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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.
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
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Signature	/crf/
Date	06/17/2009
Attachments	Notice of Reliance re Discovery Depositions Vol. 3.pdf ( 69 pages )(3787616 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

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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

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**NOTICE OF RELIANCE RE: DISCOVERY DEPOSITIONS**

**Vol. 3 of 3**

**Filed Under Seal Pursuant to Protection Order**

# Deposition Exhibit 104

**Filed Under Seal Pursuant to Protection Order**

# Deposition Exhibit 105

**Filed Under Seal Pursuant to Protection Order**

# Deposition Exhibit 106

**Filed Under Seal Pursuant to Protection Order**

# Deposition Exhibit 107

**Filed Under Seal Pursuant to Protection Order**

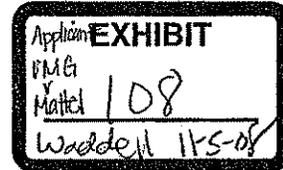
# Deposition Exhibit 108



February 25, 2005

VIA FACSIMILE (239) 263-5000  
& CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

Beasley Broadcast Group, Inc.  
3033 Riviera Drive, Suite 200  
Naples, Florida 34103



(individually and collectively referred  
to herein as "you")

Re: MOTOWN RECORDS, A DIVISION OF UMG RECORDINGS, INC. /  
TRADEMARK INFRINGEMENT - CEASE & DESIST NOTICE

Gentlepersons:

It has come to the attention of Motown Records, a division of UMG Recordings, Inc. ("Motown") that you recently registered the trademark "Motown Soul Great Rock and Roll" under the state laws of North Carolina.

Please be advised that Motown is the exclusive owner of the Motown name and trademark (the "Motown Trademark") and Motown is entitled to all of the exclusive rights associated therewith.

Motown hereby demands that you cease and desist with any and all exploitation of the Motown Trademark in any manner. Motown has not authorized any use of the Motown Trademark, by you or any related person and consequently, your present and continued use constitutes an infringement of Motown's exclusive rights to the Motown Trademark.

In the event that Motown does not receive within one (1) business day from the date hereof, a written affirmation that you have ceased all such infringing and tortious activity, including without limitation, verification of your having rescinded the "Motown Soul Great Rock and Roll" trademark, Motown will take all steps necessary to protect its rights and/or remedies available under applicable laws.

It is our hope to resolve this matter amicably without resort to formal legal process. However, your continued use of the "Motown Soul Great Rock and Roll" trademark may give rise to a cause of action in law and/or equity.

This letter is not intended to be a complete statement of the facts or of the law relevant to this matter, nor of Motown's legal and equitable rights and remedies and nothing hereinabove set forth or omitted shall be deemed a waiver or limitation of any right,

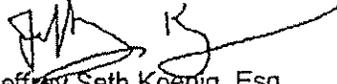
UMG 00201

1755 BROADWAY SIXTH FLOOR NEW YORK NY 10019 TEL 212 373 0600 FAX 212 373 0676

Motown C&D letter  
February 25, 2005  
Page 2 of 2

remedy or cause of action of any kind whatsoever, all of which are hereby expressly reserved.

Very truly yours,



Jeffrey Seth Koenig, Esq.  
Associate Director, Business & Legal Affairs  
Phone: (212) 841-8656  
Fax: (212) 373-0676

cc: Mel Lewinter,  
Lori Froeling, Esq.  
Michael Reinert, Esq.  
Mary Mulligan, Esq.  
DeAnne Ozaki, Esq.

UMG 00202

# Deposition Exhibit 109

IN THE MATTER of Trade Marks  
Ordinance Cap.559 of The Laws of Hong  
Kong

and

IN THE MATTER of Application No.  
300353538 for Registration of the Trade

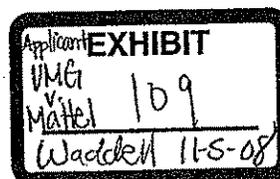
Mark "" in Classes 1, 3 and 4 in  
the name of MILLERS OILS LIMITED  
("the Applicant")

and

OPPOSITION THERETO by MOTOWN  
RECORD COMPANY, L.P. ("the  
Opponent")

GROUND OF OPPOSITION

1. The Opponent is a limited partnership organised and existing under the laws of the state of California in the United States of America with its address at 2220 Colorado Boulevard, Santa Monica, California 90404, United States of America.



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2.

The Opponent is, inter alia, the owner of the trade marks “



” and



” together with their variants (collectively, “the Opponent’s Marks”)

which are extensively used on and in relation to, inter alia, records, tapes, cassettes, cartridges, discs, audio video reproducing devices in the form of tapes, cassettes, disks and cartridges, compact discs, scientific, nautical, surveying and electrical apparatus and instruments (including wireless), photographic and cinematographic apparatus and instruments, sound recordings, clothing, footwear and/or headgear (the “Opponent’s Goods”) and/or musical entertainment services (vocal and/or orchestral), production of sound and/or video recordings, rental of films and sound and/or video recordings, discotheque services, production of films, organisation of musical events, music studio services, orchestra services, amusement park services, production of radio and television programmes, theatre productions services, music publishing, copyright management and exploitation, restaurant and bar services, cafe services and/or hotel (the “Opponent’s Services”) and goods and services of similar description since at least as early as 14 February 1992 in Hong Kong and 1 December 1964 anywhere.

3. The Opponent's Marks originated with the adoption by the Opponent and/or its affiliated/associated companies or their predecessors-in-interest as trade marks to promote the Opponent's Goods and/or the Opponent's Services.
4. On 12 April 2000, the Opponent assigned and transferred to UMG RECORDINGS, INC., a corporation organised and existing under the laws of the state of Delaware in the United States of America, all rights, titles and interests in and to intellectual property related to or used in its business and activities, including without limitation the Opponents' Marks and all applications for registrations and registrations therefor throughout the United States of America and all foreign countries, including Hong Kong, but specifically excluding all copyrights in or to

sound recordings (collectively, the "Intellectual Property") together with, inter alia, the goodwill of the business associated therewith and all common law and statutory rights, titles and interests in and to the Intellectual Property, all rights of registrations, maintenance, renewal and protection thereof, the right to create derivative work and all rights or recovery and of legal action for past infringements and of opposition, interference, interference and/or cancellation proceedings for protection of the Intellectual Property.

5. For decades, the Opponent and/or its affiliated/associated companies or their predecessors-in-interest and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) has/have dealt in the Opponent's Goods and/or the Opponent's Services under the Opponent's Marks throughout the world, including but not limited to Hong Kong, China and Taiwan. The Opponent and/or its affiliated/associated companies and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) has/have invested significant advertising and promotional expenses to promote the Opponent's Goods and/or the Opponent's Services under the Opponent's Marks and substantial sales have been achieved.
6. The Opponent and/or its affiliated/associated companies or their predecessors-in-interest and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) has/have also engaged a lot of efforts and has/have incurred substantial costs in applying for, maintaining and policing registrations of the Opponent's Marks. The Opponent and/or its successor-in-title has/have obtained a number of registrations for the Opponent's Marks in numerous countries throughout the world, including but not limited to the following:

<u>Country</u>	<u>Registration No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Goods</u>
U.S.A.	2663608		16	Printed Matter, namely, booklets, books, brochures, magazines, programs and pamphlets in the fields of music and entertainment, mounted and unmounted photographs, sheet music, calendars, pictures, playing cards.
U.S.A.	2242932		25	Shirts, pants, hats, caps, jackets, and shorts.
U.S.A.	1075409		9	Records, tapes, cassettes, cartridges and audio video reproducing devices in the form of tapes, cassettes, disks and cartridges.
U.K.	A 1102831		9	Sound and video recording and reproducing apparatus and instruments; gramophone records; discs and magnetic tape, all for or bearing sound and video recordings, and cassettes and cartridges for use therewith; and parts and fittings included in Class 9 for all the aforesaid goods.
U.K.	1494178		25	T-shirts, shirts, tops, blouses, shorts, skirts, swimwear, exercise wear, sportswear; pants, jeans, sweatshirts, jumpers, jumpsuits; sweaters, vests, jackets, coats, raincoats, nightgowns, pajamas; undergarments; hats, caps,

<u>Country</u>	<u>Registration No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Goods</u>
				scarves, mufflers, shawls, nappies, bibs, neckties; aprons, gloves; neckbands, armbands, headbands; sandals, slippers, shoes, tennis shoes, sport shoes, lounge shoes; socks, stockings; belts; all included in Class 25.
U.K.	1494179		28	Games, toys and playthings; all included in Class 28.
U.K.	1494180		41	(Services) Entertainment information; rental of cine-films; discotheque services; organization of exhibitions; presentation of live performances; orchestra services; production of radio and television programmes and of shows; radio and television entertainment; audio and video recording studio services; rental of stage and show scenery, radio and television sets, sound recordings and of stadium facilities; video tape film production; all included in Class 41.

<u>Country</u>	<u>Registration No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Goods</u>
China	780546		9	Gramophone records, music cassettes, music tapes, compact discs, digital compact cassettes, mini discs, video records, video tapes and video cassettes and other media, blank or pre-recorded, for carrying image and/or sound and/or other information.
China	1036052		9	Gramophone records, music cassettes, music tapes, compact discs, digital compact cassettes, mini discs, video records, video tapes, video cassettes, interactive compact discs.
China	783690		25	Clothing, footwear, headgear.
China	963616		41	Musical entertainment (vocal and/or orchestral), production of sound and/or video recordings; rental of films and sound and/or video recordings; discotheque services; production of films; organisation of musical events; music studio services; orchestra services; amusement park services; production of radio and television programmes; theatre production; music publishing.

<u>Country</u>	<u>Registration No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Goods</u>
China	977445		42	Copyright management and exploitation; restaurant and bar services, café services and hotel services.
Taiwan	130483		101	Video cassettes and video discs, movie films, video tapes.
Taiwan	113223		102	Phonograph records, tapes.
Taiwan	71546		1	(Services) Entertainment services in the nature of musical and theatrical, dinner theatrical services; presentation of live performances; orchestra services; production of radio, television and motion picture programs and of shows; radio and television entertainment; production of musical and theatrical performances rendered through the media of television, radio, film, audio and video recordings; organizing community festivals featuring a variety of activities.
Taiwan	658627		40	Clothing, sweater, cardigan, T-shirt, blouses, sport shirt, under shirt, uniform (for exercise), combination underwear, nightwear, pajamas, night gown.

7 In Hong Kong, the Opponent and/or its successor-in-title has/have obtained the following registrations for the Opponent's Marks:

<u>Registration No.</u>	<u>Trade Mark</u>	<u>Class</u>	<u>Goods</u>
19800189		9	Scientific, nautical, surveying and electrical apparatus and instruments (including wireless); photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; coin or counter-freed apparatus; talking machines; cash registers; calculating machines; fire-extinguishing apparatus.
199510733		25	Clothing, footwear, headgear; all included in Class 25.
199602644		41	Musical entertainment services (vocal and/or orchestral), production of sound and/or video recordings; rental of films and sound and/or video recordings; discotheque services; production of films; organisation of musical events; music studio services; orchestra services; amusement park services; production of radio and television programmes; theatre productions services; music publishing; all included in Class 41.
199611298		42	Copyright management and exploitation; restaurant and bar services, cafe services and hotel services; all included in Class 42.

8. The Opponent and/or its affiliated/associated companies and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) has/have used the Opponent's Marks in respect of the Opponent's Goods and/or the Opponent's Services extensively in Hong Kong since at least as early as 14 February 1992 and in other countries at least as early as 1 December 1964. Because the Opponent's Marks are two of the most important marks owned by the Opponent and/or its affiliated/associated companies and/or its successor-in-title and are of significant value to the Opponent and/or its affiliated/associated companies and/or its successor-in-title, the Opponent and/or its affiliated/associated companies and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) has/have expended significant time, expense and other resources advertising, promoting, registering and enforcing the Opponent's Marks to build up valuable goodwill and reputation in the same. This has resulted in greater brand awareness and increased sales/turnover of the Opponent's Goods and/or the Opponent's Services.
9. By virtue of such extensive use, registrations, sales and promotion as well as high standard of quality with regard to the goods and/or services marketed under or by reference to the Opponent's Marks, the same have acquired substantial reputation both in Hong Kong and worldwide and have become distinctive of and identified with the Opponent and/or its successor-in-title and the Opponent's Goods and/or the Opponent's Services exclusively. Further, the Opponent's Marks have also become well-known trade marks which are entitled to protection under the Paris Convention.
10. The Applicant is applying for registration of the trade mark "" under Application No. 300353538 in Classes 1, 3 and 4 in respect of respectively "chemicals used in industry; fuel additives; transmission fluids; hydraulic fluids; brake fluids; clutch fluids; coolants, solvents; detergents and degreasing preparations for use in industry and in manufacturing processes; chemical products for use in treatment of cooling systems; preparations, fluids and oils for

the removal of lime, scum, scale, mortar, oils, grease, wax, ink, carbon, dirt, mildew, mould, grime and stains; emulsifiers; chemical preparations for inhibiting rust; filtering materials; brake and clutch cleaners; chemical preparations for the dispersal of oil, grease and petroleum”, “cleaning preparations; cleaning fluids; shampoos for the interior and exterior of vehicles; waxes; cleaning preparations for shining motor vehicle exteriors” and “industrial oils and greases; lubricants; lubricating oils and greases; fuels, including gasoline and diesel fuels for motor vehicles; non-chemical additives for fuels, lubricants and greases; gear oils; transmission oils” (“the Proposed Mark”). The said application was filed on 13 January 2005 (“Application Date”) and published in the Hong Kong Intellectual Property Journal for opposition on 18 February 2005.

