

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

<hr/>)	
MARISA PAWELKO, D/B/A THE MODERN))	
SURREALIST,))	
))	
PLAINTIFF,))	
))	CIVIL ACTION NO.: 16-201
v.))	
))	JURY TRIAL DEMANDED
HASBRO INC.,))	
))	
DEFENDANT.))	
<hr/>)	

COMPLAINT

Plaintiff Marisa Pawelko, d/b/a The Modern Surrealist (“Pawelko”), brings this Complaint against Hasbro Inc. (“Hasbro”) for Hasbro’s breach of contract and theft and misappropriation of Pawelko’s product and related ideas, “Liquid Mosaic.”

BACKGROUND

1. Pawelko, a citizen and resident of Illinois, has operated The Modern Surrealist (<http://www.modernsurrealist.com>) in Chicago, Illinois for approximately twelve years. Pawelko has a bachelor’s degree in Furniture Design from Cornish College of Art, and she has been an active designer and inventor of products for the gift, toy, fashion, jewelry, and decorative accessory markets before turning her focus to the craft industry. She has authored and published a book (*Crazy-Cool Duct Tape Projects*), works as a freelance designer and inventor, works with craft manufacturers as a representative and Brand Ambassador, and she has appeared in various media, including PBS’s shows, *Creative Living* and *Hands On Crafts for Kids*.

2. Hasbro is a Rhode Island corporation with its headquarters and principal place of business in Pawtucket, Rhode Island. Hasbro manufactures, markets, and sells consumer goods in the toys and games industry. Hasbro's stock is traded publicly on the NASDAQ.

3. On November 4, 2010, Pawelko entered into a "Work for Hire" Agreement (the "WFH Agreement") with Hasbro, which is governed by Rhode Island law and broadly engaged her and her business to be an ongoing consultant and "new and valued supplier" to Hasbro. Under the WFH Agreement, designed to be a "win-win for everyone," Pawelko was to be paid on a "per-job" basis. The WFH Agreement, which was countersigned by Brian Chapman, Hasbro's Senior Vice President for Global Design and Development, provided that Pawelko was engaged generally. Ultimately, Pawelko invoiced Hasbro on December 3, 2010 (and was paid) \$8,522.86 for design work and creative services on one project: the design and development of a certain creative toy line, which was never produced, marketed, or sold by Hasbro. Hasbro employees Leigh Anne Cappello ("Cappello") and Yesim Kunter ("Kunter") managed the creative toy line project and Pawelko's work for hire.

4. Since 2010, the creative toy line project and Pawelko's work, which was well regarded and well received by Hasbro, comprise the only work for which Hasbro has engaged Pawelko. The WFH Agreement, however, does not contain a time limitation, and Hasbro has not terminated it.

5. Separately, Pawelko on November 5, 2010 notified her Hasbro colleagues (first, Cappello) that she had an invention separate from the creative toy project that she wanted to submit to Hasbro for evaluation and potential mutual development. Hasbro sent to Pawelko its standard "Agreement to Hold Confidential" ("NDA"), which is governed by New York law, and it was executed by the parties, including Hasbro's Vice President for Technology and

Innovation, and reviewed by Hasbro's legal department on or before November 15, 2010. (The NDA is attached as Exhibit A.) Pawelko and Hasbro (Cappello and Andrew Jeas ("Jeas")) met on November 22, 2010 in a scheduled conference call, which is confirmed by Pawelko in an email describing her disclosure in confidence of "Liquid Mosaic" and the slide deck, which is marked "Confidential" on each page. See Exhibit B. Separately, Pawelko emailed Cappello to indicate that she is mailing the confidential presentation and samples to Jeas, who was overseeing Hasbro's evaluation for its Advanced Technology and Innovation Division; that she is optimistic that they can make the product and related ideas successful for kids; and "that it would be a very complimentary addition to the Play-Doh brand!" Pawelko also inquires as to what Hasbro "typically works out with inventors (such as myself in this case) as far as a royalty agreement goes." Pawelko finally mentions that she also believes "Liquid Mosaic" would be complimentary to her creative toy project.

