

Tomorrow's Past

Looking at the toy business from the year 2030

By Richard Gottlieb

It's difficult now, in the year 2030, to appreciate the tumult that the American toy industry endured in the first decade of the 21st century. In the vanguard of globalized manufacturing, battered by the arrival of consumer electronics as a form of play, impacted by the dominance of a few major retailers and a dramatically shrinking customer base, bewildered by what was called "age compression" and confused by the constantly changing nature of technology and communication, the toy business was stunned to find itself confronting consecutive crises. First it lost its home of over 100 years, "The Toy Building," and then faced a crippling series of product recalls that damaged its image, sales and equity.

The fall of The Toy Building came first. Actually two buildings—the larger was a 19th century hotel converted into offices—it had sheltered the industry

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through a number of wars, the Great Depression and a constantly changing marketplace. With its unchanging interior and exterior, The Toy Building provided stability in an ever-changing world. But by the end of the century, it came to be more of a fortress against that changing world than a true home for the industry. Each February, Toy Fair attendees would return with a sense that the world was rapidly moving forward, yet be reassured by the sameness within its walls that change did not apply to their industry. Manufacturers and retailers would come and go, but the The Toy Building would remain as it always had.

The great decline

Most did, however, note that something was wrong. Elevators once packed to overflowing sometimes ran empty. A show that had once run for three weeks shrank to mere days. Fast-growing manufacturers and retailers headquartered in other parts of the country began to question why the show had to be held in New York. Major players cut back their participation and siphoned buyers to private showings. Buying decisions moved backward in time as initial toy presentations began taking place in October rather than the traditional February.

Soon, Hong Kong was the place to make major purchases, and manufacturers and buyers began an annual trek that included Hong Kong, Dallas, Nuremberg and a notably less significant New York.

It was in this atmosphere that the loss of The Toy Building took place. Attempts were made to create a new toy building, but a critical mass never formed and in that void the then Toy Industry Association moved its increasingly important fall show to Texas.

Toy industry members probably felt they were fi-

nally sailing into smoother seas when they were suddenly confronted, in 2007, by a series of product recalls based on the use of lead paint in products made in China. Toy industry leaders suddenly found themselves in the camera's glare as they appeared before Congress, apologized to governments and saw their words parsed for meaning, mistakes and culpability.

With all of this going on, it was understandable that the industry missed the big picture. What they could not know was that China helped the toy business on its way to greener pastures, and within a few years China's percentage of world toy production dropped by half. Manufacturing migrated across Asia, to Mexico, the Caribbean and even back to the U.S., where highly automated manufacturing facilities were built. Automation did away with low-cost labor, and by centering production in North America manufacturers could avoid the long transit from Asia—and

the innate risk of dealing with non-democratic governments, inflation and currency shifts.

Another major change became evident when the toy industry began viewing technology as a friend. The early 21st century saw a flood of products that combined classic play with new technology. In front of the technology boom for the first time in decades, the toy business re-absorbed the video gaming industry.

An entertaining notion

Today, we take for granted that the "toy industry" is now called the "entertainment industry." No longer stigmatized as makers of products "just for kids," the industry exploded with new revenue. Taking full advantage of the shift to virtual retailing, the industry saw its account base grow steadily.

Today, the entertainment industry is a \$100 billion business—and still growing. And some of the more forward thinking giants of the 20th century still play a role in that success. We can now look back and see that, for the toy industry, the best was yet to come. Of course, they didn't know it at the time, so our predecessors are to be forgiven for their doubts. What they forgot, and we should always remember, is that those who design and sell products that entertain provide something people will always need: a chance to feel joy and to share it with others.

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Fantasy Ball and The Law

DO YOU PLAY? If you don't, you likely know someone who does. Fantasy sports are big business. Millions of big league fans flock to Internet websites each season to try their luck at managing theoretical teams of all-stars. Of course, use of the players' names and statistics is key to the fantasy leagues. But who owns the rights to that information?

Several years ago, former players sued Major League Baseball, arguing that they owned their performance statistics. MLB argued that such information was historical fact that should be free to the public. Given that pro baseball is followed by millions, and that the public has an enduring fascination with records set by its players, the court in the prior case denied the players' claim, concluding that their statistics are integral to the public's full understanding and enjoyment of the game.

Times change, but apparently baseball players don't. Players again recently fought over the rights to their performance statistics—this time for use in fantasy baseball. In 2005, the MLB Players' Association entered into an exclusive license with MLB Advanced Media for the rights to the ball players' names and stats for use in interactive media. Wanting to keep its share of the fantasy sports business, the company that previously licensed performance stats from the Association, CBC Distribution and Marketing, took offense to this change.

First Amendment prevails

The Association argued that CBC's intention to use players' names, likeness and stats without authorization would violate players' "right of publicity"—to control and profit from the commercial use of one's name and persona. An appellate court ruled in October that CBC's planned use of the stats in fantasy baseball did violate this right of publicity. But that call did not end the game.

CBC argued that the First Amendment's free speech guarantee protected its right to use player information, and the court agreed, finding that the ability to discuss data relating to players' performance is a public interest that is constitutionally protected. Also important to the court's decision was the fact that professional players are rewarded "handsomely" for their play and endorsements, making the violation of their right of publicity relatively insignificant. The court concluded that the interests protected by the First Amendment outweighed the players' right of publicity, so CBC got to use players' names, nicknames, likenesses, signatures, pictures and records.

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A poll of nearly 1,000 holiday shoppers in the U.S. found that 53 percent planned to buy toys as gifts. Seventy-seven percent of respondents aware of this year's toy recalls said safety concerns would affect what they purchase. —Maritz Research