- 11 Due to the similarity of the Proposed Mark  and the device of  in the Opponent's Marks  and , the Proposed Mark is virtually identical or substantially similar to the Opponent's Marks whether considered visually, phonetically or conceptually. Taking into account that prior to the Application Date of the Proposed Mark, the Opponent has already registered and acquired substantial reputation in the Opponent's Marks, use and/or registration of the Proposed Mark by the Applicant will inevitably cause confusion and give rise to the mistaken belief that goods bearing the Proposed Mark also emanate from the Opponent. Use and registration of the Proposed Mark will be contrary to the provision of Section 12(3) of the Trade Marks Ordinance which precludes registration of a mark which is likely to be confused with a prior registered mark of another.
- 12 By reasons of the above, the Proposed Mark is not a sign which is capable of distinguishing the Applicant's goods and registration thereof will be contrary to Section 3(1) of the Trade Marks Ordinance which precludes from registration a

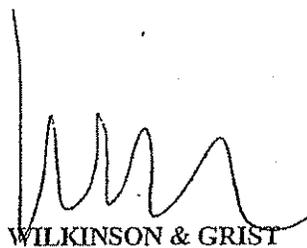
sign that is not capable of distinguishing goods of one undertaking from those of others.

- 13 The Opponent's Marks are well-known trade marks with strong and distinctive character and reputation in Hong Kong and the use of the Proposed Mark for the Applicant's goods would, without due cause, take unfair advantage of or capture the distinctive character or repute of the Opponent's Marks. Registration of the Proposed Mark should be refused under Section 12(4) of the Trade Marks Ordinance which precludes registration of a trade mark the use of which is without due cause and would take unfair advantage of or detriment the distinctive character or repute of an earlier well-known trade mark
- 14 The Proposed Mark is almost identical or confusingly similar to the Opponent's Marks. The Proposed Mark should be disallowed registration as its use in Hong Kong is liable to be prevented by the Opponent's earlier rights in the Opponent's Marks. Use of the Proposed Mark would constitute an act of passing-off and registration of the same should also be prohibited under Section 12(5)(a) of the Trade Marks Ordinance which precludes from registration a mark the use of which would cause passing-off.
- 15 Further, the Proposed Mark is calculated to deceive and cause confusion and would lead the public into the mistaken belief that the Applicant's goods are goods provided and/or endorsed by the Opponent. The application for registration of the Proposed Mark is made in bad faith. In the premises, the Proposed Mark shall not be granted registration as it is contrary to Sections 11(4) and (5) of the Trade Marks Ordinance which preclude from registration a trade mark that is likely to deceive the public or the use of which is prohibited in Hong Kong under or by virtue of any law or the application is made in bad faith.
- 16 Because of Section 19(2) of the Trade Marks Ordinance, the Opponent and/or its affiliated/associated companies and/or its successor-in-title and/or its distributor(s)

and/or its authorized licensee(s) would be prevented from taking infringement action against the Applicant as entitled under Sections 18(3) and 18(4) of the Trade Marks Ordinance if the Proposed Mark was registered. Section 18(3) provides that it is an infringement to use in the course of trade or business a sign which is similar to a registered mark in relation to goods and services which are identical or similar to those for which the registered mark is registered and the use of the sign in relation to those goods and services is likely to cause confusion on the part of the public. On the other hand, Sections 18(4) provides that it is an infringement to use in the course of trade or business a sign which is identical or similar to a well-known trade mark for dissimilar goods/services if the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or repute of the well-known trade mark. However, Section 19(2) stipulates use of a registered trade mark as an exception to infringement and as such, if registration of the Proposed Mark is allowed, the Opponent and/or its affiliated/associated companies and/or its successor-in-title and/or its distributor(s) and/or its authorized licensee(s) may be deprived of the right of action against the Applicant.

- 17 Under the circumstances, the Opponent requests that the said Application No. 300353538 be refused registration and an order for costs against the Applicant be made.

Dated this 18<sup>th</sup> day of July, 2005



WILKINSON & GRIST  
SOLICITORS FOR THE OPPONENT

IN THE MATTER of Trade Marks  
Ordinance Cap.559 of The Laws of Hong  
Kong

and

IN THE MATTER of Application No.  
300353538 for Registration of the Trade

Mark "" in Classes 1, 3 and 4 in  
the name of MILLERS OILS LIMITED

and

OPPOSITION THERETO by MOTOWN  
RECORD COMPANY, L.P.

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**GROUND OF OPPOSITION**

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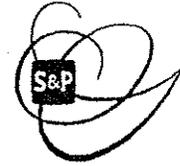
Dated the 18<sup>th</sup> day of July, 2005.

**WILKINSON & GRIST  
SOLICITORS**  
6<sup>th</sup> Floor, Prince's Building  
10 Chater Road  
Central, Hong Kong  
Tel: 2524 6011  
Fax: 2527 9041  
Our Ref: AC:FL:U103-393

*[g:\for\ann\ip\U103393 Opp]*

UMG 00188

**Exhibit: B  
Page: 345**



**SONN & PARTNER**  
SINCE 1851

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Rechtsanwälte GmbH  
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1070 Wien

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Trademark & Design Attorneys

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DI Helmut Sonn  
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Mag. Dr.rer.nat. Daniel Atge  
DI Dr.techn. Georg Heger  
DI Dr.techn. Rainer Beetz, LL.M.  
Dr.phil. Heinrich Pawloy  
DI Johann Köhler-Pavlik

TELEFAX – 521 75 21

**COPY**

Ihr Zeichen:

Unser Zeichen: M 14688/997/998/Z/II

Wien, 07.09.2005

**Gemeinschaftsmarkenmeldung Nr. 4497211 MOTOM  
im Namen von Thomas Moser**

Sehr geehrte Herren Rechtsanwälte,

wir schreiben an Sie namens und im Auftrag unserer Mandantschaft Motown Record Company, L.P.  
Diese ist die Inhaberin einer Reihe von MOTOWN bzw. MOTOWN-Komponentenmarken, nämlich

- österreichische Marke Nr. 151.762 M MOTOWN (Wort-Bild),
- österreichische Marke Nr. 90.343 M MOTOWN (Wort-Bild),
- österreichische Marke Nr. 83.997 TAMLA/MOTOWN und
- österreichische Marke Nr. 143.601 MOTOWN sowie der
- Gemeinschaftsmarke Nr. 206243 MOTOWN.

Ausdrucke der genannten Marken übersenden wir nachfolgend. Wie ersichtlich, schützen sie u.a. Waren der Klasse 9 und Dienstleistungen der Klasse 41. Diese sind als rechtlich ähnlich zu den von Ihrem Mandanten mit der Gemeinschaftsmarkenmeldung MOTOM Nr. 4497211 beanspruchten Waren der entsprechenden Klassen anzusehen.

Auch sind die wechselseitigen Marken gemäß ständiger Praxis als verwechslungsfähig ähnlich anzusehen.

**UMG 00189**

Um eine streitige Auseinandersetzung zu vermeiden, fordern wir Ihren Mandanten daher auf, die Klassen 9 und 41 aus seiner vorliegenden Markenmeldung zu löschen und die verbindliche Erklärung abzugeben, MOTOM oder ein damit verwechslungsfähig ähnliches Zeichen für diese Waren bzw. Dienst-

**Exhibit: B  
Page: 346**

leistungen nicht zu benutzen. Andernfalls sieht sich unsere Mandantschaft gezwungen, nach Veröffentlichung der Markenmeldung Widerspruch gegen diese Klassen einzulegen.

Für den Eingang Ihrer Stellungnahme zusammen mit einer Kopie des Antrags auf teilweise freiwillige Zurücknahme der Gemeinschaftsmarkenmeldung Nr. 4497211 haben wir uns den

**4. Oktober 2005**

vorgemerkt.

Mit freundlichen Grüßen

Markenausdrucke

UMG 00190

**Exhibit: B**  
**Page: 347**

# Deposition Exhibit 110



**UNIVERSAL MUSIC GROUP**

10 Universal City Plaza, 23<sup>rd</sup> Floor, Suite 2330, Universal City, California 91608  
(818) 777-2892 – phone, (818) 733-4142 – fax  
[deanne.ozaki@umusic.com](mailto:deanne.ozaki@umusic.com) – e-mail

7005 0390 0004 7339 0169

October 3, 2005

VIA CERTIFIED MAIL  
RETURN-RECEIPT REQUESTED

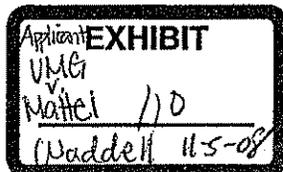
Mr. Greg Vines  
SOFA Home Entertainment, LLC  
9121 Sunset Boulevard  
Los Angeles, California 90069

Re: The "Motown Gold on the Ed Sullivan Show" DVD

Dear Mr. Vines:

I am trademark counsel for UMG Recordings, Inc. ("UMG") and the Universal Music Group family of companies. It has been brought to my attention that SOFA Home Entertainment, LLC ("SOFA") intends to release, on November 1, 2005, a DVD featuring musical performances of recording artists which were recorded on the Ed Sullivan Show (the "SOFA DVD"), entitled "MOTOWN GOLD on the ED SULLIVAN SHOW" (the "Title"). At the time these performances were recorded, certain of these artists were party to exclusive recording agreements with the Motown label, whereby the artists agreed that only the Motown label would have the right to exploit their recorded performances on any devices sold for home or personal use. In light of the foregoing, SOFA's manufacture, sale and/or distribution of the SOFA DVD violates UMG's exclusive rights under such artist agreements and any attempt by SOFA to use recordings of such artists in a manner prohibited by the artist agreements is a violation of state and federal laws.

In addition, UMG has used and registered, both in the United States and abroad, the MOTOWN mark (the "Mark") in connection with a variety of music-related products and services. Through its efforts and the expenditure of great sums for the promotion of the products and services offered in connection with the Mark, UMG has developed substantial goodwill in the Mark. As owner of the federally registered Mark, UMG has the sole and exclusive right to use the Mark in connection with the offering, sale and other distribution of music-related products and services throughout the United States. Accordingly, third parties are prohibited from using any trademark or service mark which is confusingly similar to the Mark. In light of the fact that the Title incorporates the Mark in its entirety, and given the relatedness of the



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Exhibit: B  
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products offered under the Mark and the Title, SOFA's use of the Title on the SOFA DVD or any other DVD is likely to cause great confusion in the minds of the public and trade. Moreover, SOFA's marketing, promotion and/or sale of any DVD with the Title could lead the public to believe that some association exists between SOFA and UMG. This improper use of the Title dilutes the value of the Mark and may result in damage to UMG's well-established reputation and goodwill.

It is my understanding that SOFA considers its use of the Mark to be "nominative fair use." However, to describe SOFA's use of the Title, or any title incorporating the Mark, on any DVD as "nominative fair use" under trademark law is disingenuous, at best. SOFA is not using the Mark to describe a product or service of UMG. Even if this was SOFA's intent, the Mark is being used in a manner which is likely to cause confusion. In the New Kids on the Block case (which SOFA believes insulates it from liability), the 9<sup>th</sup> Circuit held that three requirements must be met in order to qualify for the nominative fair use defense: "First, the product or services in question must be one not readily identifiable without use of the trademark; second, only so much of the mark or marks may be used as reasonably necessary to identify the product or service; and third, the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder." 971 F.2d 302 at 308. SOFA's use of the Mark in the title of any DVD fails to meet any of the three requirements. First, use of the Mark is not necessary to identify any DVD which is not released by the Motown label. If SOFA wants to identify artists featured in a DVD, it can simply list the artists, without identifying the label. If SOFA wants to identify the genre of music, it can use terms such as "60's," "music from the Motor City" and/or "soul." For example, SOFA has released a DVD entitled "Ed Sullivan Presents - Rock 'n' Roll Revolution," which features performances from American and English rock bands during the "English invasion" in the 60's. Second, assuming for purposes of argument that SOFA has the right to distribute recordings featuring performances by artists signed to the Motown label, if SOFA wants to indicate that a DVD features such performances, it could do so without using the Mark in the title of the DVD. For example, SOFA could simply footnote this fact or reference it in the text contained on the DVD cover. Third, the manner in which SOFA intends to use the Mark suggests endorsement on the part of UMG. Any use of the Mark as part of the title of a DVD, especially if the Mark is used prominently in the title, will constitute use of the Mark as a trademark, as opposed to a nominative use. Consumers who see the Mark as part of the title of a DVD are likely to assume that the Motown label is releasing or endorsing such DVD. In light of the foregoing, any use of the Mark by SOFA in the title of any DVD is a trademark use and not a nominative fair use.

