

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before The Honorable MaryJoan McNamara
Administrative Law Judge**

In The Matter Of

**CERTAIN 'SOFT PROJECTILE
LAUNCHING DEVICES,
COMPONENTS THEREOF,
AMMUNITION, AND PRODUCTS
CONTAINING SAME**

Inv. No. 337-TA-1325

EXPERT REPORT OF LYNN ROSENBLUM

Dated: _____

1/6/2023

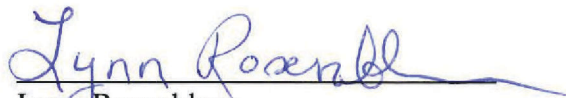

Lynn Rosenblum

TABLE OF CONTENTS

I.	Introduction.....	3
II.	Qualifications.....	4
III.	Compensation	8
IV.	Prior Cases	9
V.	Materials Considered	9
VI.	Summary of Opinions	9
VII.	Definitions.....	10
VIII.	Legal Basis.....	13
IX.	Opinions.....	14
A.	Opinions Relating to Maya Group’s “Xploderz” and “Blaster Pro” Products	14
1.	The Original Xploderz Line and Subsequent Line Extensions.....	14
2.	Packaging and Advertising of the Xploderz and Blaster Pro Products	33
3.	Maya Group’s Sales of the Xploderz and Blaster Pro Products	38
4.	Sales in the Context of Toy Industry	54
5.	Line Extensions.....	63
6.	Profitability	67
B.	Maya Group Launched a New Product Category	72
X.	Conclusion	76

[REDACTED]

[REDACTED]

I. INTRODUCTION

1. My name is Lynn Rosenblum. I have been asked by Hasbro, Inc. to provide my expert opinion regarding certain issues relevant in a matter before the United States Trade Commission that is titled “In the Matter of Certain Soft Projectile Launching Devices, Components Thereof, Ammunition, and Products Containing Same,” Inv. No. 337-TA-1325.

2. In particular, I have been asked to evaluate the commercial success of the Maya Group’s Xploderz and Blaster Pro lines of blasters.

3. Below, I lay out my opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming my opinions; exhibits that I plan to use as a summary of or support for my opinions; and my qualifications.

4. Throughout this Report, I may cite certain documents or testimony that support my opinions. These citations are non-exhaustive examples. Citations to certain documents or testimony are not intended to signify that my opinions are limited by or based solely on the cited sources.

5. This Report is based on information currently available to me. I reserve the right to continue my investigation and study, which may include a review of documents and information that may be produced, as well as deposition testimony from depositions for which transcripts are not yet available or that may yet be taken in this case. Therefore, I expressly reserve the right to expand or modify my opinions in response to any additional information that becomes available to me, any matters raised by Respondents and/or opinions provided by Respondents’ expert(s), or in light of any relevant orders from the Administrative Law Judge, the Commission, or any other authoritative body.

II. QUALIFICATIONS

6. I am an Assistant Professor of Toy Design in the Toy Design department at Otis College of Art & Design.

7. I was hired at Otis as a fulltime employee of the college on July 1, 2022, based on my decades of professional toy and consumer products experience, my wealth of comprehensive toy industry knowledge across many toy categories, and my commitment to and reputation for ethical industry education, standards, and practices. I teach Toy Business Methods, Toy Business Practices, Toy Design and Math classes.

8. My academic experience includes two additional part-time teaching tenures (1999, 2016 to 2022) at Otis College as a Part-Time Lecturer in the Toy Design Department, teaching both the Toy Industry Business Practices and the Toy Industry Business Methods courses. I will teach the Business Methods course again in Spring 2023 as a Full-Time Professor. This course includes a unit that teaches students: How to determine and quantify a viable successful toy brand; How to create new kitbash toy brands; How to create new industry categories and intellectual property; and How to explain and evaluate the success factors of a toy brand based on industry standards.

9. Over the years, in addition to teaching at Otis, I have taught college level courses and lectured at the following accredited colleges and universities:

- University of Wisconsin (Consumer Behavior)
- University of Redlands (Global Entrepreneurship)
- USC Marshall School of Business (Economics)

10. I also retain a private consulting practice. My background working in the toy, gift, and consumer goods industries across many toy and product categories for over 37 years gives me

[REDACTED]

the resources and knowledge to support teaching along with a successful consulting and expert witness practice. An accurate copy of my CV is attached hereto labeled as **Exhibit “1”** in the Appendix of this Report.

11. I obtained a Master of Business Administration Degree (MBA) with a major in Marketing from the University of Southern California (USC)’s Marshall School of Business in 1985. I received a Bachelor of Arts undergraduate degree in Political Science from the University of California at Los Angeles (UCLA) in 1981.

12. I was a Director of Marketing at Mattel Toys, Inc. from 1987 to 1995. During my tenure at Mattel, I was promoted four times from Associate Product Manager to Marketing Director. As a Marketing Director, I supervised a cross-functional team of six managers. While at Mattel, I worked on numerous global consumer product categories and established their sales goals.

13. Mattel was a very creative, sales-driven organization. As a result, Mattel trained its marketing staff to look at consumer products from every angle—what was known at the time as the “360 approach.” This consumer products strategy provided the foundation for my career path and served me well as I worked across numerous departments and roles in the toy industry over the years.

14. Starting as a junior marketing executive working on numerous brands in both the girls and boy’s divisions at Mattel, I received expert training in the following disciplines:

- Marketing
- Marketing Research
- Packaging
- Product Development (Design, Engineering and Manufacturing)

- Outside Submissions (Inventions)
- Consumer Affairs
- Sales and Sales Forecasting
- Distribution and Logistics

15. In 1993, I was one of ten Mattel employees to receive a Worldwide Excellence Award for my role as a founder of, and continuing instructor in, the “Mattel College” program, also known as “MET” (Marketing Effectiveness Training). The “Mattel College” program provided ongoing cross training in all aspects of the company’s products to Mattel employees.

16. In 1993, I was promoted from the girl’s division at Mattel to the top Marketing position (at the time)—Director of Marketing of Mattel’s Activity Toys group. Up to that point, Mattel had only competed in a limited number of toy categories. After 1993, Mattel decided to expand into new categories of products such as activity, outdoor toys, and sporting goods and to take advantage of growing international markets. During my tenure leading Activity Toys at Mattel, I was responsible for launching, managing the TLP, establishing sales goals, and marketing three new-to-market “play compounds”—Gak, Floam and Smud. All three play compounds were successful market competitors to Play-Doh. I attended all design and development meetings and was the lead for the licensing and business agreements with Nickelodeon Studios until my departure from Mattel in 1995. I also oversaw all focus groups and marketing research, deciding how we would explain the similarities and differences of our new-to-market products to our end consumer—kids. I was also a part of the initial scouting and acquisition team that looked for additional products and brands (inside and outside the company) to build this new business unit. Eventually, Mattel’s Activity Toys group grew with the purchase of Aviva and Wham-O sports.

[REDACTED]

17. In 1996, I formed my own company, Toy Power Consultants LLC, in Milwaukee, Wisconsin. Toy Power provided services nationwide in marketing, trends, focus group moderating, advertising, inventing, product design and development, manufacturing and promotion to the toy industry and other clients including, but not limited to, companies such as American Girl, Brio Trains, Ertl Toys, First Star Bank, The Donny and Marie Show, Fox News Milwaukee, Frito Lay, Hasbro Inc., Hedstrom, and Kiplinger Magazine.

18. From 2004 to 2006, I was Vice president of Business Development for Overbreak, LLC, a toys and consumer goods company, where I supervised the following departments: Marketing, Inventor Relations, Licensing, and Trade Shows. I was hired at Overbreak due to my extensive experience dealing with consumers, marketing, sales, and inventors.

19. Since 2007, I have owned and operated Toy Xpert, an independent consultant, marketing, and expert witness firm supporting major toy brands and companies, including Disney Consumer Products, Jakks Pacific, Jada Toys, Play it all Forward and Spin Master toys brands, just to name a few. I also have consulted and/or worked for smaller toy and gift companies in various areas, including sporting goods, toy Duck Dynasty style gear, and outdoor toys. Further still, I have consulted in the area of men's toyetic gifts, where representative client companies included: GarageCo Toys, Treehouse Kids, and West Coast Corporation (Boomerang outdoor/fishing tools and focus groups for Las Vegas Shot Show).

20. As a respected authority on branding, marketing, and toy industry insights, I have been featured or quoted over 30 times in the following print and television media:

- FOX News Milwaukee
- Kid Screen Magazine
- Kiplinger's Personal Finance Magazine

- The Donny & Marie Show
- Home Team with Terry Bradshaw
- The LA Business Journal
- The New York Times
- Playthings Magazine

21. My toy industry recognitions include being nominated twice (2006 & 2017) and winning once (2006) the coveted national Wonder Woman of Toys Award. I also served on the Toy Industry Association's (TIA) Marketing and Communications Committee in 2015. I also received two Mattel Chairman's Awards during my tenure at Mattel. One win was for the Barbie brand and the second as mentioned above (a consecutive) win was in recognition of my role in enacting the Mattel College business training curriculum. This program, the first of its kind, taught my colleagues in multiple departments how all of the Mattel business components worked across the company disciplines and the toy industry. It also informed individuals and teams throughout the company, as well as upper management, how different brands were performing across the board. Topics covered by the program ranged from advertising, to cost sheets, to marketing, to TLP, and so on. The list grew as we added to the curriculum over time.

III. COMPENSATION

22. I am being compensated for my time spent on this matter at my normal hourly rate of \$250 per hour. My compensation does not depend in any way on the outcome of this matter or on the content of my testimony.

[REDACTED]

[REDACTED]

IV. PRIOR CASES

23. I understand that this Report should contain a listing of any other cases in which I testified as an expert at a hearing or by deposition within the preceding four (4) years. I attest that the following list accurately identifies all such cases:

- *BenShot LLC v. Lucky Shot USA LLC*, 18-CV-1716 (ED.W.I., filed October 29, 2018); and
- *Pawelko v. Hasbro, Inc.*, 16-cv-00201-JJM-PAS (D.R.I., filed May 4, 2016).

V. MATERIALS CONSIDERED

24. In forming my opinions in this matter, in addition to the materials noted above, I have considered all materials that I cited to and reference in my report below. Additional materials that I considered in forming my opinions is attached hereto labeled as **Exhibit “2”** in the Appendix of this Report.

25. I have also spoken with Dan Bairos (Hasbro’s Director of Global Brand Finance); Oded Ben-Ezer (former CEO of Maya Group); and Dr. Barry Matthew Kudrowitz.

