

SEND

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 2 John B. Quinn (Bar No. 90378)
 3 Michael T. Zeller (Bar No. 196417)
 4 Duane R. Lyons (Bar No. 125091)
 5 Jon D. Corey (Bar No. 185066)
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 6 Los Angeles, California 90017-2543
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 Facsimile: (213) 443-3100

FILED
 CLERK, U.S. DISTRICT COURT
 JUN 17 2005
 CENTRAL DISTRICT OF CALIFORNIA
 DEPUTY

6 MUNGER, TOLLES & OLSON LLP
 Daniel P. Collins (Bar No. 139164)
 7 355 South Grand Avenue, 35th Floor
 Los Angeles, California 90071-1560
 8 Telephone: (213) 683-9100
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9 Attorneys for Defendant

10 Mattel, Inc
 RECEIVED
 BUT NOT FILED
 JUN 17 2005
 MM 4:43
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION
 DEPUTY

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

ORIGINAL

15 BY MGA ENTERTAINMENT, INC.,
 a California corporation,
 16
 Plaintiff,
 17
 v.
 18 MATTEL, INC., a Delaware corporation,
 19 and DOES 1-10,
 20 Defendants.

Case No. CV 05-02727 NM (RNBx)

DECLARATION OF MICHAEL T.
 ZELLER RE DEFENDANT
 MATTEL, INC.'S COMPLIANCE
 WITH LOCAL RULE 7-3

Date: August 8, 2005
 Time: 10:00 a.m.
 Place: Courtroom 11

Action Filed: April 13, 2005
 Trial Date: None Set

Hon. Nora M. Manella

DOCKETED ON CM
 JUN 22 2005
 BY [Signature] 002

27

1 that conversation, however, Ms. Torres indicated that she was amenable, in
2 principle, to an extension of time for Mattel to respond to the Complaint and would
3 let me know MGA's position on the potential motion. That same day, my partner,
4 Jon Corey, sent Ms. Torres a proposed stipulation by e-mail. A true and correct
5 copy of that e-mail message and proposed stipulation is attached as Exhibit A.

6 6. On May 2, 2005, the parties signed a stipulation that extended the
7 time for Mattel to respond to the complaint for, among other reasons, to allow the
8 parties additional time to discuss whether they could reach agreement and avoid
9 unnecessary motion practice. The applicable recital of the stipulation read as
10 follows:

11 WHEREAS, Mattel also is contemplating bringing motions to
12 challenge certain allegations in the Complaint, and an extension of
13 time would permit counsel *additional time to discuss* any potential
14 resolution of these issues and, if successful, thereby potentially avoid
15 motion practice before the Court, in whole or in part. . .

16 Stipulation to Extend Mattel, Inc.'s Time to Respond to Complaint; and [Proposed]
17 Order Thereupon at 2 (emphasis added). The Court "so ordered" the Stipulation
18 on May 3, 2005. A true and correct copy of the Stipulation and Order thereon is
19 attached as Exhibit B.

20 7. After Mattel's counsel did not receive any further response from
21 MGA's counsel on its position on the contemplated motion (despite two voicemails
22 I had left for Ms. Torres on May 4 and May 6, 2005), over the weekend, I sent an
23 e-mail message to Ms. Torres further detailing the basis for Mattel's contemplated
24 motion to dismiss and or strike portions of the Complaint, including by citing key
25 authorities supporting Mattel's position. In that e-mail message, I referenced our
26 prior discussions about Mattel's contemplated motion and again laid out the
27 grounds for such a motion. I concluded by inviting MGA's counsel to "*further*
28 discuss our motions . . . in greater detail to see if motion practice may be avoided."

1 A true and correct copy of my e-mail message to Ms. Torres is attached as Exhibit
2 C.

3 8. MGA's counsel did not respond to my voice-mail messages or e-mail
4 message until Wednesday, May 11, 2005. Ms. Torres informed me by telephone
5 on that day that she had been out of the office and that she would not be available
6 to further discuss the merits of Mattel's motion to determine if the parties could
7 come to an agreement before May 13, 2005, when Mattel's response was due. She
8 did inform me that another attorney for MGA, Paula Ambrosini, would be
9 available to further discuss the grounds for Mattel's motion during the afternoon of
10 Thursday, May 12, 2005.