Therefore, this letter will constitute written notice to you that SOFA's manufacture, distribution and sale of the DVD and/or use of the Mark in the title of any DVD constitutes an infringement and dilution of UMG's copyright and trademark rights, as well as unfair competition and tortious interference with contract under federal and state laws, rendering SOFA liable for any and all damages suffered by UMG as a result thereof. We hereby demand that SOFA, and each and every person, agent, company or entity affiliated with SOFA, immediately cease and desist from (1) any manufacture, distribution and sale of the DVD and (2) any use of the Mark, or any confusingly similar mark, in connection with the advertisement,

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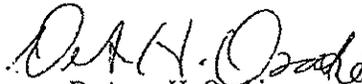
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promotion, sale, distribution and/or offering of the products and/or services of your company. Unless we receive written assurances from you within five (5) business days after your receipt of this letter expressing SOFA's intention to comply with our demands, UMG will take the necessary steps to protect its rights, and to recover damages, if appropriate, for SOFA's infringement and dilution of UMG's federally protected copyright and trademark rights. Since we have already notified SOFA of our concerns regarding the DVD and SOFA's use of the Mark, UMG will view any distribution and sale of the DVD and any use of the Mark by SOFA as a willful infringement.

We trust that you understand our concerns and that SOFA will fully and promptly comply with our demands. However, due to the seriousness of this matter, please be advised that UMG reserves all rights and remedies available to it.

We look forward to your prompt response.

Very truly yours,

  
DeAnne H. Ozaki

cc: Lori Froeling, Esq.  
Bill Waddell, Esq.  
Michael Ostroff, Esq.  
Harvey Geller, Esq.

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# Deposition Exhibit 111



The grounds for the opposition are as follows:

1. Opposer, its affiliates and its predecessors in interest (collectively, the "UMG Entities") commenced use in interstate and foreign commerce, at least as early as 1964, and are presently using the trademark MOTOWN and trademarks containing MOTOWN (collectively, "Opposer's Mark"), in connection with, among other things, the following goods and services: pre-recorded audio and video tapes and cassettes, DVDs, CDs, and phonograph records featuring music and entertainment; and musical and theatrical sound and video recordings in Class 9; clothing, footwear and headgear in Class 25; online and retail store services in Class 35; and/or and entertainment services, promotion and distribution of musical and theatrical sound and video recordings, providing a web site featuring information and materials regarding music and musical artists in Class 41.

2. Opposer's Mark is the subject of the following United States trademark registrations: Reg. No. 881,471; Reg. No. 985,972; Reg. No. 985,976; Reg. No. 1,075,409; Reg. No. 2,516,930; Reg. No. 2,767,101; and Reg. No. 3,073,897. Opposer's Mark is also registered in numerous jurisdictions worldwide.

3. By virtue of the UMG Entities' extensive and continuous use of Opposer's Mark, extensive efforts and the expenditure of large sums for promotional activities, and by virtue of the quality of the goods and services offered under Opposer's Mark, Opposer's Mark has developed extensive goodwill and consumer recognition, and/or become famous and well-known, in the United States and in foreign countries.

4. There is no issue as to priority. Opposer and the other UMG Entities commenced use of Opposer's Mark, in interstate and foreign commerce, prior to March 3, 2005.

Applicant's claimed date of first use in the Application for its MOTOWN USA & DESIGN mark ("Applicant's Mark").

5. Applicant's Mark is confusingly similar to Opposer's Mark. Applicant's Mark and Opposer's Mark are virtually identical, except for Applicant's addition of the geographically descriptive term USA and the design, and some of the services offered under the marks are related.

6. Applicant's use of Applicant's Mark dilutes Opposer's Mark.

7. Applicant's Mark is deceptively similar to Opposer's Mark so as to cause confusion and deceive the public as to origin of Applicant's services to be offered under Applicant's Mark. Consumers and persons in the trade will assume, contrary to the fact, that Applicant's services are associated with, endorsed by or in some other way related to Opposer and/or Opposer's goods and services.

8. Opposer alleges and believes, for the reasons set forth above, that if Applicant is permitted to use and/or register Applicant's Mark in connection with Applicant's services, as specified in the Application, confusion in the trade would occur, resulting in damage and injury to Opposer.

9. If Applicant is granted the registration herein opposed, Applicant would thereby obtain at least a prima facie exclusive right to the use of Applicant's Mark. Such registration would be a source of damage and injury to Opposer.

10. Opposer alleges and believes that, if Applicant is granted the registration herein opposed, it could dilute and weaken the strength and reputation of Opposer's Mark, resulting in damage and injury to Opposer.

11. By reason of the foregoing, Applicant is not entitled to registration of Applicant's Mark.

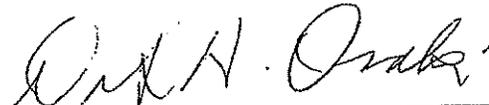
WHEREFORE, Opposer respectfully requests that this opposition be sustained in favor of Opposer and that registration of Applicant's Mark be rejected and denied.

Dated: February 20, 2008

Respectfully submitted,

UMG RECORDINGS, INC.

By: \_\_\_\_\_

  
DeAnne H. Ozaki  
c/o Universal Music Group  
2220 Colorado Avenue  
Santa Monica, California 90404  
(310) 865-1709

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

In the matter of Application Serial No. 78/751,105  
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant

---

AMENDED NOTICE OF DEPOSITION OF OPPOSER UMG RECORDINGS, INC.

(FED. R. CIV. P. 30(b)(6) and TBMP § 404.03(a)(1))

DATE: July 21, 2008

TIME: 10:00 a.m.

PLACE: Kinsella Weitzman Iser Kump & Aldisert LLP

808 Wilshire Boulevard, 3rd Floor

Santa Monica, California 90401

**TO OPPOSER UMG RECORDINGS, INC. AND ITS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, on July 21, 2008 at 10:00 a.m., Applicant Mattel, Inc. ("Applicant") will take the deposition of Opposer UMG Recordings, Inc. ("UMG") at the offices of Kinsella Weitzman Iser Kump & Aldisert LLP, 808 Wilshire Boulevard, 3rd Floor, Santa Monica, California 90401, pursuant to Fed. R. Civ. Proc. 30(b)(6) and TBMP § 404.03(a)(1). The deposition will be taken before a certified court reporter, and will continue from day-to-day (weekends and holidays excluded) until completed, unless the parties agree otherwise. Applicant intends to record the testimony by audio and video technology, in addition to recording the testimony by stenographic means through the instant display of the testimony, including by means of "Livenote" or other comparable software.

**YOU ARE FURTHER NOTIFIED THAT:**

Deponent UMG, a corporate entity, is hereby requested, pursuant to Fed. R. Civ. Proc. 30(b)(6), to designate and produce the person(s) to testify who is or are most knowledgeable about the following matters:

1. UMG's use of the mark MOTOWN in commerce, including but not limited to UMG's use of the mark MOTOWN in connection with toys, games, and/or playthings.
2. UMG's selection and/or adoption of the mark MOTOWN for use in connection with toys, games, and/or playthings.
3. UMG's plans to date for entry or expansion into the market for toys, games, and/or playthings.
4. Consumer confusion between the mark MOTOWN and the mark MOTOWN METAL.

5. Claims, demands, or complaints UMG has made or brought against third parties, including but not limited to Applicant, on the grounds that such third party's acts or conduct impinge or impinged on UMG's rights in the mark MOTOWN.

6. Why the mark MOTOWN was originally chosen for the Motown record label.

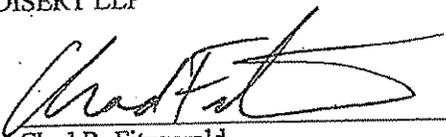
7. What UMG understands the term "Motown" to mean, represent, and/or connote.

8. UMG's Notice of Opposition and Amended Notice of Opposition filed against Applicant in this proceeding.

9. UMG's alleged common law rights in the mark MOTOWN.

DATED: June 27, 2008

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By: 

Chad R. Fitzgerald  
Attorneys for Applicant Mattel, Inc.

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, California 90401.

On June 27, 2008, I served the following document(s) described as **AMENDED NOTICE OF DEPOSITION OF OPPOSER UMG RECORDINGS, INC.** on the interested party in this action as follows:

Alexa L. Lewis, Esq.  
Mitchell Silberberg & Knupp LLP  
11377 West Olympic Blvd  
Los Angeles, CA 90064  
Email: all@msk.com

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump & Aldisert's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

**AND**

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a courtesy copy of the document(s) to be sent from e-mail address choffman@kwikalaw.com to the persons at the e-mail addresses listed above or on the attached Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 27, 2008, at Santa Monica, California.

\_\_\_\_\_  
Candace E. Hoffman

## INTELLECTUAL PROPERTY LICENSE AGREEMENT

This agreement is made as of December 1, 2001, between Motown Record Company, L.P. ("Licensor") with its principal office at 1755 Broadway, 6<sup>th</sup> Floor, New York, New York, 10019, and CA One Services, Inc. ("Licensee"), with its principal office at 40 Fountain Plaza, Buffalo New York 14202.

### 1. DEFINITIONS:

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1. "Agreement" shall mean this Agreement as amended and in effect from time to time.

1.2. "Licensed Materials" shall mean the Trade Symbols and the Promotional Materials, as such Licensed Materials may be amended, supplemented or updated from time to time in accordance with the terms hereof.

1.3. "Memorabilia" shall mean any of the items to be displayed as part of the decor of the Outlets and as listed on Exhibit A hereto as said Exhibit A may be amended or supplemented from time to time in accordance with the terms hereof.

1.4. "Motown Merchandise" shall mean merchandise that bears any of the Trade Symbols, and is sold pursuant to Section 2.1 hereunder and as listed on Exhibit A hereto as said Exhibit A may be amended from time to time in accordance with the terms hereof. For the avoidance of doubt, Motown Merchandise shall not include audio or audio-visual records (i.e., music cassettes and compact discs) sold in the Outlets.

1.5. "Opening Date" shall mean the first date upon which each Outlet shall be open to the general public for operation on a daily basis, which shall also be the first date on which the Midfield Terminal opens for use by the traveling public.

1.6. "Outlet(s)" shall mean the retail outlet located at each Site dedicated to the sale of music cassettes, compact discs, music related accessories and equipment and merchandise (including Motown Merchandise) and operated by Licensee under the name "Motown Music Review" as authorized pursuant to this Agreement.

1.7. "Person" shall mean any natural person or any corporation, association, partnership, joint venture, company, business trust, trust, organization, business or government or any governmental agency or political subdivision of any government.

1.8. "Quality Standards" shall mean standards of quality consistent with the quality and reputation for quality associated with Motown, Universal Music Group and Universal Studios.

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1.9. "Site(s)" shall mean the sites located at L-5B in the Midfield Terminal and W-1B in the Commuter Building at the Detroit, Michigan Airport where the Outlets are to be opened or are actually opened and operated subject to Licensor's reasonable approval, as the case may be in accordance with this Agreement.

1.10. "Term" shall mean the period during which this Agreement is in effect in accordance with Section 3.

1.11. "Trade Symbols" shall mean the servicemark "Motown Music Review" and the other Licensor-specific trademarks, servicemarks, trade names, domain names, symbols, names and logos listed on Exhibit A hereto as said Exhibit A may be amended or supplemented from time to time in accordance with the terms hereof.

2. GRANT OF RIGHT: Subject to all of the terms, qualifications, and conditions of usage set forth herein, Licensor hereby grants Licensee the rights described in this Section 2.

2.1. Licensed Materials. Licensor hereby grants to Licensee a one-time, nonexclusive non-transferrable license to use (i) the Licensed Materials solely in the English language and only in connection with (a) the ownership, advertising, marketing, development, promotion and operation of the Outlets, (b) the manufacture, marketing, advertising and promotion of Motown Merchandise for sale in the Outlets, and (c) the sale of Motown Merchandise solely in the Outlets, and (ii) the Memorabilia (and reproduce as necessary) as part of the decor of the Outlets.