VI. SUMMARY OF OPINIONS

26. It is my opinion that the aesthetic of the packaging for the Xploderz and Blaster Pro product lines would not have been a primary driver of sales. It is also my opinion that that the packaging and advertising focus of the Xploderz and Blaster Pro products was on the apparent product differentiators of these products, i.e., their firing distance, ammunition capacity, and ease of use.

27. It is my opinion that Maya Group’s sales data shows that the Xploderz and Blaster Pro products were commercially successful.

[REDACTED]

[REDACTED]

28. It is my opinion that the sales data of the Xploderz and Blaster Pro products in comparison to the sales data of the NERF® product line shows that the Xploderz and Pro products were commercially successful.

29. It is my opinion that the generating of multiple line extensions from the original Xploderz product line, including the X2, Night Fighterz, Blaster Pro, X3, and Firestorm product lines, shows that the Xploderz product line was commercially successful.

30. It is my opinion that the profitability of the Xploderz and Blaster Pro products, including in comparison to the profitability of the NERF® brand products, shows that the Xploderz and Blaster Pro products were commercially successful.

31. It is my opinion that the Xploderz and Blaster Pro product lines created an entirely new product category (i.e., blasters that shoot super absorbent poly ammunition), and that this shows the Xploderz, and Blaster Pro products were commercially successful.

VII. DEFINITIONS

32. I define and use several terms in my analysis throughout this Report. For ease of reference, I summarize those terms and definitions below.

33. **“Maya Sales Report”** refers to MAYA-0000001, a document that I understand the Maya Group produced in this proceeding. I understand from the transcript of the deposition of Maya Group’s witness, Mr. Oded Ben-Ezer, that the Maya Sales Report is a Microsoft Excel spreadsheet generated in December 2012 by Maya Group’s financial controller to report sales¹ of the various Maya Group products. *See, e.g.*, Ben-Ezer at 147:1-148:2, 266:18-268:3.

¹ Although some of the rows in the Maya Sales Report appear to correspond to orders that were made but not yet invoiced, this is not unusual. For example, it may be due to the fact that all such orders were made in the weeks or months leading up to the generation of the sale report, and there is sometimes a delay between when an order is recorded and when a corresponding invoice issues.

34. **“Xploderz and Blaster Pro Products”**—A subset of the Maya Group’s products included products featuring blasters designed to launch super absorbent polymer ammunition and also products that comprised ammunition refill packs. These products are organized in the Maya Sales Report under two different product lines—the Xploderz product line and the Blaster Pro product line, each of which I discuss below. I use the term Xploderz and Blaster Pro Products when referring collectively to the Xploderz and Blaster Pro product lines.

35. In the Maya Sales Report, the **“Xploderz product line”** includes the following items:

Master Item #	Item Description
45101	Ammo Refill Pack
45102	Xploderz 200
45103	Face-off 400
45104	XStormer 1000
45105	Long Ranger 2,000
45106	Ammo Battle Pack 1,000
45107	Ammo Pack 500 Ready to Use
45110	Sidewinder 1000 w/Bonus 500
45111	Xblaster 450 Kohl’s
45112	XGround Pounder 2000
45113	Xploder Pump Action 575 4 pack TRU
45114	Ammo Depot 1000
45115	Mega Pack 1500
45118	Ammo Depot 1000 (Red)
45119	Ammo Depot 1000 (Orange)
45120	Ammo Refill 500 (Red) Target Exclusive
45121	Ammo Refill 500
45122	Ammo Refill 300
45202	XBlaster 200
45203	Face-Off 400
45204	XSTORMER 1000

However, the quantity of such orders that had not yet been invoiced at the time of the report is

The presence of these orders does not change my opinions regarding the sales, profitability, and commercial success of the Xploderz and Blaster Pro Products.

45205	XRanger 2000
45206	XBlaster 700 (Big Lots)
45208	XMAGNUM 700 6-Pack
45210	XStormer 1000 w/ Bonus 500 Ammo
45211	XMAGNUM TARGET STRIKE 2000
45212	XBOW 1500
45213	Xploderz XGrenadez
45214	Xploderz XGrenadez Mag
46000	X2 Invader
46001	X2 Invader w/300 extra ammo (Kohl's)
46005	X2 Mauler
46010	X2 Retaliator
46015	X2 Face-off 1400
46020	Xploderz X2 X Bow
46500	Night Fighterz Ammo Depot 500 (Brazil)
46505	Night Fighterz Refill 500-box
46510	Night Fighterz Gen-700
46520	Night Fighterz SuperGen-1000
46525	Night Fighters Battle Ammo 1000

36. In the Maya Sales Report, the “**Blaster Pro product line**” includes the following items:

Master Item #	Item Description
49101	Blaster Pro 2500 Ammo Pack
49102	Blaster Pro 6000 Ready2Go
49103	Blaster Pro Pump Action 2500
49104	Blaster Pro Full Auto 5000
49106	Blaster Pro Glasses (TRU)
49107	Blaster Pro Pump Action (TRU)

37. I use the term “**blaster products**” when referring to products that include a handheld launcher for firing ammunition. I am not referencing products consisting solely of ammunition refills (and/or other accessories) without a launcher.

38. I use the term “**gross price**” when referring to the per-unit price on an order or invoice for a retailer before subtracting allowances and discounts. Similarly, I use the term “**gross**

[REDACTED]

[REDACTED]

sales” when referring to the gross price applied to a quantity of units on an order or invoice for a retailer.

39. I use the term “**net revenue**” when referring to gross sales dollars minus allowances and discounts.

40. I use the term “**wholesale**” when referring to a sale from a manufacturer, such as the Maya Group or Hasbro, to a retailer.

41. “**2010-2012 Hasbro [REDACTED] t**” refers to HASBRO-ITC-00111608, a document that I understand Hasbro produced in this proceeding. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Bairos Dep. at 67:3-70:10; *see also id.* at 17:12-16.

VIII. LEGAL BASIS

42. I am not a lawyer. My opinions are directed at evaluating whether certain products (described below) were a commercial success. I understand that this information can be useful in the patent law context.

43. Specifically, I have been informed that the “commercial success” of a patent-practicing product can be an objective indicator that a patented invention was not obvious at the time of the patent invention. I understand that the evidence of commercial success must have a “nexus” to the patented invention. I understand “nexus” here generally means that the commercial success is derived from the practice of the patented invention, and that the invention is the driver of the commercial success. I understand that the mere fact that a patentee has been able to sell a large quantity of its invention will not suffice to demonstrate commercial success if the patentee

[REDACTED]

does not also show that its sales were attributable to the desire for the claimed invention and not to other factors such as the patentee's marketing acumen or position in the market.

44. I am not offering opinions about whether any particular products practice any particular patented invention.

45. I understand that there is no “litmus test” to determine whether a product was a commercial success. Rather, I have been informed that commercial success (for example) can be shown by significant product sales in a relevant market. My understanding is that the data used to show product sales need not take any particular form. Nor are there any predetermined thresholds for evaluating the magnitude of product sales. What matters is that the product sales are properly contextualized in terms of a relevant market to determine whether, and to what degree, those sales are “significant” under the circumstances. I understand that commercial success can also be established by showing that a product created a new market segment within a relevant market. I am further informed from my own personal experience, of course, as to what constitutes a commercial success in the toy industry and believe that this is where my opinions may be of particular interest.

IX. OPINIONS

A. Opinions Relating to Maya Group’s “Xploderz” and “Blaster Pro” Products

1. The Original Xploderz Line and Subsequent Line Extensions

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

47. One of Maya Group's first product lines featured a new type of "blaster" that fired a soft ammunition called Xploderz Ammo with "H₂GROW" technology. *See* HASBRO-ITC-00111582; Ben Ezer Dep. at 280:2-21. The "FAQ" for the product line in 2011 explained that "the ammo is a superabsorbent polymer," which "consists of many cross-linked molecules bonded together." HASBRO-ITC-00111582; Ben-Ezer Dep. at 280:2-21. Based on my own observation of these blaster products in what appears to be their original packaging, the superabsorbent polymer ("SAP") ammunition was sold in both hydrated and in a dehydrated state. Ammunition in the dehydrated state must be hydrated before firing from the blaster, according to the instructions on the website and enclosed with the blasters. The hydration process involves soaking the SAP ammunition in water, such that "water is absorbed into the spaces between the molecules." HASBRO-ITC-00111582; Ben-Ezer Dep. at 280:2-21.

48. The first Xploderz were launched at the tail end of 2010 for a Spring 2011 product release. Ben-Ezer Dep. at 108:10-13, 112:20-113:2, 121:11-14, 258:13-259:1. For example, one of the initial products released was known as the Xploderz XBlaster 200. The XBlaster 200 is pictured below in its original packaging, which included a projectile launcher, hydrated Xploderz ammunition, and extra dehydrated refills that could be hydrated using provided instructions to "Make your own Xploderz Ammo!". HASBRO-ITC-PHYS_00035.

49. In the name of the product—XBlaster 200—the word "XBlaster" refers to the launcher and the number "200" indicates that the package includes approximately 200 rounds of ammunition. I understand from the deposition of Mr. Ben-Ezer that the XBlaster launcher was also sold in a product called the "Face-Off 400" that includes two XBlasters and approximately 400 ammunition rounds, a product called the "XBlaster 450" that includes a single XBlaster launcher and approximately 450 ammunition rounds, and a product called the XBlaster 700 that

includes a single XBlaster launcher and approximately 700 ammunition rounds. Ben-Ezer Dep. at 272:3-273:20.

50. I understand that the XBlaster 200 product has been identified in this litigation as HASBRO-ITC-PHYS_00035.



HASBRO-ITC-PHYS_00035 (Front)



HASBRO-ITC-PHYS_00035 (Back)

51. As depicted on the back of the packaging (above/below) and also on the Xploderz website at the time (HASBRO-ITC-00111600, <https://web.archive.org/web/20110124011746/xploderz.com/products>) additional launch products included (presented left to right):

- the “XRanger 2000”;
- the “XStormer 1000”;
- the “Face Off 400” 2 Pack—including two XBlasters; and
- ammunition refills—the “Battle Blowout” 1000 Xploderz Ammo Refill and the “Ammo Refill Pack” 500 Xploderz Ammo Refill.



