

ESTTA Tracking number: **ESTTA290220**

Filing date: **06/16/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176791
Party	Defendant MATTEL, INC.
Correspondence Address	Lawrence Y. Iser, Esq. Kinsella Weitzman Iser Kump & Aldisert LLP 808 Wilshire Blvd., Suite 300 Santa Monica, CA 90401 UNITED STATES CFitzgerald@kwikalaw.com
Submission	Defendant's Notice of Reliance
Filer's Name	Chad R. Fitzgerald
Filer's e-mail	cfitzgerald@kwikalaw.com
Signature	/crf/
Date	06/16/2009
Attachments	Notice of reliance re written discovery responses.pdf ( 56 pages )(2487279 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

---

**APPLICANT'S NOTICE OF RELIANCE RE: WRITTEN DISCOVERY RESPONSES**

Pursuant to 37 C.F.R. § 2.120(j), Applicant Mattel, Inc. ("Applicant") hereby makes of record and notifies Opposer UMG Recordings, Inc. ("Opposer") of its reliance on:

(1) Opposer's Responses to Applicant's First Set of Interrogatories, a true and correct copy of which is attached hereto as **Exhibit A**.

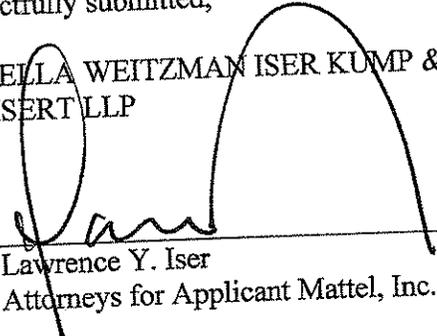
(2) Opposer's Amended Responses to Applicant's First Set of Interrogatories, a true and correct copy of which is attached hereto as **Exhibit B**.

(3) Opposer's Responses to Applicant's First Set of Request for Admission, a true and correct copy of which is attached hereto as **Exhibit C**.

DATED: June 16, 2009

Respectfully submitted,

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By: 

Lawrence Y. Iser  
Attorneys for Applicant Mattel, Inc.

# Exhibit A

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 UMG RECORDINGS, INC.'S RESPONSES TO APPLICANT MATTEL,  
INC.'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: Applicant MATTEL, INC.

RESPONDING PARTY: Opposer UMG RECORDINGS, INC.

SET NO.: ONE

TO APPLICANT MATTEL, INC. AND ITS ATTORNEYS OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Trademark Trial and Appeals Board Manual of Procedure Section 405, Opposer UMG Recordings, Inc. ("UMG") hereby responds to the First Set of Interrogatories propounded on it by Applicant Mattel, Inc.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement herein if the particular interrogatory were asked of, or if any statement contained in such response were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

Except for explicit facts set forth herein, no incidental or implied admissions are intended by these responses. The fact that UMG has answered or objected to a particular interrogatory is not intended and shall not be construed as an admission that UMG accepts or admits the existence of any facts set forth or assumed by such interrogatory, or that any of such answers or objections constitute admissible evidence. The fact that UMG has answered part or all of any particular interrogatory is not intended and shall not be construed as a waiver by UMG of any part of any objection to such interrogatory, or any part of any general objection made herein.

The responses herein are based on information currently available to UMG. However, UMG is currently engaged in discovery and investigation which may alter, modify, or add to

some of the facts set forth herein. UMG reserves the right to make appropriate changes to these responses and/or to introduce facts not contained herein if it should appear at any time that omissions or errors have been made or if UMG obtains additional or more accurate information, up to and including the time of trial.

### GENERAL OBJECTIONS

1. UMG objects to each interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, or other applicable privilege.
2. UMG objects to each interrogatory to the extent that it seeks information that is not within UMG's possession, custody or control, but which may be in the possession, custody or control of other parties to this action, or of third-parties who are not named in this action. To the extent these interrogatories may be interpreted as seeking such information, UMG objects to each interrogatory on the ground that it is overly broad and unduly burdensome.
3. UMG objects to each interrogatory to the extent that it requests information that is equally or exclusively available to Mattel and/or that has already been provided in this action.
4. UMG objects to each interrogatory to the extent that it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

5. UMG objects to each interrogatory to the extent that it seeks confidential information and no protective order has been entered in this matter.

6. UMG objects to the interrogatories as a whole on the ground that they are premature, in that discovery in this action is continuing, and additional information may be discovered in the future that conceivably could be responsive to one or more of the interrogatories propounded by Mattel. UMG reserves all rights to rely for any purpose in connection with this action upon any and all such information, whether or not provided in response to any particular interrogatory.

7. Each of these General Objections is hereby incorporated by this reference into each and every response hereinafter set forth.

