DO NOT PASS GO: PATENTS, TRADEMARKS, AND “MONOPOLY”
Research Report for WR227
Sinnett, James
Winter Term, 2018
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Table of Contents</td>
<td>2</td>
</tr>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>Developing the Property</td>
<td>3</td>
</tr>
<tr>
<td>Elizabeth Magie</td>
<td>3</td>
</tr>
<tr>
<td>Charles Darrow</td>
<td>4</td>
</tr>
<tr>
<td>Developing a Monopoly</td>
<td>5</td>
</tr>
<tr>
<td>Anti-Monopoly</td>
<td>5</td>
</tr>
<tr>
<td>Genericide</td>
<td>6</td>
</tr>
<tr>
<td>-Opoly</td>
<td>8</td>
</tr>
<tr>
<td>Summary</td>
<td>9</td>
</tr>
<tr>
<td>References</td>
<td>10</td>
</tr>
</tbody>
</table>
Ask anyone in the Western World to name a board game, and they are likely to reply with 'Monopoly'. This really isn't a surprise; with over 275 million sets sold since the game's initial release in 1935 (hasbro.com), Monopoly is possibly the best-selling non-traditional game there is. Hasbro, the game's current publisher, has estimated that over 1 billion people have played the game in that time, and it would be difficult to find a home with board games that doesn't have at least one Monopoly set. Despite its popularity, though, most people don't know about the ways that Monopoly has interacted with the laws around intellectual property in its 83 years of production.

This paper will use Monopoly as a lens to examine intellectual property laws in the United States. It will address the early interactions between the initial publisher, Parker Brothers, and the game's patents and copyrights, then explore the legal battles that arose around the game's trademarks during the last 40 years. Along the way, the existence of the many '-opoly' clone games will be addressed, both in how they can legally exist and in just how far they can push the similarity before it becomes a legal issue.

Developing the Property

The official story that has been told of Monopoly's creation, as per Parker Brothers marketing over the years, is that it was invented by a down-on-his-luck contractor, Charles Darrow, who came up with the game on his own and submitted it to the game company, which rejected it. Following its sudden success when Darrow published it himself, Parker Brothers reversed that decision, bought the rights, and the rest is history (Latson). Of course, as with most histories, there are many facts that are left out of that; in the case of Monopoly, the most interesting parts might just be the hidden details.

Elizabeth Magie

The game that would become what the modern world knows as Monopoly was originally patented in 1903, going by the title 'The Landlord's Game'. The designer, Elizabeth Magie, was a vocal proponent of Georgist economics, a theory that proposed that people should own all of what they created, land should be free, and since people already did own land, landowners should have to pay a tax on that land, with no other taxes whatsoever (Pilon 18-19). This theory had briefly been in vogue during the later part of the 19th century, but had begun to fall out of favor by the beginning of the 20th. Seeing the growing market for board games as a way to spread the Georgist message, Magie's game was designed with two rule sets, one of which illustrated the benefits of a semi-collectivist society where wealth was shared among all, while the other illustrated the dangers of allowing monopolies to thrive and drive competitors out of business (Pilon 33).

Magie was certain enough that her game was worth pursuing that she actually quit the job she had at the time, helping to start the Economic Game Company, formed by a group of
Georgists specifically to publish The Landlord's Game (Dodson) (Figure 1). At the same time, copies of the game started spreading through word of mouth, with handmade copies appearing in academia. This proliferation allowed new rules to become part of the game organically, whether those changes were as simple as putting buildings on spaces, to the more complex auctions. (Pilon 88) Some of the changes did make it back to Magie, who submitted a version of the game to the Parker Brothers Company in 1923. Parker Brothers declined to purchase the game, but advised Magie to apply for a new patent to protect her design, which she received in 1924.

Charles Darrow

In the meanwhile, the versions of The Landlord's Game that were making their way through the public domain were beginning to achieve wider production. An early edition of the game had already been published in the UK, retitled to “Brer Fox an' Brer Rabbit”, and by 1920, the “Monopoly” name had made it far enough through the word-of-mouth transmission of the game to begin appearing on hand-made boards (landlordsgame.info). The game continued to be passed from player to player, shifting slowly as it did, until it reached the hands of Charles Darrow.

Darrow was introduced to a homemade copy of the game in the early 1930s through Charles Todd, a school friend of his wife, and quickly moved to capitalize on it. He made a copy of the Atlantic City-themed board that he learned on (including carrying over a misspelling in a
property name, a fact that would become important later), hired a graphic designer to create some of the graphic elements of the board, which he copyrighted. This version of the game, then, was submitted to Parker Brothers in 1934 as his own creation. Again, the game was turned down by Parker Brothers, though apparently without the company realizing that an earlier version had been submitted ten years prior.