11 9. On Thursday, May 12, 2005, my partner, Jon Corey, spent over an
12 hour on the phone with Ms. Ambrosini elaborating further on the grounds for
13 Mattel's motion. Ms. Ambrosini indicated that she would have to discuss the
14 grounds for Mattel's motion with MGA to determine whether any agreement could
15 be reached and motion practice could be avoided. As a follow up to that
16 conversation, Mr. Corey provided Ms. Ambrosini with additional authority that she
17 requested regarding one basis for Mattel's motion. Because Ms. Ambrosini
18 indicated that she was leaving town and would be unable to discuss these issues
19 with her client before Mattel had to file its motion on May 13, 2005, Mr. Corey
20 requested in an e-mail message a short, three-day extension of time to respond to
21 the Complaint so that MGA's counsel could have additional time to discuss
22 Mattel's motion and perhaps avoid needless motion practice. A true and correct
23 copy of Mr. Corey's May 12, 2005 e-mail message to Ms. Ambrosini is attached as
24 Exhibit D.

25 10. On the following morning of May 13, 2005, Ms. Torres responded to
26 Mr. Corey's e-mail. It stated:

27 I am not in a position to agree to any extension given the time,
28 although I assume that your papers are at least largely finished

1 anyway. I will be out of the office tomorrow but will have the cases
2 you cite, as well as any other authority you provide, pulled and will
3 try to read them as soon as possible. If we find the authorities
4 persuasive, we will do what we can to avoid burdening the court. You
5 should, however, file your papers tomorrow [sic] assuming you do not
6 hear from us, which, given the timing, is unlikely to happen before the
7 court closes.

8 A true and correct copy of that e-mail message is attached as Exhibit E.

9 11. That same morning, my partner John Quinn sent a response e-mail
10 message to Diana Torres that read, in relevant part, as follows:

11 I just want to make sure that I understand the recent exchange of e-
12 mails. We have cited to you some authorities which we have
13 represented to you establish that certain of your claims have no merit.
14 We have asked you to withdraw them. You haven't had time yet to
15 look at the authorities. We have asked for a 3 business day extension
16 of our time to file, so that you will have an opportunity to consider
17 these legal issues. You have declined any extension at all and are
18 requiring that we file our responsive pleading today, notwithstanding
19 the open issues regarding the viability of certain of your claims. Is
20 this correct?

21 A true and correct copy of the e-mail message that John Quinn sent to Diana
22 Torres is attached as Exhibit F. MGA's counsel did not respond to Mr. Quinn's e-
23 mail message before the end of the day (when the motion was due) and Mattel
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25
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28

1 accordingly filed its motion to dismiss and strike portions of MGA's Complaint on
2 May 13, 2005.

3 I declare under penalty of perjury of the laws of the United States of
4 America that the foregoing is true and correct.

5 Executed this 17th day of June, 2005 at Los Angeles, California.

6
7 _____/s/
8 Michael T. Zeller
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SCANNED

22

From: Jon Corey
To: "DTorres@OMM.com".GWIA.LADOMAIN
Date: 4/29/05 3:36PM
Subject: RE: MGA v. Mattel

SCANNED

Diana,

I understood from our conversation that we had an agreement based on our agreement with your requests in the respective cases, but assuming that you will confirm that agreement on Monday, I have attached a form of stipulation for your review and signature. If you have any comments that you believe should be made before Monday morning, please let me know now, so that there will be no delay in filing the stipulation then.

Best regards,

Jon D. Corey, Esq.
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Phone: (213) 624-7707
Fax: (213) 624-0643
e-mail address: joncorey@quinnemanuel.com

Note: The information contained in this message may be privileged and confidential and protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Thank you. Quinn Emanuel Urquhart Oliver & Hedges, LLP

>>> "Torres, Diana" <DTorres@OMM.com> 04/29/05 03:16PM >>>

Jon,

I expressly told you that I didn't have final authority on this but that I thought I could get it and would try to do so as quickly as possible if you were willing to agree to the other issues. My client is ill today (which I didn't tell you) but, with this, I will try to get final sign off. Assuming that is the case, we can get the stipulations ready for filing on Monday morning. I'll start that process with respect to the Mattel v. Bryant issues as you suggest.

Thanks,
Diana

-----Original Message-----

From: Jon Corey [mailto:joncorey@quinnemanuel.com]
Sent: Friday, April 29, 2005 2:26 PM
To: Torres, Diana
Cc: Michael T Zeller
Subject: MGA v. Mattel

Diana,

This message will confirm MGA's agreement to provide Mattel an additional 10 days to answer or otherwise respond to the complaint in

EXHIBIT A
PAGE 1

SCANNED

the referenced case I will provide a stipulation for your signature shortly. If you have time to review it, I would prefer to file it today.

