

Great Scott! The DeLorean Estate Lawsuit Hits a Space Time Continuum Roadblock

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The recent decision of DeLorean v. DeLorean Motor Co. is no doubt significant to the parties as well as attorneys and courts who will cite it in future briefs and decisions. However, it is also important because it demonstrates that the intellectual property rights associated with an iconic product might be much more valuable and long-lived than the product itself, and those rights must be carefully protected. To understand the significance of the rights at issue in *DeLorean*, we need to briefly travel back to the 1980s. That decade brought to us what should have been the greatest sports car of all time: the DMC 12, more commonly referred to as “the DeLorean.”



The DMC 12: According to the calculations of scientist Dr. Emmett Brown, “when this baby hits eight-eight miles per hour...you’re gonna see some serious @!#*.”

The DMC 12 was manufactured in the United States from 1981-1983 by John Z. DeLorean's DeLorean Motor Company. The DMC 12, with its striking gull-wing doors, became an icon of the 1980s when it was most memorably used in the *Back to the Future* motion pictures where it was converted into a flying, plutonium-powered time machine. Despite its greatness, only 9,000 DMC 12s were ever produced, and the company went bankrupt. The DeLorean as an automobile was a complete flop, but the best years for its intellectual property were still ahead.

According to the *DeLorean* decision, after the failure of the DMC 12 sports car, Mr. DeLorean attempted to monetize the DMC 12's intellectual property by licensing it to Universal Pictures in March 1989 for use with the wildly successful *Back to the Future* media franchise. This included the appearance of the automobile, the “DeLorean” name, and the “DMC” logo:

In exchange, Universal was required to pay Mr. DeLorean a 5% royalty. Universal did pay the royalty for a while, but at some point it stopped. When Sally DeLorean, widow and administratrix for the Estate of the now deceased Mr. DeLorean, contacted Universal in February 2018 for an accounting of the royalty owed under the agreement, Universal told her that it had been making all of its royalty payments, just not to the Estate. Instead, Universal was now making those same payments to DeLorean Motor Company (Texas) (“DMCT”). Wait, who?

That question leads us back to the future, and to the October 12, 2018 *DeLorean v. DeLorean Motor Co. (Texas)* decision. When Ms. DeLorean learned that DMCT had been accepting the Universal royalty payments which she believed should go to the DeLorean Estate, she filed suit alleging tortious interference and unjust enrichment.



A modest logo to counterbalance the gull-wing doors.

Unfortunately for Ms. DeLorean, Judge Jose Linares of the U.S. District Court for the District of New Jersey dismissed her complaint against DMCT on October 12, 2018. And, she should not have needed a time machine to see this result coming. That is because Ms. DeLorean and DMCT were involved in a separate, earlier lawsuit that ended in a 2014 settlement agreement. In the prior lawsuit, Ms. DeLorean alleged that DMCT had infringed trademarks and trade dress relating to the DMC 12 such as its appearance, its name, its logo, etc. When the parties settled, Ms. DeLorean granted DMCT a covenant not to sue with respect to DMCT's use of the asserted trademarks and trade dress, and she also acknowledged DMCT's worldwide rights to use those properties.

It is unclear whether Ms. DeLorean forgot about the terms of the 2014 settlement agreement with DMCT or assumed that the settlement agreement had an unstated carve out with respect to the Universal agreement. Regardless, Judge Linares opined that the extensive overlap between the 2014 settlement agreement and the Universal agreement barred Ms. DeLorean's claims. He declined to let her change history and reclaim rights that she gave away years ago.

Whether Ms. DeLorean will appeal this decision and whether she will try to exploit whatever rights she still has in the DeLorean intellectual property, if any, remains to be seen. But, as famed physicist and inventor Dr. Emmett Brown once said: "Your future hasn't been written yet. No one's has. Your future is whatever you make it. So make it a good one."