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

Proceeding	91176744
Party	Plaintiff DC Comics and Marvel Characters, Inc.
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Submission	Motion for Summary Judgment
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Signature	/Michelle C. Morris/
Date	05/29/2009
Attachments	Declaration of Marilyn Drucker .pdf (19 pages)(3154505 bytes)

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

Applicant:	Michael Craig Silver
Application Ser. No.:	78/823,155
Filing Date:	2/24/06
Mark:	SUPER HERO
Date of Publication in OG:	1/16/07
DC Comics:	DC Comics and Marvel Characters, Inc.

DC COMICS and
MARVEL CHARACTERS, INC.,

DC Comics,

vs.

MICHAEL CRAIG SILVER,

Applicant.

Opposition No. 91/176,744

DECLARATION OF MARILYN DRUCKER

I, Marilyn Drucker, hereby declare as follows:

1. I am currently the Executive Director – Brand Management for DC Comics ("DC Comics"), which is headquartered at 1700 Broadway, New York, New York.

2. The facts stated herein are based on my personal knowledge.

3. DC Comics owns a vast network of thousands of character properties, including without limitation such internationally-famous characters as SUPERMAN and BATMAN.

4. DC Comics publishes comic books featuring its character properties and trademarks.

5. A substantial part of DC Comics' business originates from licensing its marks and characters for use in connection with a variety of goods and services, including without limitation: apparel and accessories, footwear, domestics and linens, fine arts and collectibles, food and beverages, gifts, novelties and decorations, toys, games, audio equipment, video games, computer products, house-wares, furniture, garden and hardware products, cosmetics, personal care and health care products such as bubble baths, toothbrushes, foam soaps, facial tissues, and bandages, pet products, promotions and entertainment, sporting goods, and stationery and paper goods.

6. DC Comics' merchandise licensing programs are among the largest and most successful in the world, involving hundreds of different licensees, and generating licensing royalties of approximately $100 million in 2006.

7. Beginning in 1966, DC Comics, jointly with Marvel Characters, Inc. ("Marvel") (including our and Marvel's predecessor-in-interest), have exploited their SUPER HERO and SUPER HEROES trademarks in connection with comic books, toys and masquerade costumes.

8. Typically, DC Comics' merchandise license agreements bundle groups of characters. Such agreements generally include a license to use the trademarks SUPER HERO and SUPER HEROES.

9. DC Comics has a long history of exploiting its other trademarks in connection with International Class 3 goods, including without limitation hand creams and lotions, body creams and lotions, sunscreen preparations, bubble baths, toothbrushes, foam soaps, facial tissues, and bandages. Consumers can find SUPERMAN toothbrushes and bandages at their local drug stores.

10. A true and correct copy of a photograph of a battery powered toothbrush bearing the BATMAN mark is attached as Exhibit A.

11. A true and correct copy of a photograph of a box of facial tissue bearing the SUPERMAN mark is attached as Exhibit B.

12. A true and correct copy of a photograph of a canister of foam soap bearing the SUPERMAN mark is attached as Exhibit C.

13. A true and correct copy of a photograph of a basketball bath set bearing the SUPERMAN mark is attached as Exhibit D.

14. A true and correct copy of a photograph of a bath set bearing the SUPERMAN mark is attached as Exhibit E.

15. A true and correct copy of an Internet page from Drugstore.com showing a toothbrush bearing the SUPERMAN mark is attached as Exhibit F.

16. A true and correct copy of an Internet page from Drugstore.com showing a package of bandages bearing the SUPERMAN mark is attached as Exhibit G.

17. DC Comics' exploitation of its trademarks on personal care products reflects a popular trend in consumer merchandising.

18. Comic books, toy figures, masquerade costumes (especially during the Halloween season), and suntan lotions can all be found at local drug stores, retail supermarket stores, big box stores like Wal Mart and Best Buy, and online.

I declare that the foregoing is true and accurate to the best of my knowledge under penalty of perjury of the laws of the United States.

