

# People of Play: IP Disputes for Game and Toy Makers

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**IRWIN IP**

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**INTELLECTUAL PROPERTY LITIGATION**

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# Irwin IP



**Jason Keener**

- Handling IP issues for 18+ years
- Represented Games Workshop and other game companies in IP matters
- Ork player in Warhammer 40k
- Father of two D&D playing daughters



**Andy Himebaugh**

- Handling IP issues for 2+ years
- Litigated IP disputes before five different courts
- Burn Deck Player in Magic: the Gathering
- Highest Wordle Streak: 57



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# What is IP?

(12) **United States Patent**  
Calvert

(10) **Patent No.:** US 7,871,077 B2  
(45) **Date of Patent:** Jan. 18, 2011

(54) **SYSTEM AND METHOD FOR PLAYING A DICE GAME, APPROXIMATING A CARD GAME**

(76) **Inventor:** Carmelo Calvert, R.R. 1, Box 55A, Eldred, IL (US) 62027

(\* ) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 12/290,413

(22) **Filed:** Oct. 30, 2008

(65) **Prior Publication Data**  
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(51) **Int. Cl.**  
A63F 9/04 (2006.01)  
A63F 7/00 (2006.01)

(52) **U.S. Cl.** 273/146, 273/292

(58) **Field of Classification Search** 273/146, 273/292, 463/13

See application file for complete search history.

(56) **References Cited**

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\* cited by examiner

**Primary Examiner:** Benjamin H Layton  
(74) **Attorney, Agent, or Firm:** Mark Masley

(57) **ABSTRACT**

In certain embodiments, the present invention relates to poker dice and methods of gameplay using poker dice that (i) allows game participants to roll all of the common poker hands (high card, pair, two pair, three of a kind, straight, flush, full house, four of a kind, straight flush, royal flush), in an efficient manner, (ii) enhances the gameplay of the poker-related dice game by using six-sided dice, and (iii) enhances the gameplay of the poker-related dice game by allowing wildcards to be incorporated into the poker dice.

12 Claims, 2 Drawing Sheets

A	3	4	5	6	J	Die Number 1
A	4	3	9	6	J	Die Number 2
A	4	7	6	8	J	Die Number 3
A	3	7	5	9	J	Die Number 4
K	2	4	9	10	Q	Die Number 5
K	Q	9	7	5	3	Die Number 6
K	2	10	8	7	J	Die Number 7
K	Q	10	8	5	2	Die Number 8
Q	10	8	6	2	J	Die Number 9



**Trademarks**  
Word, phrase, symbol, design, or other that identifies your goods or services

**Trade Secret**  
Specialized knowledge kept secret to maintain a competitive advantage

**Copyrights**  
Expression of an idea

**Patents**  
**Utility** - New and useful inventions

**Design** - ornamental appearance



# What Can Be Protected by Trademarks?

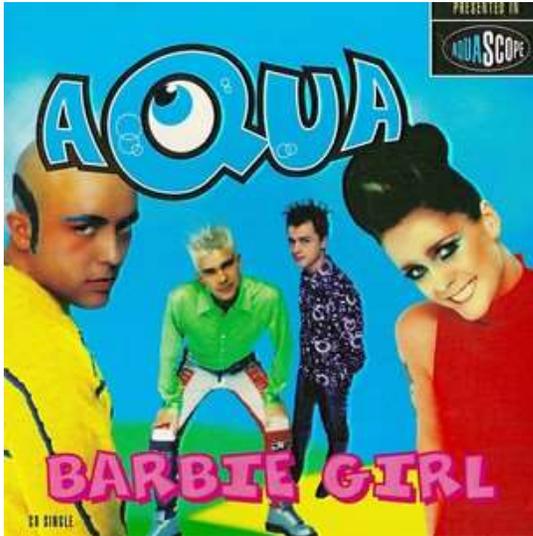


*General Motors v. Lanard Toys*

- Trademarks can also protect *trade dress*, which extends to things like **packaging** and **product appearance**
- G.I. Joe toy infringed General Motors' Hummer trademarks for the **general shape of the vehicles** and **appearance of the grille**



# Limits of Trademark Protection?



*Mattel, Inc. v. MCA Records*

**“The parties are advised to chill.”**

Despite Mattel’s extremely famous trademarks for Barbie’s name, appearance, etc. the court did not find that MCA’s song, a parody, infringed the marks or damaged their marketability.



