

# Barbie Scores a Knockout: Mattel Romps in Enforcement of Employment Agreement

By David Zwick

*To follow up on a story* we brought to you a few months back, we report the latest developments in the legal sparring between Barbie and her upstart Bratz rivals. It looks like Barbie has been awarded an almost complete knockout.

Mr. Carter Bryant, while working under an exclusive employment agreement with Mattel, Inc., created preliminary drawings of the dolls-with-attitude that eventually were sold under the Bratz name. In 2000, Bryant pitched the line of fashion dolls to MGA Entertainment Inc., a direct competitor to Mattel. MGA took the idea and ran with it, and the Bratz line became a hugely successful product for MGA, generating over \$1 billion in revenues and licensing.

After Mattel became aware of the full extent of Bryant's involvement with MGA, it sued MGA in 2006 for copyright infringement, intentional interference with contractual relations, and aiding and abetting Bryant's breach of his duty of loyalty to Mattel. Last July, a unanimous federal jury found against MGA on all counts, and awarded Mattel \$100 million in damages. Left hanging was Mattel's motion for a permanent injunction.

In a heavy blow to MGA, the trial judge issued in December a sweeping injunction that effectively closes down its operation. The permanent injunction requires MGA to stop making, selling, marketing, licensing, and distributing Bratz dolls and associated products. MGA is further required, at its own expense, to deliver to Mattel for impoundment all Bratz dolls they have in stock, all dolls in the marketplace, and all plates and molds for making the dolls.

The judge also ordered that all rights in the Bratz trademarks and domain names be transferred to Mattel by way of a constructive trust, and permanently enjoined MGA from using those marks. The effect of the constructive trust is to transfer to Mattel the ill-gotten gains that MGA has realized from making off with an idea that belonged to Mattel.

In a nod to the potential havoc to holiday shopping that the immediate injunction might cause, the judge stayed enforcement until after he rules on the parties' post-trial motions this February. In a further gesture to the marketplace, the judge very recently modified the stay again, allowing Bratz dolls to remain on sale through year-end 2009 so that retailers can stock up for the spring and fall shopping seasons. However, he left open the possibility that control of the product line could be transferred to Mattel or a court-appointed receiver. Although the judge was not explicit, it is feasible that all profits from MGA's 2009 sales of the dolls will end up in Mattel's coffers.

At the heart of this case is the employment agreement between Bryant and Mattel. The jury's unanimous verdict for Mattel, and the sweeping injunctions awarded to Mattel, reinforce the importance of including confidentiality clauses and protections for intellectual property in all employment and consulting agreements. ✧