

ESTTA Tracking number: **ESTTA1104973**

Filing date: **12/30/2020**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	MATTEL, INC.
Granted to Date of previous extension	12/30/2020
Address	333 CONTINENTAL BOULEVARD TWR 15-1 EL SEGUNDO, CA 90245 UNITED STATES
Attorney information	BRIAN D. WASSOM WARNER NORCROSS + JUDD LLP 45000 RIVER RIDGE DR. STE 300 CLINTON TWP, MI 48038 UNITED STATES Primary Email: bwassom@wnj.com Secondary Email(s): kbankeroff@wnj.com 248-784-5039
Docket Number	

Applicant Information

Application No.	88353675	Publication date	09/01/2020
Opposition Filing Date	12/30/2020	Opposition Period Ends	12/30/2020
Applicant	Kewin, Stephanie 373 RIVERTRAIL AVENUE KITCHENER, ONTARIO, N2A0J9 CANADA		

Goods/Services Affected by Opposition

Class 028. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Play mats for infants for use with infant toys; play mats containing infant toys; children's multiple activity toys for preschoolers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration	3018157	Application Date	11/22/2000
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No.			
Registration Date	11/22/2005	Foreign Priority Date	11/01/2000
Word Mark	POLLY POCKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 1989/00/00 First Use In Commerce: 1991/00/00 [GAMES, TOYS AND PLAYTHINGS, NAMELY, PLUSH TOYS,] DOLLS [, BOARD GAMES, PLAYING CARDS]		

U.S. Registration No.	3587497	Application Date	06/23/2003
Registration Date	03/10/2009	Foreign Priority Date	NONE
Word Mark	POLLY POCKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2008/05/23 First Use In Commerce: 2008/05/23 [ENTERTAINMENT SERVICES, NAMELY, THE PRODUCTION OF ANIMATED TELEVISION SERIES;] PROVIDING EDUCATIONAL AND ENTERTAINMENT SERVICES VIA GLOBAL COMPUTER WEBSITE FEATURING GAMES, PRODUCT TRIVIA AND ACTIVITIES INTENDED FOR CONSUMERS OF ALL AGES		

U.S. Registration No.	3720200	Application Date	05/30/2006
Registration Date	12/01/2009	Foreign Priority Date	04/17/2006
Word Mark	POLLY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2009/08/27 First Use In Commerce: 2009/08/27 Games and playthings, namely, toy figures, play figures, action figures,[toy vehicle track sets] and [playsets,] accessories[and cases]for all of the foregoing[; board games, card games, puzzles]		

U.S. Registration No.	4569122	Application Date	01/18/2013
Registration Date	07/15/2014	Foreign Priority Date	NONE
Word Mark	POLLY PLAZA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2014/05/06 First Use In Commerce: 2014/05/06 DOLLS, DOLL CLOTHING AND DOLL ACCESSORIES; DOLL PLAYSETS AND ACCESSORIES THEREFOR		

U.S. Registration No.	5623613	Application Date	08/02/2017
Registration Date	12/04/2018	Foreign Priority Date	NONE
Word Mark	POLLY POCKET		
Design Mark			
Description of Mark	THE MARK CONSISTS OF THE STYLIZED WORDING "POLLY POCKET" WITH THE "O" IN "POLLY" IN THE FORM OF A HEART.		
Goods/Services	Class 028. First use: First Use: 2018/08/01 First Use In Commerce: 2018/08/01 TOYS, GAMES AND PLAYTHINGS, NAMELY, DOLLS, DOLL CLOTHING AND DOLL ACCESSORIES; DOLL PLAYSETS AND ACCESSORIES THEREFOR; TOY FIGURES AND ACCESSORIES THEREFOR; TOY FIGURE PLAYSETS AND ACCESSORIES THEREFOR; TOY VEHICLES AND ACCESSORIES THEREFOR		

U.S. Registration No.	5692679	Application Date	08/02/2017
Registration Date	03/05/2019	Foreign Priority Date	NONE
Word Mark	POLLY POCKET		
Design Mark			
Description of Mark	The mark consists of the styled wording "POLLY POCKET" with the "O" in "POLLY" in the form of a heart.		
Goods/Services	Class 041. First use: First Use: 2018/08/01 First Use In Commerce: 2018/08/01 ENTERTAINMENT SERVICES, NAMELY, PROVIDING ONLINE ONGOING WEBISODES AND NON-DOWNLOADABLE VIDEOS FEATURING CHILDREN'S ENTERTAINMENT; PROVIDING ONLINE COMPUTER GAMES; PROVIDING AN INTERACTIVE WEBSITE FEATURING ENTERTAINMENT INFORMATION RELATED TO CHILDREN'S ENTERTAINMENT AND TOYS		

