

**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

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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant

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

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 William Schulte, dated March 5, 2009, as follows:

<b>Evidence:</b>	<b>Applicant's Objection:</b>	<b>Opposer's Response:</b>
On or around October 31, 2002, Late for the Sky entered into a license agreement with Universal Music Enterprises, a	(a) Improper Legal Opinion (Fed. R. Evid. 701);  (b) 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>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. (Schulte Decl., ¶ 3.)</p>		<p>introduction of a license agreement is appropriate non-opinion fact testimony. His authentication thereof is likewise appropriate foundational testimony. This evidence is admissible under, <i>inter alia</i>, FRE 701, 1002, and 1003.</p>
<p>True and correct copies of photographs depicting Motownopoly are attached hereto as Exhibit 2. (Schulte Decl., ¶ 4.)</p>	<p>(a) Exhibit speaks for itself (Fed. R. Evid. 1002).</p>	<p>The witness has testified as to, <i>inter alia</i>, his position with his employer and his familiarity with its books and records. His introduction and authentication of images of his employer's products is appropriate foundational testimony that is admissible under, <i>inter alia</i>, FRE 1002,</p>

		1003 and TBMP 703.01.								
<p>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:</p> <table border="0"> <thead> <tr> <th>Year</th> <th>Gross Sales</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>_____</td> </tr> <tr> <td>2004</td> <td>_____</td> </tr> <tr> <td>2005</td> <td>_____</td> </tr> </tbody> </table> <p>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.</p> <p>As reflected above, Late for the Sky's total sales of Motownopoly for the period</p>	Year	Gross Sales	2003	_____	2004	_____	2005	_____	<p>(a) Improper Legal Opinion (Fed. R. Evid. 701);</p> <p>(b) Exhibit speaks for itself (Fed. R. Evid. 1002).</p>	<p>The witness has testified as to, <i>inter alia</i>, his position with his employer and his familiarity with its books and records. His introduction of and testimony regarding those business records is appropriate non-opinion fact testimony. His authentication thereof is likewise appropriate foundational testimony.</p> <p>This evidence is admissible under, <i>inter alia</i>, FRE 701, 1002, and 1003.</p>
Year	Gross Sales									
2003	_____									
2004	_____									
2005	_____									

<p>2003 though 2005 were in excess of _____.</p> <p>(Schulte Decl., ¶ 6.)</p>		
<p>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:</p> <p>Year Number of Units Sold</p> <p>2003 _____</p> <p>2004 _____</p> <p>2005 _____</p> <p>As reflected above, Late for the Sky has sold in excess of _____ units of Motownopoly. (Schulte Decl., ¶ 7.)</p>	<p>(a) Lack of Foundation/Personal Knowledge (Fed. R. Evid. 602).</p>	<p>The witness has testified as to, <i>inter alia</i>, his position with his employer, his personal knowledge thereof, and his familiarity with its books and records. His testimony regarding sales of products by his employer is based on his personal knowledge and does not violate FRE 602.</p>
<p>Late for the Sky has spent</p>	<p>(a) Lack of</p>	<p>The witness has testified as</p>

<p>in excess of _____  advertising Motownopoly in  direct mail advertising.  (Schulte Decl., ¶ 8.)</p>	<p>Foundation/Personal  Knowledge (Fed. R. Evid.  602).</p>	<p>to, <i>inter alia</i>, his position  with his employer, his  personal knowledge thereof,  and his familiarity with its  books and records. His  testimony regarding  advertisement of products  by his employer is based on  his personal knowledge and  does not violate FRE 602.</p>
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Dated: March 15, 2010

Respectfully submitted,




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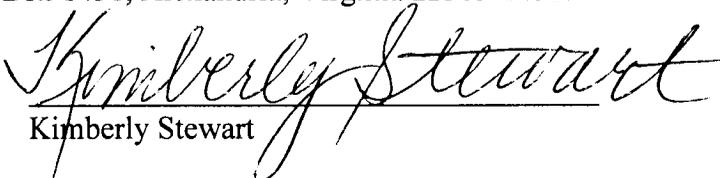
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**CERTIFICATE OF MAILING**

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 WILLIAM SCHULTE**, 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 WILLIAM SCHULTE** 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

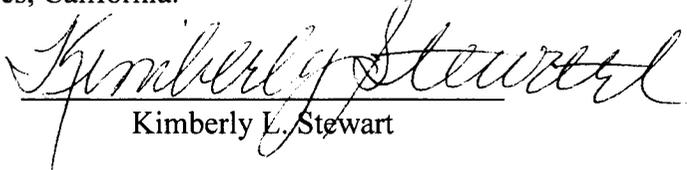
am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los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