2.2. Schedule for Opening Outlets: Failure to Meet Schedule. Licensee agrees that the Opening Date for the Outlets will occur no later than the date on which the Midfield Terminal opens for use by the traveling public. If Licensee fails to comply with the provisions of this Section 2.2. Licensor may elect to terminate this Agreement in accordance with Section 9.1.4.

3. TERM:

3.1. The Term of this Agreement shall commence on the date of this Agreement and shall expire, unless earlier terminated as provided for herein, on the date 5 years following the Opening Date of the Outlets (the "Initial Term"). In the event that the term of the concession agreement between Licensee and the County of Wayne dated March 8, 2000 (the "Concession Agreement") with respect to the Sites is automatically renewed for an additional period of 3 years in accordance with paragraph 4.1 of the Concession Agreement, the Term of this Agreement shall be automatically extended for a further period of 3 years upon written notice from Licensee to Licensor, delivered no more than 60 days and at least 10 days before the end of the Initial Term.

3.2. Notwithstanding Section 3.1. above, in the event that the term of the Concession Agreement terminates prior to the expiration of the Term of this Agreement, the Term of this Agreement shall be deemed to also end upon such earlier date. Upon becoming aware of the earlier termination of the Concession Agreement or the possibility of such termination, Licensee shall immediately notify Licensor in writing of same and the reasons therefor or the basis thereof.

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In the event that such early termination happens any time during the Initial Period of this Agreement for any reason other than due to Licensor's default or the County's election to reacquire the Sites for "airport purposes" pursuant to section 8.16 of the Concession Agreement, Licensee shall pay Licensor an early termination fee (the "Termination Fee") in an amount equal to the average monthly Gross Revenue earned in connection with the applicable Outlet(s) based on the previous 6 months of operation multiplied by the lesser of 12 or the number of months remaining in the Term of this Agreement as of the date of such earlier termination. Such Termination Fee shall be paid by Licensee to Licensor within 30 days of the date on which this Agreement has been deemed terminated in accordance with this Section 3.2.

4. CONSIDERATION; ACCOUNTING AND RECORDS:

4.1. License Fee. On the earlier of (i) the Opening Date, and (ii) the date of execution of this Agreement, Licensee shall pay Licensor \$25,000 as the license fee in consideration of the rights granted hereunder to Licensee by Licensor with respect to the Outlets. Payment of the license fee will be unconditional and available regardless of any dispute or other matter which may then exist between Licensor and Licensee. Except as described in Section 6.1.1. below, the license fee shall be non-refundable and non-recoupable (i.e., shall not be creditable against any other amounts owing by Licensee hereunder). Payment of the license fee is a condition precedent to the license granted under this Agreement.

4.2. Royalties. Licensee also agrees to pay to Licensor the following royalties:

4.2.1. 4% of all Gross Revenue up to and including seven hundred and fifty thousand dollars (US\$750,000) received by or on behalf of Licensee from the sale of merchandise (including but not limited to Motown Merchandise) in the Outlets during each contractual year of the Term; and 5%, rather than 4%, of all Gross Revenue in excess of seven hundred and fifty thousand dollars (US\$750,000) received by or on behalf of Licensee from the sale of merchandise (including but not limited to Motown Merchandise) in the Outlets during each contractual year of the Term; and

4.2.2. an additional 5% of the Wholesale Cost of all Motown Merchandise purchased from third parties.

"Gross Revenue" shall mean all amounts, charges, revenues, proceeds and credits derived by Licensee from all transactions whether placed in person, by telephone, regular or electronic mail, or any other manner, at, from or through the Outlets and for services performed on or at the Outlets, whether for cash or credit, regardless of when or whether or not collected. Gross Revenue does not include (i) any amounts levied and imposed on customers for sales or other taxes if separately stated and collected from customers and remitted directly to the applicable taxing authority by Licensee, (ii) amounts refunded for returned merchandise and (iii) any complimentary transactions provided by Licensee; provided, however, that such complementaries shall be limited to 1% of Gross Revenue for any calendar quarter. Any complementaries in excess of the aforesaid limit shall be deemed Gross Revenue. The retail list price for each item of a complimentary transaction shall be used in the determination of the total percentage of complementaries and the value of excess complementaries to be applied to Gross Revenue.

"Wholesale Cost" shall mean the full price (excluding sales taxes) at which Licensee purchases Motown Merchandise from a third party.

4.3. Royalty Payments. Royalties shall be payable in United States currency, by wire transfer of immediately available funds to the account designated in Exhibit B hereto not later than 15 days after the end of the quarter annual period in which such royalties are earned, including any partial quarter annual period following the Opening Date of the Outlet. Concurrent with the payment of royalties, Licensee shall provide Licensor with separate statements of Licensee's Gross Revenue.

"Royalty Year" shall mean the period consisting of 12 complete consecutive calendar months commencing on January 1 and the subsequent period of 12 consecutive calendar months beginning at the end of the previous Royalty Year.

4.4. Accounting and Records; Delivery of Financials.

4.4.1. Royalty Records. Licensee shall for a three year period from the time revenue is recognized maintain complete and accurate books of account and such other records, including continuous cash register tapes, relating to Gross Revenue for such Royalty Year; including records reflecting the total amount of Gross Revenue, the calculations used to determine such Gross Revenue and the underlying sales on which such Gross Revenue is based. Licensee shall keep the books and records on an accrual basis, in all material respects in accordance with generally accepted accounting principles utilized in the United States, consistently applied.

4.4.2. Delivery of Royalty and Sales Report. Licensee shall deliver, or cause to be delivered, to Licensor within 15 days after the end of each quarter annual period of a Royalty Year, a report of the computation in reasonable detail of the Gross Revenue generated for such quarter annual period. Such report shall also include detailed sales information for the merchandise sold in the Outlets (e.g., the price, discounts, sales, returns, complimentary transactions for each category of merchandise). Licensee shall deliver, or cause to be delivered, to Licensor within 60 days after the end of each Royalty Year a summary report relating to the Gross Revenue for such Year.

4.5. Maintenance of Records; Audit. Licensee agrees that for the three year period commencing on the date of submission of the relevant report as set forth in Section 4.4.2, it shall maintain and make available to Licensor, its accountants or any independent auditor engaged by Licensor, all books and records (including records reflecting the total amount of Gross Revenue) pertaining to the Outlets, and Licensor shall have the right, during normal business hours and upon reasonable notice, once per Royalty Year, to have Licensee's books and records relating to the Gross Revenue audited by Licensor, its accountants or any independent auditor for the purpose of determining whether Licensee is complying with the provisions of this Section 4; provided, if Licensor has a reasonable basis to believe that there are one or more unresolved issues relating to the books and records, Licensor can have additional access to the books and records for the purpose of resolving such issues. If Licensor concludes that Licensee has under-reported Gross Revenue, Licensor shall give written notice to Licensee of its conclusion, giving reasonable details of the basis for Licensor's conclusions, and Licensor and Licensee shall

endeavor in good faith to resolve any differences between their respective calculations. Any such audit shall be at Licensor's expense, except that Licensee shall reimburse Licensor for its reasonable costs associated with such audit in the event that actual Gross Revenue for any Royalty Year is finally determined to have exceeded Gross Revenue reported to Licensor by more than 3%.

5. LIAISONS:

5.1. Licensor Liaison. Licensor shall designate a person at its sole discretion who shall be Licensor's primary liaison (the "Licensor Liaison") with Licensee for all purposes pursuant to this Agreement. All notices and approvals to be made by Licensor pursuant to this Agreement shall be made by or through the Licensor Liaison, and Licensee shall be entitled to look solely to the Licensor Liaison for such notices and approvals. Initially, the Licensor Liaison shall be Mr. Kojo Bentil, but may be changed by Licensor at any time with prior notice to Licensee.

5.2. Licensee Liaison. Licensee shall designate an employee of Licensee at its sole discretion who shall be Licensee's primary liaison (the "Licensee Liaison") with Licensor for all purposes pursuant to this Agreement. All notices and approvals to be given to or made by Licensee pursuant to this Agreement shall be made by or through Licensee Liaison, and Licensor shall be entitled to look solely to Licensee Liaison for such notices and approvals. Initially, the Licensee Liaison shall be William Baco, but may be changed by Licensee at any time with prior notice to Licensor.

6. LICENSEE COVENANTS:

6.1. Comply with Quality Standards. Licensee shall ensure that each Outlet complies with the Quality Standards in all respects at all times. Without limiting the generality of the foregoing, Licensee shall do the following:

6.1.1. Site Specifications/Design Specifications. At least 30 days prior to beginning construction of each Outlet, Licensee shall submit to Licensor the blueprints and design plan for each such Outlet. The plans shall be submitted to the Licensor Liaison accompanied by a clear written request for Licensor to review and approve the plans, clearly indicating a request for approval pursuant to this Agreement. Licensor Liaison shall review or cause to be reviewed the plans solely to ensure that the physical structure and design plans conform to Quality Standards. Within 30 days of receipt of each plan, Licensor Liaison will give notice to Licensee as to whether or not Licensor approves such plan, which approval shall not be unreasonably withheld. Licensor shall not be responsible for the adequacy or coordination of such plans and specifications, the structural integrity of the building systems, determining compliance with the Lease granted to Licensee by the appropriate Airport Authority or any other elements thereof, the full responsibility of which remains with Licensee. If Licensor shall determine in its reasonable discretion that a plan fails in any material respect to comply with Quality Standards it shall notify the Licensee Liaison and Licensee shall immediately take all reasonable steps required to bring the applicable plan into compliance with the Quality Standards. Once the proposed plans have been approved by Licensor, if Licensee proposes to implement any material changes thereto, Licensee shall submit such changes for Licensor's review and approval in accordance with the foregoing procedure. Licensor hereby acknowledges

that pursuant to the terms of the Concession Agreement, the County of Wayne has approval rights over the design plan for each Outlet. If Licensee is unable to obtain the approval of either Licensor or the County of Wayne with respect the design plans of the Outlets, Licensee shall have the right to terminate this Agreement and receive a full refund of the license fee paid to Licensor by Licensee pursuant to Section 4.1 above.

6.1.2. Merchandise Specifications.

6.1.2.1. Design of Motown Merchandise. Licensee shall submit all proposed Motown Merchandise to Licensor Liaison accompanied by a written request for approval, clearly indicating a request for an approval pursuant to this Agreement. Licensor may withhold its approval to such Motown Merchandise or its design; provided that Licensor shall not unreasonably withhold its consent to the manner in which such Motown Merchandise is produced so long as it complies with the Quality Standards. After proposed Motown Merchandise has been approved by Licensor Liaison, Licensee may sell such Motown Merchandise and substantially identical Motown Merchandise pursuant to Section 2.1 without further approval, Licensee bearing the risk that modified Motown Merchandise is sufficiently substantially identical to avoid seeking further approval. Licensee shall carry, display, market and sell in the Outlets only Motown Merchandise, which has been approved pursuant to this Section 6.1.2.1.

6.1.2.2. Quality of Motown Merchandise. The materials used in and the manufacture, workmanship, design and packaging of all Motown Merchandise shall conform to the Quality Standards. To ensure that Licensee is conforming to such Quality Standards, Licensee shall, upon request of Licensor from time to time, submit samples of Motown Merchandise to Licensor Liaison for testing or otherwise verifying that they conform to the Quality Standards. If Licensor determines that any Motown Merchandise sold in the Outlets does not so conform, it shall notify Licensee to that effect as well as the grounds for such determination described in reasonable detail. After receiving such notice, Licensee shall immediately stop selling and shall promptly destroy or send to Licensor, at Licensor's sole option all such Motown Merchandise upon notification by Licensor, and Licensee shall confirm such destruction in writing to Licensor and provide such evidence of such destruction as Licensor may reasonably request.

6.1.2.3. Sale of Merchandise other than Motown Merchandise. Licensee shall submit to Licensor a list of the proposed merchandise, other than Motown Merchandise, that it intends to sell in the Outlets accompanied by a written request for approval, clearly indicating a request for an approval pursuant to this Agreement. Licensor's approval may be given or withheld in Licensor's sole and absolute discretion. After the proposed merchandise has been approved by Licensor Liaison, Licensee may sell such merchandise and substantially identical merchandise pursuant to Section 2.1 without further approval, Licensee bearing the risk that modified merchandise is sufficiently substantially identical to avoid seeking further approval. Licensee shall not carry, display, market and sell in the Outlets merchandise other than Motown Merchandise unless such merchandise has been specifically approved by Licensor pursuant to this Section 6.1.2.3.