HASBRO-ITC-PHYS_00035 (detail)

[REDACTED]

52. I understand that the XRanger 2000 has been produced in this matter as HASBRO-ITC-PHYS_00037:



HASBRO-ITC-PHYS_00037

53. I understand that the XStormer 1000 has been produced in this matter as HASBRO-ITC-PHYS_00033:



HASBRO-ITC-PHYS_00033

54. I understand that the Battle Blowout has been produced in this matter as HASBRO-ITC-PHYS_00074:



HASBRO-ITC-PHYS_00074

55. I understand that the Ammo Refill Pack has been produced in this matter as HASBRO-ITC-PHYS_00044:



HASBRO-ITC-PHYS_00044

56. Maya Group launched additional Xploderz products later in 2011, including the XGround Pounder 2500 and the Ammo Depot 1000, so that by Spring 2012, the Xploderz product line was as follows:

PRODUCTS

AMMO REFILL PACKS



BLASTERS



HASBRO-ITC-00111600 (excerpt)

57. I understand that the XGround Pounder 2500 has been produced in this matter as HASBRO-ITC-PHYS_00047:



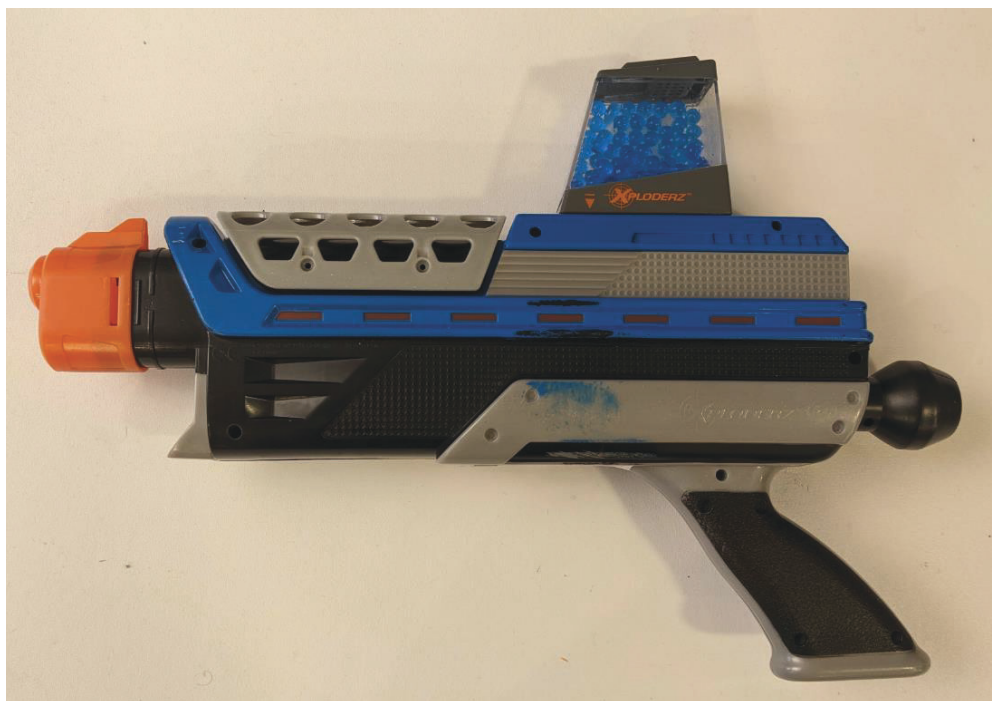
HASBRO-ITC-PHYS_00047

58. In late 2012, Maya Group introduced a second generation of blasters, the X2 series and Night Fighterz series (pictured below):



HASBRO-ITC-00111618 (excerpt)

59. I understand that the X2 Invader 700 has been produced in this matter as HASBRO-ITC-PHYS_00040:



HASBRO-ITC-PHYS_00040

60. I understand that the X2 Mauler 1000 has been produced in this matter as HASBRO-ITC-PHYS_00034:



HASBRO-ITC-PHYS_00034

61. I understand that the X2 Retaliator 2000 has been produced in this matter as HASBRO-ITC-PHYS_00048:



HASBRO-ITC-PHYS_00048

62. I understand that the X2 Faceoff 1400 has been produced in this matter as *HASBRO-ITC-PHYS_00039*:



HASBRO-ITC-PHYS_00039

63. I understand that the X2 Retaliator has been produced in this matter as *HASBRO-ITC-PHYS_00048*:



HASBRO-ITC-PHYS_00048

64. I understand that for the holiday season of 2012, Maya Group also introduced the Blaster Pro Pump Action S2500, the Auto Fire E5000, and the Blaster Pro Ammo Pack, which

[REDACTED]

were aimed at a demographic including children 14 years of age and up. HASBRO-ITC-00111601.



HASBRO-ITC-00111601 (excerpt)

65. I understand that the Blaster Pro Pump Action S2500 has been produced in this matter as HASBRO-ITC-PHYS_00059:



HASBRO-ITC-PHYS_00059

66. I understand that the Blaster Pro Auto Fire E5000 has been produced in this matter as HASBRO-ITC-PHYS_00060-61 and HASBRO-ITC-PHYS_00064:



HASBRO-ITC-PHYS_00061

67. I understand that the Blaster Pro Ammo has been produced in this matter as HASBRO-ITC-PHYS_00062:



HASBRO-ITC-PHYS_00062

68. For 2013, the Maya Group released a third generation of blasters the X3 series (pictured below):

PRODUCTS



X3 BLASTERS, NOW WITH SELECT-A-SHOT



CLOSE RANGE BLASTERS



NIGHT FIGHTERZ BLASTERS



HASBRO-ITC-00111599 (excerpt)

69. I understand that the Sneak Attack X3 has been produced in this matter as HASBRO-ITC-PHYS_00065:



HASBRO-ITC-PHYS_00065

70. I understand that the Invader X3 has been produced in this matter as HASBRO-ITC-PHYS_00068:



HASBRO-ITC-PHYS_00068

71. I understand that the Face Off X3 has been produced in this matter as HASBRO-ITC-PHYS_00053:



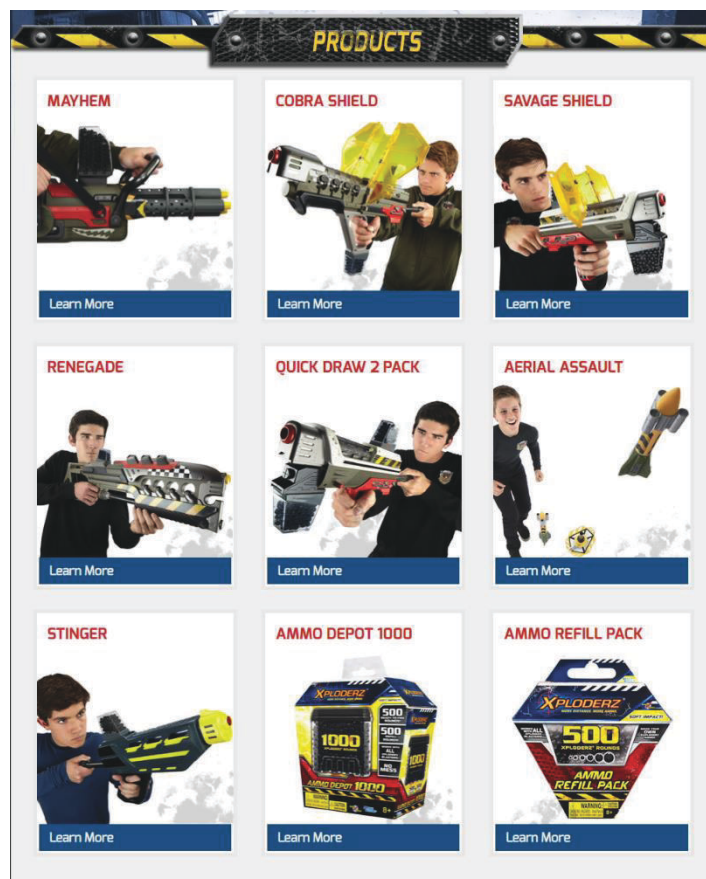
HASBRO-ITC-PHYS_00053

72. I understand that the Equalizer X3 has been produced in this matter as HASBRO-ITC-PHYS_00054:



HASBRO-ITC-PHYS_00054

73. For 2014, the Maya Group released the Firestorm series of blasters (pictured below):



HASBRO-ITC-00111620 (excerpt)

74. I understand that the Firestorm Series Stinger has been produced in this matter as HASBRO-ITC-PHYS_00073:



HASBRO-ITC-PHYS_00073

75. I understand that the Firestorm Series Savage Shield has been produced in this matter as HASBRO-ITC-PHYS_00066:



HASBRO-ITC-PHYS_00066

76. I understand that the Firestorm Cobra Shield has been produced in this matter as HASBRO-ITC-PHYS_00058:



HASBRO-ITC-PHYS_00058

77. I understand that the Firestorm Series QuickDraw 2 Pack has been produced in this matter as HASBRO-ITC-PHYS_00056:



HASBRO-ITC-PHYS_00056

2. Packaging and Advertising of the Xploderz and Blaster Pro Products

78. I have been asked to comment on my opinions regarding the packaging of the Xploderz and Blaster Pro products. In my opinion, although the packaging for these products improved over time, the packaging for the Xploderz products was not particularly appealing and the aesthetic of the packaging would not have been a primary driver of sales. There was no “wow” factor in the packaging for the Xploderz and Blaster Pro products.

79. The packaging also broke basic rules of advertising/marketing. It is well-accepted in the marketing world that packaging (with so little available space for a message) should not repeat the same words multiple times on the package. Maya Group’s packaging repeatedly broke this rule. For example, the XBlaster 200 packaging repeated the same line “SHOOTS UP TO 50

FEET!” four times on the packaging (twice on the front and twice on the back). The top left back panel of the package of the XBlaster 200 packaging also states, “More Distance.”



HASBRO-ITC-PHYS_00035 (Front) – Annotated



HASBRO-ITC-PHYS_00035 (Back) - Annotated

80. Maya Group also repeatedly emphasized the ammunition capacity of the Xploderz and Blaster Pro products on their respective packaging. For example, Maya Group repeatedly stated on the back of the packaging of the XBlaster 200 that it held 75 rounds. It also stated on the top left of the back packaging that users could have “More Ammo.”



81. Although the redundancy throughout the packaging reflects that the Xploderz and Blaster Pro products did not align with certain best industry practices for packaging, it does reflect how Maya Group sought to distinguish its products from other blasters on the market. When I say “other blasters on the market,” I am referring to foam blasters like those in Hasbro’s NERF® brand. As is clear from my review of the Xploderz and Blaster Pro products, and as Mr. Ben-Ezer confirmed in my discussion with him, Maya identified NERF® as its target competitor. As Mr. Ben-Ezer explained to me, based on marketing studies, Maya determined that Xploderz had an advantage over NERF® blasters in terms of launching ammunition further and carrying more ammunition on the blaster. Mr. Ben-Ezer also explained that a customer shopping in Target or Walmart at the time would have seen Xploderz blasters in the same aisle as NERF® blasters and faced a decision between them.