Dated: October 24 2007

Marilyn Drucker

EXHIBIT A

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

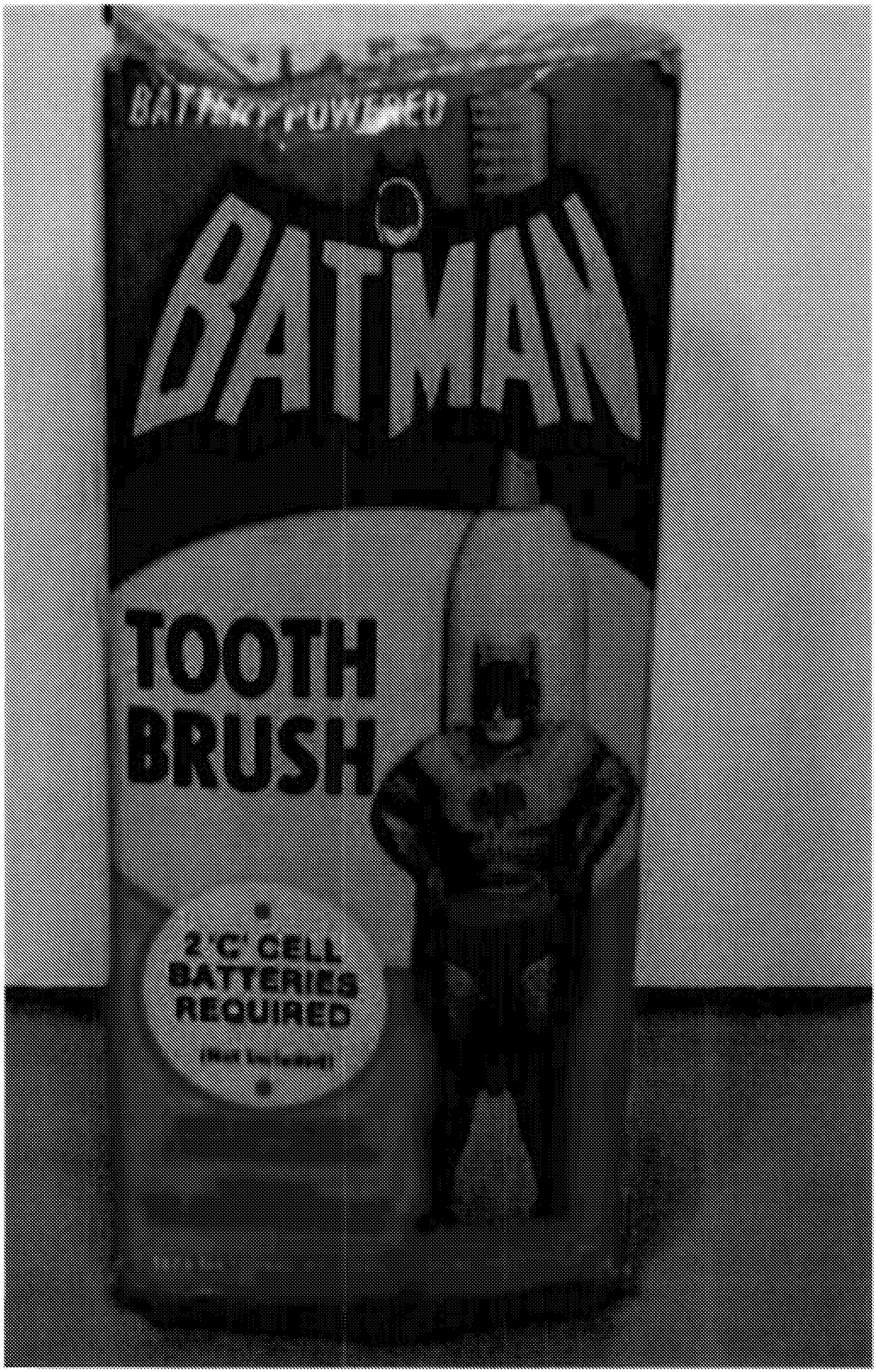
BATMAN
TOOTH BRUSH
2 "C" CELL BATTERIES REQUIRED