U.S. Registration No.	5814531	Application Date	04/11/2018
Registration Date	07/23/2019	Foreign Priority Date	NONE
Word Mark	POLLY STICK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 028. First use: First Use: 2018/09/03 First Use In Commerce: 2018/09/03 STICKERS THAT ENABLE TOY FIGURES TO ATTACH TO THEIR PLAYSETS, SOLD AS A COMPONENT OF TOY FIGURES AND ACCESSORIES THEREFOR; STICKERS THAT ENABLE TOY FIGURES TO ATTACH TO THEIR PLAYSETS, SOLD AS A COMPONENT OF TOY FIGURE PLAYSETS AND ACCESSORIES THEREFOR		

U.S. Registration No.	5904233	Application Date	05/29/2018
Registration Date	11/05/2019	Foreign Priority Date	NONE
Word Mark	POLLY POCKET		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2019/05/29 First Use In Commerce: 2019/05/29 CLOTHING, NAMELY, TOPS, SHIRTS; HEADWEAR

U.S. Registration No.	5783508	Application Date	07/19/2018
Registration Date	06/18/2019	Foreign Priority Date	NONE
Word Mark	POLLY POCKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 018. First use: First Use: 2019/04/12 First Use In Commerce: 2019/04/12 BACKPACKS; PURSES, WALLETS		

Attachments	Rolly Polly Opposition.pdf(35284 bytes)
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Signature	/Brian D. Wassom/
Name	Brian D. Wassom
Date	12/30/2020

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

MATTEL, INC.,

Opposition No.:

Opposer,

Marks: ROLLY POLLY

v.

Serial No. 88353675

STEPHANIE KEWIN,

Respondent.

NOTICE OF OPPOSITION

Opposer Mattel, Inc. (“Opposer”), by its attorneys Warner Norcross + Judd LLP, for its Notice of Opposition against Respondent Stephanie Kewin (“Applicant”), alleges as follows:

Parties

1. Opposer is a Delaware corporation with an address at 333 Continental Boulevard, El Segundo, California 90245.
2. Applicant is a Canadian individual with an address at 373 Rivertrail Avenue, Kitchener, Ontario, Canada N2A0J9.
3. Opposer believes that it will be damaged by registration of the mark ROLLY POLLY (“Applicant’s Mark”). Therefore, pursuant to Lanham Act §13(a), 15 U.S.C. § 1063(a), Opposer has standing to oppose Applicant’s Application No. 88353675 (the “Application”).

Opposer and Its Well-Known POLLY®-Formative Trademarks

4. Opposer is an American multinational company founded in 1945, and a world leader in the design, manufacture and marketing of toys, games, playthings and family products. It has a presence in over 35 countries and territories and sells products in more than 100 nations.

5. Opposer (directly and through its predecessors in interest) owns and controls the rights to the POLLY® line of dolls, toys, and related merchandise. Since at least as early as 1991, this creative franchise has entertained children and parents with the adventures of POLLY POCKET® and her friends through toys, accessories, animated programs, books, and more.

6. Specifically, and most relevant to this proceeding, Opposer owns, among others, the following U.S. trademark registrations (“Opposer’s Marks”):

U.S. Reg. No.	Mark	Excerpt of Goods
3018157	POLLY POCKET	“Dolls,” in International Class 28.
3587497	POLLY POCKET	“Providing educational and entertainment services via global computer website featuring games, product trivia and activities intended for consumers of all ages,” in International Class 41.
3720200	POLLY	“Games and playthings, namely, toy figures, play figures, action figures, and accessories for all of the foregoing,” in International Class 28.
4569122	POLLY PLAZA	“Dolls, doll clothing and doll accessories, doll playsets and accessories therefor,” in International Class 28.
5623613	POLLY POCKET (stylized)	“Toys, games and playthings, namely, dolls, doll clothing and doll accessories; doll playsets and accessories therefor; toy figures and accessories therefor; toy figure playsets and accessories therefor; toy vehicles and accessories therefor,” in International Class 28.
5692679	POLLY POCKET (stylized)	“Entertainment services, namely, providing online ongoing webisodes and non-downloadable videos featuring children’s entertainment; providing online computer games; providing an interactive website featuring entertainment information related to children’s entertainment and toys,” in International Class 41.
5814531	POLLY STICK	“Stickers that enable toy figures to attach to their playsets, sold as a component of toy figures and accessories

		therefor; stickers that enable toy figures to attach to their playsets, sold as a component of toy figure playsets and accessories therefor,” in International Class 28.
5904233	POLLY POCKET	“Clothing, namely, tops, shirts; headwear,” in International Class 25.
5783508	POLLY POCKET	“Backpacks; purses, wallets,” in International Class 18.

