

THE LEGAL DEPARTMENT

What's In
A Name?

WHEN YOU HEAR THE names Sasha and Malia, who comes to mind? The well-known maker of Beanie Babies, Ty Inc., hoped consumers would associate those names, which happen to be the same as those of President Obama's young daughters, with its TyGirlz dolls. Was this a calculated publicity stunt or a coincidence? You decide.

Just as the country was preparing for the inauguration of President Obama, Ty added "Sweet Sasha" and "Marvelous Malia," two African-American dolls, to its TyGirlz collection. The media coverage of Ty's newly introduced dolls was immediate. The reaction from the White House was immediate, too. Mrs. Obama, through her spokeswoman, protested Ty's use of the girls' names for commercial benefit, calling it "inappropriate." Mrs. Obama, a seasoned lawyer, had a legal point to make, in addition to her concerns as a parent.

The right of publicity

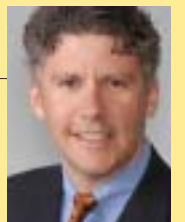
The law recognizes what is known as a "right of publicity" for prominent people. This allows persons in the public eye to control how their image, attributes and name are used for commercial purposes. For example, using an actress's image, or even her distinctive singing voice, to sell products without her permission would violate this right.

But the right of publicity has limits, and one significant limitation is the First Amendment. When a public figure's image is used in connection with an expression of free speech, particularly when criticizing our government, the First Amendment will protect that speech and trump the right of publicity. Examples of this would be bobblehead dolls of our political leaders that parody certain of their traits.

But is there a political connection here? At first, Ty denied the Obama children were an inspiration for its choice of names. Instead, Ty's spokeswoman said the names were chosen merely because they are "beautiful" and worked well with the dolls they were making. The denial garnered even further publicity for the company. Then, in early February, Ty capitulated. It admitted that "the names ... were inspired by this historic time in our nation's history," and that it was renaming the dolls in deference to the wishes of the First Family.

Ty had to know that its Sasha and Malia dolls would raise eyebrows, yet garner much attention. Is "any publicity" really "good publicity"? When introducing new products, make sure to work closely with your legal counsel to decide whether you want to be known as the good guys or the bad guys.

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An Early Influence

Toys have too much impact to be so overlooked

By **Richard Gottlieb**

Last October I was attending the first ever Toy and Game Inventor Awards in Chicago. It was a powerful evening with lots of heart and emotion. Awards called "TAGIES" were given to the "Toy Inventor of the Year," "Game Inventor of the Year" and "Rising Star of the Year." As I sat and listened to the various speakers and honorees, I was struck by not only the depth of talent in Toy Nation but by the outsize impact we as an industry have on the our culture, the economy and society.

Culture's debt to child's play

There is no better illustration of the enormous impact toys have on our culture than that of inventor Jeffrey Breslow, who received the evening's "Lifetime Achievement Award." Over the life of his 41 year career, Breslow's creations have sold over a billion

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units and are said to be found in 80 percent of American homes. Think about it: That puts his sales on a par with the Beatles and J.K. Rowling's Harry Potter books. We know more than we ever need to know about the impact Mr. Potter and the Beatles have had on world culture. Yet, we know next to nothing about how many children found joy, made a career choice, learned something new, made a friend, developed a lifetime enthusiasm and/or created a lasting memory because they played with one of Breslow's creations. Similarly, how many artists started with paint by numbers sets; how many architects with a construction toy; and how many doctors with a toy stethoscope and a pretend play doctor's bag?

How toys spark the economy

Toy Nation's impact on our world does not stop with its cultural impact. We can also make the case that the toy industry is among the very foundations of our overall economy.

The first purchase a child makes is typically a toy. In many cases, that toy is the miniature version of a brand or product that they will purchase in adulthood. The Ford Motor Company certainly realizes this. Here is a telling quote from its website:

"We're building a relationship with the consumer that starts when they're just a kid," said John Nens, director, Ford Global Brand Licensing. "They'll always remember the great time they had with their favorite Ford ride-on toy or Matchbox-sized car, and they will carry that relationship with the brand all the way to when they finally start buying vehicles."

Ford realizes the foundation of any brand relationship starts in childhood. And that fact means that toys really do play an important role in our economy.

Society's debt to Toy Nation

Most people reading this article are fortunate to live in countries ruled by laws. Those who participate in these societies do so by agreeing to obey rules and regulations that they may not want to obey. They do so, however, because they have learned the importance of living by those rules.

Where do children learn to participate in a society of laws? Well, one place is by playing board games. By sitting down with their peers and families, they learn the fun of competition while obeying rules that are applicable to all (even to their parents).

Obviously, for such a small industry, we have a dramatically oversized impact on the world. But where is the recognition of such? After all, when you visit any liberal arts university or college, you will find degree programs in art, literature and music. When you pick up any major newspaper or popular magazine,

you will find book, music, movie and art reviews—and loving profiles of those who made them.

In short, though we have an important impact on people's lives, our artists get little or no recognition. Isn't it time that that changes? Shouldn't we and our cultural institutions be trumpeting what we do and the effect it has on our society?

So, how do we make that happen? Well, one place to start is to turn our tradeshow into true celebrations of the toy industry. While we "professionals" are busy buying and selling, everyone else could be taking that week to celebrate toys through contests ("championship" tournaments, for example), celebrations, parades, and a televised Toy of the Year awards show. We could also reach out to the academic community by sponsoring scholarly workshops; giving support to academic journals like the fledgling *American Journal of Play*, and encouraging the study of toys and the toy industry.

Most importantly, we would take control of the image we present to the world rather than leaving that up to groups who may or may not like the toy industry. Groups who, ironically, are among the few to fully recognize the impact we have on people's lives.

The extra work would be well worth it. Sales would go up, investment would come in and idols would be acknowledged. It would be a long overdue recognition for an industry that more than pulls its weight.

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In 2007, New York's Museum of Modern Art added 13 of Kidrobot's art toys to its holdings. Three designs were on display as part of the museum's recent installation, 'Just In: Recent Acquisitions from the Collection.' —Kidrobot