

## The Missing Piece: Protecting Fictional Character Merchandising Through Intellectual Property Rights and the Need for a Global Sui Generis Law

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### Abstract

This article examines the legal complexities surrounding the merchandising of fictional characters, with a particular focus on the globally recognized character of Barbie. In the absence of a sui generis legal system governing character merchandising, the owners and the rightful holders are dependent on existing intellectual property (IP) laws to protect their fictional creations.

Through legal analysis and selected case studies, the article evaluates the strengths and limitations of each IP regime in offering effective protection by focusing on trademarks, copy rights, industrial designs and patents. Using Barbie as the central fictional character, this article illustrates how these IP rights may be strategically combined to construct a comprehensive protective framework.

While these IP regimes collectively offer protective mechanism for fictional characters, this article also discusses the practical challenges such as overlapping scopes and territorial limitations that may hinder consistency and effectiveness of protection. In conclusion, this article argues for a *sui generis* legal framework to address the distinctive needs of fictional character merchandising in modern commercial and legal environments.

**Keywords:** Character merchandising; Copyrights; Fictional characters; Industrial designs; Patents; Trademarks.

### 1. Introduction

Character merchandising is a technique of adopting and relying upon or using a famous character (fictional or real) to merchandise and sell for profit.<sup>1</sup> Despite its commercial growing, there is currently no *sui generis* legal framework governing character merchandising. This raises

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1 Manisha Singh & Shreyashi Mazumdar, 'Character Merchandising Vis-à-vis IPR' (2021) <<https://www.mondaq.com/india/trademark/1080424/character-merchandising-vis-%C3%A0-vis-ipr>> accessed 25 February 2025.

important questions about how owners of fictional characters can secure legal protection and reap maximum financial benefit from their fictional characters. In response to this gap, various IP rights such as trademarks, copy rights, industrial designs and patents have emerged as legal shield for protecting character merchandising.

This article only focuses on fictional character merchandising with special reference to the fictional character of Barbie.

## 2. Methodology

This article adopts a doctrinal legal research methodology, analyzing statutes, case law, and international instruments related to intellectual property. First and second topics will analyse the concept of character merchandising and why a fictional character need to be protected. Thirdly, this article will critically analyse the role of IP rights<sup>2</sup> in safeguarding fictional character merchandising.

## 3. The concept of character merchandising

The 21st century has observed the mass media outbreak as a supplier of information and a resourceful marketing tool.<sup>3</sup> Be it by print, audio, visual, or web means, markets are flooded with commercial advertisements of merchandise. These advertisements of merchandise began to be developed as character merchandising. Thus, character merchandising can be defined as the exploitation of the names and images of famous personalities and fictional characters in connection with the manufacture and distribution of a good.<sup>4</sup> In general, we used to say that character merchandising is two types: fictional and real. However, this can be further divided into fictional character merchandising, personality and image merchandising.

In practical sense, this is a promotion technique using which goods/services resembling famous fictional or real characters are made for drawing the attention of customers.<sup>5</sup> Merchandising can be in any form such as t-shirt, toys, painting, etc.<sup>6</sup> A prominent trend in modern fashion retail is

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2 Trademark, copyrights, industrial design and patent.

3 Vandan Mahalwar, 'Concept of Character Merchandising' (2024) <[https://link.springer.com/chapter/10.1007/978-981-97-5628-5\\_1](https://link.springer.com/chapter/10.1007/978-981-97-5628-5_1)> 03 March 2025.

4 'Character merchandising: Oxford Reference' <<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803095602882>> accessed 24 February 2025.

5 Tuba Ghayas, 'Character merchandising – allow you to know' (2020) <<https://blog.ipleaders.in/character-merchandising-need-know/>> accessed 24 February 2025.

6 Ibid.

clothing with images of athletes, superheroes, and Disney princesses.<sup>7</sup> It is thus no wonder that character merchandising is considered to be a marketing method.<sup>8</sup>

#### 4. Why a fictional character needs to be protected?

First and foremost, benefit of character merchandising is that it helps to boost the sales of products and services.<sup>9</sup> It aids companies to venture into new markets and earn additional income by enhancing their brand names.<sup>10</sup> Thus, an owner/the authorised party need to protect his/her character, to reap these kinds of benefits.

