

## Fighting City Hall

YOU MAY HAVE MISSED it, but something remarkable happened last month: The United States Patent and Trademark Office was on the losing end of a U.S. District Court decision.

Yes, someone sued the government—and won. The result, in *Tafas v. Dudas*, is extraordinary for a number of reasons.

First, it is noteworthy from the perspective of the players involved. A private citizen sued the executive branch of the federal government (represented by the Patent Office) to stop the implementation of a number of new rules that would dramatically change patent examination practice. The judicial branch of the federal government (represented by the district court) ordered the executive branch not to implement the planned rules. The Founding Fathers' system of "checks and balances" worked!

The larger question is, What does this mean?

Most of the companies who commented on the proposed rules agreed they were a bad idea. You may be thinking, "What do I care, now that they are history because of the court's ruling?" Well, it's likely that some of the proposed rules will return, so you may want to consider some of the changes as

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# Bargain-rate Buzz

## Awards can bulk up modest marketing budgets

By Richard Gottlieb

**T**he TV advertising and licensing industries have a virtual monopoly on access to the mass market toy shelf. Take a look at any major toy department and you will immediately see that the vast majority of products on display either bear powerful licenses or have a great deal of television behind them. Both cost great amounts of money, so what is a small or even mid-sized company to do if it wants to enter the mass market and does not have access to capital? What if it simply can't afford television advertising or hot licenses?

There are alternative ways to go to market, ways that may take a bit longer but are ultimately more affordable. One of those routes is the toy awards industry—a great way to generate buzz about a product for a surprisingly reasonable amount of money.

### The awards game

The toy awards industry is comprised of nearly a dozen entities that measure the play value of toys and issue appropriate awards or seals of approval. Winning means that a toy manufacturer, usually for a cost, gets

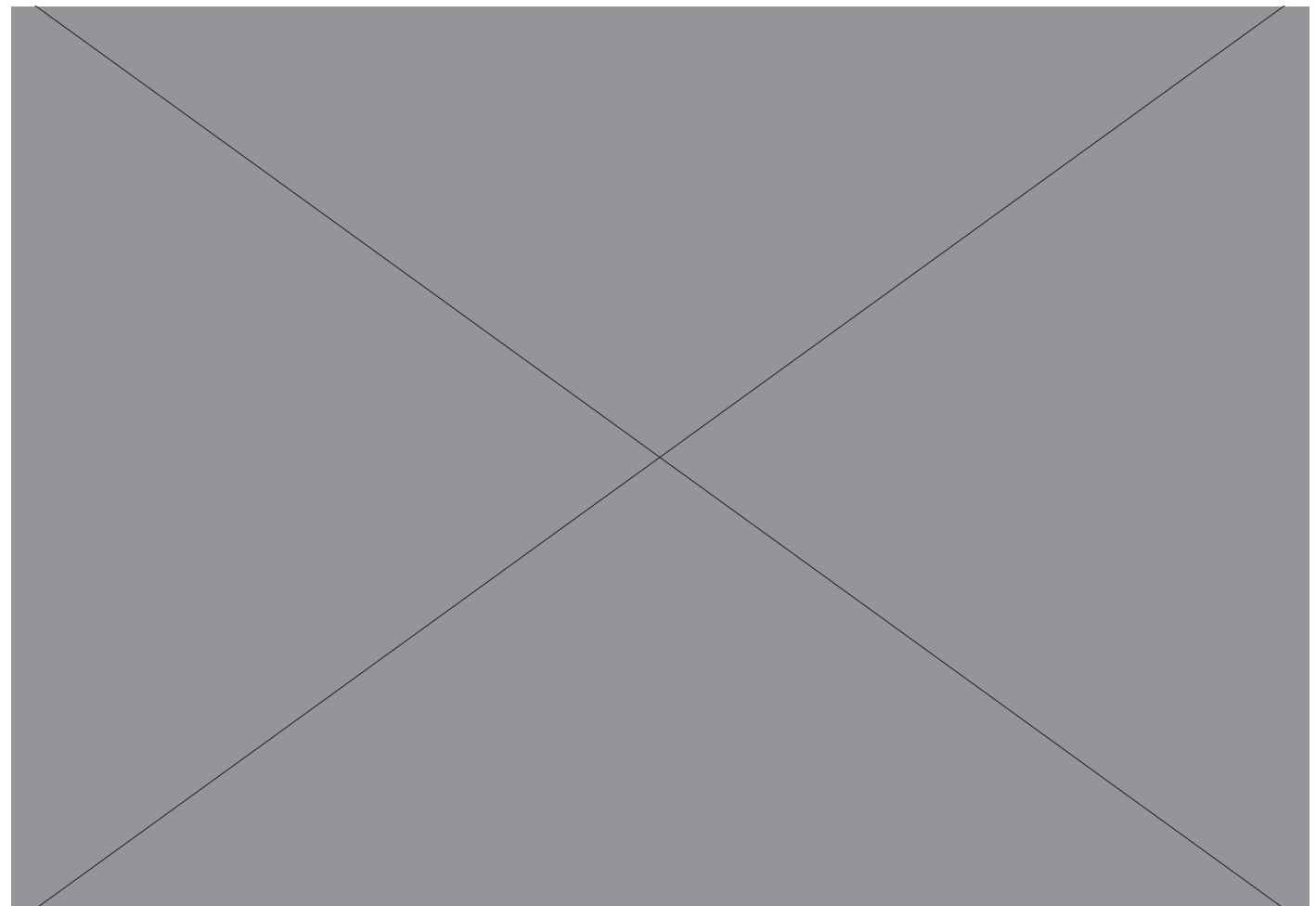
to attach its award sticker on the front of its package and take advantage of the impact such a win has on the award giver's considerable following or on open-to-suggestion consumers looking for something to help them decide between unfamiliar products. Win an award, create buzz, generate sales in the specialty markets and you may be able to overcome the lack of television and licensing and entice a mass market retailer—or any retailer, for that matter—to place your product on its shelf.

