

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 MELISSA K. COTE**

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 Melissa K. Cote, dated March 13, 2009, as follows:

Evidence:	Applicant's Objection:	Opposer's Response:
the product depicted in the photograph attached hereto as Exhibit 1 and called "Hit Clips Discs Motown 3 Pack", . . . the product	(a) Exhibit speaks for itself (Fed. R. Evid. 1002); (b) Mischaracterizes evidence.	The witness has testified as to, <i>inter alia</i> , her position with her employer and her familiarity with its books and records. Her

<p>depicted in the photograph attached hereto as <u>Exhibit 2</u> and called "ABC Jackson 5" Turbo Tooth Tunes (collectively, the "MOTOWN Toys"). (Cote Decl., ¶ 2.)</p>		<p>introduction and authentication of images of her employer's products is appropriate foundational testimony that is admissible under, <i>inter alia</i>, FRE 1002, 1003 and TBMP 703.01. Moreover, the witness does not mischaracterize evidence (nor does Applicant even attempt to explain what is purportedly mischaracterized).</p>
<p>On or around May 19, 2004, Hasbro entered into a license agreement with Universal Music Enterprises, a division of UMG Recordings, Inc. ("UMG") concerning Hit Clips. A true and correct copy of the license</p>	<p>(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Hearsay (Fed. R. Evid. 802); (d) Lacks Authentication (Fed. R. Evid. 901).</p>	<p>The witness has testified as to, <i>inter alia</i>, her position with her employer and her familiarity with its books and records. Her introduction of a license agreement and related documents, and testimony in connection therewith, is</p>

<p>agreement is attached hereto as <u>Exhibit 3</u>. On or around May 24, 2007, in a letter agreement between Hasbro and UME, Hasbro was given clearance for the use of the ABC (Jackson Five) recording. The parties are still negotiating a long form license for the recording and no royalty has yet been paid. A copy of the May 24, 2007 letter is attached as <u>Exhibit 4</u>. (Cote Decl., ¶ 3.)</p>		<p>appropriate non-opinion fact testimony. Her authentication thereof is likewise appropriate foundational testimony. This evidence is admissible under, <i>inter alia</i>, FRE 701, 901, 1002, and 1003. Moreover, this testimony is not hearsay and does not violate FRE 802, as the witness is not offering into evidence statements other than her own to prove the truth of the matter asserted.</p>
<p>Hasbro's data shows that in 2005, gross sales for the Hit Clips were approximately \$ _____. Gross sales for the ToothTunes in 2008 were approximately \$ _____.</p>	<p>(a) Exhibit speaks for itself (Fed. R. Evid. 1002).</p>	<p>The witness has testified as to, <i>inter alia</i>, her position with her employer and her familiarity with its books and records. Her introduction of and</p>

<p>Hasbro pays UMG royalties on a per unit basis as set forth in the Hit Clips license agreement between the parties. . . . Hasbro's total sales of the MOTOWN Toys, bearing the MOTOWN marks, were in excess of \$ _____. A copy of Hasbro's royalty statement relating to Hit Clips is attached as <u>Exhibit 5</u>. (Cote Decl., ¶ 6.)</p>		<p>testimony regarding sales and those business records, and authentication thereof is appropriate foundational testimony that is admissible under, <i>inter alia</i>, FRE 1002 and 1003.</p>
<p>Hasbro's data shows ____ units of Hit Clips sold in 2005. ____ units of the ToothTunes were sold in 2008. Hasbro has sold in excess of ____ units of the MOTOWN Toys bearing the MOTOWN marks. A</p>	<p>(a) Exhibit speaks for itself (Fed. R. Evid. 1002).</p>	<p>The witness has testified as to, <i>inter alia</i>, her position with her employer and her familiarity with its books and records. Her introduction of and testimony regarding sales and those business records,</p>

copy of Hasbro's royalty statement relating to Hit Clips is attached as <u>Exhibit 5</u> . (Cote Decl., ¶ 7.)		and authentication thereof is appropriate foundational testimony that is admissible under, <i>inter alia</i> , FRE 1002 and 1003.
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Dated: March 15, 2010

Respectfully submitted,



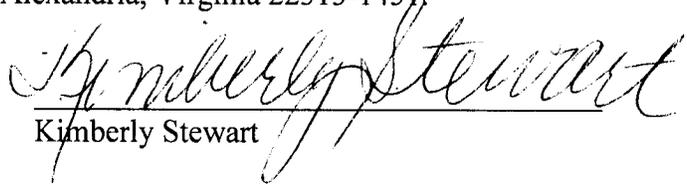
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Attorneys for Opposer

CERTIFICATE OF MAILING

Date of Deposit: March 15, 2010

"Express Mail" mailing label number: EB519288551US

I hereby certify that this paper or fee, **RESPONSE OF OPPOSER UMG RECORDINGS, INC., TO APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS TO STRIKE PORTIONS OF DECLARATION OF MELISSA K. COTE**, 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 MELISSA K. COTE** 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 SERVICES 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

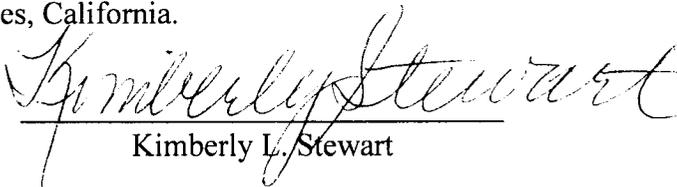
am readily familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at 11377 West Olympic Boulevard, Los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