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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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Submission	Testimony For Defendant
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Date	06/16/2009
Attachments	Trial Declaration of Raymond Adler Vol. 1.pdf (7 pages)(381767 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

TRIAL DECLARATION OF RAYMOND ADLER

RAYMOND ADLER declares under penalty of perjury as follows:

1. I am employed by Applicant Mattel, Inc. ("Mattel"). I have personal and firsthand knowledge of the facts set forth in this declaration, and if called as a witness would and could testify competently to these facts under oath.

2. I have been working at Mattel since 2002 (as a temporary employee from 2002-2006, and as a permanent employee from 2006 until present). I currently work as a Marketing Manager in Mattel's games and puzzles division. From 2004 through 2008 I worked in Mattel's Hot Wheels Marketing Group, marketing and promoting Mattel's Hot Wheels® die-cast toy car products ("HOT WHEELS"). During the time that I worked in the HOT WHEELS Marketing

Group, I participated in marketing efforts for the HOT WHEELS "Motown Metal" line of die-cast toy cars, with responsibility for the "Motown Metal" basic line – *i.e.* toy cars sold individually with the suggested retail price of $0.99.

3. Mattel began creating the Motown Metal line of HOT WHEELS products in 2005. The Motown Metal line was introduced in the marketplace in 2006 and was sold in 2006 and 2007. The "theme" of the Motown Metal line was "Detroit muscle cars" – fast, powerful cars produced by the "Big Three" Detroit automakers (General Motors, Ford, and Chrysler) in the late 1960s and early 1970s.

4. Mattel produced and sold a basic line of five Motown Metal HOT WHEELS toys: a 1970 Chevrolet Chevelle, a 1965 Ford Mustang, a 1970 Plymouth Road Runner, a 1967 Chevrolet Camaro, and a 1969 Pontiac GTO. These basic cars had a suggested retail price of $0.99 each. Mattel also produced and sold a collector's edition two-car set containing a 1970 Ford Mustang "Boss" 429 and a 1969 Chevrolet Camaro. The suggested retail price of the two-car collector pack was $19.99. This collector's edition is discussed in detail in the Declaration of Christopher Bouman submitted concurrently herewith.

5. As part of my duties in Mattel's HOT WHEELS Marketing Group, I reviewed the five toy cars in the "basic line" to ensure that they fit the criteria for the Motown Metal series in that they represented Detroit muscle cars from the 1960s and 1970s. I also reviewed and approved the layouts of the packaging materials associated with the Motown Metal toys, which included the individual "blister packs" for each car (the package that hangs on a hook in a retail story, containing one car only).

6. As part of my duties in Mattel's HOT WHEELS Marketing Group, I also reviewed and approved marketing materials used to promote HOT WHEELS toy cars, including

the Motown Metal series. Photographs of the basic cars in the Motown Metal series were included on a collector's poster which featured all the HOT WHEELS toy cars sold in 2006. A true and correct copy of this poster is attached hereto as **Exhibit A**. This poster shows images of the five Motown Metal toy cars but does not contain the words "Motown Metal." The Motown Metal cars are identified on the poster as the "Muscle Cars Series."

7. The "Motown Metal" cars are also included in a printed Collector's Guide. A true and correct copy of the 2006 Collector's Guide is attached hereto as **Exhibit B**. To my knowledge, the poster attached as Exhibit A and the Collector's Guide attached as Exhibit B are the only marketing materials produced by Mattel that show the Motown Metal series of toy cars. The Motown Metal series was never advertised on television, radio, print, or Internet media separate or apart from the HOT WHEELS brand generally.

8. The basic line of the Motown Metal toy cars were marketed primarily to boys ages three through six, as are all basic HOT WHEELS toys. The Motown Metal collector's edition two-pack was marketed primarily to the adult male collector market (males age 18 to 42).

9. The Motown Metal HOT WHEELS toys were sold in 2006 and 2007 to retailers throughout the United States and the world. The Motown Metal toys were also available for sale through Mattel's websites: www.mattel.com, www.hotwheels.com, and www.hotwheelscollectors.com.

10. Mattel generally sells HOT WHEELS toy cars directly to retail stores that typically sell Mattel products (*e.g.* Wal-Mart, Toys "R" Us, Kmart, KB Toys, certain individual drug and grocery stores) and in its own store located in Mattel's corporate offices in El Segundo, California. Retailers can only order HOT WHEELS cars in general assortments of between 18 and 144 individual cars. Retailers cannot select specific lines of HOT WHEELS to order, and

they will not know what individual cars will be in an assortment until the shipment arrives. Mattel determines which HOT WHEELS toy cars will go into a given assortment based on a number of factors including market research, cost, and inventory. No retailer was ever able to order Motown Metal HOT WHEELS (or any distinct line of HOT WHEELS) specifically.

