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CASES OF INTEREST

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IP/ENTERTAINMENT LAW WEEKLY CASE UPDATE FOR MOTION PICTURE STUDIOS AND TELEVISION NETWORKS

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Clements v. Screen Gems, Inc., USDC C.D California, December 13, 2010

 [Click here for a copy of the full decision.](#)

- In a copyright infringement action, the court grants defendants' motion for summary judgment, finding that the defendants' film "Stomp the Yard" did not infringe plaintiff's film "Steppin."

Plaintiff Clifford Clements owns the copyright in the film entitled "Steppin". "Steppin" chronicles the story of a student who is a talented dancer and who joins a fraternity at a historical black college. The student in "Steppin" participates in a dance competition as the underdog and eventually defeats his rival, the defending champion. The student also falls in love with a female character during the film.

The defendants Screen Gems, Inc., Screen Gems Productions, Inc., and their president Clint Culpepper created and developed the film "Stomp the Yard," which shared similar plot, sequence of events, setting, and characters with "Steppin". In September 2005, prior to the release of "Stomp the Yard," Culpepper viewed approximately an hour of plaintiff's film, which had completed principal photography.

Plaintiff sued defendants for copyright infringement, claiming that the similarities between "Steppin" and "Stomp the Yard" were sufficient to establish that



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defendants had infringed the protectable elements of plaintiff's work. Additionally, the plaintiff sought to invoke the "inverse ratio rule," arguing that Culpepper's access to "Steppin" in 2005 should reduce the plaintiff's burden of proving substantial similarity. The court disagreed.

The court found that the two works were not substantially similar with respect to any protectable elements. Applying the "extrinsic test," the court determined that the similar elements between the works involved non-protectable elements such as historical fact, familiar stock scenes, and scenes a faire, which flow naturally from the basic plot premise. The protectable elements in the two works, namely the plot, theme, dialogue, mood, setting, pace, characters, and sequence of events, were not substantially similar.

Additionally, the court declined to apply the inverse ratio rule because Culpepper's access to "Steppin" in 2005 did not constitute a sufficiently high degree of access to warrant invocation of the rule. Moreover, defendants independently created and developed "Stomp the Yard" prior to having any access to "Steppin". More than a year prior to Culpepper's access to "Steppin", defendants had already purchased rights to "Stomp the Yard," originally entitled "Step Show," and had already developed several drafts of the screenplay. Accordingly, the court found that defendants had not infringed plaintiff's copyright to "Steppin" and granted summary judgment for the defendants.

Buggs v. Dreamworks, Inc., USDC C.D. California, December 28, 2010

 [Click here for a copy of the full decision.](#)

- Court grants summary judgment in favor of defendants in a copyright infringement action alleging that the defendants' film "Flushed Away" infringed plaintiff's copyrighted screenplay for "Critter Island," finding that the two works were not substantially similar with respect to any protectable elements of the works.



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The plaintiff is the author of a screenplay for "Critter Island," a story about two teenage leaders of rival cockroach gangs -- the Water Bugs and the Brown Bandits -- living in a Harlem, New York, retirement home. The defendants are the creators and developers of the film "Flushed Away," the tale of Roddy, an upper-class rat living in a posh London home who is flushed down a drain into a sewer rat colony called Ratropolis.

In "Critter Island," the two ethnic gangs of cockroaches are in constant rivalry. However, Mario, the leader of the Water Bugs, develops romantic feelings for Vicki, the leader of the Brown Bandits. Mario and Vicki learn of the humans' plan to exterminate both gangs of cockroaches, but are flushed down a drain pipe before they can warn their respective gangs. With each other's help, they are able to return to their home and evacuate many of the cockroaches to Critter Island and escape extermination.

In "Flushed Away," once in the sewer Roddy encounters a female rat, a boat captain named Rita. Rita has stolen a fake ruby from an evil Toad, and the two must attempt to return to Roddy's home while being hunted by the Toad. Upon returning home, Roddy learns that the Toad has plans to flood Ratropolis, killing its inhabitants. Roddy is flushed once again and returns to the sewer to defeat the Toad, saving Rita and Ratropolis.

Plaintiff sued defendants for copyright infringement, arguing that "Flushed Away" was substantially similar to the screen play for "Critter Island." The court disagreed, finding that the two works were not similar with respect to any protectable elements. In deciding the issue of substantial similarity, the court applied the "extrinsic test," which requires that the court filter out and disregard the non-protectable elements of each work, and then determine whether there are any articulable similarities between the specific expressive elements of the works. Although each work involved anthropomorphic pests being flushed into the sewer,



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developing unlikely alliances, and saving their communities, the court held that “the basic plot idea of pests with human attributes getting flushed and saving their communities is not protectable.” The court held that, upon closer examination of the details, the works were substantially dissimilar. For example, the two works involved different types of pests living in different cities under different economic circumstances. Additionally, the “flushing” of the principal characters in “Critter Island” created a substantial hardship for the characters, whereas the flushing of the rat in “Flushed Away” proved beneficial to Roddy. “Flushed Away” also lacked any theme of racial unity and contained no hint of racial tension.