### 5. Application and analysis of the role of intellectual property rights in safeguarding fictional character merchandising

#### 5.1. Trademarks

A trademark is commonly defined as a sign that functions as an indicator of commercial origin.<sup>11</sup> The consumers will distinguish between the goods of competing traders solely by means of their marks.<sup>12</sup> Thus, a trademark is important to source distinguish process. The same can be used to the benefit of the trade by deploying them as a marketing method to attract consumers and gain fame.<sup>13</sup>

The basic rule is that any sign, or any combination of signs, capable of distinguishing the goods and services of one undertaking from those of other undertakings, must be eligible for registration as a trademark<sup>14</sup>, provided that it is visually perceptible.<sup>15</sup> The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using identical or similar signs for goods/services which would result in a likelihood

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7 Sushmita Nair, 'Character Merchandising and its tryst with IPR', <[Character Merchandising & Its Tryst with IPR \(theipmatters.com\)](#)> accessed 26 February 2025.

8 Ibid.

9 Sushmita Nair, 'Character Merchandising and its tryst with IPR', <[Character Merchandising & Its Tryst with IPR \(theipmatters.com\)](#)> accessed 26 February 2025.

10 Ibid.

11 'The history of trademarks' (European Union Intellectual Property Office, 2023) <<https://www.euipo.europa.eu/en/news/the-history-of-trade-marks>> accessed 24 February 2025.

12 World Intellectual Property Organization, Geneva (1994)19<[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf)> accessed 24 February 2025

13 Steward Goldsmith, 'Linking Trademarks and Character Merchandising' (KIPG) <<https://www.kashishworld.com/blog/linking-trademarks-and-character-merchandising/#:~:text=These%20characters%20and%20their%20peculiar,attract%20consumers%20and%20gain%20fame.>> accessed 24 February 2025.

14 Article 15 of TRIPS Agreement, 1994.

15 Although the requirement of 'visibility' is mandatory in Sri Lanka, this requirement will depend on each jurisdictional law. For example, Article 15 of TRIPS didn't make this requirement mandatory.

of confusion.<sup>16</sup> Further, it should be noted that a trade mark does not protect the rights in the fictional character per se but only their embodiment in a distinctive mark, usually in relation to the goods or services for which the mark is apply.<sup>17</sup> Moreover, generally, names, slogans, prints, stamps, combination or arrangements of colours, shapes of good, letters can register as trademarks.<sup>18</sup> This is well evident in Section 102(3) Of Sri Lankan IP Act.<sup>19</sup>

However, the question here is whether the owner need to register its trademark to get these protections. Generally, the answer would be yes. But this can be differed from one jurisdiction to another. In Sri Lanka, trademark registration is not compulsory but the remedy available to a registered trademark owner and unregistered trademark owner maybe differ.<sup>20</sup> Most commonly, in the event that a trademark is not registered, the owner of the trademark may pursue a claim under the common law of passing off<sup>21</sup> or unfair competition law.

Considering practical example, Mattel<sup>22</sup> equally protects Barbie's distinct brand identity, including its name, logo, and slogan, with its trademark.<sup>23</sup> Specifically, 23 registered trademarks in the EU and over 30 in the UK which consists of Barbie's name and a variation of the logo and Barbie's boyfriend Ken is also protected as a trade mark.<sup>24</sup> Further, the shade of pink associated with Barbie is protected as a colour in the US.<sup>25</sup> In *Mattel Inc. v. Jcom Inc.*,<sup>26</sup> held that the website, using similar shades of pink and font to write "Barbie," intended to capitalize on Mattel's goodwill associated with its trademark; thus it is a trademark violation of Mattel.<sup>27</sup> Therefore,

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16 Article 16 (1) of TRIPS Agreement, 1994.

17 World Intellectual Property Organization, Geneva (1994)<sup>20</sup><[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf) > accessed 25 February 2025.

18 It should be noted that this composition of a mark is vary depending on different jurisdictions.

19 Intellectual Property Act, no 36 of 2003 (amended).

20 Tanya Saraswat, 'Trademark protection in Sri Lanka' (2022) <<https://www.mondaq.com/trademark/1214500/trademark-protection-in-sri-lanka> > accessed 26 February 2025.

21 Poonam Nahar, 'Protection of character costume merchandise under intellectual property law' (2021) < <https://blog.ipleaders.in/protection-character-costume-merchandise-intellectual-property-law/> > accessed 24 February 2025.

