



Aqua and Mattel's Lawsuit Regarding "Barbie Girl" Song

Mattel, the manufacturer of the "Barbie" doll, sued a Danish band, Aqua, over their song "Barbie Girl." The song, among other things, contained lines that portrayed Barbie in a negative light.

Background

In 1997, Aqua released the album *Aquarium*, which features the song "Barbie Girl." In the song, a female band member, who calls herself "Barbie," sings the lyrics in a high-pitched voice: "I'm a Barbie girl, in my Barbie world / Life in plastic, it's fantastic / You can brush my hair, undress me everywhere / Imagination, life is your creation." In response, another band member ("Ken") requests of her: "Come on Barbie, let's go party." The song ultimately made it onto the Top 40 music charts.

In 2002, Mattel sued the music companies who produced, marketed and sold "Barbie Girl." Although other claims were asserted in the lawsuit, this article will focus on Mattel's federal trademark infringement claim, on appeal to the Ninth Circuit.

The Lanham Act and Trademark Basics

The Lanham Act is the federal trademark statute addressing the registration, use and infringement of trademarks and related marks. In this case, the Ninth Circuit issued the following definition: "A trademark is a word, phrase or symbol that is used to identify a manufacturer or sponsor of a good or the provider of a service...It's the owner's way of preventing others from duping consumers into buying a product they mistakenly believe is sponsored by the trademark owner."

Court Decision: Ninth Circuit Court of Appeals

The court acknowledged that the music companies undoubtedly used Mattel's trademark: "Barbie is one half of Barbie Girl." But the court qualified this by pointing out that "Barbie Girl" is the title of a song about Barbie and Ken:

"A title is designed to catch the eye and to promote the value of the underlying work. Consumers expect a title to communicate a message about the book or movie, but they do not expect it to identify the publisher or producer."

To cite the court's examples, if consumers saw a painting titled "Campbell's Chicken Noodle Soup," they would be unlikely to believe that Campbell's had "branched into the art business." Similarly, after hearing Janis Joplin's lyrics, "Oh, Lord, won't you buy me a Mercedes-Benz?," consumers would not suspect that Joplin and the car manufacturer had entered into a joint venture.

To analyze whether Aqua's use of "Barbie Girl" constituted federal trademark infringement, the Ninth Circuit adopted the following standard from the Second Circuit:

"Literary titles do not violate the Lanham Act unless the title has no artistic relevance to the underlying work whatsoever, or, if it has some artistic relevance, unless the title explicitly misleads as to the source or the content of the work."

After applying this standard to the facts of the case, the Ninth Circuit concluded that the music companies' use of "Barbie" was not an infringement of Mattel's trademark. Under the first prong of the standard, the court found that the use of "Barbie" in the title was "clearly relevant to the underlying work, namely, the song itself."

With respect to the second prong, the court concluded that the song does not explicitly mislead as to the source of the work. In other words, "it does not, explicitly or otherwise, suggest that it was produced by Mattel."

On January 27, 2003, the U.S. Supreme Court denied certiorari on the case, allowing the Ninth Circuit's decision to stand.

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