# Common Trademark Mistakes

- ▶ Not using ™ or ®
- ▶ Not doing “clearance search” before committing time and money
  - ▶ [Trademark Electronic Search System \(TESS\)](#)
- ▶ Ignoring ability to reserve a name before launch
- ▶ Failing to take action against infringers
- ▶ Not paying attention to field of use



- ▶ When to call an attorney
  - ▶ Ideally, before start using a mark
  - ▶ Afterwards, to strengthen the mark
  - ▶ Cost is relatively low



# What Can Be Protected by Copyright?



Screen shot of Duels of the Planeswalkers 2014



Screen shot of Hex: Shards of Fate

## Instant Quick Action



Giant Growth



Wild Growth



Instants work like Quick Actions. You can cast those at any time you have priority.

## *Wizards of the Coast LLC. v. Cryptozoic entertainment, LLC*

- Wizards alleged that Magic: The Gathering's cards, plot, elements, circumstances, play sequence, flow, pace, creatures, and selection and overall arrangement of elements were copied identically by Cryptozoic in Hex.
- Did Wizards' copyright really cover all of that? Most likely just some of it.
- Wizards also alleged infringement of its patents and trademarks on similar grounds—the parties settled out of court.

## Creature/Troop



Vampire Outcasts

Corrupt Harvester

Troops are just like creatures, they act the same way. In this example they both have the equivalent ability of dealing damage and gaining that much life, Lifelink vs Lifedrain. There are other abilities creatures can share from Magic:

Haste = Speed

Flying = Flight

Vigilance = Steadfast

Defender = Defensive

First Strike = Swiftstrike

Hexproof = Spellshield

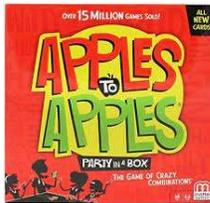
Trample = Crush

# Limits to Copyright Protection?



*DaVinci Editrice v. Ziko Games*

- Copyrights protects the expression of an idea, not the underlying idea
- For games, that means that game concepts and mechanics, rules, etc. cannot be protected by copyright—this was the reason that Legends of Three Kingdoms was not found to infringe BANG! or



compared to:



# Common Copyright Mistakes

- ▶ Waiting until after ripped off to register
- ▶ Relying on “poor man’s copyright”
- ▶ Failing to consider what you can and cannot use from other sources
- ▶ **Common myths - Copying okay if**
  - ▶ Use of less than 30%
  - ▶ Use of less than 200 words
  - ▶ I change at least 25%
  - ▶ I say where I got it from
  - ▶ I found it online
  - ▶ Everyone else doing it



- ▶ **When to call an attorney**
  - ▶ Earlier the better
  - ▶ Or - upon infringement
  - ▶ Registration is CHEAP

<https://www.copyright.gov/registration/>



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# Bringing Trademark and Copyright Together

*Games Workshop Ltd. V. Chapterhouse Studios LLC*

- Copyright - Making figures where artwork shows what they look like, but the company didn't release the figures yet



- Copyright - Making “bits” for customization that use same underlying parts, such as Space Marine shoulder pads



- Trademark - Making new figure designs but marketing them for various Games Workshop races and characters (Dark Eldar, Imperial Guard, Chaos Space Marines, etc.)

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# What Can Be Protected by Patents?