This didn't slow Darrow's belief in the game, and he instead began to produce his own copies, which he sold in the Philadelphia area and at New York's F.A.O. Schwarz toy store during the 1934 Christmas season. The game was a wild success, and sold enough sets to regain the attention of Parker Brothers, who quickly moved to buy the rights and all of the unsold copies of the game from Darrow and help him to get a patent.

Developing a Monopoly

It didn't take long after Parker Brothers started to actively engage with Monopoly for the first hints of trouble to appear. Other games derived from The Landlord's Game were actively being produced by several rival companies, and the patent office would not grant the Monopoly patent unless Parker Brothers controlled Magie's 1924 patent. Luckily for the company, Magie was quite willing to sell the patent to them for $500, in exchange for a deal to publish an edition of The Landlord's Game with her own rules, along with two other games she had subsequently designed. Armed with this new acquisition, Parker Brothers was able to get the Monopoly patent finalized, and production began.

At the same time, the company began a campaign of trying to corner the market on Landlord's Game derivatives, approaching each of the producers of those games with patents in hand. Finance, a game produced by Knapp Electric and based on an earlier version of Magie's design than Monopoly, had been on the market since 1932; Parker Brothers was able to easily convince Knapp to sell the rights and their entire stock, as Finance was not an important part of the business. The game was quickly put back into production by Parker Brothers, with some slight changes to help differentiate it from Monopoly.

Other companies were less eager to sell their titles; Milton Bradley, Parker's closest competitor, had begun selling Easy Money in 1935, another similar game that bore some striking similarities to the final version of Monopoly. The patent that Parker Brothers now controlled was sufficient incentive for Milton Bradley to license it and pay royalties, along with making changes to Easy Money for its 1936 edition that made it more clearly a different game. Things went very differently in the case of Inflation, whose publisher, Rudy Copeland, refused to play along. A lawsuit brought by Parker Brothers led to a countersuit in which it was argued that Monopoly had been in the public domain and was thus illegal to copyright or trademark; Parker Brothers quickly settled out of court, paying Copeland in exchange for his agreement never to mention it again.

If all had gone the way that Parker Brothers hoped, that would have been the end of the matter. By pushing out the competition and buying up the patents, they had secured a market space that was unassailable, and by quietly keeping the story of Elizabeth Magie well away from Monopoly (Pilon 134), they could instead build a 'man-makes-good' story around Charles
Sinnett, James

Darrow to generate good publicity. They had formed their own monopoly, and now were poised to capitalize on it, and the resulting sales certainly seemed to reflect that; by 1946, the company was selling well over a million copies per year (Pilon 139), and it remained their flagship product for the life of the company. However, the ability to trademark the word 'Monopoly' was going to come under fire again in the 1970s.

Anti-Monopoly

In 1973, an economics professor at San Francisco State University, Ralph Anspach (Figure 2), got the idea to make a game of his own, after a conversation with his eight-year-old son. Anspach's son misunderstood Anspach's anger over the OPEC oil embargo and the monopoly that allowed it, thinking the anger was instead over Anspach having lost a game of Monopoly on the previous night. Perhaps fittingly, Anspach decided to base the game on the exact opposite of the premise of the Parker Brothers game: rather than being about building up monopolies, it would be about breaking them down. (Johnson)

Working with his sons to design the game elements, Anspach created a game in which the players serve as Roosevelt-style trustbusters, breaking up the monopolies that are on the board at the start of the game. Initially planning to call it 'Bust-the-Trust', a conversation with students in one of Anspach's classes led him to instead title the game 'Anti-Monopoly'. However, he found it difficult to get the game printed; none of the game companies he pitched the game to were interested. So instead, much the way that Charles Darrow had, he took to publishing himself, starting a company called Anti-Monopoly Inc. and selling the games directly out of his home (Pilon 9-13) (Figure 2).
When Parker Brothers heard about the game, they did what any big company catching wind of possible trademark infringement would do: they sent Anspach a Cease-and-Desist order (Pilon 16). Anspach was able to find himself a trademark lawyer who was willing to take on Parker Brothers and their parent company, General Mills, along with an antitrust lawyer to address the question of using litigation to scare away competition. When Anspach's initial offers to change the game's name to similar-sounding titles were refused, it became clear that the issue would have to be handled in court.

