

Triple Word Score

BOARD GAMES ARE STILL big business. Electronic versions of board games have become an even bigger business. For all you doubters out there, Hasbro recently reminded the industry that intellectual property can be an effective weapon to protect that business when it successfully went after Scrabulous, an Internet-based word game that was a clear knockoff of Hasbro's Scrabble game.

Launched on the Internet in July 2006, Scrabulous became one of Facebook's most popular applications, reportedly with over half a million users daily. No doubt, part of the allure of the game was its familiarity. In addition to overtly suggesting a connection to Scrabble through use of a similar name, Scrabulous also mimicked the look and feel of Scrabble. The game board had a 15 square x 15 square playing field, the same as Scrabble's. The game board consisted of virtually the same pattern, colors and values of bonus squares as Scrabble. The game even included the same point values and distribution of letter tiles as Scrabble.

Legally, this was an easy one. In July, reportedly after unsuccessful efforts to acquire the rights to Scrabulous, Hasbro sued for copyright and trademark infringement. Among other things, Hasbro pointed to the near identity of the games' boards and tile designs. Hasbro had registered Scrabble's elements with the Copyright Office long ago.

The same day Hasbro filed suit, Electronic Arts launched the officially approved version of Scrabble on Facebook. Within days, Scrabulous was taken down from Facebook, reportedly at the request of the developers of the program. As of the writing of this column, though, the Scrabulous website was still up, so at this point Hasbro's legal victory remains incomplete.

Many companies wrongly believe that their games cannot be protected from copying. But graphics and text (like Scrabble's) are classic creative elements of games that can be protected by copyright, or a design patent. Even though the idea for a game, and the method of play of a game, cannot be protected by copyright, they may be protected by a utility patent.

And of course, don't forget about trademarks. There was no reason for the Scrabulous designers to choose a name that evoked the Scrabble name so clearly, except to falsely suggest a connection to Scrabble. According to the complaint, Scrabulous' programmers went so far as to include "Scrabble" in the metatags of their game's website so Internet users would find the Scrabulous site when using search engines to find Hasbro's game.

In the end, the only surprising thing about this story is that Hasbro didn't file its complaint about Scrabulous two years sooner.

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'Toy' Redefined

An expanded view of the business we're in

By Richard Gottlieb

Looking back now, I believe I had a nervous breakdown when I was 5 years old. It was caused by playing "Kick the Can." Some of you may not be familiar with Kick the Can. That's because it was outlawed in all 50 states plus the related U.S. territories some time in the mid 1970s (although, it actually may still be played in American Samoa, but no one will talk on the record).

The game consisted of someone being "it" and then trying to capture everyone who was not "it" while protecting the can; the idea was to prevent someone not yet caught from running in, kicking over the can and setting everyone free. In this particular game, I believe I had captured everybody but one five times in a row only to have that one player, yet uncaught, come running in, laughing demonically, and kicking over the can. This set everyone free ... yet again.

I was obviously not the John Wayne of 5-year-olds, because I recall melting down in frustration and crying.

If we look at ourselves as being in the 'play business' then any company offering opportunities to play is a competing company and any product that involves play is a competing product.

I bellowed out against the gods, shook my little fist, and recited the entire "To be or not to be" soliloquy from Hamlet. (OK, the last sentence is an exaggeration, but not a big one.) Soon after, one of our mothers—obviously alarmed at my outpouring of grief, which she could hear from within her house—came out on her porch and shut the game down. A bit stunned, I went home, where my mother dosed me with what was then the methadone of the mid-20th century American South: Royal Crown (RC) Cola and Potato Stix.

So what, you may ask, brought back this memory of Kick the Can? Well you can blame it on the Strong National Museum of Play. I had been invited up to Rochester, N.Y., by the museum's CEO, Rollie Adams, to discuss the museum and how it could be a source of inspiration and knowledge to the toy industry.

History lesson

For those of you not familiar with this important museum, it is a wonderful celebration of play. The museum houses the largest non-public collection of toys in the world. It is also home to the Toy Hall of Fame and to a huge doll collection. Amazingly, the museum's 6½ acres of floor space also includes a preschool and a public library.

The museum is filled with artifacts—wonderful old games and long forgotten toys for us adults—and an array of interactive displays for today's children. The mix was so evocative that I was overwhelmed with memories of playing certain games as a kid—both the kind you had to buy and the kind that were free.

Of the former, I can remember playing Calling All Cars, Careers, Kootie, The Davy Crocket Game and endless hours of Monopoly. I particularly remember playing a board game called Star Reporter with my older sister, Joyce. I recall that the playing pieces were

(are you ready for this?) ... hat pins!

I also remember playing wonderful childhood games like Hide and Go Seek, Spud, Seven Up, "Guns" or "Army," as well as Cowboys and Indians. Unfortunately, I also played Kick the Can. Hence my flashback. And so, the Strong National Museum of Play owes me a Royal Crown and a can of Potato Stix for dredging up that memory. I, however, owe it a revelation.

As its name implies, the museum does not just celebrate toys. It embraces all forms of play, and that means anything from cardboard boxes and checkers (both are members of the Toy Hall of Fame) to the dreaded Kick the Can. It was while there, pondering the concept of play and its many attributes, that I asked myself the question business philosopher Peter Drucker put to his clients: "What business are you in?"

Many now defunct businesses answered that question incorrectly. They were too parochial in their response and as a result got smashed by changes in technology or public taste. Think record companies who

thought they were in the "record" business instead of the entertainment business. And so, it suddenly hit me that the reason we in the toy industry keep getting blindsided by new technologies and suffering from age compression is, at least in part, because we think we are in the toy business, while what we are really in is the business of play.

If we look at ourselves as being in the "play business" then we realize that any company that offers opportunities to play is a competing company and that any product that involves play is a competing product. That also means that anything we produce, whether it looks like a toy or not, is appropriate as long as it allows the end user to engage in play.

So, maybe we should stop trying to give the world "toys" and get on with the business of giving them vehicles for engaging in play. If that means musical tooth brushes, video games, cell phones and PDAs, so be it, as long as whatever "it" is brings joy.

And this doesn't just apply to manufacturers. If you're a retailer, ask yourself if your store has a toy department or does it have a play department? Do you own a toy store or a play store?

Whatever part of Toy Nation you inhabit, maybe it's time for you to take a trip to the Strong National Museum of Play, or visit a playground, amusement park, electronics store or wherever people go to find things to play with. It might just expand your universe.

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