

ESTTA Tracking number: **ESTTA541633**

Filing date: **06/04/2013**

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

Proceeding	92055672
Party	Plaintiff Castleberry Toys, Inc.
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY 344 MAPLE AVENUE WEST , SUITE 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Motion for Sanctions
Filer's Name	Matthew H. Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	06/04/2013
Attachments	Mot for Sanctions.pdf(918145 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**The Trademark Trial and Appeal Board**

In the matter of U.S. Registration 3,986,956,  
For the mark TIPI,  
Registered on the Principal Register on June 28, 2011.

Castleberry Toys, Inc.,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92055672
	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**PETITIONER'S MOTION FOR SANCTIONS**

COMES NOW the Petitioner, Castleberry Toys, Inc. (hereinafter "Petitioner") by and through counsel, The Trademark Company, PLLC, and pursuant to §527.01(a) of the TBMP files the instant motion for sanctions seeking an order sanctioning Playmates Toys, Inc. (hereinafter "Registrant") for its failure to timely provide the Petitioner its responses to Interrogatories and request for production of documents per the Board's Order dated May 2, 2013. In support of the instant motion, Petitioner states as follows:

1. On or about May 16, 2012 Petitioner filed the instant cancellation proceeding to cancel the Registrant's registration of the mark TIPI as identified in Registration No. 3,986,956.
2. On December 19, 2012 Petitioner submitted to Registrant, via U.S. Mail, postage pre-paid, *Petitioner's First Set of Interrogatories to Registrant*. See Exhibit A.
3. On December 19, 2012 Petitioner submitted to Registrant, via U.S. Mail, postage pre-paid, *Petitioner's First Requests for Production of Documents to Registrant*. See Exhibit B.
4. Answers and/or responses to the above-referenced discovery were due no later than January 23, 2013.
5. On January 23, 2013 Counsel for Registrant mailed a letter to the Counsel for Petitioner stating that their client would not be responding to the Petitioner's Discovery Requests. See Exhibit C.

6. On February 14, 2013, Counsel for Petitioner called and spoke with the Counsel for Registrant in a good faith effort to obtain the Discovery Responses. During this call, Counsel for Registrant politely confirmed the information presented in his January 23, 2013 letter to Petitioner's Counsel.

7. On February 28, 2013, counsel for the Petitioner filed its Motion to Compel Discovery in order to receive the discovery responses that were missing from the Registrant.

8. On May 2, 2013 the Board issued an Order granting the Petitioner's Motion to Compel and indicated that the Registrant had until June 1, 2013 to provide its discovery responses to the Petitioner. *See Exhibit D.*

9. To date, no response has been received from Registrant to either *Petitioner's First Set of Interrogatories to Registrant* or *Petitioner's First Requests for Production of Documents to Registrant*.

10. WHEREFORE in consideration of the foregoing, pursuant §527.01(a) of the TBMP Petitioner respectfully moves the Board for an Order sanctioning the Registrant, in the nature of striking any and all discovery responses which could have been responsive to *Petitioner's First Set of Interrogatories to Registrant* and *Petitioner's First Requests for Production of Documents to Registrant* further striking any and all testimony or proposed testimony by the Registrant relating to the same.

Respectfully submitted this 4<sup>th</sup> day of June, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/  
Matthew H. Swyers, Esq.  
344 Maple Avenue West, Suite 151  
Vienna, VA 22180  
Tel. (800) 906-8626 x100  
Facsimile (270) 477-4574  
mswyers@TheTrademarkCompany.com  
Counsel for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial And Appeal Board**

In the matter of U.S. Registration 3,986,956,  
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	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and accurate copy of the foregoing Motion to for Sanctions was mailed via first-class U.S. Mail, postage pre-paid, this 4<sup>th</sup> day of June, 2013 to the following:

Michael G Frey, Esq.  
Wood Herron & Evans LLP  
2700 Carew Tower, 441 Vine Street  
Cincinnati, OH 45202

/Matthew H. Swyers/  
Matthew H. Swyers

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board

In the matter of U.S. Registration 3,986,956,  
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vs.	:	Cancellation No. 92055672
	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT**

TO: Playmates Toys, Inc., c/o Michael G. Frey, Wood, Herron & Evans LLP, 441 Vine Street,  
2700 Carew Tower, Cincinnati, OH 45202-2917

FROM: Castleberry Toys, Inc., by and through counsel, Matthew H. Swyers, Esq., The  
Trademark Company, 344 Maple Avenue West, Suite 151, Vienna, VA 22180.

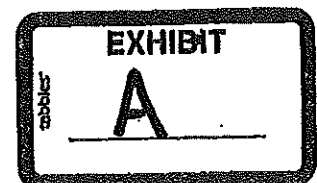
COMES NOW the Petitioner Castleberry Toys, Inc. (hereinafter "Petitioner"), by and through counsel, The Trademark Company, and in accordance with the applicable Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure (hereinafter "TBMP") propounds the following interrogatories upon the Registrant Playmates Toys, Inc. (hereinafter "Registrant") to be answered within the time provided by the applicable rules of the Board.

**DEFINITIONS**

A. The term "Petitioner" shall mean Castleberry Toys, Inc. and/or any present or former servant, agent, attorney or other representative acting on its behalf.

B. The term "Registrant" shall mean Playmates Toys, Inc. and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

C. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.



D. The term “in the U.S.” shall mean use in interstate and/or intrastate commerce in the United States.

E. The term “Registrant’s Mark” refers to the mark TIPI as identified in .S. Registration 3,986,956.

F. The term “Petitioner’s Mark” refers to the mark TIPPI TURTLE 'THE WISER ONE' as identified in U.S. Trademark Application No. 85/255,373.

