

# Automotive

L I T I G A T I O N R E P O R T E R

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Trademark Infringement:

*AM Gen. Corp. v. DaimlerChrysler Corp.*

## Court Won't Enjoin Manufacture Of Hummer Grille

The 7th Circuit has denied a request for a preliminary injunction by DaimlerChrysler Corp., ruling that the Jeep grilles it claimed were protected by trademark were too varied, and that the company waited too long to assert its rights to injunctive relief against the General Motors Corp. Hummer vehicle. *AM General Corp. et al. v. DaimlerChrysler Corp.*, No. 02-1816 (7th Cir. Nov. 18, 2002).

The Jeep, manufactured by Chrysler, now DaimlerChrysler, was originally produced as a military vehicle during World War II. It spawned a line of popular civilian models, including the Jeep Wrangler, Grand Cherokee and Liberty.

The Humvee, or "High Mobility Multipurpose Wheeled Vehicle," also has military roots, although of a more recent vintage. In the 1980s AM General Corp. won the contract to produce the vehicle for the U.S. military. It began selling the vehicles to the government in 1985. The Humvee gained acclaim and popularity for its role in Operation Desert Storm in the Persian Gulf in 1990.

AM General manufactured a civilian model of the Humvee called the Hummer, equipped with the same hood as the Humvee, with the same vertically slotted grille design. The vehicle was known as the H1.

The two car manufacturers are in the midst of their own battle now, fighting over the grilles that adorn the front end of their respective vehicles. DaimlerChrysler claims that since 1945 there has been a line of Jeep vehicles with a consistent grille design featuring seven to 10 vertical slots that appear to be stamped through a planar surface.

DaimlerChrysler asserts that its family of marks is being diluted and infringed by the Hummer.

AM General sought trademark protection for its grille in 1993. The U.S. Patent & Trademark Office rejected the company's first application but eventually granted protection to the Hummer.

DaimlerChrysler knew of AM General's application but filed no response with the PTO and did not tell the agency that the Hummer grille was similar to the Jeep grille.

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*GM was represented by John T. Hickey Jr. of Kirkland & Ellis in Chicago.*

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AM General sold the Hummer brand to General Motors in December 1999, although AM General continued to be the manufacturer. They began developing the concept for a new, more luxurious Hummer vehicle, known as the H2.

DaimlerChrysler filed suit against AM General and General Motors, alleging trademark dilution and infringement. It sought injunctive relief against its competitors, which was denied by the U.S. District Court for the Northern District of Indiana. DaimlerChrysler appealed to the U.S. Court of Appeals for the 7th Circuit.

It said that in order to claim protection for a family of marks, DaimlerChrysler had to show that there was a group of marks having recognizable common characteristics and that the public recognized those characteristics as indicative a common origin of the goods.

The appeals court noted that since their initial manufacture, Jeeps had many different types of grilles, some with eight slots, some with 10 and some with no slots.

“By 1985, when General Motors actually sold the first Humvees with seven vertical slots to the military, DaimlerChrysler had no family of grilles with seven to 10 slots that appeared to be stamped through a planar surface. ... DaimlerChrysler has not shown that it has a better than negligible likelihood of making such a showing at trial, so it is not entitled to a preliminary injunction on the dilution claim.”

The appeals court also said DaimlerChrysler had demonstrated no chance of overcoming General Motors’ affirmative defense of laches, because it waited far too long to challenge the Hummer grille. Although not being marketed, the H2 was in the process of production, GM had spent more than \$30 million and

many employees had quit their jobs with other companies to become part of the H2 workforce.

“If DaimlerChrysler had not remained silent as the grille was used on the Humvee and the H1, General Motors says it would not have invested millions of dollars into the acquisition of the Hummer brand and development of the H2,” the court said.

Nor was the court convinced that DaimlerChrysler would succeed on its infringement claim, because it had virtually no chance of showing a likelihood of consumer confusion between the Jeep and the H2. The 7th Circuit concluded that General Motors, AM General and the public would suffer harm if an injunction were issued.

The appeals court affirmed the lower court’s ruling.

GM was represented by John T. Hickey Jr. of Kirkland & Ellis in Chicago.