22 The name of the Barbie company.

23 Thejaswini Kaushal, 'Pink letter law : How Barbei had helped to shape IP law in Courts' (2023)<[Pink Letter Law: How Barbie Has Helped to Shape IP Law in the Courts \(ipwatchdog.com\)](https://www.ipwatchdog.com/2023/08/09/pink-letter-law-courtroom-barbie-helped-shape-ip-law/id=164787/) > accessed 25 February 2025.

24 Tiff Elmer, 'It's A Barbie World – The Importance Of Protecting Your Brand' (2023) < <https://laceyssolicitors.co.uk/2023/07/31/its-a-barbie-world-the-importance-of-protecting-your-brand/#:~:text=The%20first%20Barbie%20patent%20in,patent%20and%20industrial%20design%20protection.> > accessed 20 February 2025.

25 Ibid.

26 97 Civ. 7191 (SS) (S.D.N.Y., September 10, 1998).

27 Thejaswini Kaushal, 'Pink letter law : How Barbei had helped to shape IP law in Courts' (2023) <<https://www.ipwatchdog.com/2023/08/09/pink-letter-law-courtroom-barbie-helped-shape-ip-law/id=164787/> > accessed 22 February 2025.

there is no doubt that the trademark law can provide protection to protect names, letters or even colours and thereby protect the fictional character.

However, there are many exceptions to this. For instance, in a recent trademark opposition<sup>28</sup>, the Opposition Board of the JPO<sup>29</sup> dismissed an opposition by Mattel, who claimed “Salon BARBIES” is likely to cause confusion with the famous Barbie doll.<sup>30</sup> Mattel relied on Article 4(1)(xv)<sup>31</sup>, which prohibits registration if a mark is likely to be confused with another’s goods/services, and Article 4(1)(xix).<sup>32</sup> However, JPO stated that the disputed mark is dissimilar and there was no likelihood of confusion.<sup>33</sup> Thus, this demonstrates that the element of ‘confusion of relevant public’ is essential here. Therefore, the mere fact that the name or letter or the trademark is visually similar doesn’t qualify the owner to claim trademark rights. Therefore, in my opinion, owner must be aware of these complicated parts of trademark law. Otherwise, he/she will not be able to get protection.

But still very recent case like, *Mattel Inc v. Rap Snacks Inc.*<sup>34</sup> proves that trademark law without any doubt can provide a higher protection for owner of a character by protecting the good name of trademark. In this case Mattel sued against Rap Snacks, claiming that their “Barbie-Que Honey Truffle” potato chips violated Mattel’s trademark rights.<sup>35</sup> Consequently, Rap Snacks had to remove the chips from its online store.<sup>36</sup> The outcome of this is, if a person wants to use a registered trademark on any products or services, he/she must first get authorization from the trademark owner and register as the mark’s user.<sup>37</sup> Further, notably, trademark protection is indefinite.<sup>38</sup> Thus, it allows for the extension of the character’s brand into new markets and product categories, enhancing its visibility.

## 5.2. Copyright

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28 Opposition case no. 2016-900395.

29 Japan Patent Office.

30 Masaki Mikami, ‘Mattel fails in Japanese trademark opposition to block salon Barbies’ < [Mattel fails in Japanese trademark opposition to block 'Salon BARBIES' - IPWatchdog.com | Patents & Intellectual Property Law](#) > accessed 23 February 2025.

31 Trademark Act, Japan (No. 127 of 1959).

32 Article 4(1)(xix) blocks registration if a mark is identical/similar to a well-known mark.

33 Masaki Mikami, ‘Mattel fails in Japanese trademark opposition to block salon Barbies’ < [Mattel fails in Japanese trademark opposition to block 'Salon BARBIES' - IPWatchdog.com | Patents & Intellectual Property Law](#) > accessed 23 February 2025.

34 U.S. District Court for the Central District of California, No. 2:22-cv-05702.

35 Ibid.

36 Thejaswini Kaushal, ‘Pink letter law : How Barbei had helped to shape IP law in Courts’ (2023)<[Pink Letter Law: How Barbie Has Helped to Shape IP Law in the Courts \(ipwatchdog.com\)](#)> accessed 22 February 2025.