Genericide

During the preparations for the case, Anspach and his lawyers managed to uncover the hidden history of Monopoly's early years. While the lawyers found the court records from decades of Parker Brothers actively using Cease-and-Desist letters to scare makers of games that sounded similar to Monopoly, and even non-game-related naming that sounded like the spaces on the Monopoly board. At the same time, they tracked down the records from the Rudy Copeland case in 1936, which alerted them to the existence of Elizabeth Magie's two patents, along with the many witnesses that Copeland had called to prove that the game had been in the public domain. They immediately began trying to contact any of those witnesses who might still
Sinnett, James

be able to testify. (Pilon 159)

By tracing the links from person to person through these early witnesses and early players of pre-Parker Brothers 'monopoly' games, Anspach managed to track down Charles Todd. Todd still had the board that he had taught the game to Charles Darrow on (Figure 3), which included the misspelled location name, 'Marvin Gardens' (the actual location in Atlantic City being spelled 'Marven') (Figure 3). In addition, Todd was willing to give deposition about his having taught Darrow. (Pilon 170)

Anspach's direction in the case became based on this information about the game's existence prior to Darrow learning of it, both by attempting to prove that Parker Brothers had knowingly pursued the Monopoly (big-M) patent while being aware of Magie's patents, and by attempting to show that 'monopoly' (little-m)had become a generic term for the game and was thus unable to be trademarked, a direction that, if successful, would result in 'genericide', a loss of trademark due to a word becoming the generic term, as in the case of aspirin or band-aid. Unfortunately, despite accumulating a significant volume of evidence, the judge in the case was known to be pro-big-business, and ruled in favor of Parker Brothers. (Johnson)

Undeterred, Anspach pursued the appeals process, with the Ninth Circuit Court of Appeals overturning the lower-court judge's initial ruling, then overturning it again when the judge ruled a second time in favor of Parker Brothers. When the Supreme Court declined to hear the case in 1983, the Ninth Circuit ruling resulted in Parker Brothers losing the trademark, which allowed Anspach to resume selling Anti-Monopoly. (Hollie)

-Opoly

The effects on the market were rapid. Companies quickly popped up to start creating customized monopoly games, with two of the most prolific, Late for the Sky Production Company (lateforthesky.com) and Express Printing (opolygames.com) opening in 1984. While Parker Brothers was able to successfully lobby in Congress for a change to trademark law that would allow them to reinstate the Monopoly trademark a year later, the damage had already been done, and even after the trademark was reinstated, the company made an agreement with Anspach that he could market his game in exchange for not re-opening litigation again. (Pilon 241)

While Parker Brothers (or their new owner, Hasbro) has been hesitant to enter litigation again over Monopoly, they haven't always shied away from it. In 2003, David Chang created a game titled 'Ghettopoly', which was using the monopoly game type to depict caricatures of inner-city life. Notably, Chang chose not only to use the monopoly game type, but also to have the logo on the box for his game mimic the logo used for Monopoly at the time, which featured the game's mascot bursting out of the game title. This led to Hasbro taking Chang to court in order to stop production of his game. (Morrow)

Chang filed a countersuit, attempting a repeat of Anspach's lawsuit and aiming to use the proliferation of -Opoly games to argue that the trademark had been made generic and was thus unenforceable. (Morrow) However, he repeatedly failed to provide documents that were
requested by the lawyers and judge in order to prove his case, eventually resulting in Hasbro winning a summary judgment and the game being forced to stop production. (Hasbro v. Chang)

Despite the proliferation of 'monopoly' games that aren't produced officially, there is still a wide range of themed versions of Monopoly that are legally on the market with the Monopoly trademark dress on them. USAopoly, a company that opened in 1994, has a license from Hasbro to produce these alternate versions of the game (usaopoly.com), with the available designs ranging from individual cities and states to popular television shows and films; if there's a topic someone is interested in, there's probably a Monopoly for it.

Summary

Intellectual property laws serve two primary purposes in the United States. The first, as demonstrated through the early development and publishing of Monopoly, are intended to provide protections to the inventors and creators of new ideas, so that they can be properly credited for their ideas. The second, as demonstrated through later lawsuits in the 1970s and early 2000s, are to provide protections in the marketplace so that consumers are assured of actually making the same purchases they believe they are making, and to ensure that the elements that are unique to a product's identity aren't misused by other products and properties. Although some of the methods used by Parker Brothers in trying to maintain their control have been questionable, it is through the application of these laws that the Monopoly game is able to maintain its market presence and remain a perennial feature of game shelves in stores.
References