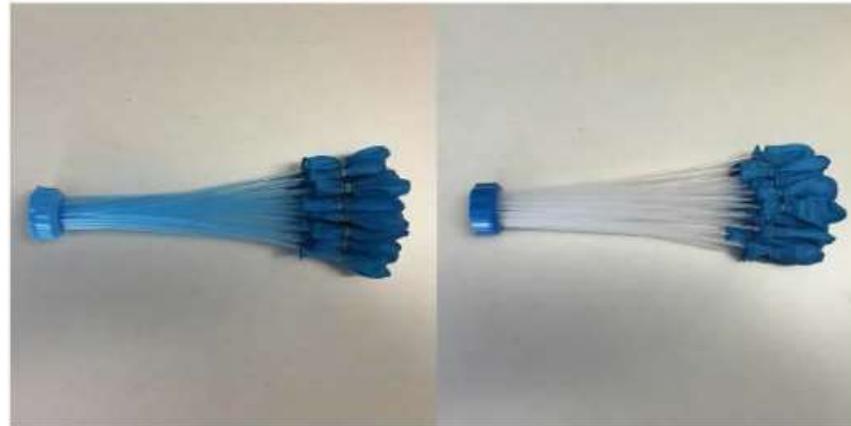
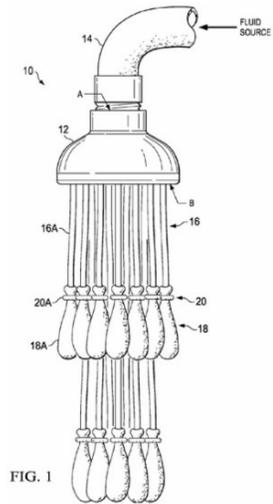
Stay Tuned: Frank Sardone



# Utility Patent Disputes: “Bunch O’ Balloons”

Bunch O Balloons

Balloon Bonanza

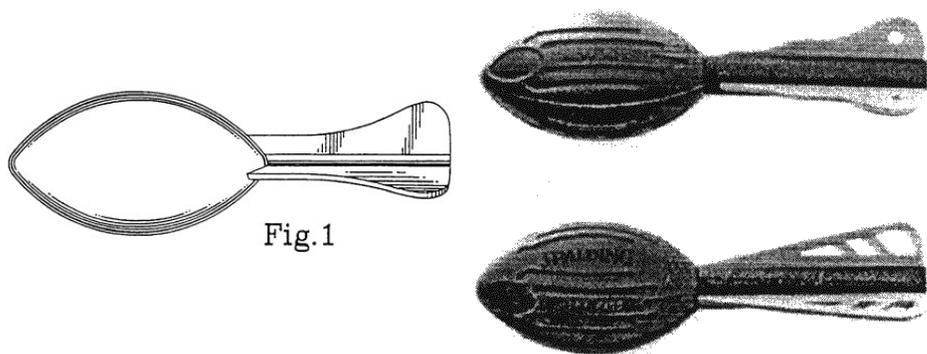


*Tinnus v. Telebrands*

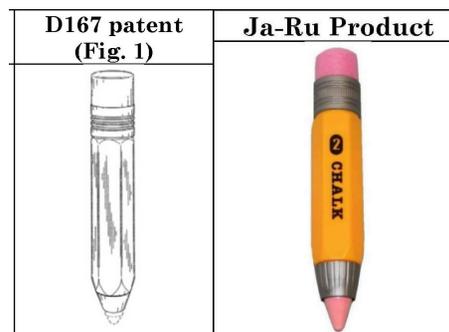
- Bunch O Balloons patent owner won an injunction to stop Telebrands from selling Balloon Bonanza
- The parties settled after 4 years of litigation with patent owner receiving over \$31 million in compensation.



# Design Patent Disputes: Footballs and Chalk



*OddzOn Products v. Just Toys*



*Lanard & Toys v. Dolgencorp*

- Design patents, ***much*** easier to obtain but only protect design not ideas. Many large companies will have hundreds or even thousands of design patents on products or components of products as a result.
- *OddzOn* and *Lanard* are two examples of the limitations—the design patents did not protect the broader concept of a finned football or pencil-shaped chalk dispenser, but rather only very specific ornamental features.

# Where to go from here...AI and NFTs?

- Can AI or other non-humans be an author or inventor?
  - Monkey photographer - No
  - AI artwork (Craiyon) - No
  - Author using AI (Craiyon) - ???
- Does owning an NFT provide any copyrights?
  - No...
  - But blockchain can still be useful to distribute IP rights for purposes of crowdfunding, royalties, etc.



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# Is there someone I can talk to?

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Set up an appointment with us:

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