Tyco Industries, Inc., Plaintiff, v. Lego Systems, Inc. and Interlego, A.G.,  
Defendants  
Civil No. 84-3201(GEB)  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY  
1987 U.S. Dist. LEXIS 13193; 5 U.S.P.Q.2D (BNA) 1023  
August 24, 1987, Decided; August 26, 1987, Filed  
  
  
II. BACKGROUND  
  
The plaintiff, Tyco, is a Delaware Corporation with its principal place of business in Moorestown, New Jersey. For over 50 years, Tyco has been a manufacturer and distributor of toys in the United States. The defendant Interlego, A.G. is a Swiss corporation located in Zug, Switzerland. For purposes of this trial only, Interlego speaks for a group of related Interlego  
companies in Denmark and Switzerland which perform various functions in connection with Lego Products. The defendant Lego Systems, Inc., is a Connecticut corporation wholly owned by Interlego, A.G. with its principal place of business in Enfield, Connecticut.  
  
Lego products consist primarily of plastic building blocks and elements developed for children. Lego began selling its Lego-brand block sets in  [\*4]  the United States in 1961. The basic Lego  
building block, also referred to as a brick, is approximately 9.5 mm. high, by 15.5 mm. wide, by 32 mm. long. The underside of the block has three tubes. The blocks interlock with one another. As one block is placed on another, the knobs or studs on the top of one block fit in the spaces  
between the outer edge of the tubes and the interwall of the other block.  
  
The gripping force that holds the blocks together is called "clutch power". Lego blocks are designed so that once a structure is built with the blocks, the clutch power will hold it together under normal conditions, but the clutch power is also low enough that a child can disassemble the blocks using normal force.  
  
Since the pieces in all Lego sets are intended to work with each other, Lego has adopted a clutch power for its blocks which is uniform over the entire range of the Lego line, but is most appropriate for children ages five to nine. The clutch power selected by Lego is sometimes too tight for children younger than six or too loose for older children who build more complex structures.  
  
Lego makes blocks with a wide variety of patterns of studs on top. These are referred to by  [\*5]  the number of rows and the number of studs on each row. For example, a "2x2" has two rows of two studs each, and a "1x3" has one row of three studs.The basic Lego block is called a "2x4" because it has two rows of four studs each.

In addition to the brick shape blocks, Lego makes other pieces, known as elements, which are non-block pieces. Lego makes approximately 470 elements, including windows, doors, windshields, wheels and axles, propellers, wind-ups, electric motors, cranes, pneumatic pumps, rooftops, miniature human figures, lighted blocks, and base plates.  
  
Since 1959, Lego has sold a pre-school size block in the United States, at first under the trademark "Lego Pre-School," and since 1977, under the trademark "DUPLO." The basic Lego and DUPLO blocks use the same system of interlocking and are of the same general overall configuration as the Lego blocks. The DUPLO block was designed so that all Lego blocks which  
have two or more studs in each direction may be mounted on top of a DUPLO  
block. To accommodate this direct connection, studs on the DUPLO block are cored out to receive the internal tubes of the Lego blocks.  
  
Lego sets are age graded. The DUPLO blocks are suitable for  [\*6]  children below four years of age, and are sold in sets designed for children from ages 18 months to about three years. Sets of  
standard sized blocks are designed to be suitable for various ages from three and up.  
  
Lego size sets for ages three and up (Lego 3+ sets) are the natural progression from DUPLO and are made up of blocks and elements. All of the blocks in 3+ sets have at least two rows of at least two studs each so that they may be connected directly to DUPLO blocks and so that they are large enough to be easily disconnected by three and four year olds. The direct attachment of Lego to DUPLO has been widely promoted by Lego on shelf strips which are attached to retail store shelves, in point-of-sale brochures, and in Lego print ads, generally accompanied by the phrase "Lego bricks work together with DUPLO blocks."  
  
Lego 5+ and 7+ sets generally contain a wider variety of sizes and shapes of pieces than the Lego 3+ sets. This is particularly true of the larger, more expensive sets. Most of these sets include 1/3 height blocks and pieces, blocks having one stud in one or both directions, and a variety of other complex elements. These smaller pieces lend greater realism to models  [\*7]  and  
permit greater detail.  
  
From about 1973 to the present, Lego and DUPLO brand building toys have held a commanding lead in the sales of plastic block construction toys, and the sales in the United States are believed to have equalled or exceeded the sales of all other brands of plastic building block toys combined. From 1977 to 1983, surveys conducted by Lego indicated that approximately 40 percent of all families in the United States with children 14 years of age or younger owned Lego products. At all relevant times, Lego has been and remains by far the most widely known and largest selling brand of interlocking plastic toy blocks in the United States.  
  
In 1983, Tyco decided to market a toy construction block in both standard and pre-school sizes. Tyco began to offer and sell its blocks to the trade in early 1984 under the trademark TYCO SUPER BLOCKS (in standard size) and TYCO PRESCHOOL SUPER BLOCKS (in pre-school size). Tyco was aware that Lego dominated the market for such toys, and decided to market a block which would fill part of the large demand for Lego sets. It is not disputed that Tyco has the right to manufacture and sell a high quality block that works together with  [\*8]  Lego blocks.  
  