Subject to and without waiving the foregoing General Objections, UMG responds to the interrogatories as follows:

### RESPONSES TO INTERROGATORIES

#### INTERROGATORY NO. 1:

Identify each product in connection with which UMG used the MOTOWN Marks in commerce for toys (including toy cars or other toy vehicles), games and/or playthings.

#### RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiving its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as

follows: UMG has licensed the MOTOWN Marks for use in commerce in connection with the board game "Motownopoly;" the Xbox game "Karaoke Revolution;" a Karaoke machine; and at least eighteen different Karaoke CDGs. In addition, UMG is informed and believes that its predecessors-in-interest used and/or licensed the MOTOWN Marks in commerce for toys, games and/or playthings. On information and belief, such products included but were not limited to comic books. UMG's investigation into such products is continuing.

**INTERROGATORY NO. 2:**

Identify each toy car or other toy vehicle UMG has sold or distributed in commerce under any mark.

**RESPONSE TO INTERROGATORY NO. 2:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 3:**

Describe in detail how the MOTOWN mark appears or is intended to appear in relation to each product in connection with which UMG used the MOTOWN mark for toys (including toy cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 3:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the

information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained.

**INTERROGATORY NO. 4:**

Identify the dates that UMG selected and/or adopted the MOTOWN mark for use in connection with any toys (including toy cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 4:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: at least as early as October 31, 2002 (the board game "Motownopoly"); at least as early as November 9, 2004 (the Xbox game "Karaoke Revolution"); at least as early as February 7, 2003 (Karaoke machine and Karaoke CDGs).

**INTERROGATORY NO. 5:**

Identify the date that the MOTOWN mark was first used in commerce in connection with toys (including cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 5:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: at least one of the MOTOWN Marks was first used in commerce in connection with toys, games and/or playthings in 2003. In addition, UMG's predecessor in interest appears to have used the MOTOWN Marks in commerce in connection with toys, games and/playthings at least as early as 1995.

**INTERROGATORY NO. 6:**

State whether the use of the MOTOWN mark in commerce in connection with toys (including toy cars or other toy vehicles), games and/or playthings has been interrupted from the date of first use to the present, and explain in detail the reasons for each such interruption and specify the time periods for each interrupted use.

**RESPONSE TO INTERROGATORY NO. 6:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, UMG responds as follows: The use of MOTOWN marks in commerce in connection with toys,

games and/or playthings has not been interrupted, with the exception that the "Motownopoly" board game was discontinued in 2005.

**INTERROGATORY NO. 7:**

Identify the geographic areas in which UMG has ever sold or distributed toy cars or other toy vehicles.

**RESPONSE TO INTERROGATORY NO. 7:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 8:**

Identify the geographic areas in which UMG has ever sold or distributed toy cars or other toy vehicles bearing the MOTOWN Marks.

**RESPONSE TO INTERROGATORY NO. 8:**

Subject to and without waiving its General Objections, UMG responds as follows: to its knowledge, UMG has never sold or distributed toy cars or other toy vehicles bearing the MOTOWN Marks, but its predecessors-in-interest with respect to the MOTOWN Marks may have done so.

**INTERROGATORY NO. 9:**

Identify the geographic areas in which UMG ever planned to sell or distribute toys (including toy cars or other toy vehicles), games or playthings.

**RESPONSE TO INTERROGATORY NO. 9:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 10:**

Identify the geographic areas in which UMG ever planned to sell or distribute toys (including toy cars or other toy vehicles), games or playthings bearing the MOTOWN Marks.

**RESPONSE TO INTERROGATORY NO. 10:**

Subject to and without waiving its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: the sale and distribution of toys, games or playthings bearing the MOTOWN Marks was planned throughout the United States.

**INTERROGATORY NO. 11:**

Identify each instance of consumer confusion or possible consumer confusion between the MOTOWN mark and the MOTOWN METAL mark.

**RESPONSE TO INTERROGATORY NO. 11:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections,

UMG responds as follows: Consumer confusion between the MOTOWN marks and the MOTOWN METAL mark could arise many ways, including by misdirected correspondence from consumers, misdirected consumer telephone calls, or consumers mistakenly purchasing the goods of one party thinking that they are purchasing the goods of the other party.

**INTERROGATORY NO. 12:**

Identify each person who has personal knowledge of any instance of consumer confusion or possible consumer confusion between the MOTOWN mark and the MOTOWN METAL mark, and describe the nature of such person's knowledge.

**RESPONSE TO INTERROGATORY NO. 12:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory because it seeks information that is protected from disclosure at this time by the attorney work-product doctrine and/or the attorney-client privilege.

**INTERROGATORY NO. 13:**

Identify and describe all instances in which UMG received any requests, inquiries or statements from any person pertaining to the existence of any relationships, association, affiliation, or agreement between UMG and Mattel or between the goods and services offered or intended to be offered by UMG under the MOTOWN mark and by Mattel under the MOTOWN METAL mark, and for each such instance identify all persons who have knowledge of the facts thereof, a description of each instance and the date of each instance.