Separately, this message will also confirm the agreements that we reached in the Mattel v. Bryant case regarding Ms. Martinez's deposition and documenting in a stipulation the May 9, 2005 obligations of each party. We are also agreeable to continuing the deposition of Mr. Larian until May 26, 2005. I will send you a letter documenting these agreements more fully. Please let me know if your office will be preparing a stipulation for filing in the Mattel v. Bryant case, or whether I should do so.

Best regards,

Jon D. Corey, Esq.
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Phone: (213) 624-7707
Fax: (213) 624-0643
e-mail address: joncorey@quinnemanuel.com

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CC: Michael T Zeller

EXHIBIT A
PAGE 2

SCANNED

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
 2 John B. Quinn (Bar No. 90378)
 3 Michael T. Zeller (Bar No. 196417)
 4 Jon D. Corey (Bar No. 185066)
 5 865 South Figueroa Street, 10th Floor
 6 Los Angeles, California 90017-2543
 7 Telephone: (213) 443-3000
 8 Facsimile: (213) 443-3100
 9 Attorneys for Defendant
 10 Mattel, Inc.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

11 MGA ENTERTAINMENT, INC.,)	Case No. CV 05-02727 CBM (RZx)
12 Plaintiff,)	STIPULATION TO EXTEND
13 v.)	MATTEL, INC.'S TIME TO
14 MATTEL, INC., a Delaware)	RESPOND TO COMPLAINT; AND
15 Corporation, and DOES 1-10,)	[PROPOSED] ORDER
16 Defendants.)	THEREUPON
)	Action Filed April 13, 2005
)	Trial Date: None Set

17
 18
 19 WHEREAS, defendant Mattel, Inc. ("Mattel") and plaintiff MGA
 20 Entertainment, Inc. ("MGA") have agreed that Mattel shall have an additional ten
 21 days to respond to MGA's Complaint;

22 WHEREAS, good cause exists for granting this extension because
 23 certain Mattel counsel responsible for this matter, including Mattel's lead counsel,
 24 John Quinn, and Mattel's principal in-house attorney, have both been out of the
 25 state on business during the majority of the 20-day period in which Mattel would
 26 otherwise have to answer or respond to the Complaint under the Federal Rules of
 27 Civil Procedure;

1 WHEREAS, Mattel also is contemplating bringing motions to
2 challenge certain allegations in the Complaint, and an extension of time would
3 permit counsel additional time to discuss any potential resolution of these issues
4 and, if successful, thereby potentially avoid motion practice before the Court, in
5 whole or in part; and

6 WHEREAS, Mattel has received no other extensions of time to
7 answer or otherwise respond to the Complaint;

8 THEREFORE, pursuant to Local Rule 7-1, Mattel and MGA, by and
9 through their respective counsel, hereby stipulate and agree, as follows:

10 Mattel's time in which to answer or otherwise respond to the
11 Complaint is extended for ten days, to and including May 13, 2005. This
12 stipulation does not waive or prejudice Mattel's right to challenge the Complaint
13 or the allegations in the Complaint in any respect.

14 This is the first extension of time requested or sought to answer or
15 otherwise respond to the Complaint.

16 DATED: April 29, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

18 By _____

19 Jon D. Corey
20 Attorneys for Defendant
Mattel, Inc.

21 DATED: April 29, 2005

O'MELVENY & MYERS, LLP

23 By _____

24 Diana Torres
25 Attorneys for Plaintiff
MGA Entertainment, Inc.

26 IT IS SO ORDERED.

27 DATED: _____

28 Hon. Consuelo B. Marshall
United States District Court Judge

SCANNED

RECEIVED

MAY 6 - 2005

FILED
CLERK, U.S. DISTRICT COURT
MAY - 5 2005
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
2 John B. Quinn (Bar No. 90378)
3 Michael T. Zeller (Bar No. 196417)
4 Jon D. Corey (Bar No. 185066)
5 865 South Figueroa Street, 10th Floor
6 Los Angeles, California 90017-2543
7 Telephone: (213) 443-3000
8 Facsimile: (213) 443-3100

9 Attorneys for Defendant
10 Mattel, Inc.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 MGA ENTERTAINMENT, INC.,

14 Plaintiff,

15 v.