Plaintiff argued that her burden of proving substantial similarity should be reduced under the “inverse ratio rule” because individuals associated with the defendant had a high degree of access to plaintiff’s work. The court declined to apply the rule, finding that “Flushed Away” was based on screenplays created by third party writers who had no access to plaintiff’s work. Even if the court were to apply the inverse ratio rule, the court found that the defendant would still prevail because the plaintiff failed to show any concrete or articulable similarities between the protectable elements of the two works. Accordingly, the court found that defendants had not infringed plaintiff’s copyright and granted summary judgment for the defendants.

Mattel, Inc. v. MGA Entertainment, Inc., USDC C.D. California, December 27, 2010

 [Click here for a copy of the full decision.](#)

- On remand, the district court denies both MGA’s and Mattel’s motions for summary judgment on the issue of copyright infringement of first generation Bratz dolls, and grants summary judgment to MGA on Mattel’s copyright infringement claim relating to most second generation Bratz dolls; the district court also denies both parties’ motions for summary judgment on the issue of whether Mattel’s confidentiality agreement applied to ideas.



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Mattel, Inc. is the maker of Barbie dolls and the former employer of Carter Bryant, who left Mattel to join MGA, maker of Bratz dolls. Mattel alleged that Bryant breached a confidentiality and inventions agreement by taking his ideas for the Bratz dolls, which he developed while employed by Mattel, to MGA. A jury found in favor of Mattel and the court [issued an injunction](#) barring MGA from selling most of its Bratz dolls.

MGA appealed and the [Ninth Circuit reversed](#), based on erroneous jury instructions and an overbroad injunction. The district court granted MGA's motion for a new trial. In this decision, the court addressed, among other things, the issue of whether the confidentiality agreement covered ideas; whether Bryant's sketches and sculptures are substantially similar to the first and subsequent generations of Bratz dolls; and whether MGA misappropriated Mattel's trade secrets.

Mattel's "Employee Confidential and Inventions Agreement" required Bryant to communicate to Mattel "all inventions . . . conceived or reduced to practice by me (alone or jointly with others) at any time during my employment with [Mattel]." It also assigned to Mattel any rights, title and interest Bryant had in such inventions, which the agreement defined as "includ[ing], but [] not limited to, all discoveries, improvements, processes, developments, designs, knowhow, data computer programs, and formulae, whether patentable or unpatentable." The agreement did not include the word "ideas".

The Ninth Circuit held that the text of the agreement was ambiguous on the issue of whether it applied to ideas, and the Ninth Circuit requested that the district court consider extrinsic evidence. Mattel argued that it and Bryant intended the confidentiality agreement to encompass ideas when the contract was executed, but the district court held that Bryant's testimony in a separate law suit and inconsistencies in Mattel's exit interview form undermined this claim. The court denied the parties' motions for summary judgment on this issue.



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The court also denied summary judgment on the issue of whether the confidentiality agreement was unconscionable or contrary to a reasonable employee's expectations and on the issue of whether "at any time during my employment" includes nights and weekends, explaining that these issues are better suited to a fact finder.

Turning to Mattel's claims of copyright infringement, the court denied MGA's motion for summary judgment relating to the first generation of Bratz dolls, and granted its motion relating to subsequent generations of all but two of the Bratz dolls. The court conducted the intrinsic/extrinsic test for each doll to determine if the Bratz dolls were substantially similar to Bryant's sketches and early sculpts. The court held that "a young, female fashion doll with exaggerated proportions" is an unprotectable idea, and that "large heads, thick lips, high cheekbones, slim arms, long legs, and slim torsos" are also unprotectable "as they are required by the underlying idea." However, the court held that there is a genuine issue of material fact whether protected elements of the first generation of Bratz dolls – such as the size, shape and placement of the ears and nose – are substantially similar to Bryant's sketches and sculpts and denied summary judgment on the issue of copyright infringement as to these dolls.

Regarding subsequent generations of Bratz dolls, the Ninth Circuit held that they lack any meaningful similarities outside of ideas with Bryant's early sketches and sculpts. The district court thus said that the Ninth Circuit's opinion disposes of most of Mattel's claims of copyright infringement relating to subsequent generations of Bratz dolls, with the exception of two dolls (Ooh La La Chloe and Formal Funk Dana). The court granted MGA's motion for summary judgment relating to copyright infringement of second generation dolls, and denied it with respect to the two named dolls.



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The court also denied both parties' motions for summary judgment on the issue of whether Mattel's alleged trade secrets derived independent economic value from not being generally known. MGA argued that doll concepts and doll names cannot be trade secrets. The court disagreed with this position, saying that "concepts can have value independent from the product they eventually inspire," but held that the issue is better resolved by a fact finder.

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