**RESPONSE TO INTERROGATORY NO. 13:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 14:**

Identify each third party against whom UMG has made any claim, demand, complaint or contention that the third party's acts or conduct impinges or impinged on UMG's rights in the MOTOWN Marks, including without limitation any opposition UMG has filed with the United States Patent and Trademark Office opposing the registration of any trademark or service mark on the basis that such trademark or service mark impinges or impinged on UMG's rights in the MOTOWN Marks, and for each such third party, describe in detail the nature of the claim, demand, complaint or contention and its current status or resolution.

**RESPONSE TO INTERROGATORY NO. 14:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving this objection and its General Objections, UMG responds as

follows. Among others, UMG (as opposed to the Motown Record Company, LP) has claimed, demanded, complained or contended that the following third parties' acts or conduct impinge or impinged on UMG's rights in its MOTOWN Marks: Motown Harley Davidson, Inc. (MOTOWN USA impinges on UMG's rights in its MOTOWN Marks; extension of time to oppose granted on November 20, 2007); and Charles O'Rourke (MOTOWN CLOTHING impinges on UMG's rights in its MOTOWN Marks; opposition pending).

**INTERROGATORY NO. 15:**

Identify every third party of which UMG is aware that uses or used, or has registered or applied to register, the word "Motown" as part of any trademark, service mark, domain name, or trade name.

**RESPONSE TO INTERROGATORY NO. 15:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving this objection and its General Objections, UMG responds as follows: When third parties use the MOTOWN Marks in a manner that is likely to cause confusion or dilution, UMG opposes those registrations, as reflected in UMG's response to Interrogatory No. 14, above.

**INTERROGATORY NO. 16:**

Identify each person who has personal knowledge regarding UMG's advertising, promotion, distribution or sale of toys, games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 16:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 17:**

Identify each person who has personal knowledge regarding UMG's advertising, promotion, distribution or sale of toys, games and/or playthings bearing the MOTOWN mark.

**RESPONSE TO INTERROGATORY NO. 17:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: Lori Froeling (Universal Music Enterprises, a division of UMG); Ashley Culp (formerly of Universal Music Enterprises, a division of UMG); Cliff Van Kopenhagen (formerly of Universal Music Enterprises, a division of UMG); Paul Herskovitz (Universal Music Enterprises, a division of UMG); Bill Schultz (Late for the Sky Production, Inc.); John Klecha (The Singing Machine Company, Inc.); J.S. Barocas (The Singing Machine

Company, Inc.); Colin Goldman (The Stronghold Group); and Ray Doustdar (The Stronghold Group); Andy Richmond (The Stronghold Group).

**INTERROGATORY NO. 18:**

Identify each person UMG expects to call as an expert witness during UMG's testimony period, and for each person identified state the subject matter(s) on which the expert is expected to testify, the substance of the facts and opinions on which the expert is expected to testify, the grounds for each opinion on which the expert is expected to testify, the qualifications of each expert, including a list of all publications authored by the expert within the last ten (10) years, the compensation to be paid for the expert's time and testimony, and a list of any other cases in which the expert has testified as an expert witness at trial or deposition within the last ten (10) years.

**RESPONSE TO INTERROGATORY NO. 18:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory because it seeks information that is protected from disclosure at this time by the attorney work-product doctrine and/or the attorney-client privilege.

**INTERROGATORY NO. 19:**

Explain why the MOTOWN mark was originally chosen for the Motown record label.

**RESPONSE TO INTERROGATORY NO. 19:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it seeks

information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections and its General Objections, UMG responds as follows: Berry Gordy, the founder of the Motown record label, described his decision to name the Motown record label in his autobiography To Be Loved: The Music, The Magic, The Memories of Motown as follows: "...I wanted something that meant more to me, something that would capture the feeling of my roots – my hometown. Because of its thriving car industry, Detroit has long been known as the 'Motor City.' In tribute to what I had always felt was the down-home quality of warm, soulful country-hearted people I grew up around, I used 'town' in place of 'city.' A contraction of 'Motor Town' gave me the perfect name – Motown."

**INTERROGATORY NO. 20:**

Explain what UMG believes or understands the term "Motown" means or represents.

**RESPONSE TO INTERROGATORY NO. 20:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**INTERROGATORY NO. 21:**

Identify all persons who provided information for UMG's responses to these interrogatories, and for UMG's responses to Mattel's Second Set of Requests for Production of Documents and Things and First Set of Requests for Admission served concurrently herewith.

**RESPONSE TO INTERROGATORY NO. 21:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is compound. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

DATED: January 14, 2008

MITCHELL SILBERBERG & KNUPP LLP

By:

Alexa L. Lewis

Alexa L. Lewis

Attorneys for Opposer UMG Recordings, Inc.