6. Thereafter on December 6, 2010, Pawelko followed up with Cappello and Jeas, and Cappello responds on December 16 that Jeas will get back to her "ASAP," but she indicates that, "[a]s far as I know everyone really likes the idea . . . just need to find an application for it, and isn't one right now. Doesn't mean there won't be." On December 17, Jeas apologizes for the delay and describes the Hasbro evaluation process and result:

After our initial phone call, I spoke briefly with our head chemist, and after I told him about *your* concept he seemed confident that there would be a way to make a formulation for the product that would meet global regulatory requirements. I shared *your* concept with the Creative Play team—it was *very well received* and there was lots of good discussion around it. We're in the process of trying to build our Arts & Crafts business through some focused strategic initiatives (since we're not well established in that area), but unfortunately *Liquid Mosaic doesn't fit directly into any of those*. It's a *great concept that we'll keep in mind for the future but the disposition now is a pass*. Leigh Anne can weigh in on where she is from a Future Now standpoint. As far as samples go, would

you like me to send them back to you or give them to Leigh Anne?
(emphasis supplied).

7. Pawelko by email on December 21 permitted Cappello to retain the samples “for longer to explore the possibility,” but later received an email from Hasbro’s Darlene Horan (with whom Pawelko did not work) on May 12, 2011 asking for Pawelko’s address to return the samples. In her email she says: “Leigh Anne Cappello returned your materials to me a few weeks ago. I know it was presented with the Creative Play group. Unfortunately, there isn’t further interest at this time.”

8. Pawelko received the returned samples of “Liquid Mosaic,” held by Hasbro for approximately four months. Pawelko herself formulated the “Liquid Mosaic” product (and her samples) with silicone and acrylic latex mixed with variants, such as glitter, opalescent pigments, and opaque pigments, to provide the desired creative impact and effect.

9. Up to October 2015, there were no intervening events, or communications, between Pawelko and Hasbro. In October 2015, however, Pawelko became aware of Hasbro’s DOHVINCI product line after seeing it demonstrated on *The Today Show* in a segment about Halloween crafting. She thereafter began seeing DOHVINCI in many sales channels (supermarkets, department stores, and toy stores in both the United States and Mexico). Pawelko thereafter emailed Jeas on November 9, 2015 with the “Liquid Mosaic” presentation and some of their prior correspondence, and she indicated that she has become aware of Hasbro’s new DOHVINCI product line. See <http://www.hasbro.com/en-us/brands/dohvinci>. Pawelko stated that “the Liquid Mosaic product concept that I presented to your team was certainly highly influential to, if not the overall inspiration for, the DohVinci product concept.” Pawelko expressed disappointment in not being involved the development process of her idea, as she remains “in the

Hasbro database of freelance designers!” She then asks for remuneration for “Hasbro’s development of the innovative idea that [she] presented.”

10. Pawelko thereafter sent a reminder on November 18 and, on November 19, Jeas responded that he “no longer works in that area of the company but will speak with the inventor relations team and make sure someone gets back to you.” He remarked that, “[a]t first glance, looking back on my original reply when I mentioned that we’re working on some ‘focused strategic initiatives’, I’m pretty sure DohVinci was it, and already in development (our development lead times for global compounds are quite long).” This communication contradicts the contemporaneous communications and assessment of “Liquid Mosaic” at the time it was submitted by Pawelko to Hasbro under the NDA for review.

11. On November 25, 2015, Pawelko followed up with Jeas again to indicate that she had not heard back from the Hasbro Inventor Relations Team, and, on December 7, 2015, Jeas responded that Hasbro is investigating the “genesis” of DohVinci:

Hi Marisa,

I’d like to introduce you to Phil Sage who heads up our Inventor Relations group, CCd. *Phil has been working with the PlayDoh team today to better understand the genesis of DohVinci, and he’ll get back to you tomorrow with his findings.* You can feel free to connect with him directly.

