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

Proceeding	91176791
Party	Defendant MATTEL, INC.
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Date	02/11/2010
Attachments	Objections to Czapla Decl.pdf (9 pages)(45433 bytes)

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

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

UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.

Applicant

APPLICANT MATTEL, INC.'S EVIDENTIARY OBJECTIONS TO AND REQUESTS
TO STRIKE PORTIONS OF DECLARATION OF DEANNA CZAPLA

Applicant Mattel, Inc. hereby objects to and moves to strike portions of the Declaration of Deanna Czaplá dated March 11, 2009.

The following format is used below:

- (1) the Declaration is copied verbatim;
- (2) where Applicant objects to all or a portion of a paragraph, the objected-to portion is shown as stricken (e.g., ~~The person told me that~~ ...) followed by a highlighted "objection number" (e.g., [Obj. 2]); and

DECLARATION OF DEANNA CZAPLA DATED MARCH 11, 2009
WITH OBJECTIONABLE PORTIONS STRICKEN

DECLARATION OF DEANNA CZAPLA

DEANNA CZAPLA declares under penalty of perjury as follows:

1. I am Retail Operations Manager and Buyer for Delaware North Companies Travel Hospitality Services, Inc., a Delaware corporation with offices at Detroit Metropolitan Wayne County Airport, Building 513 West Service Road, Detroit, Michigan 48242 (“Delaware North”). My responsibilities as Retail Operations Manager and Buyer for Delaware North include overseeing the business affairs and operation of the Motown Music Review store (the “Motown Store”) in Detroit Metro Airport. I first joined Delaware North as a Buyer in 2002, and was appointed to my present position in 2006. I submit this declaration as testimony in connection with the above-captioned proceeding.

2. I have access to the books and records of Delaware North relevant to the matters covered herein, including all records pertaining to the Motown Store. As a result of my job responsibilities I am generally familiar with the business of the Motown Store and Delaware North’s license to use the MOTOWN and MOTOWN-formative trademarks (the “MOTOWN Marks”) in connection with the store. I confirm that the facts and matters set out herein are based on my own knowledge and from the records and documents of Delaware North to which I have access.

3. ~~On or around December 1, 2001, CA One Services Inc. entered into a license agreement with Motown Record Company, L.P. (collectively, with its successor in interest UMG Recordings, Inc., “UMG”) concerning the right to use the MOTOWN Marks and Motown memorabilia in connection with the Motown Store, including in connection with toys, games and playthings bearing the MOTOWN Marks available for sale at the Motown Store. A true and correct copy of the license agreement is annexed hereto as Exhibit 1. [Obj. 1]~~

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
1	¶ 3	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Mischaracterizes evidence..	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

4. On or around September 13, 2005, CA One Services, Inc. changed its name to Delaware North Companies Travel Hospitality Services, Inc. CA One Services, Inc. and Delaware North shall hereinafter be referred to collectively as “Delaware North.”

5. Delaware North opened the Motown Store in the in the Detroit Metropolitan Wayne County Airport in 2002 and has operated the store continuously since such time. ~~Attached hereto as Exhibit 2 are true and correct photographic depictions of the Motown Store.~~

[Obj. 2]

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
2	¶ 5	(a) Exhibit speaks for itself (Fed. R. Evid. 1002).	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

6. ~~Available for sale at the Motown Store is an array of toys, games and playthings and other merchandise bearing the MOTOWN Marks, including, for example, stuffed bear, a ball, a novelty pen and pencil, a miniature toy harmonica, and a “mood light” toy (collectively, the “MOTOWN Toys”). Attached hereto as Exhibit 3 are true and correct photographs of some of the toys, games and playthings available for sale in the Motown Store. [Obj. 3]~~

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
3	¶ 6	(a) Exhibit speaks for itself (Fed. R. Evid. 1002); (b) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

7. ~~Delaware North has continuously sold toys, games, and playthings to adults and children in the Motown Store under the MOTOWN Marks as follows:~~

<u>Product</u>	<u>Date First Sold</u>	<u>Approximate Retail Price</u>
Stuffed Bear	February 2005	\$10.99
Ball	October 2005	\$4.99
Novelty Pen	November 2005	\$5.99
Novelty Pencil	July 2006	\$3.99
Miniature Toy	July 2007	\$4.99
Harmonica		
"Mood Light" Toy	October 2007	\$4.99 [Obj. 4]

OBJECTION NO.	REFERENCE	GROUND S	BOARD'S RULING
4	¶ 7	(a) Improper Speculation; (b) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

8. ~~Attached hereto as Exhibit 4 are printouts of Delaware North's business records, which are kept in the ordinary course of Delaware North's business, depicting its annual sales of the MOTOWN Toys as follows:~~

<u>Year</u>	<u>Gross Sales</u>
2005	

2006 _____
 2007 _____
 2008 _____
 2009 _____

Delaware North pays UMG royalties based on its gross revenues as set forth in the license agreement between the parties. *See Exhibit 1.* As reflected in Exhibit 4, Delaware North's total sales of the MOTOWN Toys are in excess of \$202,205.00. [Obj. 5]

OBJECTION NO.	REFERENCE	GROUND	BOARD'S RULING
5	¶ 8	(a) Improper Legal Opinion (Fed. R. Evid. 701); (b) Exhibit speaks for itself (Fed. R. Evid. 1002); (c) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

7. ~~Annexed hereto as Exhibit 5 are printouts of Delaware North's business records, which are kept in the ordinary course of Delaware North's business, depicting its annual sales of the MOTOWN Toys as follows:~~

Year _____ Number of Units Sold
 2005 _____
 2006 _____
 2007 _____
 2008 _____
 2009 _____

As reflected in ~~Exhibit 5~~, Delaware North's total sales of the MOTOWN Toys are in excess of _____. [Obj. 6]

OBJECTION NO.	REFERENCE	GROUNDS	BOARD'S RULING
6	¶ 7	(a) Exhibit speaks for itself (Fed. R. Evid. 1002); (b) Mischaracterizes evidence.	<input type="checkbox"/> Sustained/Stricken <input type="checkbox"/> Overruled

Declared under penalty of perjury of the laws of the United States of America this 11th day of March, 2009 at Detroit, Michigan.

/S/
Deanna Czapla

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Evidentiary Objections and Request to Strike has been personally served on counsel for Opposer UMG Recordings, Inc., both personally and through ESTTA, on February 11, 2010.

/crf/

Chad R. Fitzgerald