

A Greater Toy Section

Integrated electronics areas can boost sales

By Richard Gottlieb

don't throw the word delightful around very much, but when visiting the *Holiday Wishes* event this past fall, I saw a number of items that I thought were...well, delightful.

What most of these products had in common was the combination of traditional toy play with new technologies. They all had traditional play value, yet they all intelligently used technology to make the product better. These products were generally targeted at younger children with design features that were cool by anybody's standards. More importantly, the technology element didn't just add bells and whistles—it actually amplified the use of the child's imagination.

For example, I saw a new take on an old favorite, collector cards, that used a code on each card to allow a child to go

separation does help attract adolescents and young adults to a location that's less "kiddie" than the rest of the store—and lets them try out the games as loudly as they want. That's great when you are trying to sell games about stealing cars or beating up bullies, but it's no place for toys about ponies, or make up or fashion design. Tech toys of that type should be merchandised anywhere but places like "R Zone," because such products are designed for younger children whose parents are still the gate keepers of what playthings they possess. It's hard to imagine the mother of a 6-year-old girl or boy entering the video game department to purchase these types of products. And because of that, isn't it time for the toy department to, once again, become the home for toys that delight, no matter what their technology, and be



■ Not like chocolate and peanut butter: Merchandising teen-oriented video games like Rockstar's *Bully* and Radica's tween girl-targeted *Digi Makeover* in the same department most likely hurts sales of both.

online and actually play with whichever character (in this case a horse) was on the card. I saw another toy that allowed a child to design clothes on the computer, and one that allowed children to use the computer to put their pictures on the screen and see what they'd look like with different hair colors, hair styles or make up. Now that, my friends, is what I call delightful!

As delighted as I was, the question that kept occurring to me was, Where do these products belong? I think it's the toy department. The problem is, there is often no place for such products in the traditional toy department. Some of these toys are going to be relegated to electronics or video game departments.

Finding the Zone

Places like the "R Zone" at Toys "R" Us are electronically walled off areas which are designed to draw in and separate teens and young adults from the child-oriented products in the rest of the store. More often than not full of violent sounds and imagery, these sections offer titles like *Grand Theft Auto* and *Bully*. The

a place where children and parents naturally gravitate and feel comfortable? As a result, I would like to see retailers increase the size of their toy departments to include sections for products that have technology components and are aimed at children under 8 years old. This could include anything from E-rated (for 'Everyone') game software to interactive and Internet-enabled products to new hybrid items.

Such a move would be good for everyone. Manufacturers would place more products, because their items would have a natural home. Retailers would sell more products, because they would be located where parents of their target market expect to find the products. Consumers would benefit, because they would find the products that are age-appropriate for their children right in the area of the store where they are most comfortable shopping. In short, by making the toy departments much bigger and better, the extra mass and variety would draw more consumers and create more sales for everyone.



—Marc S. Cooperman

Marc S. Cooperman, a partner with Banner & Witcoff Ltd., Chicago, focuses on IP litigation.



THE LEGAL DEPARTMENT

Rail Yard Lessons

WHEN LIONEL HIRED a company to design new trains, it likely could not have imagined the cascade of events it would set into motion. Six years later, as a direct result of that sourcing decision, Lionel filed for bankruptcy protection in the face of a \$40 million judgment against the company. The toy industry can learn valuable lessons in business and litigation decision-making by examining the experience.

1. Choose a Supplier Carefully

In the late 1980s, Lionel hired MTH to work on its behalf with a Korean company that designed and supplied its model trains. After the relationship ended in the early 1990s, MTH began selling, under its own name, model trains designed and made by the same Korean company.

In 1998, another Korean company approached Lionel about designing and making its trains. Lionel placed an order for two trains with that firm, which then hired designers who had previously worked with the first Korean company. Before leaving the first company, the designers copied and took with them design drawings for MTH trains. After the new Lionel trains hit the market, MTH initiated an investigation, believing its train designs had been stolen. This eventually led MTH to sue Lionel and the Korean design company for trade secret theft, resulting in the \$40 million jury verdict for MTH.

2. Know Who Your Experts Are

To establish that its designs had been copied, MTH presented the jury with testimony from an American engineering professor. The appellate court concluded that MTH's expert should not have been allowed to testify because he lacked a "rudimentary understanding" of Korea's model-train industry. For example, one of the factors he had relied on in evaluating similarity was whether two drawings assigned a part the same number. What he hadn't known was that Korean manufacturers share a common numbering system for train parts.

3. Identify Your Trade Secrets

During the trial, MTH argued that its trade secrets ("something of commercial value that is not publicly known") were reflected in a combination of information in its design drawings. Lionel argued that this was not a specific enough identification of the supposed trade secret and, since such information was already known to the public, could not qualify as a "secret." However, the appellate court sided with MTH. It concluded that a trade secret can exist in a "combination" of elements or processes, each of which was previously known to the public, but the combination of which is unique.

Eighty-three percent of parents say they are aware of the Entertainment Software Rating Board's video game rating system, and 74 percent of them report regularly checking the rating of the games their children desire before purchasing them. —ESRB