

TTAB

Docket No.: 12838-072

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD



Mattel, Inc.,

Opposer,

vs.

Leonard Stitz,

Applicant.

Opposition No.: 117,536

07-07-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**OPPOSER'S REPLY BRIEF**

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I. INTRODUCTION

Having neither evidence to rely on nor meritorious arguments to make, Applicant Leonard Stitz (“Stitz”) has not addressed the merits of Opposer Mattel, Inc’s (“Mattel”) claims in Applicant’s Brief. Rather, Stitz, who is an attorney,<sup>1</sup> relies heavily upon a number of frivolous objections to the evidence that Mattel has properly introduced and rambles on in an incoherent manner. At best, such objections demonstrate Stitz’s ignorance of the Board’s well-established rules and procedures. At worst, these objections amount to an improper attempt by Stitz to confabulate the issues in this Opposition and divert the Board’s attention from the merits of Mattel’s case.

Stitz also relies on a number of other arguments that are based on a blatant miscategorization of Mattel’s pleadings or are, frankly, absurd. In one instance, Stitz goes so far as to claim that the Board does not have jurisdiction to hear this Opposition. Just as is the case with his objections, these arguments do not detract from Mattel’s position. Rather, they show that with nothing else to rely on, Stitz must resort to obfuscation and nonsense.

In sum, nothing that Stitz has presented changes the fact that he is impermissibly attempting to register a mark that is confusingly similar to Mattel’s family of HOT WHEELS Marks, as Mattel has shown by its admissible evidence and the arguments in its Brief. Accordingly, this Opposition should be sustained.

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<sup>1</sup> This was established in Opposer’s Combined Reply Brief In Support Of Its Motion To Deem Discovery Timely Served And Motion To Suspend Filed on April 23<sup>rd</sup>, 2001.

## II. ARGUMENT

### A. The Opposition Should Not Be Dismissed Because Mattel May Rely On The Evidence It Has Introduced

In his Brief, Stitz argues that the Opposition should be dismissed in accordance with Trademark Rule 2.132(a), which provides that if an Opposer does not submit evidence or take testimony during its testimony period, an opposition may be dismissed with prejudice. In support of this argument, Stitz relies on a case in which the dismissal of a opposition pursuant to 37 C.F.R. § 2.132(a) was affirmed, but also describes the procedures for admitting certain types of evidence by way of a Notice of Reliance, procedures that Mattel has followed. *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 1552 (Fed. Cir. 1991).<sup>2</sup>

Stitz's reliance on *Hewlett-Packard* and 37 C.F.R. § 2.132(a) is misplaced. While Mattel has not offered testimony into evidence, it has introduced admissible evidence within its testimony period – namely, its applications and registrations of its family of HOT WHEELS Marks, and generally-available printed publications – all in accordance with the procedures set forth in *Hewlett-Packard*. This evidence support's Mattel's claims, evidencing, among other things, Mattel's priority of use; ownership of the HOT WHEELS Marks; the fame and recognition of the HOT WHEELS Marks; the overlap in the parties' goods, services, and trade channels; and Mattel's natural zone of expansion into products and services relating to "real" vehicles.

Because Mattel has introduced evidence that supports its claims, the Opposition cannot be dismissed under 37 C.F.R. § 2.132(a). Instead, this evidence shows that Stitz's

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<sup>2</sup> Stitz also mistakenly cites *Dickinson v. Zurko*, 527 U.S. 151, 119 S.Ct. 1816 (1999). In this case, the U.S. Supreme Court held that the "substantial evidence" test, rather than the *stricter* "clearly erroneous" standard applies to court review of agency fact finding. Thus, Stitz has attempted to rely on a case that establishes that Mattel could prevail with *less* evidence than it could under the "clearly erroneous" standard.

attempted registration of COOLWHEELS.COM for the computerized on-line retail services in the field of automobile parts<sup>3</sup> is likely to damage Mattel by causing a likelihood of confusion. Thus, the evidence that Mattel has submitted and relied upon is more than sufficient to sustain the Opposition. *See Andrea Radio Corp. v. Premium Import Co.*, 191 U.S.P.Q. 232, 234 (TTAB 1976)(opposer's record consisted solely of five registrations, advertisements, and copies of its pending applications; opposition sustained).

