

The Ghosts of Past Licensing Agreements Continue to Haunt Ms. Pac-Man

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1980 was a momentous year. Not only was it the year in which the Rubik's Cube was first released, it was also when approximately 350 million people worldwide finally learned who shot J.R. on TV's "Dallas" (spoiler alert: it was Kristin Shepard, J.R.'s angry mistress, obviously). But perhaps the most significant event of all was the creation of Pac-Man by a Japanese company named Namco.

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That same year, Pac-Man spread to the U.S. and the rest of the world like a virus through Namco's licensed publisher, Bally Midway.



The virus was known as Pac-Man Fever. As a child, I caught Pac-Man Fever when I received this primitive LED device for Christmas in 1981:



That's what fun looked like back in the early 1980s. Still in its original box.

Pac-Man Fever has continued to spread with new Pac-Man-related games and products being released in a steady stream to this very day. But, as a game, Pac-Man was perfected in 1981 with the release of *Ms. Pac-Man*, one of the most popular arcade games of all time.



Over the course of that game, Pac-Man and Ms. Pac-Man bonded over their shared love of dots and hatred of ghosts, and, despite their strong familial resemblance and same last name, married and had a child, Jr. Pac-Man. The Ms. Pac-Man game was very similar to the original Pac-Man, but it added tweaks to the graphics, mazes, and other details that made the game even more fun to play. Despite changing very little, these addictive games have let Namco, now Bandai Namco, use its Pac-Man and Ms. Pac-Man-related copyrights and trademarks to repeatedly sell children and nostalgic adults virtually the same game and associated merchandise for nearly 40 years. As Exhibit A, here are two different handheld versions of Ms. Pac-Man, licensed by Bandai Namco, that I, as an otherwise responsible adult, purchased this past year:



My kids are not allowed to touch these until a week after my funeral.

But behind the charming graphics, intuitive gameplay, and repetitive, yet hypnotic, “wakka, wakka, wakka” sound of Ms. Pac-Man, there is a darker, and even more interesting story about IP licensing that has recently led Namco Bandai to file suit in the Northern District of California this past September for alleged infringement of its rights to Ms. Pac-Man by AtGames Holdings, Ltd. That story begins many years ago with Ms. Pac-Man’s weird alter ego, Crazy Otto.



In the 1970s, a group of MIT students formed a corporation called General Computer Corporation (“GCC”), which made and sold “enhancement kits” for arcade games. The enhancement kits were intended to modify the original game by making it harder and adding new features that would make an old game more fun and more profitable. Crazy Otto was a 1981 enhancement kit for Pac-Man. Being both smart and cautious, before releasing Crazy Otto, GCC approached Bally Midway for permission. Bally Midway liked Crazy Otto so much that they bought the rights to it and re-designed it into Ms. Pac-Man. According to Namco Bandai’s September 20, 2019 Complaint (“Complaint”), that purchase came with the requirement to pay ongoing royalties to the GCC rights holders for certain commercial uses of Ms. Pac-Man.

That means that Bally Midway owned the rights to Ms. Pac-Man for which they paid royalties to GCC, while at the same time they licensed the rights to Pac-Man from Namco. Thus, from the very beginning, the ownership and licensing situation with respect to the rights to Pac-Man and Ms. Pac-Man was somewhat complicated. Over time, it became even murkier. According to the Complaint, GCC and Bally Midway had a dispute over Ms. Pac-Man that resulted in litigation that was settled by agreement in 1983. Around the same time, GCC and Namco entered into an agreement in which, according to the Complaint, GCC assigned whatever rights it still had in Ms. Pac-Man to Namco. Subsequently, in or around 1987, Bally Midway also assigned its rights in Ms. Pac-Man to Namco.

Despite these allegations, GCC apparently believed it held on to at least some of its interests in Ms. Pac-Man, such as its rights to royalties. The Complaint fails to mention negotiations and an arbitration between GCC and Namco over unpaid royalties from 2002 to 2006, according to a [2016 Game Developers Conference presentation by a GCC developer](#). In addition, the Complaint itself states that, “[o]ver the course of a year, until late August 2019 BANDAI NAMCO and the GCC Successors continued to engage in active discussions relating to the GCC Agreement and Ms. PAC-MAN.” Presumably the terms of those agreements and the negotiation are confidential, but recent court filings

suggest that Bandai Namco may have been trying to obtain GCC's royalty interest.

The latest stage of this story began when AtGames swooped in and purchased GCC's rights before GCC could reach agreement with Bandai Namco in August 2019. AtGames makes "plug-and-play" replicas of old consoles that are packed with multiple games and playable on modern televisions. Since 2012, AtGames has licensed many properties from Bandai Namco, including Pac-Man. Recent filings by AtGames indicate that it had also been negotiating for the rights to Ms. Pac-Man for over a year. AtGames purports to have been granted the rights to make a plug-and-play Ms. Pac-Man mini-console but it was still actively seeking permission to sell a miniature replica of the Ms. Pac-Man arcade game.

According to AtGames' recent filings, Bandai Namco was concerned about further licensing of Ms. Pac-Man because it would have to pay royalties to a third party, GCC. In an alleged attempt to remove this obstacle, AtGames decided to acquire GCC's rights to Ms. Pac-Man this past August. Unfortunately, that acquisition crossed a line with Bandai Namco, because it soon filed suit against AtGames and sought a temporary restraining order. The court denied that request but ordered AtGames to file a brief by October 31, 2019 showing why injunctive relief should not be granted.

Bandai Namco evidently sees AtGames' acquisition of these rights as part of a plan to sell unauthorized Ms. Pac-Man products, and it believes that those actions must be enjoined. But in AtGames' October 31 filings, it claims that its so-called unauthorized products were merely prototypes, and it has never questioned that it would need Bandai Namco's permission to commercialize them. It claims that the lawsuit and request for injunctive relief are really just retaliation against AtGames for acquiring GCC's royalty rights.

As any seasoned Ms. Pac-Man player knows, timing is key. The same is true in litigation. Bandai Namco tells a tale of infringement that must be stopped immediately, while AtGames tells a tale of a premature complaint filed for the wrong reasons. And underlying all of this is the 1981 agreement with GCC, which seems to haunt Bandai Namco like ghosts haunt Ms. Pac-Man. I'm looking forward to seeing how this story develops when Bandai Namco files its reply brief on November 5. Stay tuned on TheTMCA!