82. Thus, the focus of the packaging reflects the “More ammo More distance” punch line at the top left of the back packaging on the Xploderz 200. The packaging clearly advertises that the Xploderz and Blaster Pro products could shoot further, and could hold more ammo, than other blasters like NERF®. The packaging also indicates that Maya Group sought to distinguish the Xploderz and Blaster Pro products from other blasters by highlighting that the Xploderz and Blaster Pro products had an easy loading and firing mechanism. This is clear from the “Load & Xplode!” section on the back of the XBlaster 200 packaging.



83. Maya Group also touted these apparent benefits in its commercials. For example, the commercial produced as HASBRO-ITC-00111621 highlighted the shooting distance (“more distance: up to 85 feet”), the ammunition capacity (“more ammo; clip holds 70 rounds”), and the easy loading and firing (“Xploderz: Quickly reload and shoot”). Indeed, the final substantive line in the commercial is “Xploderz: More ammo, more distance, more fun.”



HASBRO-ITC-00111621

84. Thus, the advertising focus for the Xploderz and Blaster Pro products indicates that Maya Group touted the apparent product differentiators of these products, i.e., that they could shoot more ammo to a greater distance.

3. Maya Group's Sales of the Xploderz and Blaster Pro Products

85. As I explained at ¶¶43-45, my understanding is that the purpose of commercial success evidence in patent law is to assist in determining whether a patented invention was obvious or non-obvious. I begin my analysis with the Xploderz and Blaster Pro Products² based on my understanding that these are the first commercial patent-practicing products at issue in this proceeding.

86. It is also my understanding that the obviousness or non-obviousness of a patent is determined from the perspective of a person at the time of the invention. In this case, I understand that the time of the invention(s) was May 10, 2010. As such, my focus is on the first two full years

² I use the term “Xploderz and Blaster Pro Products” when referring collectively to the Xploderz and Blaster Pro product lines, which included blaster products and ammunition refills. Note that I define the term “blaster products” below as excluding ammunition refills.

[REDACTED]

of Xploderz sales in 2011 and 2012, the closest years in time to the May 10, 2010, invention date. The relevant market here is the toy blaster market, as I explain further at ¶¶ 81, 129 .

87. I have reviewed the sales data produced by the Maya Group in this case for 2011 and 2012. For example, I have reviewed the document produced in this case as MAYA-0000001. I understand from the transcript of the deposition of Maya’s witness, Mr. Oded Ben-Ezer, that MAYA-0000001 is a report generated on December 2012 by Maya Group’s financial controller to report sales of the various Maya Group products, including (but not limited to) the Xploderz and Blaster Pro Products. *See, e.g.*, Ben-Ezer Dep. 147:1-148:2, 266:18-268:3. As noted above, I will refer to MAYA-0000001 as “the Maya Sales Report.”

88. The Maya Sales Report includes data that Maya Group generated based on its sales to various retailers. In my experience, a report like the Maya Sales Report includes the types of data (which I discuss in detail below) that a toy manufacture, like Maya Group, would use to assess the commercial performance of its products.

89. [REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001 (excerpt showing the sheet tab bar)

90. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

91. The Maya Sales Report shows that Maya Group sold over 3.7MM units for over \$35MM from the Xploderz product line to a number of well-known retailers in the first two full years of launch. MAYA-0000001. [REDACTED]

[REDACTED]

[REDACTED]

92. [REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001 (excerpt showing Row 93 of the Summary Tab)

93. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001 (excerpt showing Column Q filter on the 2011-2012 Tab)

94. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*MAYA-0000001
(excerpt showing the status bar w/Column I highlighted on the 2011-2012 Tab)*

95. I understand from the transcript of the deposition of Mr. Oded Ben-Ezer, and from my discussion with him, that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

96. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001 (excerpt showing Row 11,721 on the 2011-2012 Tab)

97. Next, I conducted a similar analysis to develop a total sales number that accounts for the Blaster Pro product line. [REDACTED]

[REDACTED]

[REDACTED]

⁴ I understand from the deposition of Mr. Ben-Ezer that the Maya Sales Report does not include data regarding the quantity of products that were returned to Maya Group after sale. Ben-Ezer Dep. at 301:2-6. However, I also understand from the deposition of Mr. Ben-Ezer that returns were “within an acceptable range” and, indeed, “were less than 5 percent.” *Id.* at 277:1-4. I confirmed with Mr. Ben-Ezer that most products did not have a return rate that approached 5%. However, even if I assume that every Maya Group product I have considered had a 5% return rate, this would not change my overall opinions as to commercial success. Indeed, even with a higher return rate, the fact is that Maya Group was selling millions of dollars of blasters and ammunition, and retailers made repeat purchases of the blasters, as shown in MAYA-0000001. Accordingly, it is reasonable to presume the retailers deemed the products successful enough to re-stock and sell.

[REDACTED]

[REDACTED] Accordingly, the Maya Sales Report shows that, in the first two full years of launch, Maya Group achieved more than [REDACTED] in sales to retailers under the XPloderz and Blaster Pro product lines. See MAYA-0000001.



MAYA-0000001 (excerpt showing Column Q filter on the 2011-2012 Tab)

⁵ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001

(excerpt showing the status bar w/Column I highlighted on the 2011-2012 Tab)

98. I also calculated a total sales number over the 2011 and 2012 timeframe for both the Xploderz and Blaster Pro product lines. I [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001 (excerpt showing Row 109 of the Summary Tab)

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

100. Table 1 below summarizes my analysis above regarding the total sales of the Xploderz and Blaster Pro Products during the 2011 and 2012 timeframe.



Table 1 (generated from MAYA-0000001)

101. These sales numbers that I calculated from the Maya Sales Report (and summarized in Table 1) are stunning given that Maya Group was a startup and had no presence in the blaster market before these blaster products were launched.

102. Notably, these total sales numbers correspond to the “wholesale” prices of these products—i.e., the price that the retailers paid to the manufacturer, Maya Group. The retailers then would have added an additional markup price to cover their costs and make profit, resulting in a higher retail price. 





 (“The XBlaster 200 carries a suggested retail price of \$12.99”). Based on the significantly higher retail price, one would expect that the amount of revenue generated by the Xploderz and Blaster Pro product lines in the 2011 and 2012 timeframe throughout the marketplace is even greater than the \$35MM  wholesale totals. *See, e.g.,* Ben-Ezer Dep. at 278:2-278:7.

⁶ 

[REDACTED]

[REDACTED]

[REDACTED]

MAYA-0000001

(excerpt showing the status bar w/Column K highlighted on the 2011-2012 Tab)

103. Having examined the sales across all Xploderz and Blaster Pro Products, I will turn my analysis specifically to the blaster products.

104. In 2011, the first full calendar year of sale, Maya Group sold [REDACTED] of “blaster products” for a wholesale total of [REDACTED] (By “blaster products,” I am referring to products that included a handheld launcher for firing SAP ammunition. I am not including products consisting solely of ammunition refills (and/or other accessories) without a launcher.) Table 2 below, which I generated from the Maya Sales Report, shows unit quantities and sales on a per item basis. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2011 Sales – Xploderz Product Line, Blaster Products			
Master Item No.	Item Description	Quantity	Gross Sales (\$)
45102*	Xploderz 200		
45103*	Face-off 400		
45104*	XStormer 1000		
45105*	Long Ranger 2,000		
45110	Sidewinder 1000 w/Bonus 500		
45111*	XBlaster 450 Kohl's		
45112*	XGround Pounder 2000		
45113	Xploder Pump Action 575 4 pack TRU		
45202*	XBlaster 200		
45203*	Face-Off 400		
45204*	XSTORMER 1000		
45205*	XRanger 2000		
45206*	XBlaster 700 (Big Lots)		
45208	XMAGNUM 700 6-Pack		
45210*	XStormer 1000 w/Bonus 500 Ammo		
45212	XBOW 1500		

Table 2 (generated from MAYA-0000001)

105. I understand Mr. Kudrowitz has tested certain of the Xploderz and Blaster Pro blasters but was not able to find all of the blasters from 2011-2012.

To be clear, these sales figures exclude Item Numbers 45110 (Sidewinder 1000 w/Bonus 500), 45113 (Xploder Pump Action 575 4 pack TRU), 45208 (XMAGNUM 700 6-Pack), and 45212 (XBOW 1500). Excluding the sales for the item numbers corresponding to blasters that Mr. Kudrowitz was unable to obtain and test does not change my opinions or conclusions in this Report regarding the commercial success of Maya's Xploderz and Blaster Pro Products.

106. Maya Group's most popular blaster in 2011 was the XBlaster. As I explained at ¶49, Maya sold the XBlaster in both single-packs (45102, 45111, 45202, 45206) and dual-packs (45103 and 45203) with different amounts of ammunition. *See also* Ben-Ezer Dep. at 272:3-16. Table 3 below, which is a subset of Table 2 focusing on the XBlaster, shows that Maya sold a total of [REDACTED] blasters when counting the dual-packs as two blasters) for a total extended price (wholesale) [REDACTED]

2011 Sales – XBlaster			
Master Item No.	Item Description	Quantity	Gross Sales (\$)
45102	Xploderz 200	[REDACTED]	[REDACTED]
45103	Face-off 400		
45111	Xblaster 450 Kohl’s		
45202	XBlaster 200		
45203	Face-Off 400		
45206	XBlaster 700 (Big Lots)		
	[REDACTED]		

Table 3 (generated from MAYA-0000001)

107. In 2012, the second full calendar year of sale, Maya Group sold [REDACTED] of blaster products in the Xploderz line for a total of [REDACTED] an additional [REDACTED] of blaster products in the newly introduced Blaster Pro line for a total of [REDACTED]. The combination of blaster product sales in the Xploderz and Blaster Pro blaster product lines was [REDACTED] for a sales total [REDACTED], exceeding the first year of blaster product sales. The retailers in Maya Group's customer list for 2012, [REDACTED] [REDACTED] include Amazon, Kmart, Target, Toys R Us, and Walmart.

[REDACTED]

108. Table 4 below, which I generated from the Maya Sales Report using the same steps I recited above with respect to Table 2, shows unit quantities and sales on a per item basis.⁷

⁷ [REDACTED]
[REDACTED]
[REDACTED].