Best, Andrew (emphasis supplied)

12. Phil Sage (“Sage”) responded on December 8, 2015 only to say: “we will look into it, with our business partners, [and] will come back to you as soon as possible. Very best, Phil.”

13. On December 17, 2015, Pawelko followed up again and on December 18, 2015, Sage responded: “Thanks for reaching out, in all enquiry case’s of this nature [sic], its policy [sic] that our legal team are handle the response [sic], unfortunately, this is a formality we must

follow. Thank you so much for your patience. Very best, Phil.” Pawelko has heard nothing from Hasbro since then.

14. Upon information and belief, Hasbro announced the DOHVINCI product line at the 2014 Toy Fair (in February 2014), and the video demonstration states that it had been in research and development for two years: <https://www.youtube.com/watch?v=BA4R4KrwCUU>. From Hasbro’s public filings, DOHVINCI has been extremely successful commercially, and it is sold domestically and internationally through retail stores and on the Internet. See <http://www.hasbro.com/es-mx/worldwide>. Hasbro continues to grow and expand the uses, techniques, and applications of Pawelko’s “Liquid Mosaic” product and related ideas: <http://www.hasbro.com/en-us/product/dohvinci-platinum-styler-suite:69BE8EE1-5056-9047-F510-C819E2B2B01F>; <http://www.hasbro.com/en-us/product/dohvinci-sparkle-deco-pop-refill-6-pack:69C77AD8-5056-9047-F505-3BB88858202C>.

15. DOHVINCI is also, upon information and belief, scheduled to be placed by Hasbro in DreamWorks’s new *Trolls* movie and the new *Frozen* movie sets. Though Hasbro, like most public companies, reports earnings on a consolidated basis, it has recently reported a significant increase in earnings, which has been attributed to PLAYDOH and NERF products, with DOHVINCI having been incorporated into the *Frozen* line of toys and named a “Toy Fair Favorite” by Family Fun Magazine. <http://investor.hasbro.com/releasedetail.cfm?ReleaseID=965461>.

16. Earlier, Hasbro reported that DOHVINCI significantly expanded the age range and versatility of the PLAYDOH brand for older kids from 6-12, particularly girls, and it is composed of “different material that is meant more for decorative, permanent creations that can be constructed using a toy glue gun.” <http://fortune.com/2016/02/13/hasbro-play-doh-60-years/>.

17. With its relatively low cost of production and its reasonable toy price points for the line, plus worldwide sales and appeal, DOHVINCI has, upon information and belief, been profitable and accretive to Hasbro.

18. The similarities between “Liquid Mosaic” and DOHVINCI are strong, and Hasbro’s initial evaluation confirmed that Pawelko’s concept was novel, original, well conceived, and did not fit into any of Hasbro’s existing product lines. Among the similarities are:

- Material (color, texture, glow, sparkles) (applied to wood, glass, ceramic, plastic, clothing, hats, paper, cardboard)
- Caulk gun style applicator
- Applicator nozzles
- Refills
- Dual Swirl filling
- Design tools and add ons (beads, charms, buttons, pins, rhinestones)
- How it’s Used (art projects, DIY crafts, embellishing, wearable art, room decor)
- Refill packaging

JURISDICTION

19. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 in that it is a dispute between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

20. Venue is proper in the District of Rhode Island under 28 U.S.C. § 1391(a) and (c).

COUNT I (BREACH OF CONTRACT)

21. Pawelko repeats and re-alleges paragraphs 1-18 as if fully stated herein.

22. Pawelko has fully performed her obligations under the NDA.

23. Hasbro has breached the terms of the NDA.

24. Hasbro's breach of the NDA was willful and knowing.

25. As a direct and proximate result of Hasbro's breach of the NDA, Pawelko has suffered substantial damages.

**COUNT II (BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING)**

26. Pawelko repeats and re-alleges paragraphs 1-25 as if fully stated herein.

27. Implied in every contract under New York law is a covenant of good faith and fair dealing.

28. The conduct of Hasbro as alleged herein violated the implied covenant of good faith and fair dealing.

29. As a direct and proximate result of Hasbro's breach of the implied covenant of good faith and fair dealing, Pawelko has suffered substantial damages.