16 MATTEL, INC., a Delaware
17 Corporation, and DOES 1-10,

18 Defendants.

Case No. CV 05-02727 NM (RNBx)

STIPULATION TO EXTEND
MATTEL, INC.'S TIME TO
RESPOND TO COMPLAINT; AND

[PROPOSED] ORDER
THEREUPON

Action Filed April 13, 2005
Trial Date: None Set

19 WHEREAS, defendant Mattel, Inc. ("Mattel") and plaintiff MGA
20 Entertainment, Inc. ("MGA") have agreed that Mattel shall have an additional ten
21 days to respond to MGA's Complaint;

22 WHEREAS, good cause exists for granting this extension because
23 certain Mattel counsel responsible for this matter, including Mattel's lead counsel,
24 John Quinn, and Mattel's principal in-house attorney, have both been out of the
25 state on business during the majority of the 20-day period in which Mattel would
26 otherwise have to answer or respond to the Complaint under the Federal Rules of
27 Civil Procedure;

FILED

2005 MAY - 3 AM 10:30
CENTRAL DISTRICT OF CALIF
LOS ANGELES

1 WHEREAS, Mattel also is contemplating bringing motions to
2 challenge certain allegations in the Complaint, and an extension of time would
3 permit counsel additional time to discuss any potential resolution of these issues
4 and, if successful, thereby potentially avoid motion practice before the Court, in
5 whole or in part; and

6 WHEREAS, Mattel has received no other extensions of time to
7 answer or otherwise respond to the Complaint;

8 THEREFORE, pursuant to Local Rule 7-1, Mattel and MGA, by and
9 through their respective counsel, hereby stipulate and agree, as follows:

10 Mattel's time in which to answer or otherwise respond to the
11 Complaint is extended for ten days, to and including May 13, 2005. This
12 stipulation does not waive or prejudice Mattel's right to challenge the Complaint
13 or the allegations in the Complaint in any respect.

14 This is the first extension of time requested or sought to answer or
15 otherwise respond to the Complaint.

16 DATED: May 2, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

18 By Jon D. Corey
19 Jon D. Corey
20 Attorneys for Defendant
Mattel, Inc.

21 DATED: May 2, 2005

O'MELVENY & MYERS, LLP

23 By _____
24 Diana Torres
25 Attorneys for Plaintiff
MGA Entertainment, Inc.

26 IT IS SO ORDERED.

27 DATED: 5/3/05

NORA M. MANELLA

Hon. Nora Manella
United States District Court Judge

1 WHEREAS, Mattel also is contemplating bringing motions to
2 challenge certain allegations in the Complaint, and an extension of time would
3 permit counsel additional time to discuss any potential resolution of these issues
4 and, if successful, thereby potentially avoid motion practice before the Court, in
5 whole or in part; and

6 WHEREAS, Mattel has received no other extensions of time to
7 answer or otherwise respond to the Complaint;

8 THEREFORE, pursuant to Local Rule 7-1, Mattel and MGA, by and
9 through their respective counsel, hereby stipulate and agree, as follows:

10 Mattel's time in which to answer or otherwise respond to the
11 Complaint is extended for ten days, to and including May 13, 2005. This
12 stipulation does not waive or prejudice Mattel's right to challenge the Complaint
13 or the allegations in the Complaint in any respect.

14 This is the first extension of time requested or sought to answer or
15 otherwise respond to the Complaint.

16 DATED: May 2, 2005

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

18 By _____

19 Jon D. Corey
20 Attorneys for Defendant
Mattel, Inc.

21 DATED: May 2, 2005

O'MELVENY & MYERS, LLP

23 By _____

24 Diana Torres
Attorneys for Plaintiff
MGA Entertainment, Inc.

26 IT IS SO ORDERED.

27 DATED: _____

28 Hon. Nora Manella
United States District Court Judge

SECRET

Exhibit C

From: Michael T Zeller
To: Torres, Diana
Date: 5/9/05 12:00AM
Subject: MGA v. Mattel

SCANNED

Dear Diana,

As I have previously mentioned, Mattel is contemplating moving against aspects of the Complaint that MGA recently filed. This relates, in particular, to the non-trade dress and non-trademark infringement related matters contained in the Complaint. I therefore am writing you pursuant to Local Rule 7-3 to confer with you on that matter and to set up a time when the parties might further discuss these issues, with a view of hopefully resolving them so as to avoid burdening the Court with a motion.