1. Mattel May Rely On The Evidence Submitted With Its Notices of Reliance

Stitz objects to the registrations, applications, and printed publications that Mattel has submitted with its Notices of Reliance on the following grounds: (1) no foundation laid; (2) no authentication made; (3) hearsay; and (4) "unsupported by the record." (Applicant's Brief p. 2). In making these objections, Stitz claims in essence, that Mattel's evidence is inadmissible because it not been properly introduced. Given the emphasis that Stitz has placed on Mattel's lack of testimony, it is clear that Stitz erroneously believes that that the only manner in which Mattel can introduce evidence is by authenticating it through testimony. (*See Applicant's Brief pp. 1-2*).

Stitz's objections are not well taken. Mattel has properly introduced its evidence in accordance with the Federal Rules of Evidence ("F.R.E.") and well-established practices of the Board, which permit the introduction of evidence by way of a Notice of Reliance. 37 C.F.R. § 2.122(d)-(e). Further, Mattel may rely and has relied on the evidence for purposes that are permitted under both the F.R.E. and the Trademark Rules. Accordingly, Stitz's objections must be overruled.

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<sup>3</sup> In the introduction to Applicant's Brief, Stitz deceptively states that he is attempting to register his mark for "automobile parts."

a. Mattel May Rely On Its Registrations

Under the Trademark Rules, a party may introduce any registration that it owns into evidence and make it part of the record by submitting a Notice of Reliance, accompanied by a copy of the registration prepared by and issued by the PTO showing both the current status of and title to the registration. 37 C.F.R. § 2.122(d)(2); *Hewlett-Packard*, 931 F.2d at 1553 (establishing that registrations may be admitted into evidence by a Notice of Reliance); *Weyerhaeuser Co. v. Katz*, 24 U.S.P.Q.2d 1230, 1232, n. 2 (TTAB 1992) (setting forth procedure for introducing registrations into evidence by a Notice of Reliance).

Stitz's objections to Mattel's registrations of its HOT WHEELS Marks must fail because these registrations have been properly admitted into evidence in accordance with the procedures set forth in *Hewlett-Packard*, *Weyerhaeuser*, and 37 C.F.R. § 2.122(d)(2).<sup>4</sup> During its testimony period, Mattel prepared and filed 44 Notices of Reliance, to which it attached certified copies showing that each of its registrations for its HOT WHEELS Marks is subsisting and owned by Mattel. Thus, Mattel has complied with 37 C.F.R. § 2.122(d)(2). There can be no question that its registrations are in evidence and part of the record.

When a subsisting registration upon the Principal Register has been properly made of record by its owner, as Mattel has done, the certificate of registration is entitled to evidentiary presumptions of validity, ownership, and constructive use. 15 U.S.C. § 1057(b); *CTS Corp. v. Cronstoms Manufacturing, Inc.*, 515 F.2d 780, 781 (C.C.P.A. 1975); *Andrea Radio*, 191 U.S.P.Q. at 234; *Gates Rubber Co. v. Western Coupling Corp.*, 179 U.S.P.Q. 186, 189-90 (TTAB 1973). Stitz has not rebutted, and cannot rebut, these presumptions, since he has no evidence or testimony to rely on to do so. Thus, for purposes of this proceeding, Mattel's

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<sup>4</sup> In addition, the sincerity of this objection must be questioned because Stitz has admitted that these registrations may be judicially noticed. (Applicant's Brief p. 3).

registrations conclusively establish ownership, validity, and Mattel's prior and continuous use of the HOT WHEELS Marks.

b. Mattel May Rely On Its Applications

As shown in a case relied upon by Stitz, official records, such as those of trademark applications kept by the PTO, may be admitted into evidence and made part of the record by a Notice of Reliance. 37 C.F.R. § 2.122(e); *Colt Indus. Operating Corp. v. Olivetti Coltrollo Numerico S.p.A.*, 221 U.S.P.Q. 73, 74 (TTAB 1983) (opposer's application for federal registration admitted under 37 C.F.R. § 2.122(e); opposition sustained). Just as is the case with its registrations, Mattel properly introduced its applications into evidence in accordance with 37 C.F.R. § 2.122(e). During its testimony period, Mattel submitted 17 Notices of Reliance to which it attached certified copies of its applications. Thus, these applications have been admitted into evidence and made part of the record.

Stitz's hearsay objection must also be overruled because public records are excepted from the hearsay rule under F.R.E. 803(8), and more importantly, the Board has already ruled that trademark applications are admissible in Board proceedings. *Lasek & Miller Assocs. v. Rubin*, 201 U.S.P.Q. 831, 833 (TTAB 1978) (copy of trademark application competent to prove fact that application was filed).

