

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

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MARKHAM CONCEPTS, INC.; SUSAN GARRETSON; )  
and LORRAINE MARKHAM, individually and )  
in her capacity as trustee of the Bill )  
and Lorraine Markham Exemption Trust ) C.A. No. 15-419 WES  
and the Lorraine Markham Family Trust, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
HASBRO, INC.; REUBEN KLAMER; DAWN )  
LINKLETTER GRIFFIN; SHARON LINKLETTER; )  
MICHAEL LINKLETTER; LAURA LINKLETTER )  
RICH; DENNIS LINKLETTER; THOMAS FEIMAN, )  
in his capacity as co-trustee of the )  
Irvin S. and Ida Mae Atkins Family )  
Trust; ROBERT MILLER, in his capacity )  
as co-trustee of the Irvin S. and Ida )  
Mae Atkins Family Trust; and MAX )  
CANDIOTTY, in his capacity as )  
co-trustee of the Irvin S. and Ida Mae )  
Atkins Family Trust, )  
) )  
Defendants. )

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

WILLIAM E. SMITH, Chief Judge.

To people of a certain age, who grew up in the America of the 1960s and 70s – where television meant three channels and shows like Bonanza, Star Trek, and The Art Linkletter Show (more on that to come); where cars were made in America, period; and where phones were connected to wires, not cell towers – the Game of Life was a gangbuster hit found (it seemed) in every household in the country, alongside Twister, Clue, and Monopoly. In the Game of Life, the

winner retires to "Millionaire Acres." In this suit, life imitates art as the heirs of toy developer Bill Markham have sued over what they see as proceeds from the exploitation of the Game that they have been wrongfully denied.

The Game of Life was inspired by the first boardgame invented by Milton Bradley himself, in 1860, called the Checkered Game of Life. It sold millions of copies after hitting the market in 1960, and continues to sell to this day. Based on the idea that "life's a game that can be played well, or badly," historian Jill Lepore writes in The New Yorker, "[o]nly a handful of games have had as long a shelf life." Jill Lepore, The Meaning of Life, The New Yorker, May 21, 2007, at 38, 39. This case, filed in 2015, has had a shelf life of its own. But after two amendments to the complaint and considerable motion practice, the parties tried to the Court (in Los Angeles<sup>1</sup> and Rhode Island) Plaintiffs' third claim for relief, which asks for a declaratory judgment that Markham's heirs control the Game's intellectual property. Specifically, Plaintiffs ask the Court to find that they have termination rights under section 304 of the Copyright Act of 1976.

With these, Plaintiffs would be able to acquire the copyrights

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<sup>1</sup> Through the courtesy of the United States District Court for the Central District of California, this Court was able to hear live testimony from critical witnesses who, because of their age, could not travel to Rhode Island. The Court is most grateful to those who worked to make this possible.

to the Game that were long ago transferred to Defendant Hasbro, Inc.,'s predecessor-in-interest, the Milton Bradley Company. Plaintiffs lose this turn, however: the facts found below show that the physical creation of the Game's prototype was done by Markham's erstwhile employees – Grace Chambers and Leonard Israel – as well as Markham's wife, Sue, and unnamed parties hired by Markham to furnish finishing touches. They also show that this work was done at the instance and expense of Defendant and toy developer Reuben Klamer.

#### I. Findings of Fact

The series of events leading to the Game<sup>2</sup> hitting the market in 1960 began a year earlier. See, e.g., Exs. JTX 9, JTX 11, JTX 12. In 1959, a Reuben Klamer traveled from his home in Beverly Hills, California, to Milton Bradley's headquarters in Springfield, Massachusetts. Ex. JTX 9; Nov. 16, 2017, Trial Tr. ("Trial Tr. I") 23–26. Klamer was a toy developer with myriad contacts in the industry, and had come to pitch Milton Bradley executives a concept for a new toy. See Trial Tr. I 18–26.

Milton Bradley passed on the pitch. Id. at 25. But the company's president at the time, Jim Shay, asked Klamer to develop a product idea to commemorate Milton Bradley's 1960 centennial.

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<sup>2</sup> When the Court refers to the "Game" or the "prototype" without specifying any of their composite parts (the box cover, board, rules, etc.), it means to refer to these in their entirety.

Id. at 23; Ex. JTX 9. Intrigued, Klamer agreed to do so and went searching for inspiration in Milton Bradley's archive, where he stumbled upon an old copy of the Checkered Game of Life, see Ex. JTX 9, Trial Tr. I 23, which had been invented by the company's namesake just before the Civil War to "forcibly impress upon the minds of youth the great moral principles of virtue and vice," Lepore, supra, at 41. The concept Klamer developed on the trip back home to California was to update the Checkered Game of Life to reflect post-World War II American society and values.<sup>3</sup> See Trial Tr. I 25-27; Exs. JTX 10., PTX 20, PTX 275.

But Klamer was mostly an ideas man – he needed help refining his concept and, importantly, translating it into a prototype he could actually sell to Milton Bradley. See Trial Tr. I 28-31, 64; Ex. JTX 10. For this he reached out to one of his toy-industry contacts, Bill Markham. Trial Tr. I 28-33. An experienced advertiser, Markham was head of a firm set to that purpose named California Product Development ("CPD"). See JTX 2; Trial Tr. I 112; Nov. 17, 2017, Trial Tr. ("Trial Tr. II") 64. CPD employed two artists at the time, Grace Chambers and Leonard Israel, who were very good in Klamer's estimation, and whose presence at CPD

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<sup>3</sup> Klamer testified that he had scribbled some of the thoughts he had on the plane ride from Massachusetts to California. These notes were admitted into evidence, and reflect many of the attributes that eventually found their way into the Game. Ex. JTX 10; Trial Tr. I 27-31.

convinced Klamer to hire Markham's firm over others he considered. Trial Tr. I 28-31. Chambers had received her training from the Art Center College of Design in Los Angeles, Trial Tr. II 60; Israel his from the Chicago Art Institute, Trial Tr. I 100.

Markham agreed to take on the project in the summer of 1959. See Trial Tr. I 29-33. With little time to waste – Milton Bradley wanted the product ready for market by January 1, 1960, see id. at 55 – Markham and his team went to work, see id. at 34-35. As to who did what during the approximately six weeks it took to produce the prototype, the Court credits especially the testimony of Chambers and Israel, which the Court heard live in Los Angeles.<sup>4</sup> See generally Trial Tr. II 58-111 (Chambers); Trial Tr. I 99-136 (Israel). Neither has received a cent in royalties from the Game, nor have they any financial interest in the outcome of this suit. See Trial Tr. I 108-09; Trial Tr. II 58, 80. The testimony each gave was largely consistent with that of the other. See generally Trial Tr. II 58-111; Trial Tr. I 99-136. Both, moreover, had only good things to say about their time working for Markham at CPD and with Klamer on the project. See Trial Tr. I 101; Trial Tr. II 65-66.

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<sup>4</sup> Klamer also testified to these events. See Trial Tr. I 36-37. And although he, as a successor to the now-defunct Link Research Corporation, see Ex. JTX 569, has a financial interest in this suit, the Court found his testimony credible, and largely corroborative of Chambers's and Israel's.

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