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March 15, 2013

TESLAW E-Newsletter March 15, 2013 Issue No.2

TESLAW Members:

If you are interested in serving on the TESLAW Council, please be on the lookout for an e-Blast from me in the next few weeks with more information. Serving on the council is a great way to get involved in the section. Council and officer elections take place at our section's annual meeting, which occurs at the State Bar Annual Meeting in Dallas at the Hilton Anatole on Friday, June 21. While the section's bylaws permit nominations from the floor, it is highly recommended that you submit your resume/statement to the nominating committee because it greatly increases your chance of being elected. In the past, the officers of the section have typically served on the council prior to running for an officer position, but the bylaws do not require this.

And don't forget about our great speakers lined up for the State Bar Annual Meeting, including Brad Sham of the Dallas Cowboys, and two incredible entertainment attorneys, Steven Masur and Dina LaPolt. The speakers will follow our council and section meetings on Friday afternoon.

As always, please email me if you have any questions or comments about TESLAW, or if you are looking for ways to get more involved in the section.

Sincerely,
[Shannon Jamison](#), Chair
Entertainment and Sports Law Section

TESLAW Member Spotlight



Craig Crafton's involvement in entertainment extends more than 25 years as a musician, artist, music producer and publisher, label and retail owner, and attorney. Prior to attending law school, he owned a small chain of compact disc and LP stores, promoted mid-sized shows, co-owned indie-music labels, and performed with several local bands. He graduated in 2002 from Southern Methodist University's Dedman School of Law and began developing an entertainment law practice. Among his legal clients, Craig has represented musicians, bands, labels, publishers, athletes and sports managers in contract disputes, negotiations, business entity formation, litigation and career development.

Craig has been a board member of the Dallas Songwriters Association and held officer positions in the Dallas Bar Association Sports and Entertainment Law Section including chair. He currently serves as Secretary for the Texas Sports and Entertainment Law Section and became editor of the prestigious TESLAW Journal in 2011.

Craig currently operates a music label, 3345 Music, which focuses on house and downtempo music and has an international artist roster and fan base. 3345 Music Publishing recently placed a song in the Tyler Perry movie "The Marriage Counselor." Craig is an adjunct professor teaching Entertainment Law at Texas Wesleyan University Law School and Collin County Community College. And for a full-time job, he serves as General Counsel for Travelers Insurance Company where he handles matters related to sports, entertainment, and many other topics. Craig can be reached via [email](#).

To be considered for the TESLAW Member Spotlight please submit a short bio (no more than 200 words) and photograph to Victoria Helling, [E-Newsletter Editor](#).

DC Comics v. Towle Case Note by Melissa G. Thrailkill

In 2011, Plaintiff DC Comics filed a complaint alleging that Defendant Mark Towle had infringed on DC's trademark and copyright interests in the Batmobile. No party disputed that for years prior to filing suit, Towle produced and sold cars that resembled the Batmobile, as it appeared in the 1966 Batman television series and the 1989 Batman movie. Additionally, he sold vehicle kits that allowed others to turn their own cars into the stealth-looking vehicle. In February 2013, the Central District of California considered the parties' summary judgment motions and settled most claims, ruling in favor of DC Comics. The trademark infringement claim was quickly decided as Towle did not have much of a defense on his use of the Plaintiff's trademarks on his products and marketing materials. The more interesting analysis came in the court's determination as to whether the Batmobile was a copyrightable piece of work and, if so, whether Towle violated Plaintiff's copyrights in selling the replica cars and kits.

Towle argued that the Batmobile could not be protected because it was a "useful article." The court determined that the Batmobile was only useful in the fantasy world created by Plaintiff and had no use in the world in which Towle actually sold his products. Moreover, the design elements of the Batmobile were separate and apart from the so-called useful aspects of the car. The court concluded that Towle's argument that the Batmobile was a useful object was misguided. Rather, the key question was whether the car was "especially distinctive," conveying a "set of distinct characteristics," or consistent identifiable traits that made it more than a simple tool for a superhero. The court found that the Batmobile was just as identifiable as its owner and, while it may have changed appearances in the comic book series and other works, it always maintained bat-like features and a jet-black color. It is always "swift, cunning, strong and elusive," and it is integral to Batman's ability to fight crime. Therefore, the court found there was no question that the Batmobile was a character protected by the Plaintiff's copyright interests and that Towle's Batmobile replicas infringed such copyrights. *DC Comics v. Towle*, CV 11-3934 RSWL OPX, 2013 WL 541430 (C.D. Cal. Feb. 7, 2013).

Melissa G. Thrailkill is a solo attorney in Oak Cliff. She is licensed in Texas and California and helps clients and other attorneys with family law, estate planning, probate, small business and intellectual property issues.

Practice Document

Please find the link to our March E-Newsletter a [Publishing and Master Recording Synchronization License](#) provided by Catherine Hough of Ferguson, Braswell & Fraser, P.C. located in Plano, Texas.

Send questions, comments, and submissions for the TESLAW E-Newsletter to [Victoria Helling](#), E-Newsletter Editor.

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