2012 Sales – Xploderz Product Line, Blaster Products			
Master Item No.	Item Description	Quantity	Gross Sales (\$)
45102*	Xploderz 200		
45103*	Face-off 400		
45104*	XStormer 1000		
45105*	Long Ranger 2,000		
45111*	Xblaster 450 Kohl's		
45112*	XGround Pounder 2000		
45113	Xploder Pump Action 575 4 pack TRU		
45202*	XBlaster 200		
45203*	Face-Off 400		
45204*	XSTORMER 1000		
45205*	XRanger 2000		
45208	XMAGNUM 700 6-Pack		
45211	XMAGNUM TARGET STRIKE 2000		
45212	XBOW 1500		
46000*	X2 Invader		
46001*	X2 Invader w/300 extra ammo (Kohl's)		
46005*	X2 Mauler		
46010*	X2 Retaliator		
46015*	X2 Face-off 1400		
46020	Xploderz X2 X Bow		
46510*	Night Fighterz Gen-700		
46520	Night Fighterz SuperGen-1000		

2012 Sales – Blaster Pro Product Line, Blasters			
49103*	Blaster Pro Pump Action 2500		
49104*	Blaster Pro Full Auto 5000		
49107	Blaster Pro Pump Action (TRU)		

Table 4 (generated from MAYA-0000001)

109. I understand Mr. Kudrowitz has tested certain of the Xploderz and Blaster Pro blasters but was not able to find all of the blasters from 2011-2012. For the sales of the blasters that he did test, which are starred (*) in Table 4 above, the sales figures are:

	Quantity	Gross Sales (\$)
2012 Xploderz Sub-Totals		
2012 Blaster Pro Sub-Totals		
2012 Xploderz and Blaster Pro Grand Totals		

Table 4A (generated from MAYA-0000001)

110. To be clear, these sales figures exclude Item Numbers 45113 (Xploder Pump Action 575 4 pack TRU), 45208 (XMAGNUM 700 6-Pack), 45211 (XMAGNUM TARGET STRIKE 2000), 45212 (XBOW 1500), 46020 (Xploderz X2 X Bow), 46520 (Night Fighterz SuperGen-1000), and 49107 (Blaster Pro Pump Action (TRU)). Excluding the sales for the item numbers corresponding to blasters that Mr. Kudrowitz was unable to obtain and test does not change my opinions or conclusions in this Report regarding the commercial success of Maya's Xploderz and Blaster Pro Products.

111. Maya Group's most popular blaster in 2012 was the X2 Invader. Maya sold the X2 Invader in both single-packs (46000 and 46001) and dual-packs (46015). *Compare* HASBRO-ITC-PHYS_00040 (X2 Invader single pack) *with* HASBRO-ITC-PHYS_00039 (X2 Faceoff 1400, which included two X2 Invaders). Table 5 below, which is a subset of Table 4 focusing on the X2 Invader, shows that Maya sold a total [REDACTED] blasters when counting the dual-packs as two blasters) for a total extended price (wholesale) of \$ [REDACTED]

2012 Sales – X2 Invader			
Master Item No.	Item Description	Quantity	Gross Sales (\$)
46000	X2 Invader		
46001	X2 Invader w/300 extra ammo (Kohl's)		
46015	X2 Face-off 1400		
Totals			

Table 5 (generated from MAYA-0000001)

112. Table 6 below summarizes my findings regarding the Maya Sales Report that is reflected in Tables 1-4.

2011 and 2012 Xploderz Blaster Product Sales Summary	
Description	
2011 Xploderz Product Totals, Blaster Products Only (Table 2)	
2012 Xploderz Product Totals, Blaster Products Only (Table 4)	
2011-2012 Xploderz Product Totals, Blaster Products Only	
2011 Most Popular Product: XBlaster Totals (Table 3)	
2012 Most Popular Product: X2 Invader Totals (Table 5)	

Table 6 (generated from MAYA-0000001)

113. I have reviewed the testimony of the Mr. Oded Ben-Ezer, corporate witness for the Maya Group, and understand that over the course of the line, Maya Group sold at least \$50 million dollars in wholesale of blaster and ammunition products under the Xploderz and Blaster Pro product lines. *See, e.g.*, Ben-Ezer Dep. at 275:11-14. This testimony is consistent with my analysis of the Maya Sales Report, which, as I noted above at ¶93, shows more than \$35MM in sales over the first two years of these product lines.

114. In my opinion, Maya Group's sales, such as I have documented them above from the 2011 and 2012 timeframe based on the Maya Sales Report, show that the Xploderz and Blaster Pro Products were a commercial success. Total sales on the order of [REDACTED] (or \$35MM on 3.7MM units for the Xploderz product line alone) is impressive for a new entrant to the toy market like Maya Group. *See* Table 1 and ¶¶97-98 above. By any reasonable benchmark, this is significant commercial success.

115. For one, it is surprising that a new market entrant like Maya Group could amass millions of dollars in sales through major, longstanding brick-and-mortar retailers like Kmart, Target, Toys R Us, and Walmart. These retailers were sophisticated parties with decades of experience in the toy industry. They would not have invested their money and finite shelf space

[REDACTED]
[REDACTED]

into products they did not expect to succeed commercially. Gaining approval and significant sales from major retailers, as Maya Group did with the Xploderz and Blaster Pro Products, is a telltale sign of commercial success.

116. Maya Group would have faced headwinds with getting buy-in from these retailers for a new kind of product like Xploderz in 2011. For example, I know from personal experience that Target—[REDACTED]
[REDACTED]—was particularly selective in terms of which toy products it would purchase and to which it would dedicate shelf space. Maya Group’s Xploderz and Blaster Pro Products would have been an especially tough sell from this perspective. Retailers would have had to (and did) buy and assign shelf space not only for the blaster products, but also for ammo refills. And yet, the retailers *did* buy Xploderz, and in a big way. In addition to the staggering sales numbers encompassing all Xploderz and Blaster Pro Products, which I referenced above, Maya’s sales of blaster products alone in 2011 (*see* Table 2)—i.e., more [REDACTED]—shows a major investment by retailers. Achieving this level of sales through major brick-and-mortar retailers in 2011 would have been impressive in the toy industry for virtually any new product line by a new market entrant.

117. The second year of Xploderz in 2012 was also a clear commercial success. Indeed, it is notable that Kmart, Target, Toys R Us, and Walmart each renewed their investment in Xploderz. These retailers would not have bought more product if the first line did not succeed—it obviously did. In fact, Maya had even higher blaster product sales in 2012—nearly [REDACTED]

⁸ See Cell P93 in the Summary Tab of the Maya Sales Report.

[REDACTED]
[REDACTED]
[REDACTED] (see Table 4). To sustain this level of sales two years in a row was no small feat.

118. For all these reasons, the Maya Group's sales data show that Xploderz were commercially successful. And their commercial success is even more apparent when viewed in context of the toy industry during the 2011 and 2012 timeframe, which I discuss below.

4. Sales in the Context of Toy Industry

119. In my opinion, Maya Group's sales outlined above demonstrate that the Xploderz and Blaster Pro Products, and particularly during the 2011 and 2012 timeframe as shown in MAYA-0000001, were a commercial success.

120. For context, Maya Group's Spring 2011 launch landed in an extremely competitive market. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

121. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] At that point in time, Hasbro was such a dominant force that even other

⁹ [REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]

major toy companies like Mattel did not compete with Hasbro. It was not until 2014, for example, that Mattel entered the market with its “Boomco” blasters. *See, e.g.*, HASBRO-ITC-00123369-74.

122. From my review of the transcript of Hasbro’s employee John Tomulonis, the Senior Director of Global Brand Strategy and Marketing for NERF®, [REDACTED]

[REDACTED] Tomulonis Dep. at 126:16-20.

[REDACTED]

[REDACTED] *See, e.g.*, HASBRO-ITC-00123369

(2014 article stating “Nerf traditionally claims a 75% market share in this category with no competition from the world's leading toymaker, Mattel.”); HASBRO-ITC-00123375 (2019 article stating that “Nerf still commands more than 70% of the blaster category but has lost a few percentage points in market share over the past year, [Hasbro CEO] Mr. Goldner said.”).

123. Based on these estimated percentages [REDACTED] it is possible to estimate the size of the total market, and thus Maya Group’s market penetration.

124. In 2011, the NERF® gross worldwide sales were [REDACTED].¹⁰ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁰ I intentionally used the NERF® gross sales rather than the NERF® net revenue in my analysis. Gross sales are necessarily larger than net revenue (because net revenue is derived by subtracting retailer discounts and allowances from gross sales). As such, using the NERF® gross sales will result in larger total market sales estimates, and thus a more conservative estimate of Maya’s market share.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I will refer to HASBRO-ITC-00111608 as the “2010-2012 Hasbro [REDACTED].”

125. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

126. [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED].

¹¹ By “in thousands,” I mean that 000 should be added to each numerical entry.

[REDACTED]
[REDACTED]

127. Accordingly, based on my understanding of the 2010-2012 Hasbro [REDACTED]

[REDACTED]

[REDACTED]

HASBRO-ITC-00111608 (excerpt including Rows 3 and 607)

128. [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] Maya captured 3.2%-3.4% of the

blaster market share in 2011.

129. The Maya Group and industry analysts considered Xploderz and NERF® to be in the same market segment, [REDACTED] [REDACTED]), and I have focused on that aspect of the market. *See* ¶81 (my prior explanation that Maya specifically targeted NERF® blasters as closest competitor for Xploderz); discussion with Oded Ben-Ezer.¹³ [REDACTED]

[REDACTED]

¹² I used the following formula to calculate these “total market sales” estimates:

$$\frac{\text{Hasbro's Gross Sales}}{\text{Hasbro Market Share Estimate}} = \text{Total Market Gross Sales Estimate}$$

¹³ As is clear from my review of the Xploderz and Blaster Pro products, and as Mr. Ben-Ezer confirmed in my discussion with him, [REDACTED]. As Mr. Ben-Ezer explained to me, based on marketing studies, Maya determined that Xploderz had an advantage over NERF® blasters in terms of launching ammunition further and carrying more ammunition on the blaster. Mr. Ben-Ezer also explained that a customer shopping in Target or Walmart at the time would have seen Xploderz blasters in the same aisle as NERF® blasters and faced a decision between them.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See, e.g., HASBRO-ITC-00006884; HASBRO-ITC-00111608;
Tomulonis Dep. at 126:16-127:19.) [REDACTED]
[REDACTED]

130. [REDACTED]
[REDACTED]
[REDACTED]

HASBRO-ITC-00111608 (excerpt including Rows 3 and 1006)

131. Using the same analysis as above (see ¶¶127-129) and [REDACTED]
[REDACTED]
[REDACTED] Meanwhile, Maya Group's
sales on the Xploderz and Blaster Pro Products [REDACTED] (see ¶99 and Table 1). [REDACTED]
[REDACTED]
[REDACTED] Maya's market share grew to 3.9%-4.1% of the blaster market share in
2012. Focusing solely on the Xploderz product line in 2012, which [REDACTED]
(see ¶¶99 and Table 1), shows that Maya retained its 3.2%-3.4% blaster market share from 2011
in 2012.

