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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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|---------------------------|---|---------------------------------|
| DC COMICS                 | ) | CV 11-3934 RSWL (OPx)           |
|                           | ) |                                 |
| Plaintiff,                | ) | <b>ORDER re: Defendant Mark</b> |
|                           | ) | <b>Towle's Motion to</b>        |
| v.                        | ) | <b>Dismiss Claim of</b>         |
|                           | ) | <b>Copyright Infringement</b>   |
| MARK TOWLE, an individual | ) | <b>Pursuant to FRCP</b>         |
| and d/b/a Gotham Garage,  | ) | <b>12(b)(6) [15]</b>            |
| and DOES 1-10, inclusive, | ) |                                 |
|                           | ) |                                 |
| Defendants.               | ) |                                 |

On January 25, 2012, Defendant Mark Towle's ("Defendant") Motion to Dismiss Claim of Copyright Infringement Pursuant to Federal Rule of Civil Procedure 12(b)(6) [15] came on for regular calendar before the Court. The Court having reviewed all papers submitted pertaining to this Motion and having considered all arguments presented to the Court, **NOW FINDS AND RULES AS FOLLOWS:**

As a preliminary matter, the Court hereby **GRANTS in Part and DENIES in Part** Defendant's Request for Judicial Notice. The Court **GRANTS** Defendant's request

1 as it pertains to the copyright registration records  
2 (Exhibits 4-9) and the design patents (Exhibits 12-14).  
3 The Court finds that these documents are matters of  
4 Public Record and appropriate for judicial notice  
5 pursuant to Federal Rule of Evidence 201. The Court  
6 **DENIES** Defendant's Request as it pertains to the  
7 photographs of the Batmobile (Exhibits 1-3) and the  
8 excerpts from the Comic Books (Exhibits 10-11). The  
9 Court finds that the Complaint does not necessarily  
10 rely on these items, nor are they matters of public  
11 record. Parrino v. FHP, Inc., 146 F.3d 699, 705-06  
12 (9th Cir. 1998).

13 As to Defendant's Motion, the Court hereby **DENIES**  
14 Defendant's Motion to Dismiss. Under Federal Rule of  
15 Civil Procedure 12(b)(6), a dismissal can be based on  
16 the lack of cognizable legal theory or the lack of  
17 sufficient facts alleged under a cognizable legal  
18 theory. Fed. R. Civ. P. 12(b)(6); see also Balistreri  
19 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
20 1990). A party need not, however, state the legal  
21 basis for his claim, only the facts underlying it.  
22 McCalden v. California Library Ass'n, 955 F.2d 1214,  
23 1223 (9th Cir. 1990).

24 In the present motion, Defendant has moved the  
25 Court to dismiss Plaintiff's copyright infringement  
26 claim. In its Complaint, Plaintiff alleges that  
27 Defendant has been producing and selling unlicensed  
28 replica vehicle modification kits based on vehicle

1 design copyrights from Plaintiff's Batman property,  
2 including various iterations of the fictional  
3 automobile, the Batmobile.

4 In order to establish a successful claim for  
5 copyright infringement, a plaintiff must establish the  
6 following: (1) plaintiff owns the copyright for the  
7 allegedly infringed material and (2) defendant violated  
8 at least one exclusive right granted to the copyright  
9 holder. 17 U.S.C § 501(a); Perfect 10, Inc. v. Amazon.  
10 com, Inc., 508 F.3d 1146, 1159 (9th Cir. 2006). Here,  
11 the Court finds that the Complaint pleads enough facts  
12 to support both elements of a copyright infringement  
13 claim.

14 For the first element of copyright infringement,  
15 the Court finds that Plaintiff pleads sufficient facts  
16 to support the assertion that it owns the copyrights to  
17 the relevant Batmobiles in dispute. Plaintiff  
18 specifically pleads that it created the comic book  
19 character Batman and is in the business of licensing  
20 copyrights associated with Batman. FAC ¶¶ 6-7.  
21 Furthermore, the Complaint alleges that Plaintiff owns  
22 all "DC Comics Copyrighted Designs," which include the  
23 Batman characters and their associated Batmobile  
24 vehicles. FAC ¶ 11. Accordingly, because the  
25 Complaint specifically pleads that Plaintiff owns "DC  
26 Comics Copyright Designs," the Court can reasonably  
27 infer that Plaintiff owns the Copyright for the  
28 Batmobiles in dispute. As such, the Court finds that

1 Plaintiff has satisfied its pleading requirement for  
2 the first element of copyright infringement.

3 As to the second element, the Court finds that  
4 Plaintiff pleads sufficient facts to support the  
5 allegation that Defendant violated an exclusive right  
6 of Plaintiff's copyright ownership. Federal copyright  
7 law grants all copyright owners the exclusive rights to  
8 reproduce and distribute products based on the owners'  
9 copyrights. 17 U.S.C. § 106. In the Complaint,  
10 Plaintiff adequately alleges that Defendant infringed  
11 on Plaintiff's copyright by manufacturing,  
12 distributing, and selling automobiles bearing  
13 Plaintiff's copyrighted designs. FAC ¶ 25-26. In all,  
14 the Court finds that the Complaint pleads sufficient  
15 facts to support the two elements for Copyright  
16 Infringement and thus is not appropriately dismissed  
17 pursuant to Federal Rule of Civil Procedure 12(b)(6).

18 Defendant argues that, regardless of the pleadings,  
19 the copyright infringement claim should be dismissed  
20 because the Batmobile and all its variations are not  
21 copyrightable objects as a matter of law. The Court  
22 finds, however, that Defendant's argument lacks merit.  
23 Defendant is correct that in general, the Copyright Act  
24 affords no protection to "useful articles" or items  
25 with an intrinsic utilitarian function such as  
26 automobiles. Leicester v. Warner Bros., 232 F.3d 1212,  
27 1216-17 (9th Cir. 2000). Defendant's argument,  
28 however, ignores the exception to the "useful article"

1 rule, which grants copyright protection to non-  
2 functional, artistic elements of an automobile design  
3 that can be physically or conceptually separated from  
4 the automobile. Id. at 1219, n.3. As the facts are  
5 pled in the Complaint, the Court can make the  
6 reasonable inference that there may be non-functional  
7 artistic elements of the Batmobile that may possibly be  
8 separated from the utilitarian aspect of the  
9 automobile. Klarfeld, 944 F.2d at 585 (9th Cir.  
10 1991)(holding that all reasonable inferences must be  
11 drawn in favor of the non-moving party in a motion to  
12 dismiss). As such, the Court finds that the Batmobile  
13 and all of its relevant embodiments are not, as a  
14 matter of law, excluded from copyright protection.

15 In sum, based on the foregoing reasons, the Court  
16 hereby **DENIES** Defendant's Motion to Dismiss Claim of  
17 Copyright Infringement Pursuant to Federal Rule of  
18 Civil Procedure 12(b)(6).

19

20 **IT IS SO ORDERED.**

21 DATED: January 26, 2012

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RONALD S.W. LEW

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**HONORABLE RONALD S.W. LEW**

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Senior, U.S. District Court Judge

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