**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 January 14, 2008, I served a copy of the foregoing document(s) described as **OPPOSER UMG RECORDINGS, INC.'S RESPONSES TO APPLICANT MATTEL, INC.'S FIRST SET OF INTERROGATORIES** 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))

Direct (310) 566-9801

Direct Fax (310) 566-9861

Patricia A. Millett ([pmillett@kwikalaw.com](mailto:pmillett@kwikalaw.com))

Direct (310) 566-9821

Direct Fax (310) 566-9870

Chad R. Fitzgerald ([CFitzgerald@kwikalaw.com](mailto:CFitzgerald@kwikalaw.com))

Direct 310.566.9802

Direct Fax 310.566.9882

Kinsella, Weitzman, Iser, Kump & Aldisert LLP

808 Wilshire Boulevard, 3rd Floor

Santa Monica, CA 90401

(310) 566-9800

Fax: (310) 566-9850

Counsel for Applicant, MATTEL,  
INC.

- 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 \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- 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 United States that the above is true and correct.

Executed on January 14, 2008, at Los Angeles, California.

---

Kimberly L. Stewart

# Exhibit B

**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 UMG RECORDINGS, INC.'S AMENDED RESPONSES TO APPLICANT**  
**MATTEL, INC.'S FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: Applicant MATTEL, INC.

RESPONDING PARTY: Opposer UMG RECORDINGS, INC.

SET NO.: ONE

Exhibit: B  
Page: 23

TO APPLICANT MATTEL, INC. AND ITS ATTORNEYS OF RECORD:

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Trademark Trial and Appeals Board Manual of Procedure Section 405, Opposer UMG Recordings, Inc. ("UMG") hereby amends its responds to the First Set of Interrogatories propounded on it by Applicant Mattel, Inc.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement herein if the particular interrogatory were asked of, or if any statement contained in such response were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

Except for explicit facts set forth herein, no incidental or implied admissions are intended by these responses. The fact that UMG has answered or objected to a particular interrogatory is not intended and shall not be construed as an admission that UMG accepts or admits the existence of any facts set forth or assumed by such interrogatory, or that any of such answers or objections constitute admissible evidence. The fact that UMG has answered part or all of any particular interrogatory is not intended and shall not be construed as a waiver by UMG of any part of any objection to such interrogatory, or any part of any general objection made herein.

The responses herein are based on information currently available to UMG. However, UMG is currently engaged in discovery and investigation which may alter, modify, or add to some of the facts set forth herein. UMG reserves the right to make appropriate changes to these responses and/or to introduce facts not contained herein if it should appear at any time that omissions or errors have been made or if UMG obtains additional or more accurate information, up to and including the time of trial.

### GENERAL OBJECTIONS

1. UMG objects to each interrogatory to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, or other applicable privilege.
2. UMG objects to each interrogatory to the extent that it seeks information that is not within UMG's possession, custody or control, but which may be in the possession, custody or control of other parties to this action, or of third-parties who are not named in this action. To the extent these interrogatories may be interpreted as seeking such information, UMG objects to each interrogatory on the ground that it is overly broad and unduly burdensome.
3. UMG objects to each interrogatory to the extent that it requests information that is equally or exclusively available to Mattel and/or that has already been provided in this action.

4. UMG objects to each interrogatory to the extent that it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

5. UMG objects to each interrogatory to the extent that it seeks confidential information and no protective order has been entered in this matter.

6. UMG objects to the interrogatories as a whole on the ground that they are premature, in that discovery in this action is continuing, and additional information may be discovered in the future that conceivably could be responsive to one or more of the interrogatories propounded by Mattel. UMG reserves all rights to rely for any purpose in connection with this action upon any and all such information, whether or not provided in response to any particular interrogatory.

7. Each of these General Objections is hereby incorporated by this reference into each and every response hereinafter set forth.

Subject to and without waiving the foregoing General Objections, UMG responds to the interrogatories as follows:

### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify each product in connection with which UMG used the MOTOWN Marks in commerce for toys (including toy cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 1:**

Subject to and without waiving its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: UMG has licensed the MOTOWN Marks for use in commerce in connection with the board game "Motownopoly;" the Xbox game "Karaoke Revolution;" a Karaoke machine; at least eighteen different Karaoke CDGs; and "Hit Clips" toys. In addition, UMG is informed and believes that its predecessors-in-interest used and/or licensed the MOTOWN Marks in commerce for toys, games and/or playthings. On information and belief, such products included but were not limited to comic books. UMG's investigation into such products is continuing.

**INTERROGATORY NO. 2:**

Identify each toy car or other toy vehicle UMG has sold or distributed in commerce under any mark.