I wanted to know more about the prize industry so I spoke with Lisa Orman. She runs one of the toy industry's top public relations agencies, KidStuff Public Relations, and she is a big believer in awards. In fact, her clients tend to be big winners.

Orman says that the various awards programs, though different in how they assess products, all share the commonality that poorly made or designed products don't win awards. Only well-made toys do.

Therefore, if you win an award, it means something to the specialty retail market and to a coterie of parents who, in the thousands, follow the various awards

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and follow their lead in what they purchase.

There are a number of awards programs to pick from and each offers something unique. Here is how Orman, who has entered clients in many award programs over the last 14 years, describes them:

- Dr. Toy is the oldest of the awards programs and, Stevanne Auerbach, a.k.a. "Dr. Toy," is deservedly famous for the passion she brings to the process. [*Editor's note: Dr. Toy is on hiatus in 2008.*]

- The 28-year-old Parents' Choice Foundation, a not-for-profit group, is the second oldest of the awards programs. It is oriented towards educational products. A children's product receives an award when it is determined that children can easily understand, on their own, how to play with the toy or game.

- *Toy Tips* is a magazine run by Marianne Szymanski, and its program is the only one that charges no fees of any kind. Szymanski grades products on several parameters and features the en-

For more info...

**Award-giving groups**

- **Amazing Toy Awards:** *Babyzone.com*
- **Creative Child:** *Creativechildonline.com*
- **Dr. Toy:** *Drtoy.com*
- **iParenting:** *Iparentingmediaawards.com*
- **Mr. Dad Seal of Approval:** *Mrdad.com/seal*
- **Nat'l. Parenting Publications:** *Parenthood.com*
- **Oppenheim Toy Portfolio:** *Toyportfolio.com*
- **Parents' Choice Foundation:** *Parents-choice.org*
- **The National Parenting Center:** *TNPC.com*
- **Toy Man Product Guide:** *Thetoymanonline.com*
- **Toys Tips:** *Toytips.com*

tries in her magazine, along with a report card and her detailed reviews of the products.

- The Toy Man charges nothing to submit products to his review process. His is not really an "award" program, but, once submitted, some products are bestowed with The Toy Man Seal of Approval. At press time, the Toy Man's reports were the only toy review program that included references to country of origin. Products can be honored with "The Toy Man Award of Excellence" and the "Editor's Choice Award." He charges a small optional fee for his digital license and provides the lengthiest and most in-depth reviews.

- iParenting's program is unique in that, if you don't win, you can read reviewers' comments to find out why. This allows you to learn from the process and come back with a better product. It also allow submitters to ask custom questions of the reviewers that do not impact their score, so it's like a mini focus group.

- Oppenheim Toy Portfolio is influential in that its editors are regularly called upon to serve as guest toy experts on *The Today Show*. Oppenheim has published a book annually for 15 years about its winners. Being an Oppenheim "Platinum" winner usually means that you will get national exposure for your toy.

- The 17-year-old National Parenting Center says it has 100,000 visitors to its website, and it recognizes toys as well as a range of other products, from juvenile gear to parenting resources.

- NAPPA (National Parenting Publications Awards) issues "Gold" and "Honors" awards. Its "Gold" recipients are published in many of the regional parenting magazines across the country.

Other awards worth mentioning, each with their own

niche, are *Creative Child* magazine's "Toy of the Year," the "Amazing Toy Awards" from Babyzone.com and the "Mr. Dad Seal of Approval." There are also many specialized contests aimed at gifted or special needs children, teachers and others.

So, what does it cost to enter the awards process? Orman says that if you enter every award contest for all cycles of the year, it should cost you no more than \$3,000. That's far cheaper than running a single print ad. If you win, however, there are usually further costs. You will have to pay anywhere from \$100 to \$1000 for the award stickers or a digital license that allows you to print the awards directly on your packaging.

Orman thinks the awards processes for these programs are rigorous and valuable. She is proud that a large number of her clients win these awards. Her only criticism is that the costs for seals or licenses are not always transparent, resulting in winners not knowing to factor those costs into their budgets.

Even so, the price of this marketing approach is highly affordable for most companies and is a rare value in the toy industry. Take a hard look at the awards industry. It may help you level the playing field ... at least a little.

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possibly still on the horizon.

Most significantly, the proposed rules generally called for limiting the number of patent applications a party could file based on an invention, and limiting the number of claims that could be filed in any single patent application. Currently, there are no limits on either, as long as the applicant is willing to pay the fees charged by the Patent Office. The Patent Office justified the rule changes on the ground that the number and complexity of applications has increased dramatically and is supposedly crippling the office. An important fact to keep in mind is: your tax dollars do not pay for Patent Office operations; it's a self-funded organization, operated on the fees collected from patent applicants. In fact, it typically runs a surplus, with excess funds often designated for unrelated federal government programs.

The obvious solution to the Patent Office's problem of being overworked is to hire more examiners, and to charge more or higher fees to pay for it. Wouldn't you ramp up staffing if business was so good that demand from your customers outstripped your ability to supply your product? Instead, though, the Patent Office opted to reduce its workload by limiting the ability of inventors to apply for patents. In response, the court told the Patent Office that it did not have the authority to make such rule changes.

Stay tuned, because more rule changes are bound to come. But this time, at least, the "good guys" beat "City Hall."

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