Generally in paragraphs 74 to 99 and paragraphs 113 to 114, MGA alleges various acts that it claims -- "[a]lone" and "in combination" -- violate federal and state unfair competition law. It is clear that they do not. MGA includes these non-trade dress and non-trademark allegations in its "unfair competition" claim under 15 U.S.C. § 1125(a). (Cmplt., Second Claim for Relief, esp. ¶¶ 113-14.) Section 1125 prohibits conduct that is likely to "cause confusion, or to cause mistake, or to deceive" as to the "origin, sponsorship or approval" of goods, services or commercial activities. Because the Complaint does not (and could not) allege that Mattel's supposed "intimidation" of retailers, distributors and industry organizations, its lawsuit or its pre-litigation letters to its former employees are likely to cause confusion, those matters cannot state a claim under Section 1125.

Second, MGA's allegations as to such purported conduct fail to state any violation of state unfair competition law. Paragraphs 75, 113 and 114 of the Complaint rely upon Mattel's litigation against a third-party and its pre-litigation communications with its former employees. Mattel's conduct and communications in connection with that suit are absolutely privileged under section 47(a), (b) of the California Civil Code. *Abraham v. Lancaster Community Hospital*, 217 Cal. App. 3d 796, 822-23, 266 Cal. Rptr. 360, 376 (1990). Likewise, the letters sent in anticipation of litigation, which are referenced in Paragraphs 75 and 113 of the Complaint, are privileged under section 47(b) of the California Civil Code. *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 781, 54 Cal. Rptr. 2d 830, 833 (1996). We therefore believe that these allegations are subject to a motion under Rule 12(b)(6) and 12(f) and pursuant to the California anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16.

In fact, MGA was not even a party to the *Brawer* lawsuit. Although federal law requires that facts establishing standing be affirmatively pled, MGA fails to allege that it has standing to engage in satellite litigation over that Mattel suit.

In that same vein, MGA alleges Mattel conduct as to another third party, LeapFrog. MGA does not and cannot establish standing to sue over Mattel's actions as to a third-party competitor in which MGA claims no interest.

Additionally, the unfair competition laws are not designed to allow a competitor to sue on any conduct it unilaterally labels "unfair." Rather, in the context presented by this suit, MGA must both identify some legislatively declared policy that Mattel's acts purportedly violated and allege facts demonstrating a harm to "competition." E.g., *Cel-Tech Comm. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 83 Cal. Rptr. 2d 548 (1999). The Complaint here does neither as to the non-trade dress and non-trademark infringement allegations. As a consequence, we believe that these allegations should be dismissed under Rule 12(b)(6) and for lack of standing.

Finally, several paragraphs of the Complaint, including at paragraphs 10 through 20 of the Complaint, make allegations about Mattel's business in the late-1990s that are immaterial to the claims and issues in the case. Under Ninth Circuit law, such superfluous historical allegations are subject to being stricken under Rule 12(f), especially where, as here, they would be burdensome to answer and to litigate. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517 (1994). The allegations have no bearing on whether the parties' products are confusingly similar and to who copied

EXHIBIT C
PAGE 1

whom. More troubling, if the allegations are allowed to remain, the parties and the Court will face endless discovery, and the jury will be saddled with massive presentations of evidence, regarding the details of complex corporate acquisitions, among other things. Accordingly, Mattel currently plans to move to strike these allegations. See Fed. R. Civ. P. 12(f).

We would like to further discuss our motions with you in greater detail to see if motion practice may be avoided. I look forward to hearing from you.

Michael T. Zeller
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 S. Figueroa St , 10th Floor
Los Angeles, California 90017
Tel.: 213-443-3180
Tel : 213-624-7707
Fax: 213-624-0643

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CC: Jon Corey; Timothy Alger



Exhibit D

From: Jon Corey
To: Pambrosini@omm.com
Date: 5/12/05 5:38PM
Subject: MGA v. Mattel

CONFIDENTIAL

Paula,

Following up on our conversation this afternoon, the authority that I committed to provide you that supports the proposition that the allegations in paragraph 74-100 and 113-14 do not fall within the narrow common law tort of unfair competition is Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1263-64 (1992) and Frey v. Trans Union Corp., 127 Cal. App. 4th 986, 997 (2005). I will provide you with the authority for the proposition that the evidence relevant to prove willful infringement is narrow tomorrow.