**RESPONSE TO INTERROGATORY NO. 2:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 3:**

Describe in detail how the MOTOWN mark appears or is intended to appear in relation to each product in connection with which UMG used the MOTOWN mark for toys (including toy cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 3:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained.

**INTERROGATORY NO. 4:**

Identify the dates that UMG selected and/or adopted the MOTOWN mark for use in connection with any toys (including toy cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 4:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: at least as early as October 31, 2002 (the board game "Motownopoly"); at least as early as November 9, 2004 (the Xbox game "Karaoke Revolution"); at least as early as February 7, 2003 (Karaoke machine and Karaoke CDGs); and at least as early as May 19, 2004 (the "Hit Clips" toys).

**INTERROGATORY NO. 5:**

Identify the date that the MOTOWN mark was first used in commerce in connection with toys (including cars or other toy vehicles), games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 5:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: at least one of the MOTOWN Marks was first used in commerce in connection with toys, games and/or playthings in 2003. In addition, UMG's predecessor in interest appears to have used the MOTOWN Marks in commerce in connection with toys, games and/playthings at least as early as 1995.

**INTERROGATORY NO. 6:**

State whether the use of the MOTOWN mark in commerce in connection with toys (including toy cars or other toy vehicles), games and/or playthings has been interrupted from the date of first use to the present, and explain in detail the reasons for each such interruption and specify the time periods for each interrupted use.

**RESPONSE TO INTERROGATORY NO. 6:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the

information sought. Subject to and without waiving this objection and its General Objections, UMG responds as follows: The use of MOTOWN marks in commerce in connection with toys, games and/or playthings has not been interrupted, with the exception that the "Motownopoly" board game was discontinued in 2005.

**INTERROGATORY NO. 7:**

Identify the geographic areas in which UMG has ever sold or distributed toy cars or other toy vehicles.

**RESPONSE TO INTERROGATORY NO. 7:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 8:**

Identify the geographic areas in which UMG has ever sold or distributed toy cars or other toy vehicles bearing the MOTOWN Marks.

**RESPONSE TO INTERROGATORY NO. 8:**

Subject to and without waiving its General Objections, UMG responds as follows: to its knowledge, UMG has never sold or distributed toy cars or other toy vehicles bearing the MOTOWN Marks, but its predecessors-in-interest with respect to the MOTOWN Marks may have done so.

**INTERROGATORY NO. 9:**

Identify the geographic areas in which UMG ever planned to sell or distribute toys (including toy cars or other toy vehicles), games or playthings.

**RESPONSE TO INTERROGATORY NO. 9:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 10:**

Identify the geographic areas in which UMG ever planned to sell or distribute toys (including toy cars or other toy vehicles), games or playthings bearing the MOTOWN Marks.

**RESPONSE TO INTERROGATORY NO. 10:**

Subject to and without waiving its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: the sale and distribution of toys, games or playthings bearing the MOTOWN Marks was planned throughout the United States.

**INTERROGATORY NO. 11:**

Identify each instance of consumer confusion or possible consumer confusion between the MOTOWN mark and the MOTOWN METAL mark.

**RESPONSE TO INTERROGATORY NO. 11:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and

unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, UMG responds as follows: Consumer confusion between the MOTOWN marks and the MOTOWN METAL mark could arise many ways, including by misdirected correspondence from consumers, misdirected consumer telephone calls, or consumers mistakenly purchasing the goods of one party thinking that they are purchasing the goods of the other party.

**INTERROGATORY NO. 12:**

Identify each person who has personal knowledge of any instance of consumer confusion or possible consumer confusion between the MOTOWN mark and the MOTOWN METAL mark, and describe the nature of such person's knowledge.

**RESPONSE TO INTERROGATORY NO. 12:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory because it seeks information that is protected from disclosure at this time by the attorney work-product doctrine and/or the attorney-client privilege.

**INTERROGATORY NO. 13:**

Identify and describe all instances in which UMG received any requests, inquiries or statements from any person pertaining to the existence of any relationships, association, affiliation, or agreement between UMG and Mattel or between the goods and services offered or intended to be offered by UMG under the MOTOWN mark and by Mattel under the MOTOWN

METAL mark, and for each such instance identify all persons who have knowledge of the facts thereof, a description of each instance and the date of each instance.

**RESPONSE TO INTERROGATORY NO. 13:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 14:**

Identify each third party against whom UMG has made any claim, demand, complaint or contention that the third party's acts or conduct impinges or impinged on UMG's rights in the MOTOWN Marks, including without limitation any opposition UMG has filed with the United States Patent and Trademark Office opposing the registration of any trademark or service mark on the basis that such trademark or service mark impinges or impinged on UMG's rights in the MOTOWN Marks, and for each such third party, describe in detail the nature of the claim, demand, complaint or contention and its current status or resolution.