37 Poonam Nahar, ‘Protection of character costume merchandise under intellectual property law’ (2021) < <https://blog.ipleaders.in/protection-character-costume-merchandise-intellectual-property-law/> > accessed 24 February 2025.

38 Article 18 Of TRIPS Agreement, 1994.

Because of the impression of character in the consumer's minds, they tend to purchase products of that character.<sup>39</sup> Thus if this impression was reduced because of a third party's action, then the owner of the character could not get the benefits from its character merchandising. Therefore, preventing such misuse becomes necessary and Copyright is a tool for this. Thus, the main reason behind obtaining a copyright protection is to protect the work of the author from unauthorised use and to derive profit out of his creative effort.<sup>40</sup>

Generally, a work enjoys copyright protection if the form in which it is expressed constitutes an original creation of the author.<sup>41</sup> For example, original works such as drawings, cartoons, comic strips can avail copyright protection.<sup>42</sup> Further, it is the expression of author's idea that is protected rather than ideas themselves.<sup>43</sup> In Sri Lanka, Chapter 1<sup>44</sup> provide a broader protection for literary, artistic or scientific domain works and section 6<sup>45</sup> covers vast range of works which have copyright protection including books, and other writings. Similar recognition was given by Article 2(1) of the Berne Convention.<sup>46</sup>

Further, copyrights generally means that certain uses of work or certain related acts are unlawful, except where the author or copyright owner has authorized them.<sup>47</sup> For a hypothetical example, if someone wants to sell Barbie comics to gain profits then there must be the permission of the author/copyright owner of that comic. Otherwise, owner can prevent such action using copyrights available to him/her. However, this doesn't mean that the owner of the character is the only person who can use it. By way of licensing or other agreements, a copyright owner can assign the right to use the character. For instance, Mattel<sup>48</sup> had licensed Ruggable Collection to reproduce Barbie dreamhouses.<sup>49</sup>

Moreover, commonly it appears that copyrights prevent main economic rights such as rights of adoption, reproduction.<sup>50</sup> However, remarkably, an owner can claim copyrights in moral rights

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39 Ibid.

40 Anubhuti Rastogi, 'Character Merchandising' (Law Times Journal, 2019) <<https://lawtimesjournal.in/character-merchandising/>> accessed 23 February 2025.

41 World Intellectual Property Organization, Geneva (1994)15<[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf)> accessed 24 February 2025.

42 Ibid.

43 Ibid.

44 Intellectual Property Act, no 36 of 2003 (amended).

45 Ibid.

46 Berne Convention, 1886.

47 Ibid.

48 The owner of the Barbie.

49 [Ben Roberts, Ian Hart](https://www.licenseglobal.com/movies/mattel-announces-licensing-partnerships-ahead-of-barbie-film-), 'Barbie Licensing: Brand Collaborations to Celebrate an Icon' <<https://www.licenseglobal.com/movies/mattel-announces-licensing-partnerships-ahead-of-barbie-film->> accessed 23 February 2025.

50 Sushmita Nair, 'Character Merchandising and its tryst with IPR', <[Character Merchandising & Its Tryst with IPR \(theipmatters.com\)](https://theipmatters.com)> accessed 26 February 2025.

violation.<sup>51</sup> This means the rights of the creator can claim authorship of the work and to object to any distortion or modification alleging that it amounts to prejudicial to his/her honour or reputation.<sup>52</sup> This is explicitly recognised in Berne convention.<sup>53</sup>

Considering the practical applicability, at the very beginning of Barbie regime, *Mattel Inc v. Greiner and Hausser*,<sup>54</sup> G&H<sup>55</sup> claimed that the Barbie doll was a direct take-off and copy of G&H's Bild Lilli.<sup>56</sup> Finally this case was settled because of a settlement agreement where Mattel acquired all copyrights and patents of Bild Lilli.<sup>57</sup> Owning the copyright endowed Mattel with exclusive rights to control and reproduce Barbie.<sup>58</sup> Thus, this illustrations that even though there is no *sui generis* law to protect character merchandising, still there are IP rights which had effectively filled the gaps.

