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10  
 11 UNITED STATE DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13

14 DC COMICS and TIME WARNER  
 15 ENTERTAINMENT COMPANY,  
 16 L.P.

17 Plaintiffs,

18 v.

19  
 20 JAY OHRBERG, an individual doing  
 business as JAY OHRBERG STAR  
 21 CARS; JAY OHRBERG STAR  
 22 CARS, a corporation; and DOES I-X,  
 23 inclusive

24 Defendants.

Case No. 93 5357 HLH (bx)

25 } *EX PARTE* APPLICATION FOR  
 26 } ORDER FOR SEIZURE OF  
 27 } PERSONAL PROPERTY  
 28 } PURSUANT TO PERMANENT  
 INJUNCTION

25 Plaintiffs D.C. Comics and Time Warner Entertainment Company, L.P.  
 26 (collectively "Plaintiffs"), submit this *ex parte* application for an order, pursuant  
 27 to Federal Rule of Civil Procedure 70 and Local Civil Rules 64-2 and 64-3,  
 28 directing the United States Marshal or any state or local law enforcement officer

1 to enter a private premises without notice, by forcible entry if necessary, and seize  
2 and deliver to Plaintiffs certain replicas of "Batman" vehicles described below, as  
3 well as any and all molds, models, replicas, drawings, and other materials derived  
4 from or based on any designs, drawings, models or molds of "Batman" vehicles.

5 The application is made on the following grounds:

6 A. On September 13, 1994, the Court entered a Default Judgment in this  
7 action in favor of Plaintiffs. The Judgment includes permanent injunctions  
8 against Defendant Jay Ohrberg, individually and doing business as Jay Ohrberg  
9 Star Cars, enjoining him from manufacturing, possessing, copying, exhibiting,  
10 displaying, distributing, renting, selling, advertising, or otherwise transferring or  
11 offering to transfer any "Batman" products, including "Batman" vehicles. The  
12 Judgment also requires Ohrberg to deliver to Plaintiffs any and all molds, models,  
13 replicas, drawings and other materials relating to any "Batman" vehicles. (*See*,  
14 Ex. "A" to Bergman Dec.)

15 B. Rule 70 of the Federal Rules of Civil Procedure provides that if a  
16 judgment directs a party to perform any specific act and the party fails to comply,  
17 the Court may direct the act to be done at the cost of the disobedient party by  
18 some other person appointed by the Court.

19 C. Local Civil Rule 64-2 provides that, in aid of provisional or final  
20 remedies, the Court may issue an order for seizure in a civil action directed to,  
21 and executed and returned by, the United States Marshal or a state or local law  
22 enforcement officer. Rule 64-3 further provides that the Court may issue an order  
23 requiring entry upon private premises without notice, if executed by the United  
24 States Marshal or a state or local law enforcement officer.

25 D. Plaintiffs have learned that, despite the permanent injunction, Ohrberg  
26 is manufacturing and offering for sale or rent several "Batman" vehicles. For  
27 example, Ohrberg's website currently advertises a full size replica of the  
28 Batmobile for hire as a novelty display. It also advertises Batmobiles for sale,

1 either as a kit or a turnkey replica. (See, Exs. "C" through "F" to Bergman Dec.)  
2 As a result of the website advertisement, Plaintiffs retained a private investigative  
3 company that made contact with Ohrberg under pretense of being an interested  
4 buyer. When the private investigator gained entry to Ohrberg's warehouse in  
5 Oceanside, he was shown a full size replica of the 1966 Batmobile from the  
6 television series, a full size replica in construction of the Batmobile from the  
7 1989/1992 motion pictures, a full size wood model of the "tumbler" Batmobile  
8 from the motion picture "The Dark Knight," a full size replica of the "Batboat"  
9 and a full size replica of the "Batcycle." Ohrberg told the investigator that,  
10 including two Batmobiles under construction, he had built and sold 21 Batmobile  
11 vehicles. (See, Holdridge and Fernandez Declarations.)

12 E. Good cause exists to grant this application. As explained below, this is  
13 not the first time Ohrberg has violated the Judgment. Ohrberg continues to  
14 infringe on Plaintiffs' copyright and trademark interests in direct violation of the  
15 permanent injunction against him. It is therefore necessary and appropriate, as an  
16 aid to enforcement of the Judgment, to issue the requested order permitting the  
17 United States Marshal or a state or local law enforcement officer to enter the  
18 private premises and seize all "Batman" vehicles, as well as any and all molds,  
19 models, replicas, drawings and other materials relating to any "Batman" vehicles.