Some of these registrations are now incontestable.

7. Opposer, its predecessors, and/or its affiliates have used one or more of Opposer’s Marks in interstate commerce in the United States consistently since at least 1991, and Opposer has owned relevant U.S. registrations since 2005. As a result, Opposer is the rightful and exclusive owner of Opposer’s Marks. Opposer’s Marks have been used in connection with the goods and services set forth in the chart above, as well as other goods and services through common law use (collectively, “Opposer’s Goods and Services”).

8. Opposer’s Goods and Services provided under Opposer’s Marks have been extensively and continuously sold, marketed, advertised and promoted throughout the United States.

9. As a result of the quality of Opposer’s Goods and Services, and of the widespread promotion thereof under Opposer’s Marks, the goods have met with great commercial success and widespread consumer and media recognition. In addition, Opposer’s Marks have become symbols of Opposer and its related companies.

Applicant and Its Application to Register ROLLY POLLY

10. Applicant’s Application, filed March 24, 2019, seeks to register Applicant’s Mark for use with goods described as “*Play mats for infants for use with infant toys; play mats containing infant toys; children’s multiple activity toys for preschoolers,*” in International Class 28 (“Applicant’s

Goods”). The Application is filed on an intent-to-use basis under Section 1B of the Lanham Act, and does not claim any use in commerce.

11. Applicant is not in privity to, nor the successor-in-interest of, any party that may have used Applicant’s Mark in commerce in the United States in the past.

Likelihood of Confusion, 15 U.S.C. §1052(d)

12. Opposer incorporates herein by reference each of the foregoing paragraphs.

13. Opposer has priority based on its valid and subsisting registrations for Opposer’s Marks and based on its prior and continuous use of Opposer’s Marks in commerce in connection with Opposer’s Goods and Services long before the filing date of the opposed Application and before any use in commerce by Applicant.

14. Applicant’s Mark is highly similar to Opposer’s Marks in appearance, sound, and commercial impression. Each of Opposer’s Marks consists, either solely or primarily, of the word POLLY, and “Polly” is the dominant portion of each such mark. Applicant’s Mark consists of the two-word phrase “Rolly Polly.” Since “rolly” is merely an adjective that modifies the proper noun “Polly,” “Polly” is the dominant portion of Applicant’s Mark. Further, “rolly” would be likely to be pronounced in a way that rhymes with, and thus reinforces the commercial impression of, the word “Polly.” Therefore, the dominant portions of the two parties’ marks are materially identical in both appearance and pronunciation. They would be virtually indistinguishable to the average American consumer viewing or hearing the marks in the normal course.

15. Applicant’s Goods are materially identical, or at least closely adjacent, to Opposer’s Goods and Services as well. Applicant’s Goods consist of play mats and activity toys. These are a subset of Opposer’s Goods and Services, which include toys, playsets, and other

playthings. A consumer encountering Applicant's Goods sold under Applicant's Mark would be likely to assume they are an extension of, or related to, Opposer's Goods and Services. Therefore, Applicant's Goods are closely related to the entire portfolio of Opposer's Goods and Services.

16. Opposer's Marks are or have been used in several mainstream channels of trade, including the same ecommerce websites and retailers through which Applicant's Goods are likely to be sold. Opposer's Goods and Services have been marketed generally across virtually all demographic lines—not only to children, but also to the family members who purchase gifts for children and to adults nostalgic for the toys bearing Opposer's Marks. Consumers who are familiar with Opposer's Marks are highly likely to be among those who may purchase, pay to use, or see advertisements for Applicant's Goods, and Applicant's Application does not place any limits on the consumers to whom Applicant's Goods are marketed or provided.

17. Applicant's Goods, customers, and marketing channels so closely overlap with Opposer's Goods and Services as to be highly likely to cause confusion or mistake, or to deceive consumers under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. §1052(d).

WHEREFORE, Opposer prays that Application Serial No. 88353675 be refused registration, that no registration be issued thereon to Applicant and that this opposition be sustained in favor of Opposer.

A filing fee for the Notice of Opposition in the required amount is being submitted herewith via electronic funds transfer.

Respectfully submitted,

Date: December 30, 2020

By: /Brian D. Wassom/

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CERTIFICATE OF TRANSMITTAL

I hereby certify that on December 30, 2020, this correspondence is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA).

/Kimberly Bankeroff/