The filing of these applications alone shows that Mattel has taken steps in contemplation of an expansion of its HOT WHEELS brand into: (i) entertainment services in the nature of sponsorship of automobile races, (ii) automobile accessories, and (iii) automobile paint. (Notice Nos. 29, 30, and 33). It stands to reason that a company would not file a trademark application if it did not have the intent to use the mark for the goods specified in the application. Thus, the act of filing itself shows that Mattel has demonstrated an intention to use or, at the very

least, has considered using the HOT WHEELS Marks on products associated with “real” vehicles. (Opposer’s Brief, p. 23).

In addition, Mattel notes that certain of its applications have since matured into registrations, which would entitle Mattel to rely on the registrations to establish priority of use, ownership, constructive use, and validity. 15 U.S.C. § 1057(b); T.B.M.P. § 703.02(a). The Board may take judicial notice of this change in status. *Royal Hawaiian Perfumes, Ltd. v. Diamond Head Products of Hawaii, Inc.*, 204 U.S.P.Q. 144, 146-147 (TTAB 1979); *Duffy-Mott Co. v. Borden, Inc.*, 201 U.S.P.Q. 846, 848 (TTAB 1978). Mattel respectfully requests that the Board do so.

c. Mattel May Rely On The Printed Publications

A party to an opposition proceeding may also rely on printed publications, such as periodicals that are available to the general public or a segment of the general public which “is relevant under an issue in a proceeding.” 37 C.F.R. § 2.122(e). Printed publications may be introduced into evidence by a Notice of Reliance. *Id.* To introduce printed publications into evidence by a Notice of Reliance, the Notice of Reliance must specify the printed publication (identifying the source and date of the publication), indicate the general relevance of the publication, and provide a copy of the publication being submitted. *R.J. Reynolds Tobacco Co. v. Brown & Williamson Tobacco Co.*, 226 U.S.P.Q. 169, 174 (TTAB 1985) (printed publications submitted by a Notice of Reliance held admissible); *Weyerhaeuser*, 24 U.S.P.Q.2d at 1232 (TTAB 1992) (electronic versions of printed publications held admissible when introduced by a Notice of Reliance); *Colt*, 221 U.S.P.Q. at 74 (publications admitted into evidence by a Notice of Reliance). Further, the requirement that the Notice must include a copy of the article being submitted may be satisfied by providing a printout from the Nexis database, without need for further authentication. *Weyerhaeuser*, 24 U.S.P.Q.2d at 1232; T.B.M.P. § 708.

There is no doubt that Mattel has properly introduced its printed publications into evidence in accordance with 37 C.F.R. § 2.122(e) and the relevant case law. Mattel submitted a Supplemental Notice of Reliance (“Supp. Notice”) during its testimony period, in which it listed 21 printed publications by publication title and article date. These publications were all taken from nationally-recognized newspapers such as *The Wall Street Journal*, *Philadelphia Inquirer*, and *Atlanta Journal-Constitution* or generally-available business and trade publications such as *Playthings*, *Business Wire*, and *Brandweek*.<sup>5</sup> Mattel also indicated the general relevance of each of the publications in its Notice. Finally, Mattel attached printouts from the Nexis database of each publication to its Notice. Therefore, Mattel has properly complied with the requirements of 37 C.F.R. § 2.122(e).

Just as was the case with Mattel’s applications, Stitz’s hearsay objection is not well taken. Mattel has largely relied on the publications to prove matters that are shown on the face of the documents, rather than for the truth of the matter asserted therein. Specifically, these publications show that the HOT WHEELS Marks have generated significant unsolicited publicity in major newspapers and trade publications. (Supp. Notice, Ex. 1-21). Similarly, these articles show that major newspapers, business publications, and trade publications recognize the fame and wide recognition of the HOT WHEELS Marks. *Id.* If the HOT WHEELS Marks and products and services were not famous or well-known, they would not be news-worthy. At least three articles show that the toys sold under the HOT WHEELS Marks have been compared to and associated with “real” vehicles. (Supp. Notice, Ex. 5, 10, 21).

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<sup>5</sup> Aside from the fact that there is no reasonable doubt that these printed publications are “generally available,” it should be noted that Stitz did not object on the grounds that the publications are not “generally available,” and could not prove that even if he did make that objection.

