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CONTENTS

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HYPOTHESES

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RESULTS & DISCUSSION

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- Garg, Bhavet (2011): Towards a New Natural Gas Policy, Political Weekly, Viewed on January 01, 2012 http://epw.in/user/viewabstract.jsp

THE BARBIE v/s BRATZ CASE OF IPR INFRINGEMENT: A MARKETING CASE STUDY

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ABSTRACT

This case discusses the dispute between the leading brand of fashion dolls of toy world named Barbie of Mattel Inc. and another similar product of MGA Entertainment Bratz Dolls. This case discusses about the copyright infringement claims of Barbie over Bratz Dolls whose sketches were created by Bryant an employee of Mattel who pitched his idea and initial sketches to MGA during his employment tenure with Mattel and later resigned from it. The law states that any kind of invention or idea developed by an employee in employer's business interests and all the resulting confidential information is owned by the employer. Hence, this case holds importance for the businesses which depend upon key creative and commercially competitive business ideas.

KEYWORDS

IPR infringement, Barbie Vs. Bratz.

INTRODUCTION

Intellectual Property a wonderful term that helps a marketer flourish and groom its creative and innovative ideas in a healthy environment free from idea steeling and forgery. It could also be termed as a secured approach where in we, the marketing people can feel safe that no one else will be able to take the advantage of our precious genuine innovations / inventions / ideas. To make Intellectual Property strong it is supported by the laws with precise information as to how it does what it is actually supposed to do. These laws have different supportive limbs attached to them like trademarks, copyrights and patents that give IP its real strength. They help every individual marketer earn the expected financial benefit or the desired recognition out of their creativity or innovation.

But where there are laws , there exist the law infringements. There are various major and well known disputes of intellectual property rights infringement in marketing world. Out of which the most talked about case is the case of Barbie Dolls v/s Bratz Dolls. The feud is actually between Mattel (the makers of Barbie Doll) and MGA (the makers of Bratz Dolls).

ABOUT THE PRODUCTS OF MATTEL AND MGA

Barbie the product of American Mattel which has been the ruling giant as a brand in the Fashion Dolls market, created by Ruth Handler. Barbie is in fact the first toy to have been marketed extensively through television advertising and sold more than 350,000 Barbie dolls during the first year of production. Barbie in its forthcoming years became a cultural icon as its features are designed based on the looks of the natives of various different countries so that the kids of different countries could associate with it easily and comes in their native attires and festive dress codes. It has been given the rare honors in the Toy World for example in 1974 a section of Times Square in New York City was renamed Barbie Boulevard for almost a week. Similarly the famous artisit Andy Warhol created a painting of Barbie in 1985[1] and in 2013 in Taiwan, the first Barbie- Themed restaurant called "Barbie Café" opened.[2]

PIC. 1

Bratz Dolls is actually the merchandize of MGA Entertainment. Initially four dolls were released in 2001 with the names – Cloe, Jade, Sasha, and Yasmin. They featured with almond shaped eyes and heavy makeup of lush and glossy lips. [3] In 2005, global sales of these dolls reached two billion dollars and by 2006 it covered almost forty percent of the market share of fashion-doll.[3]

PIC. 2

THE FEUD

The speedy capture of Fashion Dolls market by MGA Entertainment (creator of Bratz), made Barbie manufacturer Mattel respond to it by suing MGA about the Intellectual Property Rights. And ever since then the two California based companies have been tied up in the feud.

Mr. Carter Bryant, who was an employee of Mattel as the designer in "Barbie Collectibles" department pitched his idea of Bratz Dolls to MGA along with some initial sketches of the doll. MGA responded by offering him a consulting agreement and he resigned from Mattel.[4] And after the Bratz dolls started achieving success in the market Mattel filed its first lawsuit in the United States Federal District Court for the Central District of California in 2004. The fact remains that the preliminary designs and prototype were generated during Carter's employment tenure with Mattel and hence makes Mattel its rightful owner of the dolls. Mattel had filed a Lawsuit against MGA Entertainment for $500 million, hence, initially Court issued a verdict against MGA for infringing Mattel's Copyright and awarded Mattel US $ 100 million.[5]

BRATZ DOLLS AND PROTOTYPE

On December 3, 2008, the U.S. District Judge granted a permanent injunction to Mattel against MGA mandating it to remove all its Bratz product from the store shelves and reimburse the retailers for their loss and also to destroy all marketing material and molds and other production materials of the Bratz Dolls.[6]

The U.S. Court of Appeals for the Ninth Circuit granted MGA an immediate stay of the injunction, and also allowed the retailers to sell MGA's product "Bratz Dolls". The court of appeals ordered both Mattel and MGA for an out of court settlement of their dispute.[7]

The Ninth Circuit always test on the basis of two part Extrinsic/Intrinsic Test to distinguish between the appropriation of any idea within permissible limits and impermissible copying of an expression. Hence, in the "extrinsic" part the court segregated the protectable and unprotectable pieces of challenged works. The unprotectable elements like unoriginal elements and ideas were eliminated and what remained were the specifically original expressions of an idea which could be protected under copyright law. The Ninth Circuit Court also kept into consideration whether the idea could be expressed in many ways or few. If the idea can be expressed in many ways then the protection is deemed in a broad category otherwise it is of the "thin" category. So if your challenged work lies in the broad category then the challenged work would infringe if it is found to be "substantially similar" to the copyrighted work. Whereas if the copyright protection is in thin category, the challenged work will infringe only if it is "virtually identical" to the copyrighted work. [8] [9]

The Ninth Circuit Court disagreed with the District Court's decision of putting the challenged work in broad category stating that there are many human figure dolls in the market. Rather it explained that the features could be exaggerated only until they stop representing an ideal type and the doll looks odd. Thus, it was finalized that the scope of copyright protection lies in the thin category and District Court had applied the wrong standard of infringement. Though incase of the Bratz sketches, The Ninth Circuit agreed with the decision of the District Court that the sketches could be categorized in the 'broad' line of expressing the idea of a young hip female fashion doll which has overly exaggerated features and uses makeup, fashion accessories, designer clothing and hair color etc.. However, while applying the "substantially similar" test to sketches it was found out by the Ninth Circuit that the unprotectable elements were not filtered out like the designer trendy outfits and unique poses.

Later on July 22, 2010, the Ninth Circuit Court of Appeals rejected the initial decision of district court mandating MGA to transfer all the copyrights and trademarks of Bratz Products to Mattel and gave the decision in favor of MGA Entertainment declaring the ownership of MGA on Bratz Brand.[10] [11]

Later the jury found that Mattel's behavior was willful and malicious and hence awarded US $ 3.4 million each for various instances carrying misappropriation which totaled upto US $ 88.5 million (for 26 instances). However, the jury did conclude that MGA and its CEO interfered with the contractual relations with Mr. Carter Bryant and awarded Mattel a figure of US $ 10,000.

CONCLUSION

The feud between Mattel and MGA has a significance a case which expresses the importance of well-drafted employment agreements. If the contract agreements are made more precisely keeping in view the claims of trade secrets and include the clearly defined scope of agreement in well defined language then such disputes of copyright infringement can be avoided. The companies which thrive upon Intellectual properties as their assets should not leave any scope for its theft. Thus every employer should be keen on identifying the concepts and creative ideas on which an employee is working on while he is employed. A confidential agreement should always be signed by the employees so as to keep the trade secrets and intellectual property of the company/employer safeguarded.

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