132. These market shares are remarkable, especially given Hasbro's market dominance.
Maya Group was a new entrant into this saturated market with no prior brand name recognition
for the Xploderz line on which Maya Group could capitalize. Maya Group was building its blaster
sales from scratch and did not have a pre-existing market share on which to build. The Xploderz
sales literally went from zero to nearly two million units sold within about a year. See above at

[REDACTED]

[REDACTED]

[REDACTED]).¹⁴ Compare MAYA-0000001 with HASBRO-ITC-00111608.

Despite having only a fraction of Hasbro's products on the market, Maya's Xploderz and Blaster Pro Products sold in their first year a volume ([REDACTED]; see Table 1 above) [REDACTED]

[REDACTED]

136. [REDACTED]

[REDACTED]

[REDACTED] -

[REDACTED].

137. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

¹⁴ [REDACTED]

[REDACTED]

[Redacted Table]

Table 7 (generated from HASBRO-ITC-00111608)

138. I conducted a similar analysis to compare the 2011 sales volume of other Maya SKUs/Master Item Numbers to NERF® products.

139. [Redacted]

[Redacted]

would have put the XBlaster 200 in the [Redacted] of NERF® products sold in 2011.

Compare MAYA-0000001 with HASBRO-ITC-00111608. Similarly, [Redacted]

[Redacted]

[Redacted]

140. [Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

141. [REDACTED]

142. As I noted above at ¶81, the most apt benchmark comparison for Maya Group's Xploderz and Blaster Pro Products was the NERF® product line. [REDACTED]

Table 8 (generated from HASBRO-ITC-00111608)

5. Line Extensions

143. As I noted above, the original Xploderz product line generated multiple line extensions, including the X2, Night Fighterz, Blaster Pro, X3, and Firestorm. This is another factor signaling that Xploderz were commercially successful.

144. A line extension in the toy industry is when a toy manufacturer adds a new product to its product line. A line extension can simply refresh a core product in a minor way to keep the product “fresh” in the mind of the consumer, or it could involve a more extensive change. A line extension of a product like a blaster could—and here did—involve changes and associated manufacturing costs. Because these represent new costs beyond the original product, a line extension can signal that the manufacturer believed that the original products were commercially successful enough to invest in the additional costs.

145. The converse is usually true: If the toy manufacturer does not consider the product to be a commercial success, the manufacturer may stop selling the product in the first cycle without any such line extensions.

146. Here, the Maya Group extended the Xploderz line multiple times, which—especially in view of the sales numbers—is a signal that the Xploderz were a commercial success.

147. Another strong indicator of commercial success is the length of a products' lifecycle. If a product survives its initial launch (and many products do not) the product life cycle characteristically has an introduction, product expansion, and maturity phase—followed by a decline. This will happen over multiple years and may happen for a variety of reasons from changing customer tastes to world events, or even factory or material availabilities among other things. Countless factors can affect the length of a product cycle over its multiyear life span.

148. Although the toy industry is subject to many of same factors that affect other consumer product life cycles, the toy industry has an additional set of challenges and hurdles to navigate. For example, toys typically face the expectation of a shortened product life cycle—sometimes less than a year. In comparison to many other consumer product categories, toy products experience accelerated rates of the rise and demise of products due to the intense effect of seasonality (e.g., many toys are given as gifts), the fickle tastes of the target market and the influence of trends. A hit toy one Christmas or Easter may not even last into the next year. Even some highly successful toys experience this come and go effect over the years sometimes returning with vengeance and multiple line extensions years or decades later.¹⁵ For example, My Little Pony, Care Bears and Rubik's Cubes all have made cyclical commercially successful returns to the marketplace years after the original toys appeared and succeeded in the marketplace.

¹⁵ Even certain toys that achieve a sort of “superstar” status, such as the Hula Hoop, or Rubik's Cube, go through cycles, where the core toy does not change, but may be refreshed. *See, e.g.*, HASBRO-ITC-00125708-16, [The Rise, Fall And Rise Of The Rubik's Cube | Only A Game \(wbur.org\)](http://www.wbur.org)

149. For example, Rubik's Cube was first licensed in 1978. By October 1982, The New York Times reported that sales had fallen and that "the craze has died," and, by 1983, the brand was trending down with the exception of a few international markets. *See, e.g.*, ROSENBLUM-0000008-11(<https://www.nytimes.com/1982/10/30/business/rubik-s-cube-a-craze-ends.html>).

After this, the brand could not regain its original prominence in the marketplace and faced overall decreasing popularity, sales, and manufacturing difficulties. These were just some of the success hurdles I experienced firsthand working on the brand in 1998 at Oddzon Products in Campbell, California (a division of Hasbro).

150. Suddenly in the early 2000's Rubik's Cube sales in the U.S. more than doubled. Once again, a brand-new group of users thought it was cool to own and try to solve a Rubik's Cube puzzle. The Boston Globe quoted, in 2003, toy industry expert Richard Levy, the author of "The Toy and Game Inventor's Handbook," saying Rubik's Cube has gone from mass-market craze to marginalized cult toy and has reemerged in the 21st century as a classic plaything. *See, e.g.*, ROSENBLUM-0000001-02

(http://archive.boston.com/ac/games/articles/2003/11/08/lets_twist_again/). In other words, the Rubik's Cube had stages as the toy came and went in and out of favor with the public on the bumpy road to renewed commercial success. Stage one had been the invention sensation (early 1980's), next the toy puzzle cube became a novelty (1990's) and in the 2000's Rubik's Cube took the giant step of becoming an icon and becoming (and still is) an evergreen toy. The expression "evergreen" means the toy is now likely here to stay as a standard of the toy category for the consumer after years of coming and going and reinventing itself through cycles, line extensions and targeting new customers.

[REDACTED]

151. Another example of this here today, gone tomorrow, back next year phenomenon in the toy industry is My Little Pony by Hasbro. The My Little Pony toy was first brought to market by Hasbro in 1981. My Little Pony has been put out to pasture and brought back numerous times since 1981. Each new introduction and product cycle features new line extensions, packaging, and stories and each time takes advantage of fresh new trends in the marketplace and always finds diverse new audiences to buy the product.

152. For example, I recall that the first introduction of My Little Pony was 1982 until 1992 in the United States and was maintained until 1995 in some international markets. The first launch of the product's popularity hit its highest sales numbers in 1990, but the following year Hasbro decided to discontinue the toy line due to increased competition. I recall from working on the small toy category in the 1980's at Mattel and seeing toy industry NPD (National Purchase Diary) reports that had My Little Pony selling over one hundred fifty million ponies in the 1980's. Further, my recollection as a professor and researcher in the small doll category I recall that My Little Pony product life cycles broke down by year approximately as follows:

- Introduced in 1982
- Discontinued in the US in 1992
- Discontinued worldwide in 1995
- Revitalized in 1997
- Discontinued in 1999
- Reintroduced again in 2003¹⁶

¹⁶ See, e.g., ROSENBLUM-0000005-07 (<https://www.prweek.com/article/221751/campaign-hasbro-resurrects-little-pony-brand---consumer-pr>)

[REDACTED]

153. Hasbro continues to sell My Little Pony, a brand that Hasbro itself discontinued in around 1999, to this day with a great deal of commercial success.

154. Therefore, the fact that Maya Group did not continue strong sales of the Xploderz and Blaster Pro products beyond approximately four years does not indicate a lack of commercial success. The opposite is true. That Maya Group, a startup, created an off seasonal toy brand with a strong product life cycle track record that lasted approximately 4 years and maintained the ability to reintroduce line extensions for years to come is considered a strong sign of commercial success. Mr. Ben-Ezer's deposition supports my contention when he said in his deposition (page 285 line 13): "And I think the biggest testimony is the number of sales that we did on each year of the Blaster when we sold – in the toy industry, if you have a line that is 3 million or 4 million, that is a good brand. And we sold in 2011 and '12 in excess of 15 million or 17 million, which is phenomenal success for the product."

155. Moreover, the commercial success of the Xploderz and Blaster Pro products is further illustrated by the fact that these products ultimately created an entirely new and commercially successful product category (i.e., blasters that launch super absorbent polymer ammunition). *See* Section IX.B.

6. Profitability

156. The commercial success of the Xploderz and Blaster Pro products is also illustrated by the profitability of the products. I have been responsible for accessing and managing margin items under NDA for Mattel Inc. (as a Marketing Director 1995), Disney (as a freelance brand manager 2006), Spin Master (as a freelance brand manager 2011) and Play it all Forward (as a consultant 2020), just to name a few of my hands-on experiences. Whether the company is large or small the margin always tells the same story. The margin calculation, when paired with the

[REDACTED]

[REDACTED]

experience and knowledge of the market and competition, can give a businessperson a preliminary benchmark for probable success with all other factors being equal. This is important because margins are profit indicators used by toy companies as one of the measures for success. Healthy margins give a toy company the ability to afford other necessary elements, such as but not exclusively: an ability to sell and advertise, pay for defectives, to warehouse their toys efficiently and profitably.

157. To evaluate the profitability or margin of these products, I considered how profitable they were in comparison to Hasbro's NERF® products. As set forth below, the fact that Maya Group's margins based on gross sales were similar to Hasbro's NERF® margins based on gross sales is a notable sign of commercial success.

158. First, in order to determine the margins for the NERF® brand, I considered the 2010-2020 Hasbro [REDACTED]. I understand from Mr. Bairos's deposition transcript and from my conversations with him that, in the 2010-2012 Hasbro [REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

159. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

160. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

161. [REDACTED]

[REDACTED]

A large rectangular area of the document is completely redacted with a solid black box, obscuring the content of Table 9.

Table 9 (generated from HASBRO-ITC-00111608)

162. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

163. [REDACTED]

[REDACTED]

[REDACTED]

Table 10 (generated from MAYA-0000001)¹⁷

164. [REDACTED]

[REDACTED]

¹⁷ [REDACTED]

[REDACTED]

[REDACTED]

165. [REDACTED]

[REDACTED]

166. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Table 11 (generated from HASBRO-ITC-00111608)

B. Maya Group Launched a New Product Category

167. As noted above in section IX.A.4, it is rare for a product to continue selling at a high rate uninterrupted for many years. Some highly successful toys experience a “come and go” effect over the years, sometimes returning with vengeance and multiple line extensions years or decades later, including by different companies. Here, Maya Group rested the Xploderz and Blaster Pro lines after approximately four years, but the commercial success of those products ultimately resulted in the creation of an entirely new product category, i.e., blasters that shoot super absorbent polymer ammunition. Other companies like Gel Blaster, Prime Time Toys, and Splat-R-Ball now sell products in this category as part of a “second wave” of SAP blasters that originally started with the Xploderz and Blaster Pro products.

168. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *at 500; see also* Tomulonis Dep. at 126:16-127:19

169. In my experience, it is unusual for a product to be so commercially successful that it creates an entirely new product category, as Maya's Xploderz did here. First of all, creating a completely new category is a very unlikely proposition, as the majority of traditional toys life cycles are often less than a year in my experience. A brand-new toy category product also faces a

[REDACTED]

whole unique set of hurdles that can be almost impossible to overcome including but not limited to (1) no or little brand awareness or recognition, (2) retail placement issues and (3) the syndrome of “this is something I have never seen before.”

170. Overcoming the first hurdle can require spending significant funds trying to build brand awareness. The second is particularly challenging with a brand-new toy category product especially in traditional in-store retailers. The dilemma for the traditional retailer then (and still today) is where will you sell and merchandise a brand-new category in the store. In the major retailers such as Target space was/is clearly set-up and planogrammed by category action figures, games, preschool, and so on.

171. One case product study of how critical the execution of shelf placement can be is the story of the Tiger Electronics Furby toy. In the late 1990’s, ToysRUs liked the item but were not sure what to do with Furby in regard to store placement and there was debate where, and further whether or not to even order the product and place it in the store in the first place. The Furby toy had plush, nurturing (girls), virtual pet, sound and electronic elements. It was unclear where to place it in store and whether there was even room for the product if retailers could agree on where to merchandise the item. The buyers my guess is looked at the girls, plush and electronics aisles but Furby being a new category of toy this silly talking fluffy toy did not fit seamlessly into any of those aisles or categories because it was a new hybrid product - a stuffed plush stuffed doll-like non-novelty electronic gremlin-like yet cute pet that talked in a made-up language – “Furbish”. Ultimately, to solve the retail placement issue as I witnessed firsthand, the five-sided pentagon shaped packaging of the Furby was utilized by ToysRus’s and other retailers across the country, as a stacking mechanism to create free standing displays outside of the traditional toy aisles. See ROSENBLUM-0000003-04, picture below from <https://www.thestar.com/life/2018/11/22/before->

hatchimals-furby-was-the-hottest-holiday-toy-20-years-ago.html.



172. The story of Furby's (one of the most successful toys of all time) struggle to get a home on the retail shelf further spotlights Maya Group's success. Based on my recall of the retail landscape at the time of introduction, there was nowhere to place this brand-new category of Xploderz. The shelves were stocked with NERF® and popular sports brands. The retailers and consumers had not seen this type of play before. There would have been standard questions on the part of retailers: Where should the products be merchandised in store? How would consumers find Xploderz? Would they know which aisle to go to? Would the toy be perceived as a gun or dangerous? It was cool but would kids know how to play with the toy? Would the retailers have to take away other pegged items? Were there merchandising side caps available? Maya Group very impressively had to overcome each and every concern that the retailers had regarding shelf

[REDACTED]

space because this was a brand-new toy category. The retailers had no idea how it would perform or be perceived. Based on my experience presenting and launching brand new toys, lines, and categories to retailers throughout my entire career, all of the above makes Maya Group's commercial success regarding the Xploderz and Blaster Pro products even more impressive.

173. This product category has been so successful that Hasbro decided to launch an SAP blaster of its own as part of Hasbro's NERF® line. This is remarkable because in doing so, Hasbro is effectively cannibalizing its own NERF® line (potentially taking sales away from other NERF® products).

X. CONCLUSION

174. For the reasons stated above, I believe that the Xploderz and Blaster Pro Products were a commercial success, that the initial lines of Xploderz were a commercial success (including as shown in the 2011 and 2012 sales numbers), and that the individual products in that line were a commercial success as I have described above.

175. I reserve the right to supplement, augment, add to, or change my report as additional information is made available in the scope of this Investigation.

176. I declare under penalty of perjury under the laws of the United States of America that the foregoing is a true and correct statement of my opinions.

APPENDIX 1



LYNN ROSENBLUM

TOY INDUSTRY EXPERT
MARKETING - DESIGN & CHINA PD
NEW PRODUCT STRATEGIES
CONSUMER INSIGHTS
EDUCATOR / EXPERT WITNESS



310 – 714 – 5820



LYNN@TOY-XPRT.COM



San Diego, CA

PROFILE

Toy and consumer product design expert with a concentration in toys with soft and hard goods experience in 25+ categories of consumer goods ranging from clothing to dishware to videogame chairs and beyond. Global recognition in product design and development, branding, consumer insights and marketing. Leadership roles across the following sectors: product design and development management (from ideation to manufacturing to retail), inventor liaison, focus group moderator, expert witness, educator, coach, and presenter. Player/Coach leadership style offers a unique hybrid of skills that work globally and universally across diverse work and student groups. Comprehensive understanding of the toy design toolkit and how this “360 checklist” applies across many toy and consumer products, categories, and distribution channels. Trusted on site resource for tradeshow, and overseas factory product development roles across all levels of toy, beauty, hardware, outdoor, software and entertainment companies.

PROFESSIONAL EXPERIENCE

Full-Time Assistant Professor | Design & Development Consultant | Marketing | Consumer Insights | Toy Collector, Curator and Historian | Expert Witness (in toys and consumer products)
Toy-xpert (lynnrosenblum.com) | San Diego, CA | 2007 – Present

Provide project teaching and management services to toy and consumer product companies, colleges and universities including product design and development, worldwide manufacturing, and curriculum. (see full list companies worked for and client list at <https://lynnrosenblum.com/business-services/>).

- Teach toy design, toy business, and math classes at Otis College of Art & Design in LA.
- Confidential Expert Witness (See next page for list of cases that have concluded).
- PIAF/TOL Inc.: (10/2012-1/2022) Worldwide product design and development lead for 25+ consumer product categories including soft and hard goods directing a D & D team of 6 designers and 4 factories. Primary licenses: GameMaster (Amazon) and Paul Frank brands
- West Coast Corporation: (2017-2018) In charge of men’s gifts/toys division for Boomerang Tool Co. (outdoor and fishing) and Key-Bak, “Made in the USA” key holders & retractors and safety equipment. Created/produced 12 corporate films. Consumer liaison - social media.
- Panda Mony Toy Brands: (2017-2018) Branding, sales, and set-up of ASTRA booth
- Tucker Toys: (2017) Research lead on kid testing for sporting goods/toys.
- Middle School Moguls: (2015-2017) China design and manufacturing, trade show booth and branding lead on dolls and books. Critical role positioning brand for air on Nickelodeon.
- Starstruck Entertainment (DDW Marketing): (3/2016-12/2016) branding and over 75 mommy bloggers for Kelly Clarkson doll, plush, & books
- New Dimensions - (2015-2016) all of booth for Toy Fair including design, set-up, load in/out.
- Fibrecraft: (11/2014-3/2015) Product development specialist for Walmart and Justice (dolls)
- Jakks Pacific: (10/2013-10/2014) New business pitches and focus groups for dolls and activity brands
- Napa Valley Toys: (2013-present) China manufacturing liaison & PD Night Buddies plush toys.
- Jada Toys: (1/2012-10/2012) VP/Marketing (full time) for girl’s doll brands: Managed advertising, events, promotions, media, public relations, social media, and trade show booths. Created partnerships with Las Vegas Fashion Week, Ronald McDonald House Charities and Lip Smackers.
- Spin Master: (1/2011-12/2011) Full time on-site branding and marketing for fashion and small doll brands: LaDeeDa, Liv, Victorious (celebrity dolls), Zoobles
- Disney Consumer Products: (2006-2010) Disney Princess doll/plush franchises directing partners such as Fisher Price and Jakks Pacific full time on-site through design approvals.
- Funrise – (11/2007-5/2008) Product Development (full-time) Preschool – Shelcore
- Rokenbok Toy Company: (2006-2007) Team leader for construction toy company – design, packaging, public relations, new product brainstorm and trade shows.

Assistant Professor
Toy Design
Otis College of Art & Design
Los Angeles, CA
1999, 2016-present

Adjunct Professor
Entrepreneurship BUS-369-04
University of Redlands
Redlands, CA
May 2018

Part-time Faculty
Consumer Behavior
University of Wisconsin
Milwaukee, WI
1997-1999

PROFESSIONAL SKILLS

Branding
Consumer Behavior, Insights/Trends
Marketing
Copywriting
Creative Briefs
Customer Service
Education, Teaching and Coaching
China Manufacturing Lead
Product Design and Development
Promotions and Events
Inventor Relations and Contracts
Focus Group Moderator
Research Screeners, Recruiting, Discussion Guides, and Toplines
Packaging Development and Critique
Media buying and planning.
Public Relations/On Camera
Sizzle films, TV Production & (DRTV)
Trade Shows and Booths
Business Development/Pitch Decks
Account Management & Route Sales
Boomerabilia Toy Valuations
Human Resources Training
Intern Programs

LYNN ROSENBLUM

SKILLS

Account Management
Brand Directional Outlines
China manufacturing expert
Competitive Market Positioning
Design Project Management
Executive Presentations
Public Speaking
SWOT Assessment
Territory Expansion
Trend & Valuation Analysis
Vendor & Factory Management

ACHIEVEMENTS

Wonder Woman of Toys Award 2017
Nomination for Marketing and
Mentoring - November 2016

Invited as feature mentor speaker, U.S.
Consulate in Beijing - July 2016

LA Business Journal – Advisor – 2007-
2010 for articles on toy industry/trends

Playthings Magazine (featured in three
stories - one a cover story - on mentors,
another on toy collection) 2005-2006).

Wonder Woman of Toys Award National
Honoree – 2005 (award winner 2006)

EXPERT WITNESS

BenShot LLC v. Lucky Shot USA LLC, 18-
CV-1716 (ED.W.I., filed October 29,
2018): Retained as expert witness for
the defendant on declaration on
consumer behavior and insights.

Catherine Hurrell v. Keylock Storage
Holdings, LLC, 2:19-cv-01211 (CD.C.A.,
filed February 28, 2020): Retained as
expert witness for valuation on toys
and consumer goods.

American Cover Design 26, Inc. v. LA
Trim & Rugs, Inc., 16-cv-00201-JJM-PAS
(D.R.I., filed February 18, 2019):
Retained as expert witness for
declaration on novelty and similarity.

Pawelko v. Hasbro, Inc., 16-cv-00201-
JJM-PAS (D.R.I., filed May 4, 2016):
Retained as expert witness for
declaration on novelty and similarity.

