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PAGE ONE

Why Dora the Explorer Can't Come To Your Kid's Birthday Party

The Issue Is Trademark Infringement; Invite SpongeBob, Get SquishyGuy

By **KATHERINE ROSMAN**
July 22, 2008; Page A1

In planning birthday parties for their children, parents are facing stumbling blocks that include trademark infringement.

For children's parties, many companies around the country provide costumed characters popular with kids -- characters like Dora the Explorer, Bob the Builder and Hannah Montana. In recent years, corporations that own the rights to some of the more popular characters, companies that include **Marvel Entertainment Inc.**, **Scholastic Inc.**, and HIT Entertainment, have sent cease-and-desist letters, threatened lawsuits and in some cases received settlements from companies that market unauthorized character impersonators.



Dora the Explorer


that she didn't explicitly offer trademarked characters: "I don't have SpongeBob. I have SquishyGuy."

This week she changed her mind. She dissolved her company, reincorporated under the name

The threats rattle the costume industry. Some companies hire lawyers to advise them on how to stay out of trouble and remain in business. Others are now commissioning costumes that only slightly resemble characters owned by media companies. They have names like "Big Red Tickle Monster," instead of Elmo, and "Explorer Girl with Backpack," rather than Dora.

Leslie Ann Hooker, a Fort Lauderdale costume-company owner, thought she had found a way to run her business without running into trouble. "I try to make my costumes look 40% different," she said early this month, adding

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Clean, Green and Crazy Cartoons, Inc. and now will only market her self-created band of environmentally conscious super heroes. "I made the change out of fear of lawsuits," she said Monday.

The relationship between birthday parties and intellectual property has become more fraught as children's television has gone beyond "Sesame Street" and become a multi-billion-dollar business. In his new book, "Anytime Playdate: Inside the Preschool Entertainment Boom," Dade Hayes counts more than 50 TV shows aimed at the 2- to 5-year-old audience, up from fewer than 10 in 1990.

Out of Luck

Generic clowns no longer do the trick. Kids want to see at their parties the characters they know and love from TV and movies. But to sustain live-entertainment and theme-park revenues, most companies that own rights won't offer licensed, authentic costumes that can be worn by professional birthday-party entertainers. That has left parents out of luck.

Miriam Sorkin, an office manager in Englewood Cliffs, N.J., threw a fourth-birthday party for her daughter in May and arranged for a costumed impersonator of Dora the Explorer. Though the walk-about "Dora" had the expected pageboy haircut and backpack, her expression was blank and her legs appeared out of proportion to the rest of her body. "When Dora came out," Mrs. Sorkin says, "none of the kids would go to Dora, including my daughter, and a few of the kids started crying."



A 'Dora' that appeared at a child's birthday party in May.

Elvira Grau, who owns Space Odyssey USA, where Mrs. Sorkin held her daughter's party, says the costume companies that service her parties try to make their costumes look sufficiently different from the trademarked characters to avoid lawsuits. When Mrs. Sorkin complained to her that Dora was "hideous," Mrs. Grau gave her a \$250 credit. "But I told her, 'You can't have the real Dora. If you want the real Dora, call Nickelodeon.' "

For her son's third birthday last year, Faith McVeigh wanted to give a Thomas the Tank Engine birthday party. She called a half-dozen costume providers but none would give her what she wanted. "I told them, 'I don't want a blue train and a conductor. It has to be Thomas,'" she says. A resident of Milton, Wash., Ms. McVeigh co-owns a franchised Yamaha dealership and respects the right of companies to protect their assets. Still, she is irked by the birthday-party crackdown. "They cram this down our throat on Graham cracker boxes and macaroni and cheese. They've so oversaturated the market in every way and all we're asking for is the ability to give a birthday party for our children," Ms. McVeigh says.

Costume providers say they are increasingly hamstrung. Kim Kalin, the owner in Atlanta of Copy Cats for Kids, a party-service provider, has a special folder marked "lawsuits" for the nine or so cease-and-desist letters she has received in the past eight years. She has settled one suit with lawyers representing Barney, the purple dinosaur. "The whole mess ended up costing me \$30,000 -- I spent \$20,000 alone for the lawyer," Ms. Kalin says. In June, an attorney for Marvel Entertainment sent her a letter claiming knowledge of "unauthorized costumed Spider-Man, Hulk and Wolverine appearance services," and added, "Marvel has no choice but to seek legal recourse against your business."

Ms. Kalin says she's now turning away customers who insist on Marvel characters, and has had to scuttle plans to add Iron Man, from this spring's box-office hit, to her offerings. The red-and-gold nylon bodysuit and hood could be worn by one of her employees to a party for a fee of about \$130 for one hour. "The children are begging for this costume," Ms. Kalin says.

Protecting Brand Integrity

Trademark holders say they are trying to protect the integrity of their brands; they don't want Dora to show up at a party with a cigarette dangling from her mouth. Attorneys note that if they do not actively police their trademarks in one realm, a court might later rule that they have forfeited their rights to enforce it in others.

A trademark claim can be made when someone is marketing a product that is "likely to cause confusion among consumers about the source of the product," according to James D. Weinberger, an intellectual-property attorney whose firm represents clients like DC Comics and the Jim Henson Co. The media companies contacted for this story declined to quantify the number of cease-and-desist letters sent or lawsuits filed. But Mr. Weinberger says, "This sort of thing is definitely on the radar in the industry."

John Turitzin, executive vice president and general counsel for Marvel says a company that is built on intellectual property must police the use of its assets. "We don't want to interfere with or ruin the fun of birthday parties," he says. "But we do search the Internet all the time for commercial use of our characters."

Authentic, licensed costumes in adult sizes that would be legal to rent for birthday-party entertainment are hard to come by. Marvel contracts with a company that now offers sanctioned entertainers dressed as Spider-Man and Iron Man. But the cost of an appearance starts at \$1,600. Dan Martinsen, a spokesman for Nickelodeon, says that while the company doesn't offer walk-about characters for birthday parties, it does send such characters on national tours and sells tickets to see them. And this past spring it opened Nickelodeon Universe at the Mall of America in Bloomington, Minn. Scholastic, which owns characters like Clifford the Big Red Dog, offers rentals for literacy-related events. Scholastic's Web site lists rules for those wearing the big red dog costume including "Clifford should never take his costume head off in view of children" and "Clifford should NOT do anything objectionable like lift his leg or push a kid."

HIT Entertainment, which has a portfolio including characters like Barney, Bob the Builder and Thomas the Tank Engine, says the company tries to actively police the world of birthday parties by regularly monitoring birthday-party planning Web sites and parenting blogs. Jamie Cygielman who oversees the company's U.S. consumer-products division says that kids who want to see characters live can visit "Thomas Town" attractions at Six Flags facilities, including in Atlanta and Springfield, Mass. Ms. Cygielman adds that though parents can't hire Thomas to come to their homes, they can still host Thomas-theme birthday parties by buying paper plates and decorations at Hallmark, which is the authorized provider of paper products featuring HIT's characters.

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