

The Baby Bust

Planning today for a tomorrow with fewer kids

By **Richard Gottlieb**

Worldwide, birthrates are sharply declining. Not surprisingly, this will have a particular impact on any industry that markets to children—including the toy industry, if we don't pay attention to and plan for the changes ahead.

Europe has a dramatically declining population of kids. So does Japan. In the U.S., the birthrate is still rising but in a patchwork fashion, with some metropolitan areas reporting more deaths than births.

In a July 3, 2008, article entitled "As the Birthrate Drops, A Doll Is Born in Japan," *China Daily* reported that "Japan is the first developed country to register more annual deaths than births and the elderly will outnumber children two to one within five years."



■ For all the lonely people: Bandai's Primopuel dolls

I don't know about you, but that statement stops me in my tracks.

The lack of children has gotten so dire that it has already had an impact on the Japanese toy business. The same *China Daily* article reports that Bandai's most popular doll in Japan is one that is targeted to those old enough to be—but aren't—grandparents. Called Primopuel, "It's now Bandai's best-selling doll with more than a million bought, mostly by women in their 50s and 60s," according to *China Daily's* story.

Japan is not alone. In an article that could only be described as disturbing, *The New York Times Magazine* reported in its June 29, 2008, issue on Europe's rapidly declining birthrate. In the 1990s, European demographers began noticing that a sharply declining birthrate was occurring across the continent. Since then, it has declined even more. "For the first time on record," the article states, "birthrates in southern and Eastern Europe ha[ve] dropped below 1.3 ... At that rate, a country's population would be cut in half in 45 years."

This decline in birthrates is not just occurring in developed countries. The global birthrate is declining as well. Again, according to the *Times*, "... birthrates have plummeted—from 6.0 globally in 1972 to 2.9 today."

The U.S. is experiencing a different phenomenon. America has a fertility rate of 2.1, its highest since the 1960s. But while that birthrate is healthy, population

growth is uneven. According to a May 18, 2008, *New York Times* article ("As Deaths Outpace Births, Cities Adjust,") there are more people dying than being born in the Northeast, the Rust Belt of the Middle West and Appalachia. In Pittsburgh, for example, the enrollment in the public school system has declined from 70,000 in the mid-1980s to 30,000 today.

With numbers like that, marketing children's products in the U.S. is going to get a lot more complicated. For the toy business, it will mean a need to shift how, where and to whom we market. Toymakers will have to look for markets wherever there are children. It will mean toys flowing in new ways, including into China from the West. New markets—at least to Western firms—will need to be exploited in India, Russia, Vietnam and other countries with large youth populations. The potential "gold rush" for a piece of these still-growable markets will spark intense competition among the developed world's toy manufacturers.

Following the leaders

It is probably European and Japanese toy companies that will lead the charge into major new markets. The U.S. toy business, with exceptions, has talked global, but stayed close to home. We may still be able to afford to maintain that stance, but not so our European and Japanese counterparts driven by a need to open new markets or face oblivion. As a result, U.S. companies shouldn't feel too smug about their comparative advantage in birthrates. Successes by overseas toy manufacturers to open new markets will make them more sophisticated, more robust and much richer.

If American companies do stay home, they could eventually find themselves struggling on their own turf against companies who, by truly going global, have already done the work needed to become much stronger. The US auto business provides a model for what happens when domestic firms become complacent.

For toy retailers, doing business in countries or regions with negative birthrates will also pose challenges. The smart ones will either drive their competitors under and corral whatever market share is available, or shift their product selection to contain more toys that appeal to new audiences, like adults.

Surely, there are going to be winners and losers in the coming fight for market share among a shrinking audience for children's products. The winners are going to be those who anticipate the future and take actions now to determine what their products and strategies are going to look like five or 10 years down the road.

Richard Gottlieb is president of Richard Gottlieb & Associates, New York, a provider of business development services, and author of Ambassador to the Kingdom of Wal-Mart. He can be reached at richard@usatoyexpert.com.



THE LEGAL DEPARTMENT

Winning Wii Strategies

YOUR KIDS AND THEIR FRIENDS aren't the only ones spending time with Nintendo's Wii. Recently, a federal jury in Texas had a chance to "play" with the Wii, too. In a patent infringement suit brought against Nintendo over several of the controllers used for the game, a jury issued a verdict of more than \$20 million against the video game maker. Though it may appear that the company ran out of lives in this contest, in actuality, Mario and company may be off celebrating in some secret level.

How could a \$20 million verdict be considered a victory? Consider what the plaintiff, Anascape Ltd., was seeking from Nintendo. By accusing Nintendo's GameCube controller, wireless Wavebird controller, Nunchuck controller, Wii Classic controller and Wii remote controller of infringement, Nintendo had over \$1 billion in sales at stake. Anascape's damages expert told the jury that a royalty to compensate for the alleged infringement was at least 5 percent of sales, or more than \$50 million in damages.

Nintendo used an interesting strategy in responding to this damages theory—it essentially ignored it. Rather than putting on its own expert to give a much lower damages number, Nintendo chose not to present any damages theory at all. Instead, Nintendo focused on convincing the jury that its accused game controllers did not infringe in the first place. Of course, this strategy, if fully successful, would have resulted in Nintendo paying nothing. The calculated risk Nintendo took was that the jury would not hear from an expert with a different damages number—in essence, presenting the jury with a potential all-or-nothing scenario.

In reality, Nintendo worked hard at trial to prove that its big selling Nunchuck controller did not infringe. Nintendo also pressed hard on a trial theme that Anascape had, in fact, copied Nintendo, rather than the other way around. These efforts were, at least, partly successful. The jury concluded that the Nunchuck did not infringe. And the end result was a verdict that was less than half of what Anascape was seeking from Nintendo.

In litigation, as in video games, it's important to develop and implement the right strategies in light of the strengths and weaknesses of your particular situation. Some lawyers advise "scorched earth" tactics that leave no stone unturned, and no argument un-rebutted. Don't accept that approach without careful consideration. Often—in fact, usually—that is not the best approach. Here, Nintendo's strategy, which largely ignored the damages portion of the case, paid off.

Marc S. Cooperman is a partner with Chicago's Banner & Witcoff Ltd. He specializes in IP litigation. He can be reached at mcooperman@bannerwitcoff.com.



The US video game industry generated \$6.6 billion in sales in 2008's first five months, a figure higher than its sales for all of 1997. This year, video game industry revenues are expected to reach \$21 billion to \$23 billion. —The NPD Group