

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

OPPOSER'S SUPPLEMENTAL REQUEST
FOR JUDICIAL NOTICE RE: WEBSITES

Pursuant to 37 C.F.R. §2.122(a) and Federal Rule of Evidence 201, Opposer UMG Recordings, Inc. hereby makes of record and asks the Board to take judicial notice of the following document, a true and correct copy of which is attached hereto as Exhibit A:

(1) A Reference.com web page, <http://dictionary.reference.com/barbie>.

Good cause exists for the Court to grant this Request for Judicial Notice. Fed. R. Evid. 201(b) provides that “a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”

The website page UMG seeks to introduce is a proper subject for judicial notice. Denius v. Dunlap, 330 F.3d 919, 926-27 (7th Cir. 2003) (in § 1983 action by employee, district court abused its discretion in withdrawing its judicial notice of the information regarding health records from the National Personnel Records Center’s website; although employee testified regarding his records, information on website was not duplicative of testimony); Caldwell v. Caldwell, No. CO5-4166 PJH, 2006 WL 618511 at *4 (N.D.Cal. March, 13, 2006) (stating that “[t]he court agrees with the proposition that, as a general matter, websites and their contents may be proper subjects for judicial notice,” but denying request because the court had not been provided with copies of the webpages at issue); Wible v. Aetna Life Ins. Co., 375 F. Supp. 2d 956, 965-66 (C.D.Cal. 2005) (taking judicial notice of Amazon.com webpages and a page from the website of the American Academy of Allergy Asthma and Immunology). Here, the Board has been provided with

copies of the website pages at issue; and their accuracy cannot reasonably be questioned.

Pursuant to Rule 201, this Court should take judicial notice of the documents that

comprise Exhibits A-C.

Dated: March 15, 2010

Respectfully submitted,



Alexa L. Lewis, Esq.
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Attorneys for Opposer

CERTIFICATE OF MAILING

Date of Deposit: March 15, 2010

“Express Mail” mailing label number: EB519288551US

I hereby certify that this paper or fee, **OPPOSER’S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE RE: WEBSITES**, is being deposited with the United States Postal Service “Express Mail Post Office to Addressee” on the date indicated above and is addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board , P.O. Box 1451, Alexandria, Virginia 22313-1451.


Kimberly Stewart

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683 .

On March 15, 2010, I served a copy of the foregoing document(s) described as **OPPOSER'S SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE RE: WEBSITES** on the interested parties in this action at their last known address as set forth below by taking the action described below:

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- BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by FIRST LEGAL SUPPORT SERVICE of the document(s) listed above to the person(s) at the address(es) set forth above.
- BY PLACING FOR COLLECTION AND MAILING:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and placed the envelope(s) for collection and mailing following ordinary business practices. I am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice

it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los Angeles, California 90064-1683 in the ordinary course of business.

- BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at ___:___m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.
- BY FAX:** On _____, at _____ am/pm, from facsimile number (310) _____, before placing the above-described document(s) in sealed envelope(s) addressed as set forth above, I sent a copy of the above-described document(s) to each of the individuals set forth above at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of that report is attached hereto.

I declare that I am employed in the office of a member of the State Bar of California and various federal bars, at whose direction such service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 15, 2010, at Los Angeles, California.

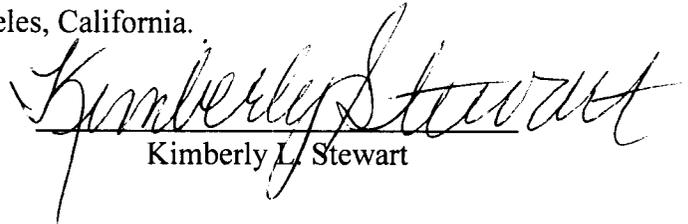
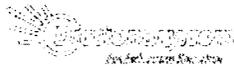

Kimberly L. Stewart

EXHIBIT A

EXHIBIT A



Search bar containing the word 'barbie' and a 'Search' button.

Related Searches

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Barbie [bahr-bee] Show IPA

- 1. Trademark. a brand of doll representing a slim, shapely young woman, esp. one with blond hair, blue eyes, and fair skin.

-noun

- 2. Also called Barbie doll. a person, esp. a young woman, perceived as blandly attractive and vacuous.

Dictionary.com Unabridged
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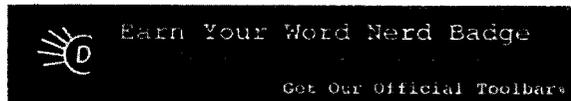
Word Origin & History

Barbie 1959, trademark name (reg. U.S.). Supposedly named after the daughter of its creator, U.S. businesswoman Ruth Handler (1916-2002); see Barbara.

Online Etymologic Dictionary. © 2010 Douglas Harper
Cite This Source

Main Entry: barbie
Part of Speech: n
Definition: barbecue
Etymology: from barbe(cue)
Usage: Australian slang

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Exhibit A
Page 4

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