6.1.2.4. County of Wayne Approval. Licensor hereby acknowledges that pursuant to the terms of the Concession Agreement, the County of Wayne has approval rights over the selection of merchandise to be sold at each Outlet and any changes with respect thereto.

6.1.3. Music Specifications. Licensor shall have the right to approve (which approval shall not be unreasonably withheld) music and videos played in the Outlets prior to such play. Licensor acknowledges that any music distributed on the Motown label is deemed approved for the purposes of this Section 6.1.3.

6.1.4. Trade Symbol Specifications. All uses of the Trade Symbols shall be accompanied by: (i) commercially reasonable notices and legends approved in advance by Licensor; and (ii) in all commercially reasonable instances, wording approved by Licensor indicating that the Trade Symbols are owned by Licensor and used by Licensee with the permission of Licensor.

6.2. Operations. As of the Opening Date and during the Term of this Agreement, Licensee shall operate each Outlet as provided herein and as specified from time to time from the Licensor, always consistently with sound business judgment and with the high quality standards required of Licensee hereunder.

6.3. Notice of Completion. Licensee shall notify Licensor in writing upon substantial completion of the physical structure and of the substantial completion of the interior of each Outlet.

6.4. Alteration of Premises. With respect to each Outlet, after Licensor's initial approvals are given and after completion of construction the applicable Outlet, Licensee will not make any alteration to such Outlet or vary the design, decor, fixtures, fittings, furniture, furnishings or equipment of such Outlet without obtaining Licensor's prior written approval (which shall not be unreasonably withheld if such alteration conforms to Quality Standards) except that Licensee may, and shall be obligated to, make such alterations or variations thereto or maintenance and repair thereof as Licensor shall reasonably require from time to time consistent with good business judgment and in order to maintain the Outlet consistent with Quality Standards. Licensor hereby acknowledges that pursuant to the terms of the Concession Agreement, any alterations to the premises of each Outlet are subject to the prior approval of the County of Wayne.

6.5. No Other Use of Site. Licensee will not use the Sites for any purpose other than operating the Outlet pursuant to the Quality Standards and selling approved merchandise, (including Motown Merchandise) therefrom, unless Licensor has given its prior written consent to such other use.

6.6. Insurance. Licensee shall obtain and maintain in full force and effect during the Term and for a period of not less than one (1) year thereafter, at its sole cost and expense, the following insurance: (a) comprehensive general liability insurance (including, without limitation, coverage for bodily injury, personal injury, property damage, casualty loss and contractual, advertiser's and trademark liability) with limits of not less than One Million Dollars (US \$1,000,000) per occurrence, Three Million Dollars (US \$3,000,000) aggregate; (b) product liability insurance providing full indemnification and defense against any claims, liabilities, damages, demands and causes of action, actual or alleged, arising out of any defects in or use or misuse of the materials using the Licensed Materials with respect to operations conducted by Licensee at the Outlets with limits of not less than One Million Dollars (US \$1,000,000) per occurrence, Three Million Dollars (US \$3,000,000) aggregate; and (c) workers' compensation and employers' liability insurance, where applicable, in accordance with the laws of the State of Michigan. All such policies may be provided under blanket and/or umbrella policies carried by the Licensee, subject to the provisions of this Section 6.6. The comprehensive general liability insurance shall be primary insurance and Licensee's insurer shall be liable for the full amount of any loss up to the total limit of liability required without the right of contribution of any other insurance coverage held by the Licensor. Within thirty (30) days following the execution of this Agreement by Licensee, it shall provide certificates of insurance to Licensor certifying that Licensor and any other entity specified by Licensor which has an insurable interest hereunder have been added as additional insureds to each of the insurance policies set forth above and that before any proposed cancellation or material modification in the coverage the insurance carrier will give the certificate holder(s) not less than sixty (60) days' prior written notice thereof. Upon receipt of any such notification, Licensor shall have the right to purchase replacement insurance from an insurance carrier of Licensor's choice and charge Licensee for all costs thereof. Licensee agrees to pay all such costs immediately upon submission by Licensor. Any claims covered by Licensee's insurance policies shall not be offset or reduced in any amount whatsoever by any other insurance which Licensor may independently maintain. Licensee's insurance shall be carried by a licensed insurer qualified in the United States with a rating in accordance with the BEST Rating Guide of A-6 (or its equivalent) or better. Each policy required hereunder shall contain a waiver of subrogation. Licensee shall notify Licensor of all claims regarding the Licensed Materials under any of the foregoing policies of insurance promptly upon the filing thereof. Nothing in this Section 6.6 shall be construed as requiring liability coverage and/or indemnification of the Licensor for Licensor's negligence or willful action or omission.

6.7. Compliance with Laws. Licensee shall comply in all respects with all laws, ordinances, regulations and orders applicable to its business, including all health, labor, advertising, sanitary and safety codes, rules, and regulations. Licensee shall be solely responsible for ensuring that each Outlet and each Site related thereto complies in all respects with all such legal requirements.

6.8. Licenses and Permits. Licensee will obtain and maintain all licenses, permits, and consents from third parties that may be required to operate each Outlet and market and sell the Motown Merchandise and without limiting the generality of the foregoing, Licensee shall comply in all respects with all requirements set out in the Lease granted to Licensee by the applicable Airport Authority.

6.9. Prohibited Activities. To the fullest extent permitted by law, Licensee shall implement rules in each Outlet that prohibit patrons or employees of each Outlet from using drugs, the possession and use of which are illegal in the United States, from participating in prostitution, or from engaging in activities involving pornography or violence.

6.10. Staff. To the fullest extent permitted by law, Licensee shall use commercially reasonable efforts to ensure that all personnel employed or otherwise retained by it or contracted to it in connection with the operation of each Outlet shall at all times be polite and comply with the Quality Standards with regard to cleanliness, clothing appearance, neatness, hygiene or demeanor. Licensee shall use the color, fabric, materials, workmanship, size, design and other specifications for all uniforms, aprons and other clothing and the like to be worn by Licensee's employees as consistent with the Quality Standards.

6.11. Presentation Standards. Licensee shall follow the Quality Standards with respect to, without limitation, service standards and practices, appearance, presentation, display quality (including the display of all merchandise), coloring of all products offered for sale to the public on or from the Outlets.

6.12. Cleanliness Standards. Licensee shall maintain a high level of cleanliness, appearance, neatness and hygiene of each Outlet consistent with the Quality Standards. If, at any time, Licensor is of the reasonable opinion that Licensee is not complying with any of these requirements, Licensor may, without prejudice to any other remedy available to Licensor, give to Licensee written notice of the actions required by Licensee in order to ensure compliance with said provisions and Licensee shall at its own expense immediately comply with such requirements forthwith.

6.13. Intentionally Deleted.

6.14. Payment of Suppliers. Licensee shall pay promptly all suppliers of Licensee in accordance with such suppliers' usual terms and conditions.

6.15. Advertising. Any advertisements, marketing or promotional materials and marketing or promotional plans relating to the Outlets are subject to the prior approval of Licensor, not to be unreasonably withheld, provided that all matters relating to the use of the Trade Symbols and any notices or disclosures deemed advisable by Licensor will be determined in Licensor's reasonable judgment and Licensor will not be deemed unreasonable in rejecting any requested changes upon the advice of its attorneys. Licensee will comply with all applicable advertising regulations and use sound business judgment in its advertising. Licensee shall, upon written request of Licensor, cease and desist from using or continuing to use any advertising or publicity which Licensor believes is not in the best interests of the preservation of the Licensed Materials or is not consistent with Quality Standards.

6.16. Inspections. Licensee shall permit Licensor upon at least 10 days prior notice to inspect either Outlet for any purpose reasonably related to this Agreement; provided that such inspections shall be no more frequent than once per fiscal year unless Licensor has a reasonable basis to believe that an Outlet does not conform to Quality Standards or law or regulation in

which case Licensor can continue to make inspections until the applicable Outlet is in compliance.

6.17. Non-Compliance. Subject in any event to the provisions of Section 9, if Licensor gives written notice in reasonable detail to Licensee of any respect in which an Outlet fails to comply with the Quality Standards, any plans approved by Licensor pursuant to Sections 6.1 and 6.2, or any other provisions of this Section 6 or this Agreement, Licensee shall bring the applicable Outlet into compliance as soon as possible but in any event within 30 days (60 days where Licensee can provide evidence that it is diligently pursuing a cure) after such notice was given.

## 7. LICENSOR SUPPORT:

7.1. Memorabilia. Licensor shall use good faith efforts to provide Licensee with reasonable access to Memorabilia that Licensor presently owns; provided that said Memorabilia is not already in use. Licensor shall provide at Licensee's cost either the original or a reproduction of such Memorabilia as Licensee shall select for decor in its Outlets after Licensor has provided Licensee a list of the items available. Whether an original or a reproduction is provided is subject to Licensor's sole discretion, provided, however, that if Licensor provides Licensee an original piece of Memorabilia, Licensor shall have the right at any time upon reasonable notice to request that a reproduction of such Memorabilia be made at Licensee's expense and the original be immediately returned to Licensor.

## 8. TRADEMARK PROTECTION:

### 8.1. Protection and Acknowledgment of Licensed Materials:

8.1.1. Licensed Materials. Licensee acknowledges the value of the goodwill associated with the Licensed Materials and agrees to use the Licensed Materials at all times in such a manner as to maintain their value, validity, enforceability, distinctiveness and reputation. Licensee shall not take or fail to take any action that could damage, jeopardize or otherwise endanger the value, validity, enforceability, distinctiveness and reputation of Licensed Materials or any other trade name, trademark, trade symbol, domain name, servicemark or other intellectual property right of Licensor, or assist or allow others to do so. Licensee shall not take any other action that is harmful or potentially harmful to or which disparages, demeans, or jeopardizes directly or indirectly, the goodwill and reputation of Licensor.

8.1.2. Property of Licensor. Licensee expressly acknowledges that all right, title and interest in and to the Licensed Materials and all parts thereof, including without limitation all amendments, modifications, variations and derivations thereof and/or improvements thereto, are the sole property of Licensor, and any and all goodwill associated with or identified by the Licensed Materials and all parts thereof shall inure directly and exclusively to the benefit and is the property of Licensor. Licensee shall not at any time do or suffer to be done any act or thing which will in any way jeopardize or impair the rights and title of Licensor in and to the Licensed Materials or the rights of any other licensee or franchisee thereto. Nothing contained in this Agreement or anything contemplated hereunder shall be construed to confer upon Licensee, now, during the Term of or after expiration or termination of this Agreement, any right to have the

Licensed Materials registered in the name of Licensee or to vest in Licensee any right of ownership to the Licensed Materials, and Licensee shall not, directly or indirectly, register or cause or assist to be registered, in any country or governmental subdivision, any trademark, trade name, servicemark or copyright consisting of, and/or similar to any of the Licensed Materials. Licensee shall not represent in any manner to any third party that it has any title or right to the ownership, registration or use of any of the Licensed Materials in any manner except as set forth in this Agreement. Subject to Section 7.1, in the case of Memorabilia, Licensee may possess the physical piece of Memorabilia but such possession is conditioned upon its compliance with all terms and conditions of this Agreement, and Licensee acknowledges that it does not own any other rights, including copyrights, to such Memorabilia.

8.1.3. No Challenges by Licensee. During the Term of this Agreement and thereafter, Licensee will not (i) challenge the validity of Licensor's ownership or use of the Licensed Materials, right to grant the license pursuant to this Agreement or (unless in direct conflict with the rights granted to Licensee hereby) right to license the Licensed Materials to others; or (ii) contest the fact that Licensee's rights under this Agreement are solely those of a licensee and terminate upon termination of this Agreement.

8.1.4. Licensee Covenants Regarding Licensed Materials. Licensee will:

8.1.4.1. (i) Use the Licensed Materials only as specifically permitted by this Agreement, (ii) not use any trade name, trademark, trade symbol, domain name, or servicemark that incorporates, is derived from, is similar to or capable of being confused with the trade names, trademarks, trade symbols or servicemarks included in the Licensed Materials, (iii) not use any trade name, trademark, trade symbol or servicemark other than the Licensed Materials (including any of the same of third parties, whether in a co-branding arrangement or otherwise) in connection with the Outlets unless by prior written consent of Licensor, and (iv) not use any other trade name, trademark, trade symbol or servicemark of Licensor;

8.1.4.2. Not interfere in any manner with nor attempt to prohibit the use or registration by Licensor or any licensee of Licensor of the Licensed Materials or other trade name, trademark, trade symbol, domain name or servicemark owned or licensed by Licensor (unless in direct conflict with the rights granted to Licensee hereby);

8.1.4.3. Take such action with respect to the intellectual property rights associated with, identified by or used in connection with the operation of the Outlets as Licensor may from time to time reasonably require, including (without limitation) the marking of any advertising material, signs or other items bearing any of the trade names, trademarks, trade symbols or servicemarks included in the Licensed Materials in such manner as applicable law or Licensor may reasonably require; and

8.1.4.4. Give notice on business stationery, promotional material, advertisements and in such other places as Licensor may from time to time require that the Outlets are operated under license from Licensor and such other information as Licensor may deem necessary to inform third parties that Licensor does not accept liability for the acts, debts and defaults of Licensee.

