VIII. The League of Mutual Destruction

The BRATZ Wars

The newspaper headline which appeared at the end of this war read, "It's Finally Over: 8 Years of Mattel vs. BRATZ And No One's Getting Paid but The Lawyers." That probably best sums up the battle between Mattel and MGA Entertainment over the BRATZ property.

It all started in 2001 when MGA introduced the BRATZ doll called "The Girls with a Passion for Fashion!" which became an overnight success. MGA sold $97 million worth of BRATZ dolls in 2001 and a billion dollars' worth in 2003. Perhaps for the first time since BARBIE was introduced, Mattel felt threatened that it would lose its dominance in the doll market.

When Mattel learned that the man behind BRATZ was its former employee, Carter Bryant, it became incensed. In August 2000, while he was still employed by Mattel, Bryant had pitched his idea for the BRATZ line of dolls to two MGA employees. Bryant was called back to see MGA's CEO, Isaac Larian, and brought some preliminary sketches, as well as a crude dummy constructed out of a doll head from a Mattel bin, a BARBIE body, and Ken (BARBIE's ex) boots. The Zoe, Lupe, Hallidae, and Jade dolls in Bryant's drawings eventually made it to market as Cloe, Yasmin, Sasha, and Jade, the first generation of BRATZ dolls.

Bryant signed a consulting agreement with MGA on October 4, 2000, although it was dated September 18. Bryant gave Mattel two weeks' notice on October 4 and continued working there until October 19. During this period, Bryant was also working with MGA to develop BRATZ, even creating a preliminary BRATZ sculpt. A sculpt is a mannequin-like plastic doll body without skin coloring, face painting, hair, or clothing

MGA kept Bryant's involvement with the BRATZ project somewhat hush-hush, offering several explanations about its origin, e.g., it was developed by MGA's president and/or his children, by a focus group, etc. Mattel would, however, receive an anonymous letter suggesting that Bryant was the creator, and in 2004 this led to a lawsuit against Bryant in California state court. Bryant would counterclaim against Mattel and then remove the case to federal court where MGA joined the party.

The litigation would ultimately morph into multiple fronts involving multiple parties, even including MGA Mexico, alleging various causes of action, including trademark and copyright infringement,

"serial copycatting," theft of trade secrets, state-based tort claims, and even RICO (Racketeer Influenced and Corrupt Organizations Act) claims. It also extended to actions between MGA and its insurance carriers alleging that the actions should be covered by MGA's insurance policies.

Some of the top law firms in the country got involved in the case. Mattel was represented throughout by the LA office of Quinn Emanuel, while MGA used several different firms, including Skadden Arps; Jones Day; O'Melveny & Myers; Christianson; Glaser; and finally Keller/Anderle. All these firms shared a common trait—high billing rates.

Discovery was beyond extensive. A review of the docket entries in the case indicated more than 800 individual docket entries, which is extraordinary. During the discovery phase of the initial trial, Mattel was granted the right to scan Bryant's computer for evidence and found pornography and software used to wipe hard drives. During the trial, the judge allowed Mattel's lawyers to introduce pornography as evidence, and to question him about it … not a normal occurrence.

On the eve of trial, Mattel settled with Bryant, leaving the two toy companies to continue the battle. At trial, Mattel argued that Bryant violated his employment agreement by going to MGA with his BRATZ idea instead of disclosing and assigning it to Mattel. Mattel claimed that it was the rightful owner of Bryant's preliminary sketches and sculpt, since Bryant had worked for them at the time. Mattel further claimed that MGA's subsequent BRATZ dolls infringed on Mattel's rights and that MGA had wrongfully acquired the ideas for the names "BRATZ" and "JADE," and, as such, the BRATZ trademarks should be transferred to Mattel.

Mattel won virtually every point in the District Court, with the jury finding MGA liable for infringing Mattel's copyrights. It awarded Mattel $10 million in damages which were about 1% of what Mattel had originally sought, because it found only a small portion of the BRATZ dolls were infringing. The court then did a very unusual thing and placed the BRATZ trademarks in a "constructive trust," enjoining MGA from selling certain BRATZ dolls.

The tide turned, however, in 2010 when the decision was appealed to the 9th Circuit Court of Appeals, which reversed the district court decision and remanded it back to the district court for a re-trial. In a decision entitled, "Who Owns BRATZ" written by then Chief Judge Alex Kosinski (who, seven years later, would prematurely retire after over a dozen former female law clerks and legal staffers accused him of sexual harassment and abusive practices), the Court found that multiple errors had been committed by the District Court. Finding that fashion dolls with a bratty look or attitude, or dolls

sporting trendy clothing were unprotectable ideas, Kosinski concluded his decision, stating, "America thrives on competition; BARBIE, the all-American girl, will too."

On remand and retrial, the case turned, in large part, on the questioning by MGA's lawyer Jennifer Keller of the Mattel C.E.O., Robert Eckert, to wit:

> Q: Say I am eighteen, doodling away. I place my doodles in my parents' house in one of the drawers of my teen-age closet … Twenty years later, I am hired by Mattel. I visit my parents' home and find doodles. Does Mattel own them?
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> A: Yes. … Probably, yes.

Some believe that this exchange turned the jury in MGA's favor because it not only found against Mattel but found in favor of MGA's countersuit for theft of trade secrets. They awarded $85 million in exemplary damages, $2,172,000 in reasonable attorneys' fees under its copyright claim, and $350,000 in costs.

The case went back to Chief Judge Kosinski who, once again, reversed the district court (in part), but this time more in Mattel's favor, vacating the exemplary damages award but allowing the $2M+ attorney's fee award under the Copyright Act. Kosinski editorialized at the end of his decision, stating: "While this may not be the last word on the subject, perhaps Mattel and MGA can take a lesson from their target demographic: Play nice."

Litigation between MGA and its insurance carriers continued as MGA sought to get their attorneys' fees covered and the carriers sought to recoup some of the fees that they advanced but fell under the fees that MGA was awarded.

MGA would later file an additional action in state court against Mattel in 2014 seeking $1 billion in damages.

So, at the end of the day, with essentially $0 damages being awarded, one can only wonder who were the real winners? It cannot be determined exactly how much the various law firms billed for their services, or were actually paid, but based on the numbers recited in some of the decisions involving MGA's insurance carriers, one could reasonably estimate that the total legal fees billed for both parties may have approached a half a billion dollars.