passes to see if it is, indeed, a '69.

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