8.1.5. Use of Trade Name. Licensee will operate the Outlets only under the trade name that is a part of the Licensed Materials without any accompanying words or symbols of any nature (save as required by the provisions hereof) unless first approved in writing by Licensor. Licensee shall not merge, co-join, co-brand or otherwise use the Trade Symbols with the trademarks, trade names, domain names, trade symbols or servicemarks of third parties without the prior written consent of Licensor which may be given or withheld in Licensor's sole discretion. Licensee will not use the Licensed Materials or any part or variant thereof as part of its corporate name or any partnership into which it enters or (other than as permitted hereunder) this Agreement for whatever reason procure an immediate change in its corporate or partnership name if Licensor reasonably considers it to be indicative (visually, orally or in any other way) of a connection with Licensor, to such name as Licensor reasonably considers not to be so indicative.

8.2. Notice of Unauthorized Use or Infringement Licensee shall immediately give Licensor written notice upon learning of any: (i) potential or actual unauthorized use by a third party of (a) the Licensed Materials, or (b) the name "Motown" in connection with a retail establishment or any merchandise; or (ii) allegation that any of the Trade Symbols are invalid or that Licensee's use of the Licensed Materials infringes the rights of a third party.

8.3. Enforcement of Trademarks. In the event that Licensee becomes aware of any infringement of, or any third party attempting to prevent Licensee from using, the Trade Symbols or other Licensed Materials, or the name "Motown" in connection with a retail establishment or merchandise, Licensee shall notify Licensor of same and Licensor and Licensee shall consult on a strategy for pursuing the infringer or halting the efforts of such third party. If as a result of such consultation Licensor agrees that the infringer is to be pursued or the efforts of such third party halted, Licensor will do so at its expense. In bringing any legal action against an infringer, Licensor may, subject to Licensee's consent which shall not be unreasonably withheld, add Licensee's name as additional plaintiff unless such addition is required by law, in which case, no consent is necessary. Licensee may not bring a legal action for infringement of the Trade Symbols or other Licensed Materials without Licensor's prior written consent unless and until Licensor has decided not to bring such action in its own name, in which case, Licensor shall not withhold consent unreasonably to Licensee's bringing the suit.

9. REMEDIES:

9.1. Licensor Termination of Agreement. This Agreement may be terminated as set forth below:

9.1.1. Licensor may terminate this Agreement if (i)(a) a petition is filed, a proceeding is commenced, or an effective resolution is passed for the Bankruptcy, Composition, Corporate Reorganization, Special Liquidation, Arrangement or any other bankruptcy proceeding in the United States of Licensee, (b) Licensee generally suspends payments to its creditors or is unable to pay its debts as they fall due, or a bill or check issued by Licensee is dishonored; or (c) a voluntary reorganization is commenced or any other event which diminishes the creditworthiness of Licensee, or (ii) Licensee assigns its rights or obligations under this Agreement in violation of the provisions of this Agreement governing assignment.

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9.1.2. Licensor may terminate this Agreement upon written notice to Licensee in the event Licensee willfully impairs or jeopardizes or causes the impairment or jeopardy of the Licensed Materials or the trademark "Motown".

9.1.3. Licensor may terminate this Agreement, in the event there is a determination pursuant to Section 14 that there is a breach by Licensee of this Agreement under Section 4.2, 4.3 or 4.4, if restitution (plus interest from the date such payment was originally due calculated at the U.S. prime rate) shall not be made by Licensee within 10 business days after determination.

9.1.4. Licensor may terminate this Agreement on written notice to Licensee if Licensee breaches in any material respect any other provision of this Agreement, provided that Licensor has notified Licensee of such breach and such breach is not cured within 30 days (60 days where Licensee can provide evidence that it is diligently pursuing a cure) after such notice was given.

9.2. Licensor's Other Remedies. In addition to Licensor's right to terminate this Agreement in accordance with the provisions of Section 9.1, Licensor shall be entitled to damages or for specific performance as a result of any breach of this Agreement so long as in the case of a breach described in Section 9.1.4 (i) Licensor has given Licensee written notice of such breach and (ii) 30 days (60 days where Licensee can provide evidence that it is diligently pursuing a cure) have expired after the receipt of such notice. In the case of any breach by Licensee, Licensor shall have the right to pursue all appropriate remedies at law or in equity therefor. Licensee acknowledges that any breach by Licensee of this Agreement shall cause Licensor irreparable harm for which there is no adequate remedy at law, and Licensee agrees that in the event of breach Licensor shall be entitled to injunctive or other equitable relief. No remedy of Licensor herein is intended to be exclusive of any other remedy available to Licensor under law, equity or otherwise and each and every such remedy of Licensor shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or otherwise.

9.3. Termination of Agreement by Licensee. This Agreement may be terminated by Licensee as set forth below:

9.3.1. Licensee may terminate this Agreement if (i) a petition is filed, a proceeding is commenced, or an effective resolution is passed for the Bankruptcy, Composition, Corporate Reorganization, Special Liquidation or Arrangement of Licensor, (ii) Licensor generally suspends payments to its creditors or is unable to pay its debts as they fall due, or a bill or check issued by Licensor is dishonored, or (iii) a voluntary reorganization is commenced or any other event which diminishes the creditworthiness of Licensor occurs.

9.3.2. Licensee may terminate this Agreement on written notice to Licensor if Licensor breaches in any material respect any other provision of this Agreement; provided that Licensee has notified Licensor of such breach and such breach is not cured within 30 days (60 days where Licensor can provide evidence that it is diligently pursuing a cure) after such notice was given.

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9.3.3. Licensee shall have the right to cease operation of any or both of the Outlets at any time during this Agreement by giving 3 months advance notice to Licensor if prior to the giving of such notice such Outlet has been opened for at least 1 year and Licensee determines in good faith that such Outlet will not be financially viable in the long term. In the event that Licensee ceases operation of any or all of the Outlets (the "Closed Outlet(s)"), it shall also cease sales of the Motown Merchandise at the Closed Outlet and remove all Memorabilia and other items bearing the Trade Symbols from the Closed Outlet. In the event of such closure, Licensee shall be released from all obligations to pay royalties to Licensor with respect to the Closed Outlet for the period after the date of closure subject to the payment of the Termination Fee as set out in Section 3.2 above. Licensee's cessation of operations at the Closed Outlet shall not constitute a breach of the terms and conditions of this Agreement, and Licensee shall not be responsible for compensation of any damages, including loss of profits, suffered by Licensor due to such cessation. In the event that Licensee closes both Outlets, the Term of this Agreement shall be deemed terminated and Licensee shall have no right to renew.

9.4. Licensee's Other Remedies. In addition to Licensee's right to terminate this Agreement in accordance with the provisions of Section 9.3, Licensee shall be entitled to damages or for specific performance as a result of any breach of this Agreement after: (i) giving Licensor written notice of such breach and (ii) the expiration of 30 days (60 days where Licensor can provide evidence that it is diligently pursuing a cure) after the receipt of such notice.

9.5. Accrued Rights of Parties. Termination of this Agreement for whatever reason shall not affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and in particular, but without limitation, the right of either party to recover damages from the other.

9.6. Effect of Termination. Upon the termination of this Agreement for whatever reason, all rights granted hereunder to Licensee, including, without limitation, the right to use the Licensed Materials and the right to use the name "Motown Music Review" in connection with the Outlets, will thereupon automatically cease and terminate and Licensee shall immediately remove from the Outlets all Motown Merchandise, Memorabilia and all items bearing the Trade Symbols. Licensee will, within 90 days of the date of termination, discontinue all of its activities hereunder (including, without limitation, operation of the Outlets) and will terminate all arrangements and agreements theretofore entered into with third parties respecting the subject matter of this Agreement and at Licensor's option destroy or sell to Licensor for fair value all materials containing any of the Licensed Materials.

#### 10. REPRESENTATIONS AND WARRANTIES:

10.1. Licensor's Representations and Warranties. Licensor represents and warrants to Licensee that:

10.1.1. Licensor is a limited partnership duly organized and in good standing under the laws of the State of California, and has all necessary power and authority to execute and deliver this Agreement and to carry out its obligations hereunder, to carry on its business as now conducted and as contemplated hereby and to own or lease and operate its properties.

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10.1.2. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default under the charter of Licensor or in any violation of, or default with respect to, any mortgage, agreement or other instrument, permit, license, judgment, order, law, rule or regulations applicable to or binding upon Licensor.

10.1.3. Neither Licensor nor any Person authorized by it has granted or entered into any written, oral or implied assignments, grants, licenses, encumbrances, obligations, or agreements which are inconsistent with this Agreement or which would prevent Licensor from performing its obligations under this Agreement.

10.1.4. This Agreement has been duly authorized, executed and delivered by Licensor and constitutes the valid and binding obligations of Licensor, enforceable in accordance with its terms.

10.1.5. Licensor owns and/or controls the Licensed Materials and is not aware of any third party claims challenging its ownership and/or control of the Licensed Materials.

10.2. Licensee's Representations and Warranties. Licensee represents and warrants to Licensor that:

10.2.1. Licensee is a corporation duly organized and in good standing under the laws of the State of Delaware, and has all necessary corporate power and authority to execute and deliver this Agreement and to carry out its obligations hereunder, to carry out its business as now conducted and as contemplated hereby and to own or lease and operate its properties.

10.2.2. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in any violation of or default under any provisions of the organizational or governing documents of Licensee or in any violation of, or default with respect to, any mortgage, agreement or other instrument, permit, license, judgment, order, law, rule or regulations applicable to or binding upon Licensee.

10.2.3. Neither Licensee nor any Person authorized by it has granted or entered into any written, oral or implied assignments, grants, licenses, encumbrances, obligations, or agreements which are inconsistent with this Agreement or which would prevent Licensee from performing its obligations under this Agreement.

10.2.4. This Agreement has been duly authorized, executed and delivered by Licensee and constitutes the valid and binding obligations of Licensee, enforceable in accordance with its terms.

10.2.5. Licensee has the financial capacity to enter into this Agreement and the transactions contemplated by this Agreement.

10.2.6. Licensee has obtained, or will obtain prior to the opening of the Outlets, all permits, licenses, leases and any other regulatory approvals necessary for the operation of the

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Outlets, and Licensee has no reason to believe that it will not be able to obtain any of such necessary permits, licenses, leases or other regulatory approvals.

10.3 Licensor does not make any warranties or representations as to the popularity, success, viewership or continuing exploitation of or marketing and advertising budget with respect to the Licensed Materials and makes no warranty or representation as to the amount of gross sales, net sales or profits Licensee shall derive under this Agreement.

## 11. INDEMNIFICATION:

11.1. Licensor Indemnities. Licensee shall defend, indemnify, and hold Licensor and each of its affiliates and agents and each of its and their officers, directors, and employees ("Licensor Indemnitees") harmless against any claims, actions, demands, causes of action, liability, loss, damages and judgments arising out of or as a result of: (i) any breach of Licensee's representations and warranties contained in this Agreement; (ii) any breach of Licensee's covenants contained in this Agreement; (iii) any use of the Licensed Materials in a manner contrary to the provisions of this Agreement; or (iv) the operation of the Outlets, including any negligence on the part of Licensee or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees and any incident, injury, death, or damage to any person or property occurring in, on or about the Outlets, or resulting from the acts or omissions of Licensee or its agents or employees, and will reimburse each Licensor Indemnitee for any legal claims, actions, demands, causes of action or liability. Licensee, at Licensee's sole expense, shall maintain control and direction of the defense of such a claim or claims brought against any Licensor Indemnitee, provided, however, that such Licensor Indemnitee shall have the right to approve papers filed regarding dispositive motions and shall have the right to approve any settlement of the claims brought against it if such claim in anyway whatsoever affects Licensor's property, including without limitation, the Licensed Materials, Memorabilia, Motown Merchandise and/or the Trade Symbols. Each Licensor Indemnitee agrees and shall agree to provide Licensee with any and all reasonable assistance, which Licensee may request in connection with its defense of such claims.