Tyco copied the physical appearance of six basic Lego blocks almost exactly, except that Tyco deliberately altered the "feel" of Tyco blocks by slightly reducing the dimension of the tubes and studs so as to make the Tyco blocks feel looser and to make them more easily detachable.

n2 No Tyco set is identical in piece makeup to any Lego set. Except for the basic blocks, Tyco pieces are not copied from similar Lego pieces. All Lego sets contain pieces not found in Tyco sets, and no two Lego and Tyco sets are the same in piece type or array. Another difference is that Lego places its name inside each of the studs; Tyco places its name on the plate between the studs.  
  
Tyco's pre-school blocks also differ from DUPLO blocks. The studs of the Tyco pre-school blocks are not cored out as are the DUPLO studs. Since the Tyco pre-school studs are not cored out, standard Tyco (and Lego) blocks cannot be mounted on a Tyco pre-school block. Tyco has a 2x4 grey adapter block which fits on the Tyco pre-school block to connect it with a standard block. The block is available only in Tyco standard size sets (except in set numbers 5205 and 5207). No Lego block fits directly on Tyco's  [\*9]  pre-school size blocks.  
  
III. PART ONE: THE FALSE ADVERTISING CLAIMS  
  
In its complaint, Tyco sought entry of judgment declaring that the value comparisons used on its packaging and promotional materials did not infringe on Lego's statutory or common law rights. Lego counterclaimed pursuant to § 43(a) of the Lanham Act seeking to enjoin advertising and certain statements on Tyco packaging on the grounds that the statements are literally false  
and/or tend to deceive consumers. Neither party claims damages.  
  
A. Tyco's Advertising: The "Toy Box" Concept  
  
Lego's challenges are directed at claims made by Tyco: 1) that Tyco "looks and feels like Lego", 2) that "you can't tell the difference" between Tyco and Lego so that "your child can keep right on building with either one"; 3) that one can "build a bigger" structure with Tyco than Lego for the same money; 4) that Tyco's standard and pre-school sizes connect to each other, and 5) that Tyco sets are less expensive than "comparable" or "comparably priced" Lego sets.  
  
In 1985, Tyco advertised its TYCO SUPER BLOCKS to the consuming public in variations of one print ad and one television commercial. In addition, in 1985, Tyco advertised  [\*10]  its "outer space" theme sets in one print ad. Tyco's marketing plan was intended to convince the trade and the public that Tyco's new product looked like, felt like, was of the same quality as  
Lego, and that the only difference was that Tyco was much less expensive. As Mr. Grey, Tyco's President, testified, "The ad says buy Tyco instead of Lego because you get better value. It's the same merchandise or substantially the same, it looks the same, it feels the same, it works together . . .". As Tyco's counsel stated in his opening remarks, Tyco's ads make the claim one  
can get the same bricks for less money. Tyco claims it never intended, however,  
to make "sets" of blocks and elements that were in any sense the same as Lego sets.  
  
In his testimony, Mr. Grey described what was referred to throughout the trial  
by Tyco as "the toy box" concept. Tyco's theory is that Tyco and Lego sets are substantially the same and can be mixed up in the same toy box and the pieces can be used interchangeably. Thus, when the child reaches in the toy box for piece to build with, it doesn't matter whether the piece is a Tyco or a Lego piece. As Mr. Grey testified on direct examination:  
  
Literally, what it  [\*11]  means is that a child could reach into a box, toy box, bucket container of some kind, pull out a block and not care whether it's a Tyco block or a Lego block. That is fully  
compatible.  
  
However, Mr. Grey also testified that it was never Tyco's intention to duplicate the entire line of Lego pieces or sets:  
  
It was never our intention to produce at any time every element and shape that Lego had. There were certain basic shapes and sizes and elements that should be identical or very, very similar, and beyond that, we planned and in fact have gone our own way and developed other blocks, other shapes that we felt were suited or more suited to the kinds of projects that we felt American kids would be happy with.  
  
The "toy box" concept was conveyed on the 1984 print media "Butterfly" ad n3  
and the basic 1985 print ad, as well as on the bullet and the legends on Tyco's packaging. n4 (Tr. 253). Tyco felt that for the "toy box" concept to be accepted, the pieces which were the same had to look the same (Tr. 144, 229-31), and a difference in the appearance of similar Tyco and Lego  
blocks would be unacceptable to the consumer. (Tr. 255-56). However, while only  
some of the pieces were intended  [\*12] to be "identical", this fact was not and is not disclosed in Tyco's advertising and packaging.  
  
n3 The "butterfly" ad was a print ads which showed a butterfly constructed out of both Lego and Tyco blocks. In large letters on either side of the butterfly appear the words: "Which part is Tyco? Which part is Lego? If you can't tell the difference, why pay more?" The ad goes on to include inter alia the statements, "Tyco looks like and feels like Lego" and "Tyco works with  
Lego."  
  
n4 The "bullet" on the Tyco package shows a picture of a Lego 2x4 and a Tyco 2x4 connected together. The written message is that Tyco works with Lego.  
  
The "toy box" concept also included the fit, since a child, Mr. Grey testified, might care if Tyco and Lego fit differently (Tr. 273). Indeed, Mr. Grey admitted that Tyco pre-school was offered as compatible with DUPLO in the "toy box" sense, as emphasized in Tyco's ads and packaging (Tr. 263 and 280-81), and acknowledge that it "is not unlikely that the mother who has the Tyco pre-school and the DUPLO in the toy box would be of the belief that after reading the [package insert] she would not be able to tell the difference between the products." (Tr.  [\*13]  284-85).  
However, the Tyco Pre-School block is in fact different from the DUPLO block and the two are not interchangeable if the child is using the blocks with either party's regular-size sets.