However, cases like *Mattel Inc. v. Walking mountain production*<sup>59</sup>, demonstrate that how an infringement of copyrights would be justified under 'fair use'. In this case even though Mattel alleged that Forsythe's use of Barbie's name infringed on their copyrights, trademarks, the court ruled in favour of the photographer, stating that his work fell under 'fair use'.<sup>60</sup> Thus, according to author's point of view, this could give rise to an adverse benefit for a third party.

## 6. Industrial Designs

Industrial designs can be defined as the ornamental or aesthetic aspect of a good.<sup>61</sup> This protection is mainly relevant for cartoon characters represented in the form of aesthetic designs or three-dimensional articles.<sup>62</sup> Notably, a design of a product can influence consumer choices which

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51 World Intellectual Property Organization, Geneva (1994)15<  
[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf) > accessed 24 February 2025.

52 Ibid.

53 Article 6bis(l) of the Berne Convention (1886).

54 GMBH 354 F3d 857 (9th Cir 2003).

55 A German company called 'Greiner & Hausser GmbH'.

56 'Mattel Inc v Greiner and Hausser' < <https://casetext.com/case/mattel-inc-v-greiner-and-hausser-gmbh/> > accessed 23 February 2025.

57 Ibid.

58 Hanna Buklieieva, 'Barbie: A Masterclass on Intellectual Property Ownership' < <https://www.evalueserve.com/blog/barbie-a-masterclass-on-intellectual-property-ownership/> > accessed 23 February 2025.

59 353F.3d 792 (9th Cir. 2003).

60 Ibid.

61 World Intellectual Property Organization, Geneva (1994)18<  
[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf) > accessed 24 February 2025.

62 Ibid.

create high commercial value; thus no one should allow to misappropriate it.<sup>63</sup> Therefore, protecting industrial designs become necessary to reap the maximum benefits of character merchandising.

A product incorporating a design will constitute an infringement if it is identical or similar to the registered design and courts will examine such an infringement by using 'ordinary person' test and of a comparison the overall appearance.<sup>64</sup> Most importantly, protection for industrial design is only available if the claim can prove novelty of the product. This requirement is demonstrated in section 29(a) of Sri Lankan IP Act.<sup>65</sup> Further, this protection has spread in international regime as well. For instance, Paris Convention, Article 5 quinquies<sup>66</sup> explicitly provide this protection. Notably, the effective protection of an industrial design generally starts on its registration date and it enjoy protection for a limited time period; After that, the design will fall in the public domain.<sup>67</sup>

Considering practical examples, now Barbie's feet have been flattened and this has been protected by way of industrial design protection and patent.<sup>68</sup> This proves that since these rights are able to prevent misuse of a character, owners of characters are more concern about IP rights to protect their charters.

## 7. Patents

In most jurisdictions, patents are used to protect inventions, processes, or methods, rather than fictional characters.<sup>69</sup> However, if the character is associated with a unique technology or process

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- 63 Ruzbeh Irani & Lois Frankel, 'The Role of Design in Consumer Behaviour: How Design Can Influence Consumer Decision Making at a Point of Purchase' (2020) 1-3<  
[https://www.researchgate.net/publication/342742866\\_The\\_Role\\_of\\_Design\\_in\\_Consumer\\_Behaviour\\_How\\_Design\\_Can\\_Influence\\_Consumer\\_Decision\\_Making\\_at\\_a\\_Point\\_of\\_Purchase](https://www.researchgate.net/publication/342742866_The_Role_of_Design_in_Consumer_Behaviour_How_Design_Can_Influence_Consumer_Decision_Making_at_a_Point_of_Purchase)> accessed 23 February 2025.
- 64 World Intellectual Property Organization, Geneva (1994)25<  
[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf)> accessed 24 February 2025.
- 65 Intellectual Property Act, no 36 of 2003 (amended).
- 66 Paris Convention for the Protection of Industrial Property (amended 1979).
- 67 World Intellectual Property Organization, Geneva (1994)25<  
[https://www.wipo.int/export/sites/www/copyright/en/docs/wo\\_inf\\_108.pdf](https://www.wipo.int/export/sites/www/copyright/en/docs/wo_inf_108.pdf)> accessed 24 February 2025.
- 68 Tiff Elmer, 'It's A Barbie World – The Importance Of Protecting Your Brand' (2023) <  
<https://laceyssolicitors.co.uk/its-a-barbie-world-the-importance-of-protecting-your-brand/>> accessed 20 February 2025.
- 69 Thejaswini Kaushal, 'Pink letter law : How Barbei had helped to shape IP law in Courts' (2023)<[Pink Letter Law: How Barbie Has Helped to Shape IP Law in the Courts \(ipwatchdog.com\)](https://www.ipwatchdog.com/pink-letter-law-how-barbie-has-helped-to-shape-ip-law-in-the-courts/)> accessed 22 February 2025.

that can be patented, it might be possible to use a patent to protect aspects of the character.<sup>70</sup> In simple terms, patent protects the originality of a product.

