

Dastar Corp. v. Twentieth Century Fox Film Corp. et al.

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In 1948, Twentieth Century Fox Film Corporation (Fox) was granted exclusive television rights to General Dwight D. Eisenhower's World War II book, *Crusade in Europe*. Fox arranged for a 26 episode series to be produced with the book's name and it first broadcast in 1949. Fox did not renew the copyright and it subsequently expired in 1977, leaving the series in the public domain. In 1988, however, Fox reacquired the television rights. In 1995, Dastar Corporation (Dastar) released a video series titled *World War II Campaigns in Europe*, which was made from the beta cam tapes of the original *Crusade* television series and sold as Dastar's own product. Fox sought action in the United States District Court for the Central District of California, and the case subsequently rose to the United States Supreme Court. Fox claimed that Dastar's sale and distribution of the video series without giving proper credit to the *Crusade in Europe* (*Crusade*) television series constituted a misleading representation, likely to cause confusion as to the origin of the video, in violation of § 43(a) of the Lanham Act. The Supreme Court held that Dastar was the "origin" of the product it sold, and therefore, Fox could not prevail on its Lanham Act claim.

The Supreme Court read the term "origin" in § 43(a) to require attribution only to copyrighted material. As the *Crusade* television series was in the public domain, the right to use the work at will and without attribution had been passed to the public. Fox's claim would have been upheld had Dastar bought and repackaged the *Crusade* videotapes and sold them as their own. However, the Court concluded that Dastar's actions did not constitute a reverse passing off in violation of the Lanham Act, which occurs when an entity misrepresents some else's goods or services as their own, because Dastar purchased beta cam tapes of the original version of the *Crusade* television series, a product in the public domain, copied it, and made modifications (although minor) in producing its own series.

The court concluded that an item is subject to copying unless it is protected by an intellectual property right, such as a patent or trademark, and as Fox's copyright had expired, Dastar's use of Fox's video did not constitute a Lanham Act violation. Had Fox renewed the copyright of the *Crusade* television series, it would have had an easy claim of copyright infringement. Fox's decision not to renew the copyright, and their subsequent inability to achieve their desired remedy, exemplifies the importance of renewing an intellectual property right to protect a product. Without such protection, the public has the right to copy without attribution once a copyright has expired.