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Bratz and Barbie Case Playing Out

By - Los Angeles Business Journal Staff

Playing with dolls might be for children, but Barbie's attorneys are dragging Bratz to the not-so-friendly playhouse of federal court.

In a four-year legal battle with billions of dollars at stake, Mattel Inc. alleges that a doll designer took his drawings for the Bratz line when he left Mattel and accepted a job at MGA Entertainment eight years ago and gave them to his new employer. The suit is scheduled for a federal jury trial on May 27.

A verdict in favor of Mattel could result in damages of up to \$360 million against Van Nuys-based MGA and could cripple the company if it were stripped of its \$2 billion marquee product.

As the case nears trial, the judge's rulings have been going in Mattel's favor.

Mattel lawyer John Quinn, of Los Angeles-based Quinn Emanuel Urquhart Oliver & Hedges LLP, will try to convince a jury that the designer, Carter Bryant, did drawings of the Bratz dolls, complete with their distinctive almond-shaped eyes and oversized sneakers, while working at Mattel. He will also claim an agreement Bryant signed with Mattel gives the El Segundo toy giant the rights to those sketches.

"It will be interesting if MGA loses the intellectual property of Bratz," said Jim Silver, editor-in-chief of trade publication Toys and Family Entertainment and a toy industry expert. "If Mattel wins, it really comes down to what kind of damages MGA owes, and any way you cut it, we are talking about sales in the billions of dollars."

If a jury agrees that Mattel owns the copyright to Bratz, the company could recover lost profits and \$500 million in annual sales and licensing fees. And Mattel could ask for a permanent injunction against MGA, stopping the company from selling the Bratz line, said **Michelle Cooke**, an intellectual property lawyer in the Los Angeles office of **Steptoe & Johnson LLP** who is not involved in the case.

But it might be in Mattel's interest to work out an arrangement under which Mattel would benefit from MGA's production of Bratz dolls.

"Mattel may be able to get an ongoing licensing agreement with MGA, which could be a win-win situation for Mattel given the decline in Barbie revenues," Cooke said.

Cooke was referring to the decline of the empire of Barbie, who made her debut in 1959. Barbie has been dressed by such fashion icons as Bob Mackie and Donna Karan, and has served as a girls' role model by working as a doctor and an astronaut. Sales of the smiling

blonde, however, have gone into a downturn in recent years.

In an April conference call to investors, Mattel Chief Financial Officer Kevin Farr said U.S. Barbie sales fell in the first quarter by 12 percent.

Bratz sales haven't been spectacular lately, either, losing ground to Disney's new dolls based on Hannah Montana and the popular High School Musical franchise.

"Bratz is a huge money maker, but it is not at the level it once was," Silver said. "They have fallen off in the last 15 months because of the success of Hannah Montana and High School Musical dolls."

Battle royale

MGA lawyer Thomas J. Nolan said Mattel's lawsuit is a desperation play to get a piece of the popular brand, which has eroded Mattel's market share. Regardless of the question of the drawings, MGA made the dolls, distributed them and marketed them successfully.

"MGA invested millions of dollars to create a 3D object that turned into Bratz," said Nolan, a partner in the Los Angeles office of Skadden Arps Slate Meagher & Flom LLP. "They took the risk and brought it to the market, knocking Barbie off of her perch while Mattel was sitting back."

U.S. District Court Judge Stephen Larson is scheduled to rule on May 19 whether Mattel waited too long to file its lawsuit against MGA. Larson is also expected to address whether there are factual disputes regarding the timing of the Bratz drawings and the Bratz model creation, and whether the initial Bratz doll line looks similar to Bryant's drawings and blueprint.

In the event Larson rules that Mattel did not file the suit in a timely manner, the war is over.

Nolan said internal Mattel documents from 2003 and 2004 state that Barbie was "a brand in crisis" and that Mattel needed to "kill Bratz." That, he said, shows the company only took legal action after Barbie began to lose market share, and not when they became aware of a potential copyright infringement by MGA.

"In 2004, Mattel needed to aggressively implement a business strategy to kill Bratz, and part of that was filing this lawsuit," Nolan said.

But Mattel claims Bryant pitched his Bratz designs to MGA while working for Mattel. Mattel alleges MGA was aware of Bryant's contractual relationship with Mattel but continued to work with the designer, and in doing so, aided Bryant in breaching his contract.

Bryant's lawyer, John Keker of San Francisco-based Keker Van Nest LLP, claimed Bryant's sketches were not considered inventions, as specified by an inventions agreement Mattel has with its employees that gives the company rights to the employees' designs and other copyrightable material.

But on April 25, Larson allowed Mattel to continue with its claims that the Bratz drawings fell within the scope of the agreement and Bryant was legally bound by the inventions agreement. Larson also ruled that Bryant breached his duty to Mattel by entering into a

contract with MGA to produce a line of fashion dolls.

There remains a dispute over the dates that Bryant sketched the original Bratz drawings.

Nolan said Bryant did the drawings for Bratz in 1998, and the inspiration for Bratz came while he wasn't employed by Mattel, but at home in Missouri. Bryant worked for Mattel from 1995 to April 1998 and from January 1999 to October 2000. He then jumped ship to MGA.

Doll parts

If a jury finds that Mattel doesn't own the copyright to Bratz, then MGA can press a related suit over its claim that Mattel copied Bratz's lips and almond-shaped eyes for its My Scene dolls.

That trial is scheduled for early 2009, but Nolan said the companies may try to resolve their differences before that date.

Founder of Los Angeles-based Toy Power Consulting LLC, Lynne Anne Rosenblum, said the toy industry has been closely watching the lawsuit between Mattel and MGA.

"I think the business has had an extremely difficult year, and infighting between two companies didn't help how the industry appears to the outside business world and consumers," she said. Rosenblum has consulted for both companies.

MGA's fashion-oriented Bratz hit shelves in 2001, and the company built the line into an empire of accessories, including clothing, bicycles and home-decor items. The pouty Bratz even have their own interactive Web site, where young girls can play games with virtual versions of the plastic toys.

MGA also owns Little Tikes, a line of toys that has also been successful.

Rosenblum said that whatever happens, Barbie will remain a strong competitor in the market.

"Barbie is an icon," Rosenblum said. "She is about to have her 50th birthday, and Mattel is well-versed at reinventing her."

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