According to Sri Lankan law, as benefits of this right, the inventor of a fictional character gets the right to prevent other persons from exploiting his/her invention, assign or transmit the patent, to conclude licence contract.<sup>71</sup> Similarly, this protection extends only to acts done for industrial or commercial purpose.<sup>72</sup> Further, TRIPS<sup>73</sup> provide that subject to the normal tests of novelty, inventiveness and industrial applicability, an inventor can claim patent.<sup>74</sup>

For example, Barbie has over 330 patents.<sup>75</sup> From how the angle of the doll's feet to the specifics of materials are patented now.<sup>76</sup> Interestingly, hair style of the Barbie doll is also patented.<sup>77</sup> It is obvious that extensive, detailed patenting activity for over 60 years has helped protect Barbie from copycats and competitors.<sup>78</sup> Thus, without any doubts, it can be stated that patent rights can provide benefits to owner of the fictional character by preventing anyone else from using the same technology without the patent holder's permission.

## 8. Territorial Principle and IP Rights

IP rights are territorial nature, meaning that protection is often restricted to the jurisdiction where the rights are registered or recognized. This territorial principle can create practical difficulties in registering characters and IP rights. Because fictional characters like Barbie is not limited to its parent country but it has been spread in worldwide. Thus, the right holders find it practically impossible to register and defend their IP rights in every country in the globe. This disparity highlights the territorial approach's shortcomings in offering characteristics with international commercial importance complete protection.

Therefore, in author's view, there is a compelling need for a *sui generis* law for character merchandising. Such a *sui generis* law could provide uniform protection across every jurisdiction mitigating the inefficiencies of fragmented national systems. Nevertheless, it should also be acknowledged that certain international instruments provide partial solutions. For instance, the Hague Agreement<sup>79</sup> facilitates international protection of industrial designs while the Madrid

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70 Ibid.

71 Section 84 of Intellectual Property Act, no 36 of 2003 (amended).

72 Ibid, section 86 (1) (i).

73 Abbreviation used to 'Trade-Related Aspects of Intellectual Property Rights'.

74 Article 27 (1) of TRIPS Agreement, 1994.

75 Lucy Crook, 'Life in plastic, it's patented' (2023) <  
<https://www.csiro.au/en/news/all/articles/2023/august/barbie-ip>> accessed 27 February 2025.

76 Ibid.

77 Ibid.

78 Ibid.

79 Hague Agreement Concerning the International Registration of Industrial Designs 1925.

System enables the international registration of trademarks.<sup>80</sup> However, these mechanisms remain limited in scope and do not fully address the unique concerns posed by fictional characters merchandising.

## 9. Conclusion

Although character merchandising is a profitable idea, there exists no legislation which entirely governs it.<sup>81</sup> Therefore, it is wise for companies to seek refuge in the remedies provided by legislation governing IP rights<sup>82</sup> such as trademark, copyright, industrial property rights and patent. In 2022 alone, Mattel sold about \$1.5 billion worth of Barbie dolls which is one of the world's most profitable business deals.<sup>83</sup> Thus fictional character of Barbie proves that the owners of a cherished fictional character can leverage IP rights to reap the benefits of character merchandising. However, because of certain hardships in IP rights, there is a real need to a *sui generis* legislation for character merchandise.

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80 'What is Intellectual property' (2020,WIPO) 11-15 <  
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81 Sushmita Nair, 'Character Merchandising and its trust with IPR', <[Character Merchandising & Its Trust with IPR \(theipmatters.com\)](#)> accessed 26 February 2025.

82 Ibid.

83 Hanna Buklieieva, 'Barbie: A Masterclass on Intellectual Property Ownership' <<https://www.evalueserve.com/blog/barbie-a-masterclass-on-intellectual-property-ownership/> > accessed 23 February 2025.

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