

# EXHIBIT 1

# United States Court of Appeals For the First Circuit

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No. 19-1927

MARKHAM CONCEPTS, INC.; LORRAINE MARKHAM, individually and in  
her capacity as trustee of the Bill and Lorraine Markham  
Exemption Trust and the Lorraine Markham Family Trust;  
SUSAN GARRETSON,

Plaintiffs, Appellants,

v.

HASBRO, INC.; BEATRICE PARDO, in her capacity as successor co-  
trustee of the Reuben B. Klamer Living Trust; PAUL GLASS, in his  
capacity as successor co-trustee of the Reuben B. Klamer Living  
Trust; 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; MAX  
CANDIOTTY, in his capacity as co-trustee of the Irvin S. and Ida  
Mae Atkins Family Trust,

Defendants, Appellees,

IDA MAE ATKINS,

Defendant.

No. 21-1957

MARKHAM CONCEPTS, INC.; LORRAINE MARKHAM, individually and in  
her capacity as trustee of the Bill and Lorraine Markham  
Exemption Trust and the Lorraine Markham Family Trust;  
SUSAN GARRETSON,

Plaintiffs, Appellees

v.

HASBRO, INC.,

Defendant, Appellant.

BEATRICE PARDO, in her capacity as successor co-trustee of the Reuben B. Klamer Living Trust; PAUL GLASS, in his capacity as successor co-trustee of the Reuben B. Klamer Living Trust; 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; MAX CANDIOTTY, in his capacity as co-trustee of the Irvin S. and Ida Mae Atkins Family Trust; IDA MAE ATKINS,

Defendants.

No. 21-1958

MARKHAM CONCEPTS, INC.; LORRAINE MARKHAM, individually and in her capacity as trustee of the Bill and Lorraine Markham Exemption Trust and the Lorraine Markham Family Trust; SUSAN GARRETSON,

Plaintiffs, Appellees

v.

BEATRICE PARDO, in her capacity as successor co-trustee of the Reuben B. Klamer Living Trust; PAUL GLASS, in his capacity as successor co-trustee of the Reuben B. Klamer Living Trust,

Defendants, Appellants

HASBRO, INC., 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; MAX CANDIOTTY, in his capacity as co-trustee of the Irvin S. and Ida Mae Atkins Family Trust; IDA MAE ATKINS,

Defendants.

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APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

[Hon. William E. Smith, U.S. District Judge]

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Before

Kayatta, Lipez, and Thompson, Circuit Judges.

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Patricia L. Glaser, with whom Erica J. Van Loon, Joshua J. Pollack, Nixon Peabody LLP, Thomas P. Burke Jr., and Glaser Weil Fink Howard Avchen & Shapiro LLP were on brief, for defendants-appellants Beatrice Pardo and Paul Glass.

Joshua C. Krumholz, with whom Courtney L. Batliner, Mark T. Goracke, Holland & Knight LLP, Patricia K. Rocha, and Adler Pollock & Sheehan PC were on brief, for defendant-appellant Hasbro, Inc.

David A. Cole, with whom John T. Moehringer and Cadwalader, Wickersham & Taft LLP were on brief, for plaintiffs-appellees.

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June 22, 2023

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**LIPEZ, Circuit Judge.** In this copyright action involving ownership rights to the classic board game, The Game of Life, conveyed more than six decades ago, the prevailing defendants seek attorney's fees from the unsuccessful plaintiffs. The district court denied fees for the trial-level proceedings, and the defendants claim on appeal that the court abused its discretion in doing so. The defendants also moved in this court for appellate attorney's fees. The Copyright Act of 1976 permits the award of reasonable fees and costs to a prevailing party, see 17 U.S.C. § 505, and the Supreme Court has endorsed a set of nonexclusive factors to be considered by courts in evaluating whether to award fees, see Fogerty v. Fantasy, Inc., 510 U.S. 517, 534 & n.19 (1994). After carefully considering those factors and other aspects of the record, we affirm the district court's decision to deny fees and, primarily for the same reasons, decline to award fees for the appeal.

**I.**

As detailed in our opinion on the merits, this case arose from a long-running dispute between Reuben Klamer, a toy developer who originated the idea for The Game of Life, and Bill Markham, a game designer whom Klamer asked to design and build the game prototype. See Markham Concepts, Inc. v. Hasbro, Inc., 1 F.4th 74, 77-78 (1st Cir. 2021), cert. denied, 142 S. Ct. 1414 (2022). The game was a huge success, and for decades following its debut

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