EXHIBIT B

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

SUPERMAN
Facial Tissue
FACIAL TISSUE 2-PLY TISSUES - 8.25 x 9.50 IN

EXHIBIT C

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

Crazy Foam
CAUTION

EXHIBIT D

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

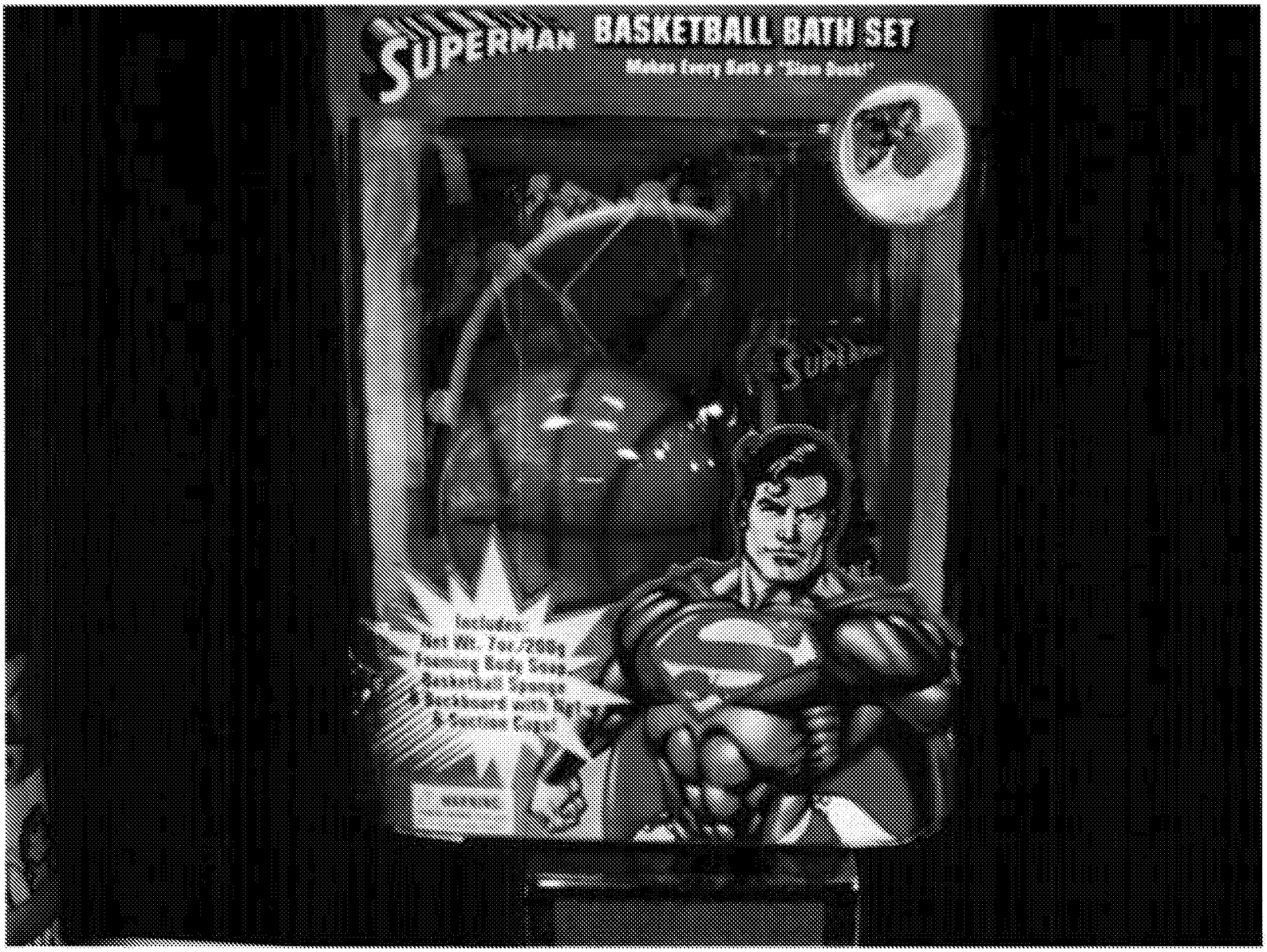
SUPERMAN BASKETBALL BATH SET

EXHIBIT E

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

SUPERMAN
SPIN N' SCRUB
TUB FUN
SUPERMAN
BUBBLE
BATH
WARNING

EXHIBIT F

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

free shipping on any order* of $25 or more >
*First, nonprescription orders only. Standard shipping.

up to 40% off sun care and summer essentials >

Colgate Children's Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) 1 ea

our price: $2.79

quantity: 1 ADD to BAG
or
Save to your list™

availability: in stock

Everyday Free Shipping

see larger photo

Package Details

Colors and Characters May Vary

This brush is specially designed for children older than 5 years of age who have a combination of baby and adult teeth.