20 F. Based on Ohrberg's repeated willful disobedience of the Judgment, it is  
21 likely that if he were to receive advance notice of this *ex parte* application and the  
22 relief sought, he would take immediate steps to hide the personal property to  
23 evade enforcement of the Judgment. To protect Ohrberg's due process rights, the  
24 order sought by Plaintiffs requires them to hire a third party storage company to  
25 store all seized property for either (i) 60 days from the date of the seizure if  
26 Ohrberg does not file a motion or other application challenging the seizure, or (ii)  
27 if Ohrberg does file a motion or other application challenging the seizure within  
28 60 days, then until the resolution of Ohrberg's challenge becomes final.

1           This *ex parte* request is based on this application, the accompanying  
2 Memorandum of Points and Authorities, the concurrently filed Declarations of  
3 Michael Bergman, Heather Holdridge and Erik Fernandez, all papers, records,  
4 and documents on file in this action, and upon such further evidence and  
5 argument as may be required by the Court.

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DATED: October 10, 2008

Respectfully submitted,

Weissmann Wolff Bergman Coleman  
Grodin & Evall LLP



By: \_\_\_\_\_  
Steven Glaser  
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 More than fourteen years ago, this Court entered a Judgment in this action  
5 intended to prohibit Ohrberg from continuing to infringe on Plaintiffs' intellectual  
6 property rights. To that end, the Judgment includes a permanent injunction  
7 prohibiting Ohrberg, individually and doing business as Jay Ohrberg Star Cars,  
8 from manufacturing, advertising and selling vehicles replicated from the  
9 "Batman" television series, comic books, and motion pictures. In addition to  
10 prohibiting Ohrberg from further infringing activities, the Judgment specifically  
11 requires him to deliver to Plaintiffs any and all infringing materials, including any  
12 and all replicas of "Batman" vehicles and molds used to manufacture them.

13 Ohrberg never delivered any infringing materials to Plaintiffs and is now  
14 back in business manufacturing, advertising, renting, and selling unauthorized  
15 replicas of "Batman" vehicles -- conduct expressly prohibited by the Judgment.

16 This is not the first time Ohrberg has violated the Judgment. In light of  
17 Ohrberg's continued disregard of the permanent injunction, it is likely he would  
18 take steps to avoid seizure of the personal property if notified in advance of this  
19 application. For this reason, Plaintiffs seek *ex parte* relief, without notice, as  
20 provided by Local Civil Rules 64-2 and 64-3. To protect Ohrberg's due process  
21 rights, the proposed order requires Plaintiffs to hire a third party storage company  
22 to store all seized property for at least 60 days to enable Ohrberg to challenge the  
23 seizure if he deems it appropriate.

24 **II.**

25 **FACTUAL AND PROCEDURAL BACKGROUND**

26  
27 On September 3, 1993, Plaintiffs filed their Complaint stating causes of  
28 action for trademark infringement, trade dress infringement, false advertising,

1 unfair competition, dilution, breach of contract, conversion, and copyright  
2 infringement against defendants Jay Ohrberg and Jay Ohrberg Star Cars. On  
3 September 13, 1994, the Court entered Judgment in favor of Plaintiffs and against  
4 Ohrberg. A true and correct copy of the Judgment is attached as Exhibit "A" to  
5 the Declaration of Michael Bergman. In addition to statutory damages and  
6 attorney's fees, the Judgment imposes permanent injunctive relief against  
7 Ohrberg and each of his agents, employees, representatives, affiliates, partners,  
8 joint venturers, successors, and assigns, and all those acting in concert with him  
9 and having knowledge of the Judgment,

10 a. prohibiting them from manufacturing, obtaining, possessing,  
11 copying, exhibiting, displaying, distributing, renting, selling, advertising, or  
12 otherwise transferring or offering to transfer any and all items bearing various  
13 "Batman" elements, including any replicas of "Batman" vehicles; and

14 b. requiring them to deliver to Plaintiffs any and all molds, models,  
15 replicas, drawings, and other materials derived from or based on any designs,  
16 drawings, models, or molds of the "Batman" vehicles.

