



gone in (far more than) 60 seconds: ninth circuit holds that ford mustangs known as “eleanor” are not entitled to copyright protection

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MSK Client Alert

June 9, 2025

In *Carroll Shelby Licensing v. Halicki*, No. 23-4008 (May 27, 2025), the Ninth Circuit recently weighed in again on the scope of copyright protection for characters, denying protection to a series of Ford Mustangs called “Eleanor.” The cars appeared, in varying forms, in four separate films between 1974 and 2000.

Eleanor first appeared in the original *Gone in 60 Seconds* film, which featured a team tasked with stealing 48 different types of cars. In order to discreetly reference the targeted cars, the team assigned each type of car a common female name. A yellow Fastback Ford Mustang with black stripes was named “Eleanor.”

A few years later, the spin-off film, *The Junkman* came out. *The Junkman* is set before the fictional premiere of the original *Gone in 60 Seconds* and depicts Eleanor in severely damaged form, with words painted on the side of the car that read: “Eleanor from the movie *Gone in 60 Seconds* ... The most hair-raising chase scene ever filmed!” The next film in the series, *Deadline Auto Theft*, combines scenes from each of the first two films. Finally, in the fourth film—the remake of *Gone in 60 Seconds*—Eleanor is a GT-500 Ford Mustang, and appears in two versions: one gray with black stripes, and the other rusty and stripped of paint.

Appellants and Cross-Appellees Denise Halicki and her corporate entities (together, “Halicki”) own the copyrights in the first three films, along with the merchandising rights to Eleanor as it appears in the remake.

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In the early 2000s, Appellees and Cross-Appellants Carroll Shelby Licensing Inc. and the Carroll Hall Shelby Trust (together, "Shelby") produced GT-500E Mustangs. Believing that the car unlawfully copied Eleanor, Halicki sued Shelby for several claims, including copyright infringement. Halicki and Shelby settled that suit in 2009. Shortly thereafter, Shelby began producing a reimagined and revised version of the car, the GT-500CR Mustang. Halicki responded by sending cease and desist letters to the custom car shop building the GT-500CRs, auction houses selling them, and purchasers of the same. In response, Shelby initiated the current lawsuit for declaratory relief and breach of the settlement agreement; Halicki filed counterclaims for copyright infringement and breach of the settlement agreement.

The district court granted summary judgment for Shelby on most issues, finding that Eleanor was not a protectable character, and that the settlement agreement between the parties only precluded the recreation of *specific characteristics* embodied in Eleanor, which were not present in the GT-500CR Mustangs. The district court declined to grant summary judgment on Shelby's claim for a declaration of non-infringement. Both parties appealed. The Ninth Circuit affirmed the district court's holding that Eleanor was not copyrightable and reversed (in Shelby's favor) on the issue of declaratory relief.

The Ninth Circuit first considered Eleanor's copyrightability, applying the test set forth in *DC Comics v. Towle*, 802 F.3d 1012 (9th Cir. 2015). Under the *Towle* Test, a character is entitled to copyright protection if (1) the character has physical as well as conceptual qualities; (2) is "sufficiently delineated to be recognizable as the same character whenever it appears;" and (3) is "especially distinctive." In considering Eleanor's copyrightability, the Ninth Circuit analyzed each prong in turn.

Physical & Conceptual Qualities. The Court noted that Eleanor is a car that was always controlled and driven by the film's human protagonists. Eleanor does not speak, think, express emotion, or have any personality, making it "is more akin to a prop than a character." Because Eleanor has no conceptual qualities, it failed the first prong of the *Towle* test.

Sufficiently Delineated. Eleanor appeared in eleven different iterations across four films. Each time, its physical appearance changed: sometimes the car was yellow and black, sometimes black and gray, and sometimes rusty and paintless. Even the characteristics Halicki relied on to establish sufficient delineation—for example, that Eleanor incurred "severe damage"—were inconsistent across films and cars, as fewer than half of the Eleanors were depicted with damage, and those that were suffered significantly *different* damage, with some incurring body damage, others cosmetic damage, and one ending up "entirely shredded." Based on these inconsistencies, the Court held that Eleanor could not satisfy the second prong of the *Towle* test.

Especially Distinctive. Finally, the Court analyzed whether Eleanor contained unique elements of expression, finding that nothing distinguished Eleanor from a great variety of other sports cars in action films. Even the name "Eleanor" is a common female name.

Having found that Eleanor did not satisfy any of the prongs of the *Towle* test, the Court concluded that Eleanor is not entitled to copyright protection, affirming the district court judgment.



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Next, the Court analyzed whether the prior settlement agreement between the parties precluded Shelby from manufacturing cars that copied any of Eleanor's features whatsoever, ultimately concluding that recreation of Eleanor's features—besides the distinctive hood and headlights—was permissible under the agreement, such that Shelby was not in breach. Finally, disagreeing with the district court, the Ninth Circuit indicated the Shelby was likely entitled to a declaration that its cars do not infringe on any copyright interest in Eleanor or any contractual right under the settlement agreement. However, the panel reversed to allow the district court to decide the scope of declaratory relief.

Interestingly, *Towle*, upon which the Court relied, concluded that D.C. Comics' "Batmobile" was a copyrightable character. By pointing to the distinctions between the Batmobile and Eleanor, the *Shelby* case helps delineate the contours of character copyrightability.