11.2. Licensee Indemnities. Licensor shall defend, indemnify, and hold Licensee and each of its affiliates and agents and each of its and their officers, directors, and employees ("Licensee Indemnitees") harmless against any claims, actions, demands, causes of action, liability, loss, damages and judgments arising out of or as a result of: (i) any breach of Licensor's representations and warranties contained in this Agreement; or (ii) any breach of Licensor's covenants contained in this Agreement and will reimburse each Licensee Indemnitee for any legal or other expenses reasonably incurred in connection with investigating or defending any such claims, actions, demands, causes of action or liability. Licensor, at Licensor's sole expense, shall maintain control and direction of the defense of such a claim or claims brought against any Licensee Indemnitee. Each Licensee Indemnitee agrees and shall agree to provide Licensor with any and all reasonable assistance, which Licensor may request in connection with its defense of such claims.

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12. ASSIGNMENT:

12.1. Assignment. Licensee may not assign, pledge, transfer, sub-license or otherwise grant or dispose (whether directly or indirectly through a sale of assets or equity interests), in whole or in part, any of its rights or delegate any of its duties hereunder, except that with the prior written consent of Licensor (not to be unreasonably withheld) Licensee may assign all of its rights and delegate all of its duties hereunder to a Person who succeeds to Licensee's entire business (as a result of spin-off, sale, transfer, merger or consolidation). Licensor hereby acknowledges that Licensee intends to assign this Agreement to a joint venture, of which Licensee will be the general partner with a seventy percent (70%) interest; Licensor hereby approves such assignment provided that Licensee shall remain primarily liable for any and all of its duties and obligations under this Agreement. Licensor may assign its rights and delegate its duties under this Agreement as a result of a merger or consolidation or to a Person to whom it sells or transfers the name "Motown Music Review." In the event of assignment made by Licensor to a third party, Licensor's release from its obligations under this Agreement is subject to full assumption of its obligations by such third party. Any improper assignment or delegation shall be null and void *ab initio* and of no force or effect.

13. CONFIDENTIALITY:

13.1. Confidential Information. "Confidential Information" shall mean any non-public information which is proprietary to one of the parties hereunder (the "Discloser") and is disclosed by the Discloser to the other party (the "Recipient") and is: (i) provided to Licensee by Licensor pursuant to this Agreement; (ii) provided by Licensor to Licensee pursuant to this Agreement or (iii) contained in a document marked "Confidential".

13.2. Specific Information Excluded. Confidential Information shall not include any information that Recipient can demonstrate: (i) was in the Recipient's possession prior to disclosure or development under this Agreement; (ii) was or has become publicly known through no wrongful act of the Recipient; or (iii) was developed by the Recipient independently of and without reference to Confidential Information of the Discloser.

13.3. No Disclosure. The Recipient shall maintain the confidentiality of any Confidential Information it receives and, except as expressly permitted in this Agreement, shall not disclose Confidential Information to third parties except (i) in the case of Licensor or Licensee, on a confidential basis to attorneys, accountants or advisors acting for, and to Persons providing a material amount of financing for, the Recipient who so discloses the Confidential Information, (ii) as required by law or legal process, and (iii) as permitted by the Discloser in writing. The terms and conditions of this Agreement shall be kept confidential by Licensee and shall not be disclosed except as provided in clause (i) of the immediately preceding sentence.

13.4. Court Order. In the event that Recipient is ordered to disclose Discloser's Confidential Information pursuant to a judicial or governmental request, requirement or order, Recipient shall promptly notify Discloser and take reasonable steps to assist Discloser in contesting such request, requirement or order, otherwise protecting Discloser's rights prior to disclosure or ensuring that Confidential Information that is so disclosed will be accorded confidential treatment.

14. ARBITRATION:

14.1. Except (i) with respect to any matters relating to Section 8 (ii) with respect to specific performance and (iii) except to the extent necessary to enforce the provisions of this Section 14, any claim, dispute or other matter in question between the parties hereto arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the rules of the American Arbitration Association in effect on the date hereof before one arbitrator, such arbitrator to be selected by the so-called "strike-off" method. Any such arbitration shall be conducted in New York, New York. The arbitrator shall be qualified by education, training or experience as may be appropriate according to the nature of the claim, dispute or other matter in question. The foregoing agreement to arbitrate and any other agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen; and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. All costs and expenses in connection with any such arbitration shall be borne in the manner, which the arbitrator making the determination shall direct.

15. GENERAL PROVISIONS:

15.1. Relationship of the Parties. This Agreement does not create a partnership, agency relationship or joint venture between the parties and Licensee shall have no power to obligate or bind Licensor in any manner whatsoever.

15.2. Notices. All notices required to be sent to either party shall be in writing addressed to Licensor and Licensee at the addresses set forth on page 1 or such other address as a party may from time to time furnish in writing to the other party. All notices shall be effective upon receipt by the intended recipient. A copy of all notices to be sent to Licensor shall also be sent to Universal Music Group, 2220 Colorado Avenue, Santa Monica, California 90404, Attention: Senior Vice President Business and Legal Affairs.

15.3. Governing Law. This Agreement shall be construed and enforced according to the internal laws of the State of New York.

15.4. Consent to Jurisdiction: Waiver of Jury Trial. With respect to those matters excepted from arbitration in Section 14 hereto, (i) each party to this Agreement, by its execution hereof, hereby irrevocably submits to the non-exclusive jurisdiction of the state courts of the State of New York or any United States District Court located in the State of New York for the purpose of any action arising out of or based upon such matters, and (ii) to the extent not prohibited by applicable law which cannot be waived, each of the parties hereto hereby waives, and agrees to cause each of its affiliates to waive, and covenants that it will not assert (whether as plaintiff, defendant or otherwise) any right to trial by jury in any forum in respect of any issue or action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon such matters, whether now existing or hereafter arising.

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15.5. Waiver. No waiver by either party of a breach or default under this Agreement shall be deemed a waiver by such party of a subsequent breach or default under this Agreement.

15.6. Severability. If any term or provision of this Agreement shall become or be declared illegal, invalid or unenforceable, such term or provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement, provided that if such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend and modify the terms and provisions of this Agreement to give effect to the original intent of the parties.

15.7. Integration: Amendment. This Agreement represents the entire understanding between Licensor and Licensee with respect to the subject described, supersedes all previous representations, understandings or agreements, oral or written, between Licensor and Licensee with respect to the subject matter and cannot be modified or amended except by a written instrument signed by Licensor and Licensee.

15.8. Press Release and Public Announcement. Neither Licensor nor Licensee will issue any press release or make any public announcement of the existence or terms of this Agreement without prior consultation with and approval by the other party; provided, however, that the provisions of this sentence shall not apply to the promotion and advertising of the Outlets or the activities conducted therein.

15.9. Ambiguity. The parties shall be deemed to have drafted this Agreement jointly, and any uncertainty or ambiguity existing herein shall not be interpreted against either party.

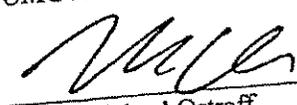
15.10. Approvals. Licensor's silence or failure to respond to a request for approval shall in no event be deemed an approval.

15.11. Exhibit A. Licensor may amend Exhibit A at any time to add to the definitions of Merchandise, Memorabilia, Trade Symbols and Promotional Materials. Licensor shall promptly notify Licensee of any such amendments.

15.12. Validity. The License granted herein is not valid unless each and every one of the above terms and conditions are met and this Agreement has been executed by an authorized signatory for both parties hereto and returned to Licensor.

IN WITNESS WHEREOF, the parties to this Agreement have duly authorized and executed this Agreement as of the date first written above.

MOTOWN RECORD COMPANY, L.P.  
By: UMG Recordings, Inc., its General Partner

By:    
Name: Michael Ostroff  
Title: Executive Vice President

CA ONE SERVICES, INC.

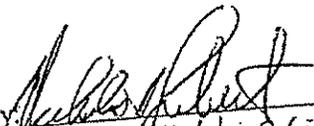
By:   
Name: Nicholas D. Liberto  
Title: Vice President - Finance

Exhibit A

Please see the attached photo descriptions of Motown Merchandise, Memorabilia and Trade Symbols. These materials may change from time to time with the mutual agreement of both parties.

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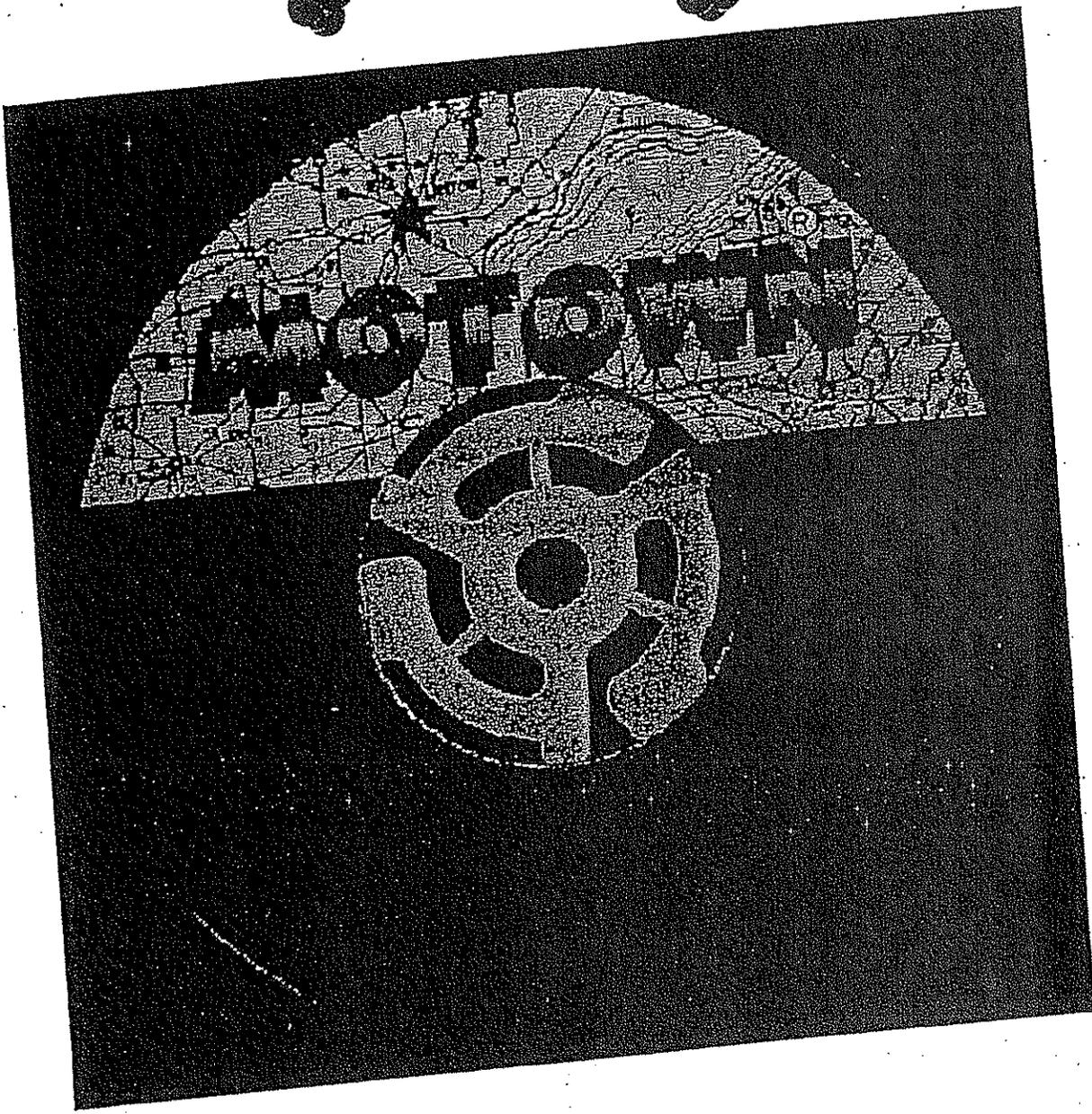


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A handwritten signature or set of initials, possibly 'GJ', is written in black ink.