**RESPONSE TO INTERROGATORY NO. 14:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it is overbroad, unduly burdensome, oppressive, and harassing, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information

protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving this objection and its General Objections, UMG responds as follows. Among others, UMG (as opposed to the Motown Record Company, LP) has claimed, demanded, complained or contended that the following third parties' acts or conduct impinge or impinged on UMG's rights in its MOTOWN Marks: Motown Harley Davidson, Inc. (MOTOWN USA impinges on UMG's rights in its MOTOWN Marks; extension of time to oppose granted on November 20, 2007); and Charles O'Rourke (MOTOWN CLOTHING impinges on UMG's rights in its MOTOWN Marks; opposition pending).

**INTERROGATORY NO. 15:**

Identify every third party of which UMG is aware that uses or used, or has registered or applied to register, the word "Motown" as part of any trademark, service mark, domain name, or trade name.

**RESPONSE TO INTERROGATORY NO. 15:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving this objection and its General Objections, UMG responds as follows: When third parties use the MOTOWN Marks in a manner that is likely to cause confusion or dilution, UMG opposes those registrations, as reflected in UMG's response to Interrogatory No. 14, above.

**INTERROGATORY NO. 16:**

Identify each person who has personal knowledge regarding UMG's advertising, promotion, distribution or sale of toys, games and/or playthings.

**RESPONSE TO INTERROGATORY NO. 16:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**INTERROGATORY NO. 17:**

Identify each person who has personal knowledge regarding UMG's advertising, promotion, distribution or sale of toys, games and/or playthings bearing the MOTOWN mark.

**RESPONSE TO INTERROGATORY NO. 17:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. Subject to and without waiving this objection and its General Objections, pursuant to Fed. R. Civ. P. 33(d), UMG responds by referring Mattel to documents being made available for inspection and copying, from which the response to Mattel's interrogatory may be derived or ascertained, and as follows: Lori Froeling (Universal Music Enterprises, a division of UMG); Ashley Culp (formerly of Universal Music Enterprises, a division of UMG); Cliff Van Koppenhagen (formerly of Universal Music Enterprises, a division of UMG); Paul Herskovitz (Universal Music Enterprises, a division of UMG); Bill Schultz (Late for the Sky Production, Inc.); John Klecha (The Singing Machine Company, Inc.); J.S. Barocas (The Singing Machine

Company, Inc.); Colin Goldman (The Stronghold Group); Ray Doustdar (The Stronghold Group); Andy Richmond (The Stronghold Group); Melissa K. Cote (Hasbro).

**INTERROGATORY NO. 18:**

Identify each person UMG expects to call as an expert witness during UMG's testimony period, and for each person identified state the subject matter(s) on which the expert is expected to testify, the substance of the facts and opinions on which the expert is expected to testify, the grounds for each opinion on which the expert is expected to testify, the qualifications of each expert, including a list of all publications authored by the expert within the last ten (10) years, the compensation to be paid for the expert's time and testimony, and a list of any other cases in which the expert has testified as an expert witness at trial or deposition within the last ten (10) years.

**RESPONSE TO INTERROGATORY NO. 18:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory because it seeks information that is protected from disclosure at this time by the attorney work-product doctrine and/or the attorney-client privilege.

**INTERROGATORY NO. 19:**

Explain why the MOTOWN mark was originally chosen for the Motown record label.

**RESPONSE TO INTERROGATORY NO. 19:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it seeks

information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections and its General Objections, UMG responds as follows: Berry Gordy, the founder of the Motown record label, described his decision to name the Motown record label in his autobiography To Be Loved: The Music, The Magic, The Memories of Motown as follows: "...I wanted something that meant more to me, something that would capture the feeling of my roots – my hometown. Because of its thriving car industry, Detroit has long been known as the 'Motor City.' In tribute to what I had always felt was the down-home quality of warm, soulful country-hearted people I grew up around, I used 'town' in place of 'city.' A contraction of 'Motor Town' gave me the perfect name – Motown."

**INTERROGATORY NO. 20:**

Explain what UMG believes or understands the term "Motown" means or represents.

**RESPONSE TO INTERROGATORY NO. 20:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this interrogatory on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**INTERROGATORY NO. 21:**

Identify all persons who provided information for UMG's responses to these interrogatories, and for UMG's responses to Mattel's Second Set of Requests for Production of Documents and Things and First Set of Requests for Admission served concurrently herewith.

**RESPONSE TO INTERROGATORY NO. 21:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this interrogatory on the grounds that the interrogatory is compound. UMG further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

DATED: February 28, 2008

MITCHELL SILBERBERG & KNUPP LLP

By:

Alexa Lewis

Alexa L. Lewis

Attorneys for Opposer UMG Recordings, Inc.

