

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

DENISE DANIELS; THE MOODSTERS  
COMPANY,

*Plaintiffs-Appellants,*

v.

THE WALT DISNEY COMPANY; DISNEY  
ENTERPRISES, INC.; DISNEY  
CONSUMER PRODUCTS AND  
INTERACTIVE MEDIA INC.; DISNEY  
INTERACTIVE STUDIOS, INC.; DISNEY  
SHOPPING, INC.; PIXAR,

*Defendants-Appellees.*

No. 18-55635

D.C. No.  
2:17-cv-04527-  
PSG-SK

OPINION

Appeal from the United States District Court  
for the Central District of California  
Philip S. Gutierrez, District Judge, Presiding

Argued and Submitted November 6, 2019  
Pasadena, California

Filed March 16, 2020

Before: Jerome Farris, M. Margaret McKeown, and  
Barrington D. Parker, Jr., \* Circuit Judges.

Opinion by Judge McKeown

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### **SUMMARY\*\***

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#### **Copyright**

The panel affirmed the district court's dismissal of an action alleging copyright infringement by the Disney movie *Inside Out* of plaintiffs' characters called The Moodsters.

Affirming the denial of plaintiff's claim under the Copyright Act, the panel held that The Moodsters, lightly sketched anthropomorphized characters representing human emotions, did not qualify for copyright protection because they lacked consistent, identifiable character traits and attributes and were not especially distinctive. The Moodsters also did not qualify for copyright protection under the alternative "story being told" test.

The panel also affirmed the district court's denial of plaintiff's claim for breach of an implied-in-fact contract under California law, based on her disclosure of information

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\* The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

about The Moodsters to various employees of Disney and its affiliates.

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### COUNSEL

Patrick Arenz, Esq.(argued), Ronald J. Schutz and Brenda L. Joly, Robins Kaplan LLP, Minneapolis, Minnesota, for Plaintiffs-Appellants.

Mark Remy Yohalem, Esq. (argued), Glenn D. Pomerantz, Erin J. Cox, Kenneth M. Trujillo-Jamison, and Anne K. Conley, Munger, Tolles & Olson LLP, Los Angeles, California, for Defendants-Appellees.

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### OPINION

McKEOWN, Circuit Judge:

Literary and graphic characters—from James Bond to the Batmobile—capture our creative imagination. These characters also may enjoy copyright protection, subject to certain limitations. Here we consider whether certain anthropomorphized characters representing human emotions qualify for copyright protection. They do not. For guidance, we turn to *DC Comics v. Towle*, our court’s most recent explanation of the copyrightability of graphically-depicted characters. *DC Comics v. Towle*, 802 F.3d 1012 (9th Cir. 2015).

Denise Daniels developed a line of anthropomorphic characters called The Moodsters, which she pitched to entertainment and toy companies around the country, including The Walt Disney Company. Under *Towle*, “lightly

sketched” characters such as The Moodsters, which lack “consistent, identifiable character traits and attributes,” do not enjoy copyright protection. *Id.* at 1019, 1021. We affirm the district court’s dismissal of Daniels’s complaint.

## BACKGROUND

### I. The Moodsters

Daniels is an expert on children’s emotional intelligence and development. She designed and promoted initiatives that help children cope with strong emotions like loss and trauma. The Moodsters were devised as a commercial application of this work. Daniels hired a team to produce and develop her idea under the umbrella of her new company, The Moodsters Company. The initial product was The Moodsters Bible (“Bible”), a pitchbook released in 2005. It provided a concise way to convey Daniels’s idea to media executives and other potential collaborators, and included a brief description of the characters, themes, and setting that Daniels envisioned for her Moodsters universe.

The Moodsters are five characters that are color-coded anthropomorphic emotions, each representing a different emotion: pink (love); yellow (happiness); blue (sadness); red (anger); and green (fear). Daniels initially named The Moodsters Oolvia, Zip, Sniff, Roary, and Shake, although these names changed in each iteration of the characters.

In 2007, Daniels and her team released a 30-minute pilot episode for a television series featuring The Moodsters, titled “The Amoodsment Mixup” (“pilot”). The pilot was later available on YouTube.

Between 2012 and 2013, Daniels and her team developed what they call the “second generation” of

Moodsters products: a line of toys and books featuring The Moodsters that were sold at Target and other retailers beginning in 2015.

Daniels and The Moodsters Company pitched The Moodsters to numerous media and entertainment companies. One recurring target was The Walt Disney Company and its affiliates, including Pixar. Daniels alleges that she or a member of her team had contact with several different Disney employees between 2005 and 2009.

The claimed contact began in 2005, when a member of The Moodsters Company shared information about The Moodsters with an employee of Playhouse Disney. Daniels alleges that in 2008 she was put in touch with Thomas Staggs, the Chief Financial Officer of the Walt Disney Company, and that Staggs later informed her that he would share materials about The Moodsters with Roy E. Disney, the son of a Disney founder, and Rich Ross, the President of Disney Channels Worldwide. Finally, Daniels alleges that she spoke by phone with Pete Docter, a director and screenwriter, and they discussed The Moodsters, although no year or context for this conversation is alleged in the Complaint.

## **II. Disney's *Inside Out***

Disney began development of its movie *Inside Out* in 2010. The movie was released in 2015, and centers on five anthropomorphized emotions that live inside the mind of an 11-year-old girl named Riley. Those emotions are joy, fear, sadness, disgust, and anger. Docter, who directed and co-wrote the screenplay, stated that his inspiration for the film was the manner with which his 11-year-old daughter dealt with new emotions as she matured.

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