In short, Mattel has primarily relied on the printed publications to prove that Mattel's HOT WHEELS Marks are famous and associated with "real" vehicles – matters that concern the perceptions and expectations of the public, rather than actual "facts" per se. As these perceptions and expectations are shown on the face of the publications themselves, the Board cannot exclude the publications as hearsay. *Manpower, Inc v. Manpower Information Inc.*, 190 U.S.P.Q. 18, 21 (TTAB 1976) (printed publications admitted into evidence and considered by the Board; opposition sustained).

The probative value of printed publications has been articulated in a case involving an *ex parte* appeal. *In re Philips-Van Heusen Corporation*, 228 U.S.P.Q. 949, 950, n. 4 (T.T.A.B. 1986). In *Van-Heusen*, the applicant objected to the Examining Attorney's reliance on articles from the Nexis database because the facts in the stories could not be proven to be true. Regardless, the Board considered these publications because they "were stories to which the public has been exposed, and such exposure has a bearing on the public [expectations]." *Id.* The same should be done here, because the printed publications that Mattel has relied on also illustrate the perceptions of the public, namely, that Mattel's HOT WHEELS Marks are widely known and that the public expects that Mattel has expanded, and will expand, its brand to include products associated with "real" automobiles.

In short, the printed publications that Mattel has submitted establish, on their face, relevant considerations regarding the public's perceptions. Accordingly, they should be admitted into evidence and relied on by the Board for their probative value.

2. The Fame Of The HOT WHEELS Marks Should Be Judicially Noticed

Certain marks reach a level of recognition such that it becomes generally known that they are famous. In such cases, courts may take judicial notice of the public's recognition of the mark in question. *B.V.D. Licensing Corp. v. Body Action Design, Inc.*, 846 F.2d 727, 728

(Fed. Cir. 1988) (court took judicial notice of fame of B.V.D. trademark).<sup>6</sup> In reversing a District Court ruling that the trademark EVEREADY did not have secondary meaning, the Seventh Circuit articulated the reasoning for taking judicial notice in such cases:

... we find it difficult to believe that anyone living in our society, which has daily familiarity with hundreds of battery-operated products, can be other than thoroughly acquainted with the EVEREADY mark. While perhaps not many know that Carbide is the manufacturer of EVEREADY products, few would have any doubt that the term was being utilized other than to indicate the single, though anonymous, source. A court should not play the ostrich with regard to such general public knowledge.

*Union Carbide Corp. v. Ever-Ready Inc.*, 531 F.2d 366, 381 (7th Cir. 1976).

Mattel owns extensive rights in and to its HOT WHEELS Marks. As shown in the Supp. Notice, these rights are part of the public's general knowledge. The HOT WHEELS products are recognized as one of the best-selling toy lines in history – and the top-selling toy of 2001. (Supp. Notice, Ex. 2, 3, 6-9, 12, 15-20). As a result, these marks carry “instant” recognition amongst consumers and are associated exclusively with Mattel.

Just as was the case in *B.V.D.* and *Union Carbide*, Mattel's HOT WHEELS Marks are so well recognized that it would be a miscarriage of justice for the Board to “play the ostrich” with respect to Mattel's rights in them. Thus, the Board should not permit Stitz to preclude from evidence a matter which is general public knowledge.<sup>7</sup> In short, because the HOT WHEELS Marks identify one of the most famous toy lines in history, the Board should take judicial notice of Mattel's rights in them.

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<sup>6</sup> The portion of the holding in *B.V.D.* that states that a famous mark may, in some cases, be entitled to minimal protection has been universally disapproved of and, indeed, the Federal Circuit has stated that it is expressly limited to the specific facts of that case. *Kenner Parker Toys Inc. v. Rose Art Industries*, 963 F.2d 350, 354 (Fed. Cir. 1992)(in finding that the Board erred in relying on *B.V.D.*, the Federal Circuit held that “before and after *B.V.D.*” well-known marks were afforded a wide scope of protection).

3. The Dictionary Definitions of “HOT” and “COOL” Should Be Judicially Noticed

In support of its claims that HOT WHEELS and COOL WHEELS have confusingly similar “associative” meanings, Mattel attached printouts of dictionary definitions of the terms “HOT” and “COOL” to its Brief as appendices. Stitz objected to these appendices, claiming that the Board could not consider them because they were not admitted as evidence. These objections are not well taken, because both of these things are the proper subject of judicial notice. Mattel hereby requests that the Board take such judicial notice, which would be proper for the reasons described below.