**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 February 28, 2008, I served a copy of the foregoing document(s) described as **OPPOSER UMG RECORDINGS, INC.'S AMENDED RESPONSES TO APPLICANT MATTEL, INC.'S FIRST SET OF INTERROGATORIES** 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))

Direct (310) 566-9801

Direct Fax (310) 566-9861

Patricia A. Millett ([pmillett@kwikalaw.com](mailto:pmillett@kwikalaw.com))

Direct (310) 566-9821

Direct Fax (310) 566-9870

Chad R. Fitzgerald ([CFitzgerald@kwikalaw.com](mailto:CFitzgerald@kwikalaw.com))

Direct 310.566.9802

Direct Fax 310.566.9882

Kinsella, Weitzman, Iser, Kump & Aldisert LLP

808 Wilshire Boulevard, 3rd Floor

Santa Monica, CA 90401

(310) 566-9800

Fax: (310) 566-9850

Counsel for Applicant, MATTEL,  
INC.

- 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 \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- 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 United States that the above is true and correct.

Executed on February 28, 2008, at Los Angeles, California.

---

Kimberly L. Stewart

# Exhibit C

01/14/08

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 UMG RECORDINGS, INC.'S RESPONSES TO APPLICANT MATTEL,  
INC.'S FIRST SET OF REQUESTS FOR ADMISSION

PROPOUNDING PARTY:

Applicant MATTEL, INC.

RESPONDING PARTY:

Opposer UMG RECORDINGS, INC.

SET NO.:

ONE

TO APPLICANT MATTEL, INC. AND ITS ATTORNEYS OF RECORD:

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Trademark Trial and Appeals Board Manual of Procedure Section 407, Opposer UMG Recordings, Inc. ("UMG") hereby responds to the First Set of Requests for Admission propounded on it by Applicant Mattel, Inc.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement herein if the particular request were asked of, or if any statement contained in such response were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

Except for explicit facts set forth herein, no incidental or implied admissions are intended by these responses. The fact that UMG has answered or objected to a particular request for admission is not intended and shall not be construed as an admission that UMG accepts or admits the existence of any facts set forth or assumed by such request for admission, or that any of such answers or objections constitute admissible evidence. The fact that UMG has answered part or all of any particular request for admission is not intended and shall not be construed as a waiver by UMG of any part of any objection to such request, or any part of any general objection made herein.

The responses herein are based on information currently available to UMG. However, UMG is currently engaged in discovery and investigation which may alter, modify, or add to some of the facts set forth herein. UMG reserves the right to make appropriate changes to these responses and/or to introduce facts not contained herein if it should appear at any time that omissions or errors have been made or if UMG obtains additional or more accurate information, up to and including the time of trial.

### GENERAL OBJECTIONS

1. UMG objects to each request for admission to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, or other applicable privilege.

2. UMG objects to each request for admission to the extent that it seeks information that is not within UMG's possession, custody or control, but which may be in the possession, custody or control of other parties to this action, or of third-parties who are not named in this action. To the extent these requests may be interpreted as seeking such information, UMG objects to each request for admission on the ground that it is overly broad and unduly burdensome.

3. UMG objects to each request for admission to the extent that it requests information that is equally or exclusively available to Mattel and/or that has already been provided in this action.

4. UMG objects to each request for admission to the extent that it seeks information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

5. UMG objects to each request for admission to the extent that it seeks confidential information and no protective order has been entered in this matter.

6. UMG objects to the requests for admission as a whole on the ground that they are premature, in that discovery in this action is continuing, and additional information may be discovered in the future that conceivably could be responsive to one or more of the requests for admission propounded by Mattel. UMG reserves all rights to rely for any purpose in connection with this action upon any and all such information, whether or not provided in response to any particular request for admission.

7. Each of these General Objections is hereby incorporated by this reference into each and every response hereinafter set forth.

Subject to and without waiving the foregoing General Objections, UMG responds to the requests for admission as follows:

### **RESPONSES TO INTERROGATORIES**

#### **REQUEST FOR ADMISSION NO. 1:**

Admit that Kerry Regan is currently employed by UMG in UMG's legal department.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this request to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**REQUEST FOR ADMISSION NO. 2:**

Admit that Kerry Regan is an attorney currently licensed to practice law in California.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this request to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**REQUEST FOR ADMISSION NO. 3:**

Admit that Kerry Regan was employed by Mattel as an attorney prior to her employment with UMG.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible

evidence. UMG further objects to this request to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**REQUEST FOR ADMISSION NO. 4:**

Admit that, while employed by Mattel, Kerry Regan had certain responsibilities for applying to register Mattel's MOTOWN METAL mark with the United States Patent and Trademark Office.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. UMG further objects to this request to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine.

