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It's Not Over For MGA's Bratz Doll Line Yet

The Ninth Circuit recently stayed an injunction entered against MGA Entertainment, Inc., that would have otherwise required MGA to ensure that none of its popular Bratz dolls, the subject of a copyright dispute with toy giant, Mattel, Inc., are available on store shelves as of January 21, 2010. The injunction's requirement that MGA also turn over its portfolio of Bratz related trademarks to Mattel was stayed as well. Mattel obtained an injunction against MGA after a jury found that a former Mattel employee, Carter Bryant, came up with the Bratz doll idea while under Mattel's employ, that Mattel owned the copyrights in the Bratz doll designs, and that MGA, who hired Carter Bryant after he left Mattel, infringed Mattel's copyrights.

MGA's appellate brief submitted to the Ninth Circuit asserted, among other arguments, that the district court erred in concluding that Mattel owned every idea of its employees and that even if Mattel did own these ideas, the Bratz dolls did not infringe any copyright owned by Mattel. On the question of copyright ownership, MGA takes the position that Bryant was a low level employee, that the Bratz doll idea was unrelated to his employment at Mattel (i.e., not created within the scope of his employment), and that Mattel therefore did not own the idea/concept for the Bratz dolls. MGA further argued that certain terms of Bryant's employment agreement, which assigned to Mattel any inventions created or conceived during employment, were unconscionable and therefore unenforceable. On the issue of copyright infringement, MGA argued that the applicable standard for determining copyright infringement on the dolls at issue was virtual identicality (as opposed to the substantial similarity standard applied by the district court) because of the nature of the works at issue - dolls with facial and anatomical features.

Mattel's appellate brief in opposition asserts that its employment agreement with Bryant extended its ownership over employee inventions/concepts beyond those created within the scope of employment (i.e., works made for hire). Were that not the case, Mattel argued, the employment agreement is merely superfluous of existing law which automatically vests an employer with ownership of works made for hire. On the issue of copyright infringement, Mattel argued that the district court applied the appropriate test - substantial similarity - in determining whether MGA's dolls infringed Mattel's rights in Carter Bryant's sketches/designs for the dolls. Mattel asserts that the numerous details that form the dolls' particularized expression and features warrant more than the "thin" copyright protection provided by the virtual identicality test that MGA argues is applicable.

In MGA's concluding remarks to its appellate brief, MGA requested that the Ninth Circuit decide its appeal on an expedited basis, or alternatively, grant a stay of the district court's injunction pending the appellate court's decision. In oral argument before the Ninth Circuit, MGA again pleaded for a stay of the district court's injunction, explaining that the injunction would be

ruinous for MGA. The Ninth Circuit panel inquired at oral argument whether the district court's remedy, effectively requiring MGA to turn over the Bratz line to Mattel, was appropriate, potentially hinting that the district court remedy will not stand. An alternative and perhaps more acceptable remedy as suggested by the court would be some sort of royalty arrangement. The court also ordered the parties to participate in expedited mediation. While MGA has temporarily succeeded in obtaining a stay of the district court's injunction, the appellate court decision on these issues and the determination of MGA's future is still to come.

For more information regarding MGA's Bratz case please click [here](#).

Authored By:

[Ashley Merlo](#)

(714) 424-8218

AMerlo@sheppardmullin.com