The Board (and Federal Circuit) routinely has taken judicial notice of dictionary definitions, such as those shown in the appendices to Opposer’s Brief. *B.V.D.*, 846 F.2d at 728; *In re Sun Microsystems, Inc.*, 59 U.S.P.Q. 1084, 1086, n. 3 (TTAB 2001). The Board has also taken judicial notice of the meaning of slang terms and other colloquial expressions. *Hertz System, Inc. v. A-Drive Corp.*, 222 U.S.P.Q.2d 625, 629-631 (TTAB 1984) (judicial notice taken of the fact that the numeral “1” is commonly used to indicate superiority). Just as in the cases cited above, the dictionary definitions and colloquial use of the terms “HOT” and “COOL” should be judicially noticed here.

In any event, Stitz also relies on the definitions of “HOT” and “COOL” in his Brief. (Applicant’s Brief, p. 7) (“as far apart as COOL is from HOT”). Since Stitz has relied on the definitions of these terms, Mattel should be permitted to rely on them as well. *See The Conde Nast Publications, Inc. v. Vogue Travel, Inc.*, 205 U.S.P.Q. 579 (opposer referred to

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<sup>7</sup> Similarly, Stitz cannot preclude the Board from considering the case law cited by Mattel that shows that courts have recognized the strength of the HOT WHEELS Marks. Despite his outrageous claim that since he “did not participate” in these cases, Mattel has “ignored ... the most basic aspects of due process,” the Trademark Rules expressly provide for, and implicitly require, the citation of cases to support one’s position. 37 C.F.R. § 2.128(b).

applicant's otherwise inadmissible evidence in its brief, evidence deemed to have been stipulated into the record).

4. Mattel's Lack Of Discovery Was Caused By Stitz's Bad Faith

With great fanfare, Stitz states in his Brief that Mattel "failed to elicit any meaningful discovery" in support of its claims. Conspicuously absent from this statement is an explanation as to why Mattel was unable to procure discovery. As discussed at length in prior motions<sup>8</sup> submitted to the Board, Opposer served discovery on Stitz on three separate occasions. But, Stitz never responded, despite the Board's November 2, 2001 order to do so.

The Board should not allow Stitz to prevail on this Opposition because of his bad faith refusal to comply with the letter and spirit of the Federal Rules of Civil Procedure and the Board's discovery order. This holds particularly true given that Mattel's other evidence in this case is sufficient to sustain the Opposition.

**B. Stitz's Other Arguments Must Be Disregarded**

Stitz has also raised a number of nonsensical arguments that are unsupported in fact or law. These arguments amount to nothing more than an attempt to draw the Board's attention from the pertinent issues in this case, namely, that Stitz's mark is likely to cause confusion with Mattel's family of HOT WHEELS Marks.

1. Judicial Estoppel Does Not Apply

Stitz claims that because Mattel pleaded its ownership of an intent to use application in its Notice of Opposition, it is somehow "estopped" from proceeding on the basis

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<sup>8</sup> These Motions are: (i) Mattel's Motion to Deem Discovery Timely Served, dated January 31, 2001, (ii) Mattel's Second Motion to Deem Discovery Timely Served, dated February 21, 2001, (iii) Mattel's Motion to Suspend Proceedings, dated February 21, 2001 (iv) Mattel's Motion to Extend Discovery and Testimony Periods, dated December 27, 2001, (v) Mattel's Motion to Compel and for Sanctions, dated January 7, 2002, and (v) Mattel's Motion for Reconsideration, dated July 29, 2002.

of its ownership of its HOT WHEELS marks. (Applicant's Brief pps. 5-7). This contention defies both common sense and the plain language of the Federal Rules of Civil Procedure.

Federal Rule of Civil Procedure 8(a) expressly provides that a party may plead multiple, alternative grounds for recovery. Mattel did this in its Notice of Opposition ("Opposition"). In alleging that it would be damaged by Stitz's registration, it first pleaded its ownership, use, and extensive rights in its family of "HOT WHEELS" and "HOT" marks. (Opposition ¶¶ 3-6). It then pleaded its ownership of an intent-to-use application to register COOL WHEELS. (Opposition ¶ 7). In short, Mattel claimed that it had prior rights based on its application and prior registrations.

