

A Tale Of Two Classics

Did A Modified Corvette Infringe On The Viper?

by Lawrence Savell

One of my favorite features in this magazine are the "Future Classics" articles, which identify new vehicles likely to achieve legendary status down the road.

The link between classic old cars and classic new cars was one of the issues involved in the case of *Chrysler Corporation vs. Silva*, decided on July 9, 1997 by the United States Court of Appeals for the First Circuit.

According to the Court, this "unusual case" was a lawsuit brought in 1991 by Chrysler for trademark infringement against John C. Silva, Jr. and others. Chrysler alleged that Silva copied Chrysler's innovative "muscle car," the Dodge Viper. Silva counter-claimed that Chrysler was the one at fault, having stolen the allegedly infringed design from him.

On December 9, 1993 the trial court

ordered summary judgment for Chrysler on Silva's counterclaim. Chrysler then moved for a preliminary injunction against Silva, to stop any further alleged infringement. This motion was denied, and after a bench (judge, no jury) trial, the court dismissed Chrysler's complaint. Both parties appealed.

The Court of Appeals began by making the following observation: "It is, of course, well-known that there is enormous competition that depends upon the body appearance of automobiles. It is not so well-known that this is so important to true enthusiasts that custom builders make, or order made, special bodies to place over a standard chassis. This art can produce problems."

"In 1988, spurred on by a conversation between its executives the previ-

ous year, Chrysler considered designs harking back, in part, to 1960s roadsters. A prototype was completed in time for the January 1989 International Automobile Show in Detroit. Here the reception was so good that Chrysler formed Team Viper. By December 1991, it had four production units and in 1992 it produced 200 Vipers. It had spent approximately \$8 million to promote this vehicle and over \$75 million to bring it into production. It attracted a special class of buyers."

"During the trial, as a defense to the infringement claim, Silva testified that he had contacted Chrysler by mail in October 1987 and offered it the opportunity to either purchase his design for a car Silva had dubbed the 'Mongoose,' for which he included sketches with his letter, or to contract with him to build a show car based on the design. He claimed that past experience in building cars for large manufacturers instilled in him the necessity of clearly marking the designs with proprietary statements of ownership and confidentiality before forwarding them to Chrysler. He also included a request that the sketches be returned if Chrysler was not interested. He received no response to his letter and the sketches were not returned."

"In early 1989, Ronald Torlone, one of the original defendants, decided he wanted a 'new look' for his 1979 Chevrolet Corvette. For this he retained a builder, Motor Incorporated, for which Silva worked as an independent contractor. They and another original defendant, Richard Galardi, produced the Mongoose."

"Also in 1989, after seeing a picture of Chrysler's prototype for the Viper, Silva called Chrysler and eventually spoke with an in-house attorney who, after learning of the Mongoose, demanded that Silva stop work and destroy the vehicle. Silva refused, Chrysler brought this suit and Silva counterclaimed for the theft of his design."

The Court noted that federal Trademark Law Act provides protection against "[a]ny person who, on or in connection with any goods or services,...cause[s] confusion...as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person..." This provision has been extended to protect "the design

and appearance of [a] product together with the elements making up the overall image that serves to identify the product presented to the consumer."

The trial court found that the Viper "had acquired inherent distinctiveness" but that Chrysler failed to prove the likelihood of confusion between the two cars. It also made several individual findings of fact, including that Silva saw and/or read the press coverage of the Viper concept car in the Spring and Summer of 1989; that photographs of the Dodge Viper concept car served as the starting point for the car body designed by Silva for Torlone; that Silva made significant modifications to the design of the Dodge Viper in his creation of the car body, including, but not limited to the windshield, the roll bar,

the nose area, the wraparound area of the mirrors, and the cut lines; and that Silva did not intend to duplicate or otherwise copy the Dodge Viper.

The Court of Appeals concluded "it is hard to explain how the [trial] court could say, 'that plaintiff did not establish a likelihood of confusion between its vehicle and the Silva vehicle.'" It thus ordered a new trial: "We see no possible fair resolution...short of giving Chrysler a whole new trial, to be before a new judge..."

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at www.carcollector.com.



In a case that was decided in 1997, both Chrysler Corporation and a man named John Silva, Jr. claimed the rights to the design of the Dodge Viper.