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Cases of Note-Copyright-Constructive Trust

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LEGAL ISSUES



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Cases of Note — Copyright — Constructive Trust

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MATTEL, INC. V. MGA ENTERTAINMENT, INC. UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, 2010 U.S. App. LEXIS 26937.

This opinion was written by Chief Judge Alex Kozinski who was considered one of the great brains of copyright. See "Bet You Missed It" in this issue for a brief description of how he was driven off the bench.

Carter Bryant worked in the **Mattel** "Barbie Collectibles" department designing fashion and hair styles for high-end collector dolls. In a lightbulb moment, he conceived of Bratz dolls — urban, multiethnic and with a ... well ... bratty attitude.

He pitched his idea to **MGA Entertainment**, a **Mattel** competitor. They loved it. He gave two weeks notice to **Mattel**.

In no time, the "anti-Barbie" began to crush its rival. By 2005, the **Bratz** line had revenues of \$800 million while **Mattel** steadily descended to \$445. That will tend to get the attention of the suits in the top floor suites. And the attack-dog lawyers are just a phone call away.

And you can already see what's coming. You know darn well Bryant was under a contract where every thought he had belonged to Mattel. But he just couldn't quite see leaving until his bases were covered.

And of course **MGA** knew **Bryant** had been under contract to **Mattel**, and did its best to conceal his employment. Besides, he claimed he designed **Bratz** when he was on a hiatus from **Mattel** and, by golly, his mom would testify to it.

But the **Bratz** line "The Girls With a Passion for Fashion" was a juggernaut and a badly frightened **Mattel** did some snooping.

"Wasn't what's-his-name in accessory design one of ours? Where did he go exactly?"

The truth came out, and **Mattel** sued.

In the final two weeks of **Bryant's Mattel** employment, he had done a "sculpt" — a mannequin-like plastic doll body and coined the name "Bratz."

The trial court really slammed **MGA**, granting **Mattel** a constructive trust over everything with **Bratz** in it. That included — ready? —:

Bratz dolls (Bratz, Bratz Boyz, Lil' Bratz, Bratz Lil' Angelz, Bratz Petz, Bratz Babyz, Itsy Bitsy Bratz, etc.), doll accessories (Bratz World House, Bratz Cowgirlz Stable, Bratz Spring Break

Pool, Bratz Babyz Ponyz Buggy Blitz, etc.), video games ("Bratz: Girlz Really Rock," "Bratz: Forever Diamondz," "Bratz: Rock Angelz," etc.) AND *Bratz* the movie.

The Appeal

A constructive trust transfers wrongfully held property to its rightful owner. **Communist Party of U.S. v. 522 Valencia, Inc.**, 35 Cal. App. 4th 980 (1995).

That case name should grab your attention. It's a fight over ownership of real estate. What? I thought commies believed in sharing!

Bryant's Mattel contract had him assigning all "inventions" to the company and stated the term "includes, but is not limited to, all discoveries, improvements, processes, developments, designs, know-how, data computer programs and formulae, whether patentable or unpatentable."

The Ninth Circuit chewed over whether "ideas" were in the list, but decided it was a jury question for remand.

It did, however, find the constructive trust was way too broad. The value **Mattel** would be getting had been made much, much greater than **Bryant's** little sculpt and the name "Bratz." As you can see from the list of products, there was all that designing, investment and marketing.

Should I defraud you of stock that rises in market value, I can't complain that you get that benefit when you take it back. But "[w]hen the defendant profits from the wrong, it is necessary to identify the profits and to recapture them without capturing the fruits of the defendant's own labors or legitimate efforts." **Dan B. Dobbs**, *Dobbs Law of Remedies: Damages-Equity-Restitution* § 6.6(3) (2d ed. 1993).

Gosh-a-rootie. Dobbs was my Torts prof way back in the UNC Law days of yore. And a fabulous prof he was.

Bryant was only a minor cog in a machine that took the "Bratz" name and idea and ran with it. First generation (Cloe, Yasmin, Sasha and Jade), second (Ciara, Dana, Diona, Felicia, Fianna etc.).

Ninth said 'twas inequitable to transfer a billion dollar brand because **Bryant** had an idea in the last weeks of his job.

So Now What?

Well, you're back with copyright violations.

The jury had been quite astute, sending the judge a note asking if it could find that only the first generation of **Bratz** dolls were infringing. And he said they could. And they found damages of \$10 million, a mere bagatelle.

The judge didn't care for this and made his own finding of infringement leading to the constructive trust.