17 In 1998, it came to light that Ohrberg had imported certain movie props  
18 that had been seized by the United States Customs Service for failure to pay  
19 import duties. Included in the pending auction to be conducted on behalf of the  
20 United States Treasury Department were three "Batman" vehicles -- two  
21 "Batmobiles" and one "Batcycle." At Plaintiffs' request, the items were removed  
22 from the auction and held by the United States Customs Service. Plaintiffs then  
23 applied to this Court on an *ex parte* basis for a seizure order. That order was  
24 granted, and Plaintiffs were able to seize the three infringing vehicles. A true and  
25 correct copy of the prior seizure order is attached to the Declaration of Michael  
26 Bergman as Exhibit "B."

27 Plaintiffs recently learned that Ohrberg once again is building full size  
28 replicas of several "Batman" vehicles and advertising them for sale or rent on the

1 internet. Copies of select pages from Ohrberg's websites depicting the vehicles  
2 and offering them for sale or rent are attached to the Declaration of Michael  
3 Bergman as Exhibits "C" through "F."

4 Plaintiffs retained the services of Brand Security Corporation, a private  
5 investigative company specializing in intellectual property infringement. Brand  
6 Security Corporation determined that Ohrberg's warehouse is located at 305  
7 Wisconsin Avenue, Oceanside, CA. Acting under pretense of a potential buyer,  
8 one of Brand Security Corporation's investigators met Ohrberg at the warehouse  
9 on October 7, 2008, and confirmed first-hand the existence of several full scale  
10 "Batman" vehicles at the site. (See Declarations of Heather Holdridge and Erik  
11 Fernandez.)

12  
13 **III.**

14 **GOOD CAUSE EXISTS FOR THE RELIEF SOUGHT.**

15 FRCP Rule 70 provides that if a judgment requires a party to perform a  
16 specific act and the party fails to comply, the Court may order the act to be done  
17 by a person appointed by the Court.

18 FRCP Rule 64, in combination with Local Civil Rules 64-2 and 64-3,  
19 authorize the Court to issue an order requiring entry onto private premises  
20 without notice in furtherance of the seizure of property in satisfaction of a  
21 judgment. The Local Rules require the order to be carried out by the United  
22 States Marshal or a state or local law enforcement officer.

23 The permanent injunctive relief imposed by the Judgment against Ohrberg  
24 is clear and absolute. The Judgment not only prohibits Ohrberg from  
25 manufacturing, obtaining, possessing, copying, exhibiting, displaying,  
26 distributing, renting, selling, advertising, or otherwise transferring or offering to  
27 transfer any "Batman" vehicles, it also requires him to deliver to Plaintiffs any  
28 and all molds, models, replicas, drawings, and other materials derived from or

1 based on any designs, drawings, models, or molds of the "Batman" vehicles.

2 Ohrberg repeatedly has demonstrated contempt for the Judgment. This is  
 3 at least the second time Ohrberg has violated the permanent injunction against  
 4 him, and given his disregard of its prohibitions, it is likely that Ohrberg would  
 5 take steps to evade seizure of the infringing vehicles and other materials if given  
 6 advance notice of this application. Therefore, good cause exists to grant the  
 7 requested relief on an *ex parte* basis without notice. The proposed order  
 8 submitted by Plaintiffs protects Ohrberg's due process rights by enabling him to  
 9 challenge the seizure after-the-fact and requiring Plaintiffs to safely store all  
 10 seized property for either (1) 60 days from the date of the seizure if Ohrberg does  
 11 not file a motion or other application challenging the seizure, or (2) if Ohrberg  
 12 does file a motion or other application challenging the seizure within 60 days,  
 13 then until the resolution of Ohrberg's challenge becomes final.

14  
 15 **IV.**


16 **CONCLUSION**

17 For the foregoing reasons, Plaintiffs respectfully request that the Court  
 18 grant this *ex parte* application in its entirety.

19  
 20 DATED: October 10, 2008

Respectfully submitted,

21 Weissmann Wolff Bergman Coleman  
 22 Grodin & Evall LLP

23  
 24 By:   
 25 Steven Glaser  
 26 Attorneys for Plaintiffs  
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