COUNT III (BREACH OF IMPLIED-IN-FACT CONTRACT)

30. Pawelko repeats and re-alleges paragraphs 1-29 as if fully stated herein.

31. The facts and circumstances of Pawelko's disclosure of "Liquid Mosaic", an original and novel product and related ideas, to Hasbro under the NDA, and the subsequent conduct of the parties created a contract implied-in-fact between Pawelko and Hasbro, under which Hasbro agreed to compensate Pawelko in the event Hasbro used Pawelko's product and related ideas.

32. Pawelko fully performed her obligations under the contract.

33. Hasbro used Pawelko's "Liquid Mosaic" product and related ideas, profiting substantially, but Hasbro has neither compensated nor remunerated Pawelko as agreed.

34. Hasbro breached its implied-in-fact contract with Pawelko.

35. As a direct and proximate result of Hasbro's breach, Pawelko has suffered substantial damages.

COUNT IV (MISAPPROPRIATION)

36. Pawelko repeats and re-alleges paragraphs 1-35 as if fully stated herein.

37. The facts and circumstances of Pawelko's disclosure of "Liquid Mosaic," an original and novel product and related ideas, to Hasbro in confidence and the subsequent conduct of the parties created a duty upon Hasbro that it would compensate Pawelko in the event that Hasbro used Pawelko's product and related ideas.

38. Hasbro used Pawelko's "Liquid Mosaic" product and related ideas, profiting substantially, but Hasbro has neither compensated nor remunerated Pawelko.

39. Hasbro's use by improper means of Pawelko's original and novel product and related ideas without Pawelko's consent and without compensating or remunerating Pawelko constitutes misappropriation.

40. As a direct and proximate result of Hasbro's misappropriation, Pawelko has suffered substantial damages.

41. Hasbro's conduct has been willful, morally culpable, and malicious.

COUNT V (UNFAIR COMPETITION)

42. Pawelko repeats and re-alleges paragraphs 1-41 as if fully stated herein.

43. Hasbro in bad faith misappropriated Pawelko's labor, skill, and expenditures for its own benefit in a commercial context.

44. The acts and conduct of Hasbro complained of herein constitute unfair competition under the common law.

45. As a direct and proximate result of Hasbro's unfair competition, Pawelko has suffered substantial damages.

46. Hasbro's conduct has been willful, morally culpable, and malicious.

PRAYER FOR RELIEF

WHEREFORE, Pawelko requests that this Court enter final judgment on all counts of the Complaints against Hasbro providing:

A. An Order that Hasbro to Plaintiff an account for all sales, revenues, and profit of DOHVINCI products, accessories, line extensions, and licensed products;

B. An Award of compensatory damages to Plaintiff comprising a reasonable royalty on Hasbro's sales of DOHVINCI products, accessories, line extensions, and licensed products;

C. An Award of compensatory damages comprising a disgorgement of all Hasbro profits realized on the commercialization of Pawelko's "Liquid Mosaic" product and related ideas through Hasbro's sales of DOHVINCI products, accessories, line extensions, and licensed products;

D. An Award of punitive damages to Plaintiff based upon Hasbro's willful, morally culpable, and malicious conduct;

E. Such other relief as Plaintiff may be able to demonstrate she is entitled to.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of her Complaint so triable.

Marisa Pawelko, d/b/a The Modern
Surrealist

By her attorneys,

/s/ Ryan M. Cunningham

Jonathan W. Fitch (R.I. Lic. #5240)

Ryan M. Cunningham (R.I. Lic. #9329)

Sally & Fitch, LLP

56 Pine Street

Providence, RI 02903

401-521-6500

jwf@sally-fitch.com

rnc@sally-fitch.com