Shapiro v. Hasbro Inc., 15-cv-02964-BRO-
AJW (C.D.Cal., filed Apr. 21, 2015):
Retained expert witness for declaration
for toy industry practices, similarity, toy
invention value.

NSI International, Inc. v. Imperial Toy
LLC, 15-cv-01037 (RA) (S.D.N.Y., filed
Feb. 15, 2015): Retained expert witness
for declaration in support of motion for
preliminary injunction.

Shapiro v. Moose Enterprise PTY Ltd.,
14-CV-1073-JFW-Ex (C.D.Cal., filed Feb.
11, 2014): Retained expert witness for
declaration on industry practices,
similarity, and royalty.

EXPERIENCE *continued*

VICE PRESIDENT OF BUSINESS DEVELOPMENT

Overbreak LLC | Sun Valley, CA | 2004 – 2006

Consumer products DRTV company. Department head over: design, business development, marketing, licensing, trade shows, inventor relations, demo teams, samples, and public relations

- Across multiple product categories toys, fashion, and electronics
- Company sales grew from \$35 million to \$85 million during tenure.
- Screened, evaluated, and processed over 200 new concepts/inventions a year.
- Negotiated and secured crown jewel licenses such as Star Wars and Batman.

VICE PRESIDENT OF BUSINESS DEVELOPMENT

Toy Power LLC | Milwaukee, WI | 1996-2003

Branding and on-air media expert agency with over 35 consumer clients and short or extended employment including Bacardi Spirits, Brio Trains, Educational Insights, Ertl, Frito Lay, Hasbro Oddzon, Lionel Trains, Mattel, MGA, MGM, Playmates Toys, NBC Universal, Saatchi & Saatchi, Small Minds Yo-yo's, Spinmaster, Totsy Toys and Western Publishing.

- Frito Lay – Brainstorming and strategic planning – Star Wars partnership - 1996.
- Lionel Trains – 1997-2000 – Led PD team and China goods strategy team for incremental \$5 million business in preschool, CD's, books, and collectibles.
- Berchet – 2001-2003 – full time on site building \$5 million US preschool and large doll TRU business through rep groups, trade shows, credit & collections, and customized product.
- Over 30 spokesperson appearances as a respected authority on kids' branding, marketing, and consumer insights: The New York Times, Kid Screen Magazine, Kiplinger's Personal Finance Magazine, FOX News, Donny & Marie, and Home Team with Terry Bradshaw.

DIRECTOR OF MARKETING

Mattel Inc. | El Segundo, CA | 1987–1995

Marketing Director and brand development on Mattel's Nickelodeon Activity Toy line (including Gak, Floam and Smud) at \$100 million in sales. Managed brand group and was team leader when interacting with inventor, licensor, promotional, entertainment and retail communities worldwide.

- Broad perspective spearheading over 20+ brand P&Ls from \$15-\$100 million dollars.
- Approved and supervised over 15 television commercials in and outside United States.
- Created, developed, and nurtured priceless key strategic alliances, promotions, strong working relationships and partnerships with Disney, McDonald's, Pepsi, Reebok, Baskin Robbins, U.S. Army/Air Force, Radio City Musical Hall Rockettes, Western Publishing, M.T.V. Networks, Nickelodeon Studios, Spelling Entertainment, World Pog Federation.
- Developed as team leader Mattel's fastest-to-market incremental Barbie products (Mermaid, Madison Avenue and My Size) creating more than \$50 million in response to market opportunities. Responsible for a customized line of Barbie products and promotional programs tailored to over 20 individual retailers including TRU, Wal-Mart and Target increasing dollar volume of the specialty Barbie category from \$5 million in 1988 to \$33 million in 1992. All concepts overseen in China – 80% travel.
- Recognized as 1 of 150 Mattel employees in 1992 for creative excellence with a Worldwide Excellence Award for role in the first ever Barbie store and product line at FAO Schwarz.
- Recognized as 1 of 150 Mattel employees in 1993 for creative excellence with a Worldwide Excellence Award for role as a charter member of Mattel "MET" (Marketing Effectiveness Training) committee. Also known as "Mattel College".
- Recruited, supervised, trained, and mentored staff of 6.

EDUCATION

Master of Business Administration (MBA), Marketing
University of Southern California/Los Angeles (USC) - Marshall
School USC Marshall School
Los Angeles, CA
1985

Bachelor of Arts (BA), Political Science
University of California, Los Angeles (UCLA)
Los Angeles, CA
1981

APPENDIX 2

APPENDIX 2

List of Materials Considered Expert Report of Lynn Rosenblum

Discovery:

- Respondents' Second Supplemental Joint Disclosure of Initial Contentions in Response to Complainants' Common Interrogatory Nos. 23 and 24, dated December 7, 2022 and accompanying Appendices 5.2-A, 5-2-B, 13.1-B, and 13.2-A
- Claim Charts for U.S. Patent No. 8,371,282 and U.S. 8,640,683 – Maya Group Products (“Xploderz”)

Depositions:

- Deposition Transcript of Oded Ben-Ezer, dated December 13, 2022 and accompanying exhibits
- Deposition Transcript of Tom Roeder, dated December 7, 2022 and accompanying exhibits
- Deposition Transcript of Dan Bairos, dated December 8, 2022 and accompanying exhibits
- Deposition Transcript of John Tomulonis, dated December 14, 2022 and accompanying exhibits

Production Documents:

BegBates	EndBates
HASBRO-ITC-PHYS 00032	HASBRO-ITC-PHYS 00032
HASBRO-ITC-PHYS 00033	HASBRO-ITC-PHYS 00033
HASBRO-ITC-PHYS 00034	HASBRO-ITC-PHYS 00034
HASBRO-ITC-PHYS 00035	HASBRO-ITC-PHYS 00035
HASBRO-ITC-PHYS 00036	HASBRO-ITC-PHYS 00036
HASBRO-ITC-PHYS 00037	HASBRO-ITC-PHYS 00037
HASBRO-ITC-PHYS 00038	HASBRO-ITC-PHYS 00038
HASBRO-ITC-PHYS 00039	HASBRO-ITC-PHYS 00039
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HASBRO-ITC-PHYS 00050	HASBRO-ITC-PHYS 00050
HASBRO-ITC-PHYS 00051	HASBRO-ITC-PHYS 00051
HASBRO-ITC-PHYS 00052	HASBRO-ITC-PHYS 00052

BegBates	EndBates
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HASBRO-ITC-00001646	HASBRO-ITC-00001658
HASBRO-ITC-00006911	HASBRO-ITC-00006911
HASBRO-ITC-00092131	HASBRO-ITC-00092131
HASBRO-ITC-00111575	HASBRO-ITC-00111575
HASBRO-ITC-00111576	HASBRO-ITC-00111576
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HASBRO-ITC-00111581	HASBRO-ITC-00111581
HASBRO-ITC-00111582	HASBRO-ITC-00111582
HASBRO-ITC-00111580	HASBRO-ITC-00111580
HASBRO-ITC-00111581	HASBRO-ITC-00111581
HASBRO-ITC-00111580	HASBRO-ITC-00111580
HASBRO-ITC-00111581	HASBRO-ITC-00111581
HASBRO-ITC-00111598	HASBRO-ITC-00111598
HASBRO-ITC-00111599	HASBRO-ITC-00111599
HASBRO-ITC-00111600	HASBRO-ITC-00111600
HASBRO-ITC-00111601	HASBRO-ITC-00111601

BegBates	EndBates
HASBRO-ITC-00111608	HASBRO-ITC-00111608
HASBRO-ITC-00111610	HASBRO-ITC-00111610
HASBRO-ITC-00111611	HASBRO-ITC-00111611
HASBRO-ITC-00111612	HASBRO-ITC-00111612
HASBRO-ITC-00111613	HASBRO-ITC-00111613
HASBRO-ITC-00111614	HASBRO-ITC-00111614
HASBRO-ITC-00111615	HASBRO-ITC-00111615
HASBRO-ITC-00111616	HASBRO-ITC-00111616
HASBRO-ITC-00111617	HASBRO-ITC-00111617
HASBRO-ITC-00111619	HASBRO-ITC-00111619
HASBRO-ITC-00111620	HASBRO-ITC-00111620
HASBRO-ITC-00111621	HASBRO-ITC-00111621
HASBRO-ITC-00111622	HASBRO-ITC-00111622
HASBRO-ITC-00111623	HASBRO-ITC-00111623
HASBRO-ITC-00111624	HASBRO-ITC-00111624
HASBRO-ITC-00111724	HASBRO-ITC-00111740
HASBRO-ITC-00125693	HASBRO-ITC-00125693
HASBRO-ITC-00125694	HASBRO-ITC-00125694
HASBRO-ITC-00125708	HASBRO-ITC-00125716
MAYA 0000001	MAYA 0000001
ROSENBLUM-0000001	ROSENBLUM-0000002
ROSENBLUM-0000003	ROSENBLUM-0000004
ROSENBLUM-0000005	ROSENBLUM-0000007
ROSENBLUM-0000008	ROSENBLUM-0000011
ROSENBLUM-0000012	ROSENBLUM-0000012
SM0004213	SM0004213
SM0004214	SM0004214
SRB 000004350	SRB 000004353
SRB 000004354	SRB 000004357
SRB 000004546	SRB 000004552
SRB 000004562	SRB 000004568
SRB 000008969	SRB 000008970
SRB 000010498	SRB 000010503
SRB 000018132	SRB 000018134

Miscellaneous:

- Conversation with Dan Bairos
- Conversation with Oden Ben-Ezer
- Conversation with Barry Kudrowitz
- All materials referenced in my report

**CONTAINS CONFIDENTIAL BUSINESS INFORMATION
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document, **EXPERT REPORT OF LYNN ROSENBLUM**, has been filed and served on January 6, 2023, on the following:

The Honorable MaryJoan McNamara Administrative Law Judge U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, SW Washington, D.C. 20436 McNamara337@usitc.gov	☐ Via First Class Mail ☐ Via Hand Delivery ☐ Via FedEx ☒ Via Electronic Mail ☐ Via Electronic Filing (EDIS)
Todd P. Taylor, Esq. Office of Unfair Import Investigations U.S. INTERNATIONAL TRADE COMMISSION 500 E Street, S.W., Room 401 Washington, D.C. 20436 Phone: (202) 205-3248 todd.taylor@usitc.gov	☐ Via First Class Mail ☐ Via Hand Delivery ☐ Via FedEx ☒ Via Electronic Mail ☐ Via Electronic Filing (EDIS)
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/s/ Jeannet T. Santos
Jeannet T. Santos