

**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

**RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT  
 MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO  
 STRIKE PORTIONS OF DECLARATION OF GARY ATKINSON**

Opposer UMG Recordings, Inc. ("Opposer" or "UMG") hereby responds to Applicant, Mattel, Inc.'s ("Applicant" or "Mattel") evidentiary objections to and request to strike portions of Declaration of Gary Atkinson, dated March 18, 2009, as follows:

<b>Evidence:</b>	<b>Applicant's Objection:</b>	<b>Opposer's Response:</b>
Attached hereto as <u>Exhibit 1</u> is a printout of The Singing Machine's business records, which are kept in the ordinary course of The	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	The witness has testified as to, <i>inter alia</i> , his position with his employer and his familiarity with its books and records. His

<p>Singing Machine's business, depicting its annual sales of the Karaoke Products bearing the MOTOWN Marks from as follows:</p> <table border="1"> <thead> <tr> <th><u>Year</u></th> <th><u>Units Sold</u></th> <th><u>Net Sales</u></th> </tr> </thead> <tbody> <tr> <td>2004</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2005</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2006</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>2007</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table> <p>The Singing Machine pays UMG royalties based on its gross revenues as set forth in the license and distribution agreements between the parties. As reflected in <u>Exhibit 1</u>, The Singing Machine's total net sales of the Karaoke Products for the period</p>	<u>Year</u>	<u>Units Sold</u>	<u>Net Sales</u>	2004	_____	_____	2005	_____	_____	2006	_____	_____	2007	_____	_____		<p>introduction and authentication of his employer's business records, and testimony in connection therewith, is appropriate foundational testimony that is admissible under, <i>inter alia</i>, FRE 1002 and 1003.</p>
<u>Year</u>	<u>Units Sold</u>	<u>Net Sales</u>															
2004	_____	_____															
2005	_____	_____															
2006	_____	_____															
2007	_____	_____															

2004 though 2007 were in excess of _____ units and \$ _____. (Atkinson Decl., ¶ 3.)		
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Dated: March 15, 2010

Respectfully submitted,



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Alexa L. Lewis, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, CA 90064  
(310) 312-3100  
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, **RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO STRIKE PORTIONS OF DECLARATION OF GARY ATKINSON**, 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 **RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO STRIKE PORTIONS OF DECLARATION OF GARY ATKINSON** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Lawrence Y. Iser ([liser@kwikalaw.com](mailto:liser@kwikalaw.com))

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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

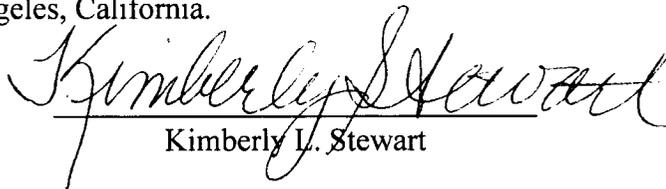
am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los 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