Please let me know when you can get back to me to see if we can resolve the issues that we discussed without having to burden the Court with needless motion practice. Based on our discussion, it appeared that we could possibly reach agreement on some issues. It makes sense, therefore, that the parties agree that Mattel can have until next Wednesday to answer or otherwise respond to the Complaint while we see if we can minimize any motion practice. I look forward to hearing from you promptly in this regard.

If you have any questions regarding the foregoing, please do not hesitate to call.

Jon D. Corey, Esq.
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Phone: (213) 443-3000
Fax: (213) 443-3100
e-mail address. joncorey@quinnemanuel.com

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CC: Michael T Zeller

SCANNED

From: "Torres, Diana" <DTorres@OMM.com>
To: "Jon Corey" <joncorey@quinnemanuel.com>
Date: 5/13/05 12:10AM
Subject: MGA v. Mattel

SCANNED

Jon,
Paula had to leave town this afternoon but forwarded your message to me. I am just getting to it now because I was out of the office on a personal matter all day yesterday and had another matter to deal with all day (and all night) today so my email inbox is fairly full. I am not in a position to agree to any extension given the time, although I assume that your papers are at least largely finished anyway. I will be out of the office tomorrow but will have the cases you cite, as well as any other authority you provide, pulled and will try to read them as soon as possible. If we find the authorities persuasive, we will do what we can to avoid burdening the court. You should, however, file your papers tomorrow assuming you do not hear from us, which, given the timing, is unlikely to happen before the court closes.
- Diana

-----Original Message-----

From: Jon Corey [mailto:joncorey@quinnemanuel.com]
Sent: Thu May 12 17:39:45 2005
To: Ambrosini, Paula
Cc: Michael T Zeller
Subject: MGA v. Mattel

Paula,

Following up on our conversation this afternoon, the authority that I committed to provide you that supports the proposition that the allegations in paragraph 74-100 and 113-14 do not fall within the narrow common law tort of unfair competition is *Bank of the West v. Superior Court*, 2 Cal. 4th 1254, 1263-64 (1992) and *Frey v. Trans Union Corp.*, 127 Cal. App. 4th 986, 997 (2005). I will provide you with the authority for the proposition that the evidence relevant to prove willful infringement is narrow tomorrow.

Please let me know when you can get back to me to see if we can resolve the issues that we discussed without having to burden the Court with needless motion practice. Based on our discussion, it appeared that we could possibly reach agreement on some issues. It makes sense, therefore, that the parties agree that Mattel can have until next Wednesday to answer or otherwise respond to the Complaint while we see if we can minimize any motion practice. I look forward to hearing from you promptly in this regard

If you have any questions regarding the foregoing, please do not hesitate to call.

Jon D. Corey, Esq.
Quinn Emanuel Urquhart Oliver & Hedges, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Phone: (213) 443-3000
Fax: (213) 443-3100

EXHIBIT E
PAGE 1

e-mail address: joncorey@quinnemanuel.com

SCANNED

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CC: "Ambrosini, Paula" <PAmbrosini@OMM.com>

EXHIBIT E
PAGE 2

SCANNED

From: John Quinn
To: Dtorres@omm.com
Date: 5/13/05 7:35AM
Subject: diana--

SCANNED

i just want to make sure i understand the recent exchange of emails.

we have cited to you some authorities which we have represented to you establish that certain of your claims have no merit. we have asked you to withdraw them.

you haven't had time yet to look at the authorities.

we have asked for a 3 business day extension of our time to file, so that you will have an opportunity to consider these legal issues

you have declined any extension at all and are requiring that we file our responsive pleading today, notwithstanding the open issues regarding the viability of certain of your claims.

is this correct? if so, it seems very unfortunate i would ask you to reconsider, in part to protect your own interests and those of your client.

CC: Jon Corey; Michael T Zeller

EXHIBIT F
PAGE 1

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017.

On June 17, 2005, I served the foregoing document:

**DECLARATION OF MICHAEL T. ZELLER RE DEFENDANT MATTEL, INC.'S
COMPLIANCE WITH LOCAL RULE 7-3**

on the interested parties in this action:

Diana M. Torres
Paula E. Ambrosini
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071-2899
O 213.430.6000; F 213.430.6407

- [] [PERSONAL] by personally delivering the document listed above to the persons at the address set forth above.
- [X] **BY TELECOPIER** By transmitting the above listed document(s) to the fax number(s) set forth on this date.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 17, 2005, at Los Angeles, California.



Olivia Banke