

PIRACY – A CASE STUDY

Piracy is a serious and growing problem. In illustrate the depth and cost of piracy set out below is a case study of the impact of piracy on one company, Mattel.

Introduction

A member of the ATA, Mattel, has had to fight long and hard to protect its very substantial reputation not only in Australia but throughout the world, particularly against pirated products which have affected its reputation and profitability. Many consumers are led to believe that the pirated product is a legitimate one when in most circumstances it is of a very inferior quality and does not necessarily carry the safety assurances that are given by Mattel.

Mattel has lost many millions of dollars throughout the world as a consequence of pirated products. Probably the best example that ever occurred was when Mattel introduced a new electronic line of goods under the brand name 'Intellivision Home Video Entertainment'. The product was formally launched in 1979 but unfortunately substantially cheap knock-off software was imported into the United States and other jurisdictions to such an extent that there was a glut of pirated product imported in 1982 and 1983 with the result that 'Intellivision' could no longer compete against such high levels of piracy. Consequently, in 1983 the loss to Mattel was in the order of \$394million as a result of piracy alone. Australian experience and cost. In more recent times there are abundant examples of piracy having occurred with Mattel product in Australia. Its now wholly owned division of Tyco and Croner Toys were the licensees of the 'Teenage Mutant Ninja Turtle' range of products in Australia which came onto the market in the early '90s. The extent of piracy was so heavy that Croner Tyco was required to obtain Federal Court orders in five different States around Australia. In excess of \$200,000.00 was expended merely to restrain black-market pirates from marketing product, namely toys and t-shirts, throughout Australia. Whilst it was successful in obtaining restraining orders against all of the operators in question, it was unable to obtain payment from any of them because of the nature of their business. In one instance, Mary Pearson, a defendant from Sydney, had already been declared bankrupt once in relation to piracy of imported product and in this circumstance Mattel was faced with the same difficult problem of seeking to enforce orders against a bankrupt importer of piracy product into Australia. Without stricter criminal provisions and a desire of government and the courts to enforce those provisions, then the current civil remedies will have little impact on those who are

prepared so flagrantly to breach the law as they find it so easy to hide behind the insolvency provisions of the Bankruptcy Act.

Barbie

In more recent times the pirate importers have turned their interests to the leading item within the Mattel range and the number one toy item in the world, namely the Barbie Doll range. The Barbie Doll range enjoyed its fortieth birthday in 1999 and is now the subject of piracy imports throughout the world. From September 1998 to this time, Mattel has had to pursue five different piracy actions against people importing illegal pirated product into Australia alone. In 1998 Mattel had to take action against importers of product who had stolen packaging from a factory in China and placed fake Barbie Dolls in the packaging for sale in markets throughout Australia. In 1999 Federal Court proceedings had to be issued against importers of exact knock-off pirate product known as 'Gloria' which in every other respect replicated a large range of products within the Barbie range. These proceedings were successful in the Federal Court. However they were only successful after huge expenditure was incurred which has not been able to be recovered.

As recently as May 1999 Mattel has had to take action against, of all people, an adult entertainment strip club in Brisbane which had been promoting the Barbie trade mark on the windows of its establishment. They had also marketed the Barbie trade mark for strippers in the Brisbane Courier Mail, much to the disgust not only of Mattel but also of the church and the broader community of Brisbane. It has successfully undertaken that action to restrain the parties but use this as an example of how rampant piracy is within Australia.