**REQUEST FOR ADMISSION NO. 5:**

Admit that Kerry Regan is identified as an "appointed attorney" on Mattel's application for registration of the MOTOWN METAL mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 6:**

Admit that Kerry Regan sent a letter to Mattel, dated February 22, 2007, claiming that Mattel's MOTOWN METAL mark violated UMG's asserted rights in its MOTOWN mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is argumentative, vague, ambiguous, and unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 7:**

Admit that, at the time Kerry Regan sent the February 22, 2007 letter to Mattel, she was identified as an "appointed attorney" on Mattel's application for registration of the MOTOWN METAL mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 8:**

Admit that UMG has no knowledge of any actual consumer confusion between the MOTOWN mark and the MOTOWN METAL mark, or between UMG products or services bearing the MOTOWN mark and Mattel products bearing the MOTOWN METAL mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague, ambiguous, unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this request to the extent it seeks information protected from disclosure by the attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections or the General Objections, UMG states: Admitted.

**REQUEST FOR ADMISSION NO. 9:**

Admit that UMG has received no requests, inquiries or statements from any person pertaining to the existence of any relationship, association, affiliation or agreement between UMG and Mattel or between the goods and services offered or intended to be offered by UMG under the MOTOWN mark and by Mattel under the MOTOWN METAL mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague, ambiguous, unintelligible in the context of this action and does not reasonably apprise UMG of the information sought. UMG further objects to this request to the extent it seeks information protected from disclosure by the

attorney client privilege and/or the work product doctrine. Subject to and without waiving these objections or the General Objections, UMG states: Admitted.

**REQUEST FOR ADMISSION NO. 10:**

Admit that UMG has never sold, distributed or marketed toy cars or other toy vehicles.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is overbroad, unduly burdensome, and seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General Objections, UMG states: UMG has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

**REQUEST FOR ADMISSION NO. 11:**

Admit that the term "Motown" is commonly understood to refer to the city of Detroit, Michigan.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague and ambiguous. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 12:**

Admit that the term "Motown" is a shortened form of the term "Motor City."

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague and ambiguous. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General Objections, UMG states:  
  
Denied.

**REQUEST FOR ADMISSION NO. 13:**

Admit that the term "Motor City" is commonly understood to refer to the city of Detroit, Michigan.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague and ambiguous. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General Objections, UMG states:  
  
Admitted.

**REQUEST FOR ADMISSION NO. 14:**

Admit that the definition of "Motown" in *Webster's College Dictionary* is "1. Detroit, Michigan: a nickname. 2. an upbeat, often pop-influenced style of rhythm and blues associated with the Detroit and with numerous black vocalists since the 1950s."

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague and ambiguous. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General Objections, UMG states: UMG has made reasonable inquiry and the information it knows or can readily obtain is insufficient to enable it to admit or deny this request.

**REQUEST FOR ADMISSION NO. 15:**

Admit that the term "Motown" is used descriptively to identify the city of Detroit and things associated with Detroit, including without limitation the automobile industry in Detroit and/or automobiles manufactured in Detroit.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that the request is vague and ambiguous. UMG further objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 16:**

Admit that the mark MOTOWN MISSILE has been registered with the United States Patent and Trademark Office.

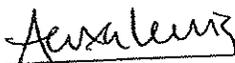
**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

In addition to the Preliminary Statement and General Objections set forth above, UMG objects to this request on the grounds that it seeks information that is not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections or the General Objections, UMG states:  
Admitted.

DATED: January 14, 2008

MITCHELL SILBERBERG & KNUFF LLP

By:

  
\_\_\_\_\_  
Alexa L. Lewis  
Attorneys for Opposer UMG Recordings, Inc.

**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 January 14, 2008, I served a copy of the foregoing document(s) described as **OPPOSER UMG RECORDINGS, INC.'S RESPONSES TO APPLICANT MATTEL, INC.'S FIRST SET OF REQUESTS FOR ADMISSION** 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))

Direct (310) 566-9801

Direct Fax (310) 566-9861

Patricia A. Millett ([pmillett@kwikalaw.com](mailto:pmillett@kwikalaw.com))

Direct (310) 566-9821

Direct Fax (310) 566-9870

Chad R. Fitzgerald ([CFitzgerald@kwikalaw.com](mailto:CFitzgerald@kwikalaw.com))

Direct 310.566.9802

Direct Fax 310.566.9882

Kinsella, Weitzman, Iser, Kump & Aldisert LLP

808 Wilshire Boulevard, 3rd Floor

Santa Monica, CA 90401

(310) 566-9800

Fax: (310) 566-9850

Counsel for Applicant, MATTEL,  
INC.

- 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 \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- 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 United States that the above is true and correct.

Executed on January 14, 2008, at Los Angeles, California.

---

Kimberly L. Stewart

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Notice of Reliance re: Written Discovery Responses has been served on counsel for Opposer UMG Recordings, Inc. through ESTTA on June 16, 2009.

/crf/

Chad R. Fitzgerald