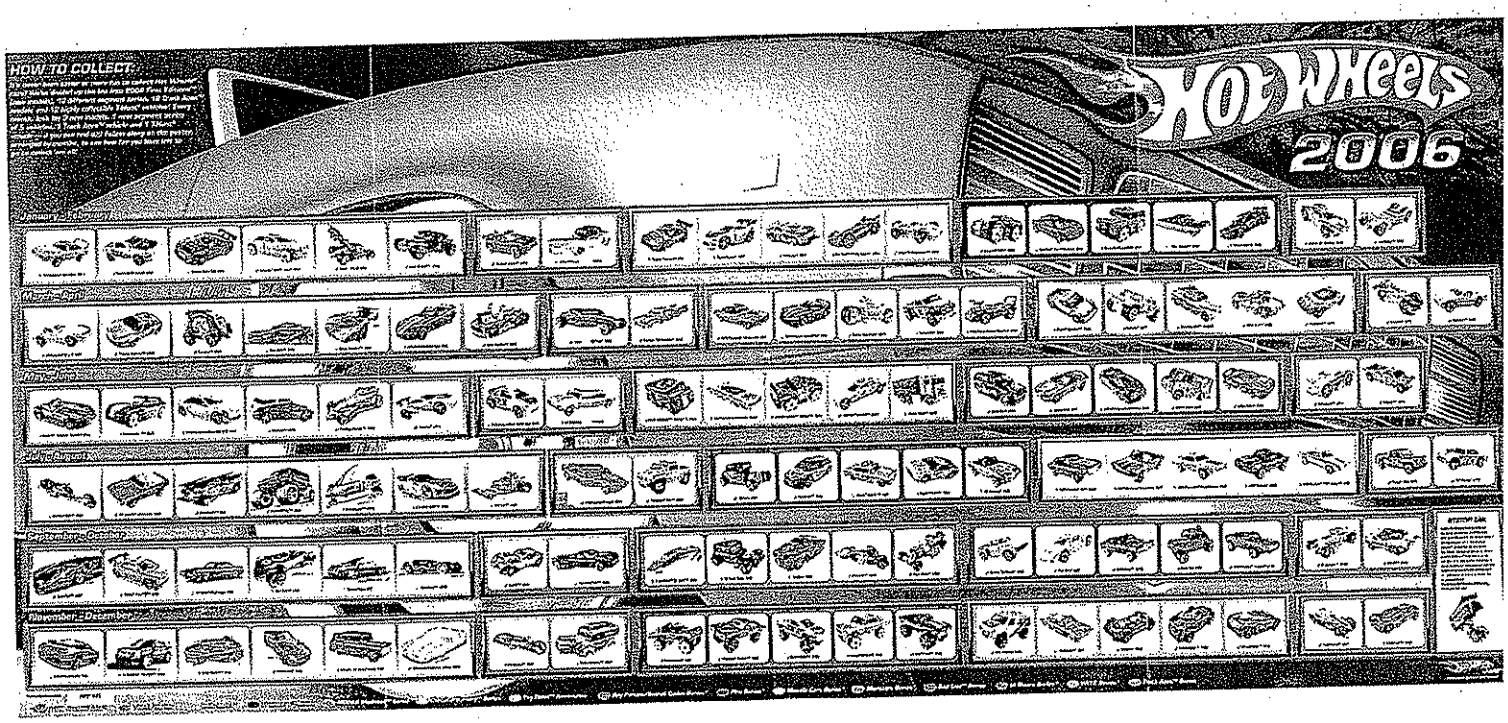
11. To my knowledge, Mattel entered into no licenses or other agreements with third parties for use of the Motown Metal trademark.

12. Mattel conducts consumer research regarding the HOT WHEELS brand. To my knowledge, Mattel never conducted consumer research on the Motown Metal line specifically, as opposed to HOT WHEELS in general. Mattel's consumer research suggests that boys ages three through six (the target demographic for the basic car lines) choose HOT WHEELS based first on their shape and styling, and then based on their color. Adult HOT WHEELS collectors are choosier and tend to research their purchases, ultimately deciding on an individual toy car because of the level of detailing in a collector model, because the original car on which the toy is modeled appeals to them, or to round out or complete a collection.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on June 15, 2009, at El Segundo, California.

Raymond Adler

Exhibit A


HOW TO COLLECT:
Hot Wheels
2006

Hot Wheels 2006

SECRET SEGMENTS

In addition to all of the series cars released each month, we'll be releasing some other "secret segment" cars every month! Look for about 8 new vehicles on this list a month to complete your collection.

Exhibit: A
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