

MONDAY, MARCH 31, 2014

PERSPECTIVE

## Trademark saga for King's Candy Crush game

By Kelly McCarthy

This week, the social gaming company known as King began trading on the New York Stock Exchange as King Digital Entertainment PLC. Although share prices didn't live up to the hype, we should all pause to reflect that a company which makes a single product involving patterns of candy, chocolate lava and cartoon videos in the lands of "Minty Meadows" and "Easter Bunny Hills" went public and made a lot of money doing it. Social gaming presents challenges but it is a viable business in the modern world and now it only takes one major hit to propel a company into the stratosphere.

In the months leading up to the initial public offering, the game gained relevancy in the trademark world as well. As has been reported, the basic facts are this: King filed a trademark application for "CANDY CRUSH SAGA" in relation to a social game and related products and services claiming effective first use in March 2012. A company called Runsome Apps Inc. opposed the application based on their own game and related trademark for "CANDY SWIPE" claiming first use back to 2010. In spite of the fact that the two marks were fairly different, King attempted to shore up its position further by purchasing the rights to the mark "CANDY CRUSHER" and then asserting those rights against Runsome in a counterclaim. This act prompted Albert Ransom, the owner of Runsome, to publish an "open letter" to garner sympathy for his cause.

Although such tactics are not out of the ordinary in intellectual property disputes, King's reputation for playing nice was taking a nose dive in other gaming circles as well because the company was attempting to register both the words "CAN-



Associated Press

King Digital Entertainment CEO and founder Riccardo Zacconio, second left, high-fives with company co-founder Lars Markgren, the maker of Candy Crush Saga and Farm Heroes Saga, during opening bell ceremonies at the New York Stock Exchange, March 26.

DY" and "SAGA" by themselves in relation to computer games. After significant media coverage and a hackathon contest called "Candy Jam," King apparently gave into pressure and dropped the applications in the U.S. Currently, King

**While it may have overplayed its hand with 'CANDY' and 'SAGA' most attorneys would likely advise companies in King's position to do the same thing.**

has a number of pending applications for various "CANDY" related trademarks before the U.S. Patent and Trademark Office and other offices worldwide and the opposition matter with Runsome is suspended pending settlement negotiations between the parties.

As we sit in the eye of this trademark storm, many are still wondering why this has all blown up the way it did. The trademarks "CANDY CRUSH SAGA" and "CANDY SWIPE" don't have anything in

common other than the word "CANDY." Why would a small company like Runsome Apps pick a fight with a company about to go public which could stand to lose everything if they lost their trademark? Why would King attempt to gain rights to a word which is used, by some reports, in over 2,000 apps in Apple's App Store alone knowing that the gaming community is a resourceful bunch?

With regard to Ransom, it could be that he is convinced that King stole his game idea and he is trying to get restitution for the trademark as a consolation prize. It could also be that he went after King precisely because it would be a "bet the company" matter for King and settlement would come fairly easily. One thing is for sure, his game probably received more publicity through this legal matter than it previously enjoyed. It currently proclaims in the App Store "Over 120+ MILLION game plays and over 4 MILLION downloads on other mobile platforms." It may be that without winning the opposition Runsome has already won.

King also seems to be coming

out of all of this fairly well and is amassing an impressive portfolio of trademarks around the game. The company has been criticized for the fact that it only has one successful title and must rely on long term loyal users to continue to make the revenue to which it has become accustomed. It is likely precisely for this reason the company has become so aggressive with its trademark strategy. Without a stable of protectable IP, the company could lose value. While it may have overplayed its hand with "CANDY" and "SAGA" most attorneys would likely advise companies in King's position to do the same thing.

The Candy Crush legal saga is nowhere near over. First, the opposition with Runsome has not yet been resolved. Suspension pending settlement is a promising sign but settlement has not happened yet. King is also fighting a new battle on another front where a company has recently filed to cancel King's registration for "CANDY" in the European Union. Finally, King has a number of other trademark applications pending in the U.S. and worldwide and if recent events are any indication, a few new parties can be expected to jump into the fray. All of this is taking place in the fish bowl of the gaming and app developer community which promises to make all of these issues public relations minefields for the newly public company. How this all develops and its effect on the long term success of King Digital Entertainment PLC is anyone's guess.



**Kelly McCarthy** is a partner at Sideman & Bancroft LLP focusing on brand protection matters.