The Ninth Cir. held that **Mattel** only owned copyright in the original sketches and the sculpt with bratty expression — not the idea of a bratty doll. **Mattel** could not own the idea of young, hip, female fashion dolls with exaggerated features.

The district court needed to take another look and determine if each doll ("Bratz Wild Wild West Fianna," "Bratz Funk 'N' Glow Jade" et al.) is like (substantially similar) or different from the original sketches. It could not have found that the vast majority of the dolls were at all like the sketches unless it relied on the similarity of ideas — big-headed, attitudinous mall rats.

See: Cases of Note, Vol. 30-1, p.52 for a discussion of the whole substantial similarity thing.

The retrial did not go well for Mattel.

MGA had gotten in claims of trade secret theft by **Mattel**. The jury decided **Mattel** had not proven copyright violations but instead had stolen trade secrets and awarded **MGA** \$88.5 mil which the judge bumped up to \$310 million.

MGA claimed **Mattel** had an 11-page "How to Steal" manual and lied its way into private showings for retailers to get advance knowledge of **MGA's** toys. www.giftsanddec.com/.../485187-mga-entertainment-sues-mattel-over-trade-secrets.

See also: tsi.brooklaw.edu/cases/mga-entertainment-inc-v-mattel-inc-et-al

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And *Business Insider* reports that lawyers have done very well from all this having raked in “hundreds of millions” in hourly billings. www.businessinsider.com/bratz-mattel-lawsuit-2011-8.

And what of **Carter Bryant**? The latest on him is from 2013 when he designed “Pinkie Cooper and the Jet Set Pets,” 9-inch fashionistas that are human but with a cocker spaniel’s face for a toymaker named **Bridge Direct**. Money.cnn.com/2013/02/04/smallbusiness/bratz-dolls-pinkie-cooper/index.html.

The line died within a year, but the internet has many entries by grieving doll collectors.

Isaac Larian, 82% **MGA** owner, is an Iranian Jewish immigrant who became a billionaire through toys. *Singing Bouncy Baby*, rejected by **Mattel**, became his first hit in 1997.

Larian’s 2013 line, *Lalaloopsy*—rag dolls with button eyes and names like *Lalaloopsy-Oopsy Princess Anise*—took in \$350 mil in revenue that year while *Bratz* had dropped to \$50 mil. www.forbes.com/.../the-toy-mogul-who-became-a-billionaire-through-his-fight-to-the-death-with-Barbie. 🐾

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ties, has selected **OCLC WorldShare Management Services (WMS)** as its new library services platform. “Oxford Brookes University has over 150 years of history,” said **Eric van Lubeek**, Vice President, Managing Director, OCLC EMEA & APAC. www.brookes.ac.uk

Gale, a Cengage Company, is launching a new digital archive to help researchers explore the development, actions and ideologies behind political extremism. *Political Extremism & Radicalism in the Twentieth Century: Far-right and Left Political Groups in the U.S., Europe and Australia* is the first digital archive documenting a range of radical right and fascist movements, communist and socialist groups and new left activists in never-before-digitized primary sources. The archive contains more than 600,000 pages of content and more than 42 audio histories with full transcripts, making it the largest and most comprehensive resource of its kind. Additionally, researchers of contemporary topics can examine the origins and development of present-day issues, such as the resurgence of right-wing politics, evolution of civil rights movements and the nature of extreme or radical political thought. *Political Extremism & Radicalism in the Twentieth*

Century will be available in June 2018. The archive is the latest release in **Gale’s** suite of twentieth century primary source archives, helping researchers discover the hidden histories behind today’s most critical conversations including gender, race, diversity and sexuality. **Gale** will host a launch event and showcase the new archive at the **American Library Association (ALA) Annual Conference**, June 22-25 in New Orleans at the **Gale** booth #2331. www.gale.com.

John Wiley and Sons Inc., (NYSE:JWa) (NYSE:JWb) has recently launched a comprehensive program to partner with leading content platform providers to make it more affordable and easier for students to purchase their **Wiley** course materials, as part of their tuition and fees. **Wiley Inclusive Access**, in partnership with **Barnes and Noble College**, **Follett**, **Red Shelf** and **VitalSource** enabled campus stores, not only saves students more than 60% off the cost of a bound text, but also provides valuable first-day of class access. In a study by **Vital Source**, 63% of students who had their textbooks with them on the first day of class completed the course, while only 29% of the students who showed up without the materials finished the course. Instructors at participating campuses, like **University of Tennessee at Knoxville**, who enroll in **Wiley’s** inclusive access program pass along

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