1. Center color dot helps you measure the recommended amount of toothpaste.
2. Unique soft tongue cleaner on back of the head to encourage good oral care habits early on
3. Small oval head with soft material protects children's gums.
4. Multi-height bristles to thoroughly clean teeth
5. Comfortable thumb rest and non-slip cushioned handle for better control.

Dentists & Hygienists recommend replacing your toothbrush every 3 months.

Questions? Comments? 1-800-468-6502

Warnings:

Children under 4 should not use without adult supervision. Do not chew. For toothbrushing only.

Colgate Palmolive Co.

Customer Reviews

There are currently no reviews for this item. Be the first one to write a review!

Product Info

package details
see accessories

Talk about this item:

e-mail a friend
write a review

Related Products:

children's
interdental
medium / compact head
medium / full head
sanitizers
More in personal care

Visit our Colgate Store

See what other customers of this item also shopped for and bought

Get Colgate Children's Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) with accessories:

	Product Name:	Quantity:	Price:	Select:
	Colgate Children's Toothbrush, Extra Soft, Ages 5+, Superman (Colors and Characters May Vary) - 1 ea in stock	1	$2.79	☑
	Crest Glide Dental Floss, Flip-Top Vial - 109.4 yd in stock	1	$6.92 save10%	☐
	Listerine PocketPaks Oral Care Strips, Cool Mint - 72 strips in stock	1	$3.19 save20%	☐
	VIOlight Toothbrush Sanitizer & Storage System - 1 ea in stock	1	$44.99 save10%	☐

Add selected to bag

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Recently viewed products:

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Assorted Kid Size Bandages, Superman - 20 ea

suggested: $2.99
our price: $2.79 Try
save 7%

Band-Aid - Children's
Adhesive Bandages, Assorted Sizes, Care Bears, Care Bear - 20 ea

our price: $2.99 Try

Band-Aid
Adhesive Bandages, Strawberry Shortcake Variety Pack 20s - 20 ea

suggested: $3.99
our price: $3.49 Try
save 13%

Recent searches:

superman
batman
kids bandaid
kids
lotion, lotion

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EXHIBIT G

Opposition No. 91/176,744, SUPER HERO
DC Comics Exhibit

free shipping on any order* of $25 or more >
*First, nonprescription orders only. Standard shipping.

up to 40% off sun care and summer essentials >

Curad - Children's Assorted Kid Size Bandages, Superman 20 ea

Product Info

package details

Talk about this item:

e-mail a friend

write a review

Related Products:

adult bandages

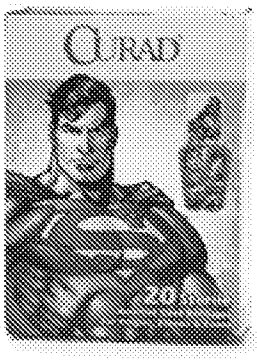
elastic bandages

More in health

Visit our Curad Store

See what other customers of this item also shopped for and bought

FSA Eligible



see larger photo

suggested: $2.99
our price: $2.79
save 7%

Everyday Free Shipping

quantity: 1 Add to bag
or
Save to your list™

availability: in stock

Package Details

20 Sterile Assorted Sized Bandages for Fingers, Elbows & Knees

6 - 1 1/8 x 2 1/8 inch (30 x 55 mm)
14 - 3/4 x 2 1/8 inch (19 x 55 mm)

Directions:

Apply bandage to clean, dry skin. Change bandage daily or when pad becomes wet. Sterile unless wrapper is damaged or opened.

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our policies

Questions? Please visit our site help pages for information about our site and our policies.
about our prices

Customer Reviews

There are currently no reviews for this item. Be the first one to write a review!

Can't remember where you saw something? Try these recently viewed areas:

Recently viewed products:

Band-Aid - Children's
Adhesive Bandages, Assorted Sizes, Care Bears, Care Bear

Band-Aid
Adhesive Bandages, Strawberry Shortcake Variety

Band-Aid - Children's
Adhesive Bandages, Assorted Sizes, Barbie - 25 ea