

Guys and Dolls: Big Boys Fight Over Billion-Dollar Playthings

By David Zwick, Patent Associate

In a high-stakes legal battle over the copyright to the popular Bratz dolls, a federal jury has awarded Mattel, Inc. \$100 million in damages. MGA Entertainment Inc., which began producing the big-headed, pouty-lipped multi-ethnic dolls-with-attitude in 2001, generates over \$1 billion in revenues from sales and licensing fees from the moppets.

Mattel, which blames competition from the Bratz franchise for declining sales of its Barbie line, had sought almost \$2 billion in damages. So when the award came in at only \$100 million, it was MGA who breathed a sigh of relief and claimed victory. The still-hefty award could be reduced by more than half if the judge finds that some of the damages are duplicative. That would just about cover Mattel's legal fees in the matter, which have been reported to be \$44 million in the first half of 2008 alone.

The case centers on a set of drawings of the Bratz dolls created by Carter Bryant while he was working for Mattel. Bryant was under an "exclusive employment contract" with Mattel as a Barbie designer, which presumably gave Mattel all rights in any work-related ideas and products developed by Bryant. While still employed by Mattel, Bryant freelanced for MGA and helped them develop the Bratz line of dolls.

After a three-month trial, a unanimous jury found that Mattel owned the drawings, and that MGA's Bratz dolls were substantially similar to the drawings in their bodies, facial features, and clothing and accessories, which "express [an] aggressive, contemporary, youthful style." For all its drama and expense, the trial hinged on the fairly humdrum work-for-hire provisions of copyright law, under which an employer owns all work prepared by an employee within the scope of his employment.

For MGA's copyright infringement, the jury awarded Mattel \$10 million dollars. The jury also found that MGA and its CEO were liable for intentional interference with contractual relations, and aiding and abetting Bryant's breach of his duty of loyalty to Mattel. The jury awarded Mattel \$90 million for these wrongs.

And for the drawings themselves that lie at the heart of the case? The jury found that MGA owed Mattel a mere \$31,500.

The trial was not without its share of sideshows. At the beginning of the trial, counsel for MGA inked a contract with the fanciest hotel in Riverside, California, that specified that no Mattel lawyers be allowed to stay there for the duration of the trial. MGA cited "security concerns" regarding misdelivery of faxes and other documents.

The trial also saw a juror removed for making "grossly inappropriate remarks" about MGA's CEO. And the judge ruled that the jury could hear evidence that Bryant used a software program to scramble over 9,000 files on his computer just two days before it was to be scanned for evidence.

This litigation is far from over – there is still the question of further damages, a possible injunction against MGA, and MGA's vow to appeal. Still, the jury's unanimous verdict for Mattel reinforces the importance of including confidentiality clauses and broad protections for intellectual property in all employment and consulting agreements. ✧

BROMBERG ✧ SUNSTEIN LLP

125 Summer Street, Boston, MA 02110-1618 Telephone: (617) 443-9292 www.bromsun.com