The Legal Profession Saga Behind the Toy Story

Author : Eli Wald

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Orly Lobel, **You Don't Own Me: How Mattel v. MGA Entertainment Exposed Barbie's Dark Side** (2018).

You Don't Own Me is a colorful telling of the Bratz v. Barbie battle, a modern David and Goliath decade-long dispute fought by MGA Entertainment and toy giant Mattel. It is a story of competition, innovation and greed, economic espionage and corporate personalities larger than life, of creativity and its legal treatment, of dolls, and ultimately of American culture itself. In Professor Orly Lobel's masterful hands this award-winning book ((For reviews of Professor Lobel's book see Wall Street Journal, New Yorker Magazine, and the Financial Times.)) effectively mixes legal analyses and business insights to offer a compelling read.

At the same time, if you dig a little deeper, *You Don't Own Me* is also a fantastic account of the legal profession saga behind the toy story, examining the various roles legal actors–outside counsel, in-house lawyers, judges and jurors–played in the litigation, and their interactions with clients, related parties, and the general public. In particular, Part III, titled *Warring Titans* (Pp. 125-243), is a must read for lawyers and law students interested in contemporary law practice.

Briefly, Mattel sued MGA (then a smaller toy manufacturer) and Carter Bryant (Bratz's designer) in federal court for intellectual property infringement in 2005, asserting that Carter initially conceived of Bratz, the so-called anti-Barbie doll, while he was an employee of Mattel; that Carter assigned to Mattel all his future creativity and innovation while at its employment; and that Mattel owed the copyright to Bratz. Initially, Mattel prevailed, winning a 2009 jury verdict after which Judge Stephen Larson issued a global all-inclusive injunction ordering MGA to pull Bratz from the market and stop production. (Pp. 145-174.) Judge Kozinski writing for the Ninth Circuit Court of Appeals reversed (chapter 9, *Taming Barbie*, Pp. 175-191), and MGA prevailed before Judge David Carter in 2011 (chapter 10, *Round 2*, Pp. 193-229). Recounting this legal saga within the greater story, Lobel provides deep insights into the practice of law.

To begin, consider the interplay between the following three phenomena in contemporary law practice: the federal-state court litigation dichotomy, the corresponding distinction between BigLaw and litigation boutiques, and increased specialization. As Lobel explains, elite BigLaw firms tend to dominate federal court litigation—especially specialized litigation, such as intellectual property infringement cases—leaving the less prestigious state court litigation to solo practitioners and small law firms. Thus, MGA's decision, in preparation for Round 2, to retain a general litigation boutique to take over the lead in its defense from the BigLaw firms which handled Round 1, was surprising. How bold, and uncommon given the under-representation of women lawyers in positions of power and influence in the legal profession, was the move to entrust the first chair to Ms. Jennifer Keller of a small all women-owned law firm? Less surprising was the establishment's response to these moves: "Mattel's Quinn Emanuel attorneys," writes Lobel, treated Keller condescendingly. "At one point John Quinn said about Jennifer dismissively, 'She's behaving like a state court attorney.'" (P. 195.)

Relatedly, Lobel's gripping account provides a window into the complex world of lawyer identity, client identity, and corporate attorney-client relationships. MGA's unorthodox decisions, points out Lobel, were

made by its flamboyant immigrant outsider Chief Executive, Isaac Larian, because he "had been unable to get along with the highly paid lawyers from some of America's biggest law firms." (P. 194.) In contrast, Mattel, led by Robert Eckert, its "all-American professional CEO" (P. 168), opted for BigLaw elite outside counsel. Eckert was "[p]art of an old boys' network of Fortune 500 professional CEOs, [who] frankly admits that lucrative executive gigs only go to members of an exclusive society." (P. 110.) *You Don't Own Me* suggests similarly that lucrative legal gigs (still) only go to members of an exclusive legal society, the elite club of elite large law firms, in part because of the informal ethno-religious and class affinity between their lawyers and C-Suite executives making decisions as the authorized constituents for Fortune 500 entity clients.

Next, the book details Mattel's aggressive corporate and litigation strategies, including spying on Larian and his family in conjunction with the litigation by, for example, taking pictures of his kids coming and going from their home. (P. 170.) It then chronicles the aggressive conduct of Mattel's lawyers in the courtroom: "one of Mattel's attorneys read one of Larian's work emails back to him," in which Larian responded to a female employee's request for $12,000 for a project. (P. 171.) "Larian originally wrote, 'All the women in my life–my wife, my secretary, you–want so much from me.' But on the stand, Mattel's attorney asked Larian why he wrote that his wives (plural), secretary, and so forth make demands. Larian," writes Lobel, "face bright with anger exploded. 'Wives?!? What did you say? Wives?!? You racist!'…Mattel's attorney said it was only a slip of the tongue; Larian's Iranian heritage had nothing to do with his accidentally saying 'your wives,' rather than 'your wife.' He turned to Larian's wife and apologized." (Id.) Whether Mattel's lawyer indeed had a good faith slip of the tongue, whether his conduct revealed implicit bias, or whether this was an instance of explicit bias which backfired is beside the point. Rather, *You Don't Own Me* raises challenging questions about the interplay between client identity and conduct, and lawyer identity and conduct, and the subtle and complex ways in which they shape and inform each other, as well as questions about the prevalence and use of bias in our courtrooms.

Finally, Lobel's account of Judge Larson (Pp. 149, 174), his evidentiary rulings (P. 170) and jury instructions (P. 173), juxtaposed against the colorful personality and philosophy of Judge Kozinski (Pp.175, 178, 182), and contrasted with the calm and composed judicial temperament of Judge Carter (Pp. 196, 198) and his jury instructions (P. 205), provides an illuminating view of the role and impact of judges–trial and appellant–on litigation, the parties and the law. *You Don't Own Me*'s detailed account reminds us not only that, to an extent, the law is what the judge had for breakfast, but also that the law is a function of the judge's experience (or lack thereof, in the case of Judge Larson), philosophy, judicial temperament, and ambitions.

One of the manuscript's many strengths is that it does not exaggerate the role of lawyers and other legal actors in the overall saga. This is not a book about lawyers, and it is not intended primarily for lawyers. Yet, it is a book lawyers (among others) should read: it carefully and compellingly documents how lawyers interact with and advise powerful clients, how clients in turn shape lawyers' behavior, how lawyers' conduct impacts related parties (do not miss Lobel's moving but never sentimental account of Carter Bryant, left crashed and penniless, after two rounds of bitter litigation between the corporate titans (Pp. 199-202, 238)), how lawyers' professional identity interacts with their personal identity and firm ethos, and how the practice of law reflects and features some of the highs and lows of American culture, its imagination and creativity on the one hand, but also its biases and injustices.

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