

ESTTA Tracking number: **ESTTA331596**

Filing date: **02/11/2010**

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

Proceeding	91176791
Party	Defendant MATTEL, INC.
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Date	02/11/2010
Attachments	Objections to Schulte Decl.pdf (8 pages)(39664 bytes)

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

In the matter of Application Serial No. 78/751,105
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

**APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS
TO STRIKE PORTIONS OF DECLARATION OF WILLIAM SCHULTE**

Applicant Mattel, Inc. hereby objects to and moves to strike portions of the Declaration of William Schulte dated March 5, 2009.

The following format is used below:

- (1) the Declaration is copied verbatim;
- (2) where Applicant objects to all or a portion of a paragraph, the objected-to portion is shown as stricken (e.g., ~~The person told me that~~ ...) followed by a highlighted "objection number" (e.g., [Obj. 2]); and

DECLARATION OF WILLIAM SCHULTE DATED MARCH 5, 2009
WITH OBJECTIONABLE PORTIONS STRICKEN

DECLARATION OF WILLIAM SCHULTE

WILLIAM SCHULTE declares under penalty of perjury as follows:

1. I am Vice President of Late for the Sky Productions Co., Inc., an Ohio corporation with offices at 3000 Robertson Avenue, Cincinnati, Ohio 45209 (“Late for the Sky”). I first joined Late for the Sky in 1985. I submit this declaration as testimony in connection with the above-captioned proceeding.

2. I have access to the books and records of Late for the Sky relevant to the matters covered herein. As a result of my job responsibilities I am generally familiar with the business of Late for the Sky and Late for the Sky’s license to use the MOTOWN and MOTOWN-formative trademarks (the “MOTOWN Marks”) in connection with the board game “Motownopoly.” I confirm that the facts and matters set out herein are based on my own knowledge and from the records and documents of Late for the Sky to which I have access.

3. ~~On or around October 31, 2002, Late for the Sky entered into a license agreement with Universal Music Enterprises, a division of UMG Recordings, Inc. (“UMG”) concerning the right to use the MOTOWN Marks in connection with Motownopoly. A true and correct copy of the license agreement is attached hereto as Exhibit 1. [Obj. 1]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD’S RULING
1	¶ 3	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

4. ~~True and correct copies of photographs depicting Motownopoly are attached hereto as Exhibit 2. [Obj. 2]~~

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
2	¶ 4	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

5. Late for the Sky began selling Motownopoly nationwide in 2003 and sold Motownopoly in nationwide in stores such as Borders, Barnes and Noble, Transworld Entertainment and The Motown Museum Gift Shop until 2005 to consumers ages 8 to adult. The retail price for Motownopoly was approximately Twenty-Five Dollars and no/100 (\$25.00).

6. ~~Based upon Late for the Sky's business records, which are kept in the ordinary course of Late for the Sky's business, its annual sales of Motownopoly bearing the MOTOWN Marks were as follows:~~

<u>Year</u>	<u>Gross Sales</u>
2003	_____
2004	_____
2005	_____

~~Late for the Sky pays UMG royalties based on its gross revenues as set forth in the license agreement between the parties. See Exhibit 1. As reflected above, Late for the Sky's total sales of Motownopoly for the period 2003 though 2005 were in excess of _____~~

_____. [Obj. 3]

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
3	¶ 6	(a) Improper Legal Opinion	<input type="checkbox"/> Sustained/Stricken

		(Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Overruled
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7. ~~Based on Late for the Sky's business records, which are kept in the ordinary course of Late for the Sky's business, its annual sales of Motownopoly bearing the MOTOWN Marks were as follows:~~

Year	Number of Units Sold
2003	_____
2004	_____
2005	_____

~~As reflected above, Late for the Sky has sold in excess of _____ units of Motownopoly.~~

[Obj. 4]

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
4	¶ 7	(a) Lack of Foundation/Personal Knowledge (Fed. R. Evid. 602).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

8. ~~Late for the Sky has spent in excess of _____
_____ advertising Motownopoly in direct mail advertising.~~ **[Obj. 5]**

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
5	¶ 8	(a) Lack of	<input type="checkbox"/> Sustained/Stricken

		Foundation/Personal Knowledge (Fed. R. Evid. 602).	<input type="checkbox"/> Overruled
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Declared under penalty of perjury of the laws of the United States of America this 5th day of March, 2009 at Cincinnati, Ohio.

/S/
William Schulte

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Evidentiary Objections and Request to Strike has been personally served on counsel for Opposer UMG Recordings, Inc., both personally and through ESTTA, on February 11, 2010.

/crf/

Chad R. Fitzgerald