Mattel fails to recognize, and Stitz does not articulate, how the pleading of additional, alternative grounds for recovery constitutes "talking out of both sides of its mouth." (See Applicant's Brief p. 7). Mattel simply stated all of the ways in which it that would be damaged by the registration of Stitz's application and has not made any inconsistent statements.

Indeed, the authorities relied upon by Stitz certainly do not establish Mattel has acted inequitably, much less that it should be estopped from bringing this Opposition. In one case, judicial estoppel precluded a party from relitigating certain antitrust claims after it previously successfully argued that they should be heard in a different forum. *U.S. Phillips Corporation v. Sears Roebuck & Co.*, 55 F.3d 592, 596 (Fed. Cir.1995). Stitz's other case similarly establishes that where a party successfully takes a position in a prior litigation, it cannot take a contrary position in a subsequent proceeding to its advantage. *Davis v. Waklee*, 156 U.S. 680, 687, 15 S.Ct. 555, 558 (1895).

Here, Mattel has not taken two inconsistent positions or engaged in any prior litigation on these issues. Mattel has simply identified all of its rights that would be damaged by

Stitz's registrations. Similarly, Stitz has not shown that Mattel has taken a contrary position in a prior case. Indeed, he has not even identified the prior proceeding in which Mattel has asserted the alleged contrary position. Thus, the cases cited by Stitz are inapposite and his "judicial estoppel" argument must fail.

2. The Board Has Jurisdiction To Hear This Opposition

To the extent that this argument is even discernable, Stitz seems to make the *incredible* claim that because Mattel pleaded its ownership of an intent to use application in its Opposition, the Board does not have jurisdiction over this Opposition. Not surprisingly, Stitz has cited no authority to support this bizarre claim.

The Trademark Rules expressly provide that "any entity which believes that would be damaged by the registration of a mark . . . may oppose the same." 37 C.F.R. § 2.101. Jurisdiction over opposition proceedings is vested exclusively with the Board. *Id.* Consistent with this rule, Mattel filed a timely notice of opposition when Stitz's application was published, thereby instituting this Opposition.

Despite the fact that this proceeding has gone on for the better part of three years, Stitz now claims that this matter should be resolved in an interference proceeding before the Commissioner of Trademarks. (Applicant's Brief p.5). However, interferences are only declared in "extraordinary circumstances" "upon a petition to the Commissioner." 37 C.F.R. § 2.92. Stitz has not alleged, much less proven, that any such "extraordinary circumstances" exist. Further, no petition to the Commissioner has been filed by Stitz. In short, no interference can be declared as a matter of law because the requirements for an interference have not been satisfied.

### III. CONCLUSION

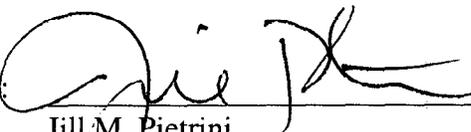
In summary, despite Stitz's objections and arguments, the fact remains that his mark, COOLWHEELS.COM, is confusingly similar to Mattel's HOT WHEELS Marks in sound, appearance, and, perhaps most significantly, connotation. Further, the services for which Applicant seeks registration are closely related, if not identical, to those goods and services for which Mattel owns prior registrations, and certainly within Mattel's zone of natural expansion. This comparison, sure to lead to a finding of likelihood of confusion, can be made based solely on an examination of the applications and registrations of the respective parties. This is enough in and of itself to sustain the opposition and refuse registration of Stitz's mark. The *other admissible*, probative evidence in this case only amplifies this inevitable conclusion, as it shows Mattel's unprecedented history of brand expansion and the widespread fame and recognition of the HOT WHEELS Marks .

For these reasons and those stated in its Brief, Mattel respectfully requests that this Opposition be sustained and Applicant's registration refused.

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

Dated: July 2, 2003

By:   
Jill M. Pietrini  
Andrew Klungness  
*Attorneys for Opposer*  
MATTEL, INC.

**CERTIFICATE OF MAILING**

I hereby certify that three (3) copies of this Opposer's Brief is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Commissioner of Patents and Trademarks, Attn: Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on July 2, 2003.



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Ruth Quintanilla

**CERTIFICATE OF SERVICE**

I hereby certify that this Opposer's Brief is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Leonard Stitz, 1608 North Main Street, Suite 110, Santa Ana, California 92701, by depositing first class mail on July 2, 2003.



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Ruth Quintanilla

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