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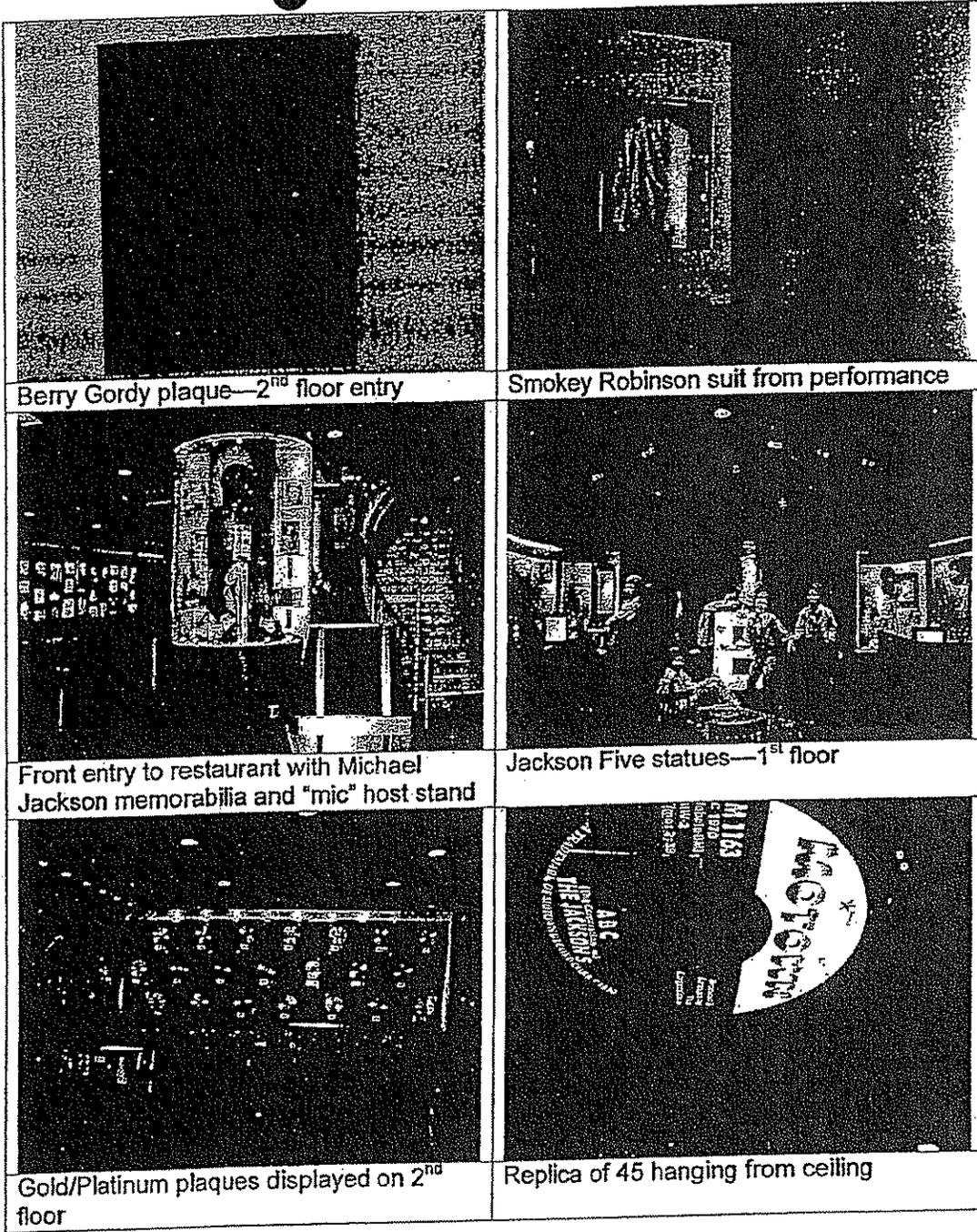


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A handwritten mark or signature, possibly a stylized letter 'G' or a similar symbol, located in the bottom right corner of the page.

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Berry Gordy plaque—2<sup>nd</sup> floor entry

Smokey Robinson suit from performance

Front entry to restaurant with Michael Jackson memorabilia and "mic" host stand

Jackson Five statues—1<sup>st</sup> floor

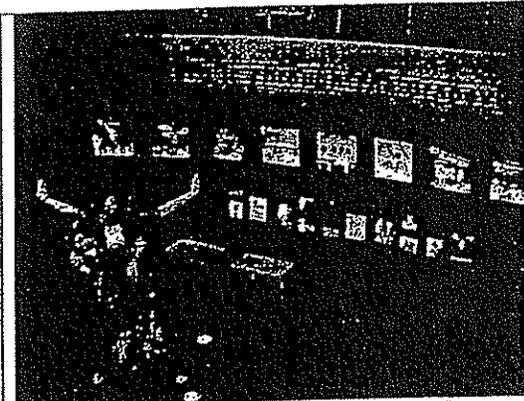
Gold/Platinum plaques displayed on 2<sup>nd</sup> floor

Replica of 45 hanging from ceiling

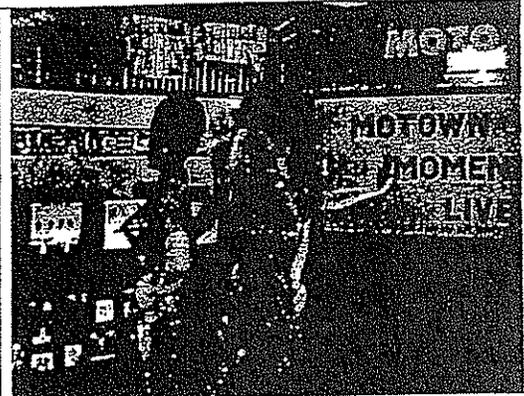
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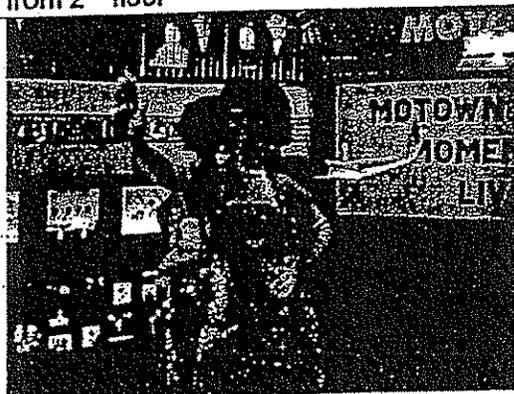
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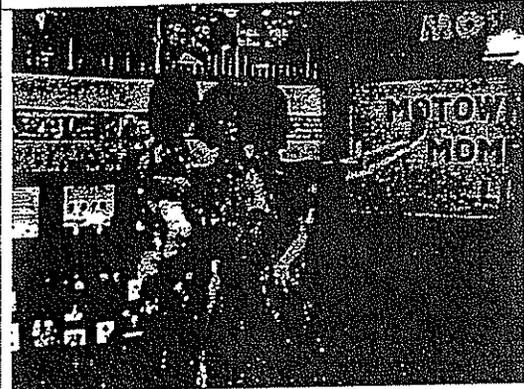
View of main (1<sup>st</sup>) floor & Supremes Statue from 2<sup>nd</sup> floor



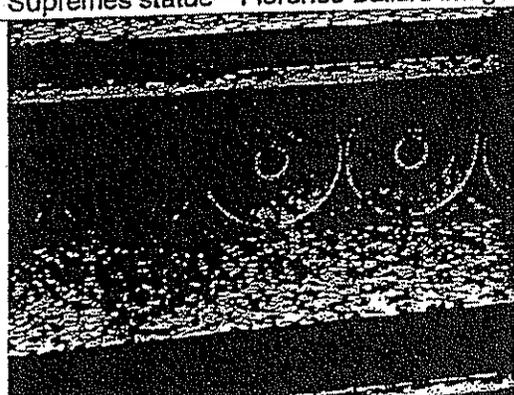
Supremes statue—Mary Wilson image



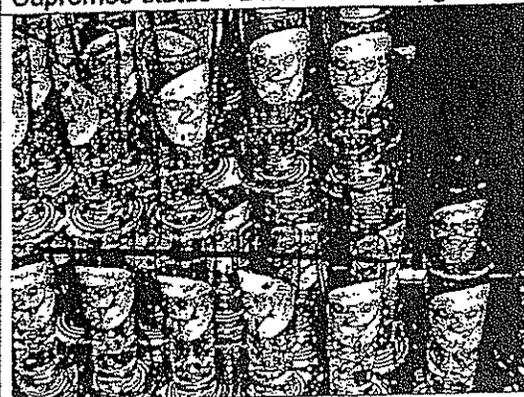
Supremes statue—Florence Ballard image



Supremes statue—Diana Ross image



Staircase between 1<sup>st</sup> and 2<sup>nd</sup> floors showing other "Motown" family labels

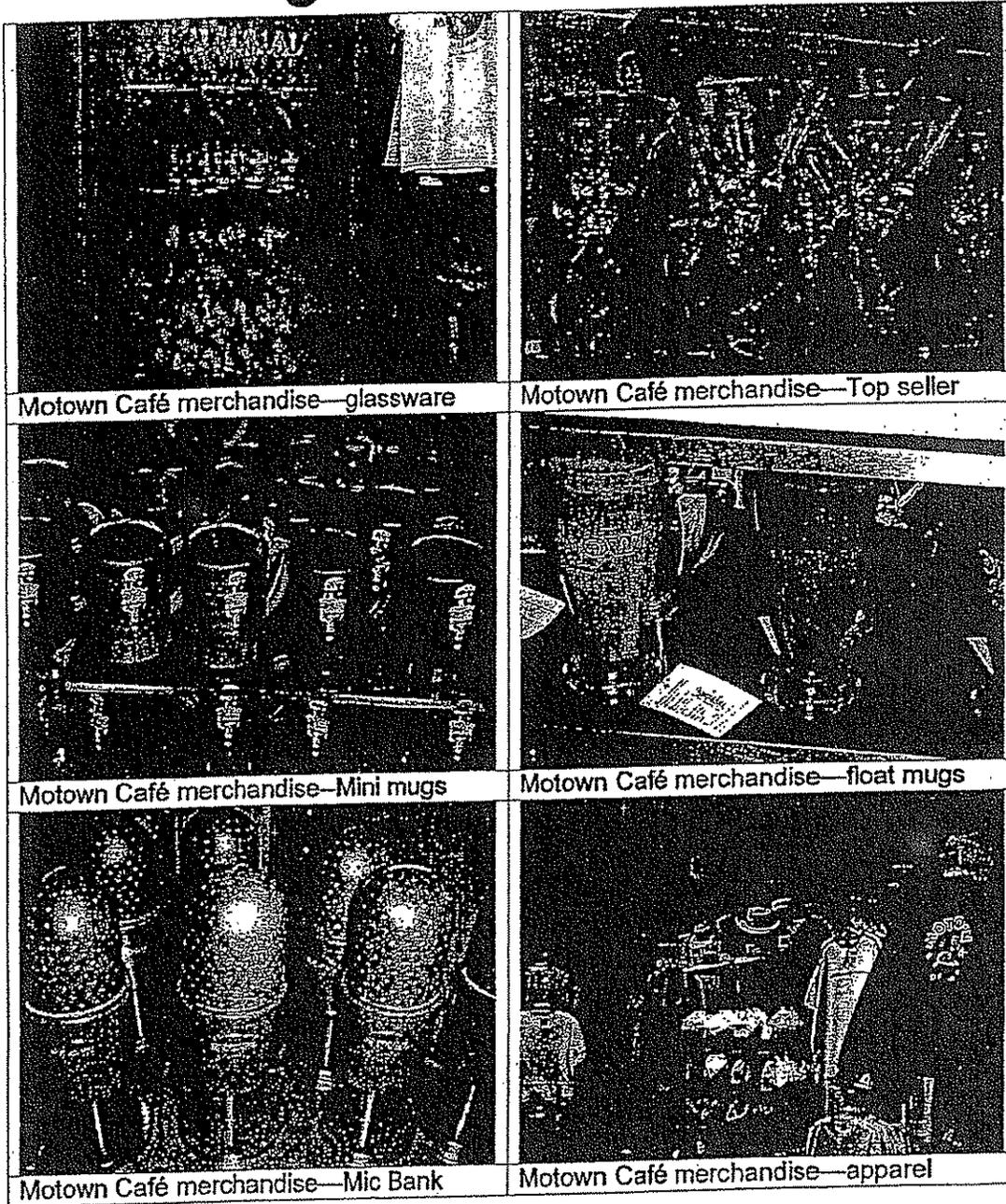


Motown Café merchandise—Top seller

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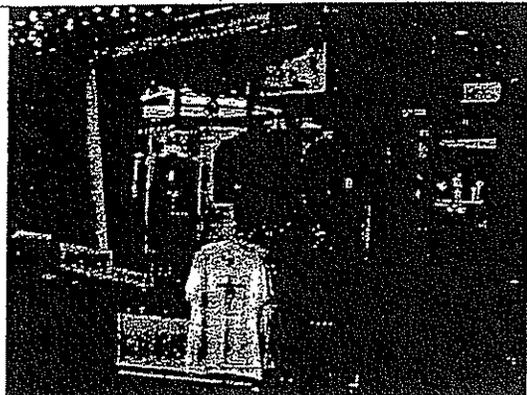
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Motown Café merchandise—apparel



Motown Café merchandise—Outdoor display

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**CERTIFICATE OF SERVICE**

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

\_\_\_\_\_/crf/  
Chad R. Fitzgerald