G. The term “you” shall mean the party or person to whom these interrogatories are propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom these interrogatories are propounded has the right to or does control or direct and activities.

H. The phrase “legal action” shall mean submission of correspondence to the Registrant or any third party not a party to this proceeding requesting that they cease use of a mark, or institution of any legal proceeding in the United States Patent & Trademark Office, state, or federal court or agency.

I. The term “live” shall mean currently registered with the U.S. Patent and Trademark Office and not dead as it applies to abandoned, cancelled, or successfully opposed trademarks.

J. The term “commerce” is define as “all commerce which may lawfully be regulated by Congress” as found in TEMP sec 901.01.

### INTERROGATORIES

INTERROGATORY NO. 1: State in detail the nature of the business, operations, and activities conducted by Registrant.

ANSWER:

**INTERROGATORY NO. 2:** Identify each person who has knowledge of Registrant's selection and adoption of Registrant's Mark and who has knowledge of how and when it was first used, how it is used today, and how it is intended to be used in the future. To the extent this interrogatory identifies more than ten (10) persons, limit the response to only those persons who possess the most knowledge.

**ANSWER:**

**INTERROGATORY NO. 3:** Describe in detail all goods and services formerly and currently being offered by Registrant in conjunction with Registrant's Mark and any goods or services intended to be used in connection with Registrant's Mark in the future identifying the dates on which Registrant first began such use(s) and/or and the geographic areas in which such use occurred and/or will occur.

**ANSWER:**

**INTERROGATORY NO. 4:** Describe any periods since Registrant's alleged date of first use, as set forth in the preceding paragraph, during which Registrant did not make use of the Registrant's Mark.

**ANSWER:**

**INTERROGATORY NO. 5:** Identify the date on which Registrant alleges it first began use of Registrant's Mark in interstate commerce in connection with each good and/or services identified in your response to Interrogatory No. 3 and how such use occurred.

**ANSWER:**

**INTERROGATORY NO. 6:** With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the channels of distribution by which the goods and/or services of Registrant reach or are expected to reach the ultimate user or consumer as well as the geographic regions in which such channels of distribution were conducted and the dates such channels of distribution were instituted.

**ANSWER:**

**INTERROGATORY NO. 7:** With respect to each good and/or service identified in your response to Interrogatory No. 3, indicate the dates each good and/or service was first available for sale beyond the State of Oregon and by what medium such goods were offered for sale.

**ANSWER:**

**INTERROGATORY NO. 8:** With respect to each good and/or service identified in your response to Interrogatory No. 3, list all retail establishments each good and/or service has been, is, or will be available for sale, the establishments' geographic locations, and the dates each good and/or service was, is, and/or will be available at each retail store.

**ANSWER:**



**INTERROGATORY NO. 9:** With respect to each good and/or service identified in your response to Interrogatory No. 3, describe in detail the manner in which Registrant's Mark is promoted in the United States, including but not limited to the media and mode of any marketing efforts as well as the geographic regions in which said promotions are conducted as well as the dates when such manners were instituted.

**ANSWER:**

**INTERROGATORY NO. 10:** For each medium identified in the preceding interrogatory, state the annual expenditure for advertising and promotion since inception.

**ANSWER:**

**INTERROGATORY NO. 11:** Identify the person or persons who, from the date of Registrant's claimed date of first use of Registrant's Mark to the present, have been responsible for the marketing and/or promotion of Registrant's goods and services under Registrant's Mark indicating the period during which each person was so responsible.

**ANSWER:**

**INTERROGATORY NO. 12:** Identify all advertising agencies, public relations agencies or market research agencies that Registrant has used, participated with or cooperated with in advertising, marketing or promoting the goods/services identified in response to Interrogatory No. 3, and indicate the time period(s) during which such activities were conducted.

**ANSWER:**

**INTERROGATORY NO. 13:** Identify any and all licensees of Registrant's Mark, if any, and in so doing, describe each licensing arrangement and identify each product and/or service offered or sold by each licensee under Registrant's Mark or similar designation.

**ANSWER:**

**INTERROGATORY NO. 14:** Describe in detail all quality control measures adopted and used by Registrant in the oversight of the use of Registrant's Marks by the licensees identified in the preceding interrogatory.

**ANSWER:**

**INTERROGATORY NO. 15:** Describe in detail any adversarial proceeding or challenge, if any, involving Registrant's Mark, or any similar designation, before the Trademark Trial and Appeal Board, Bureau of Customs, Federal Trade Commission, or any court or tribunal, including but not limited to any challenge by cease and desist letter to Registrant's Mark aside from the instant proceedings instituted by the Petitioner.

**ANSWER:**

**INTERROGATORY NO. 16:** Identify and describe any and all opinions relating to the Registrant's Mark, including but not limited to Registrant's use of the mark vis-à-vis Petitioner's Mark.

**ANSWER:**

**INTERROGATORY NO. 17:** Identify and describe any and all investigations, polls, studies, evaluations, analysis, tests, ratings, or surveys relating to Registrant's Mark.

**ANSWER:**

**INTERROGATORY NO. 18:** Describe in detail how Registrant maintained Registrant's date of first use.

**ANSWER:**

**INTERROGATORY NO. 19:** Describe in detail Registrant's awareness and knowledge of Petitioner, Petitioner's business activities, Petitioner's Marks, and/or Petitioner's use of Petitioner's Mark, prior to as well as subsequent to Registrant's use of Registrant's Mark and filing of its federal trademark application(s), and in so doing, state the dates on which each person or persons gained such knowledge or awareness.

**ANSWER:**

**INTERROGATORY NO. 20:** Identify the intended and actual class or type of consumers of Registrant's products and services offered and/or sold under or in connection with Serial's Mark or similar designation.

**ANSWER:**

**INTERROGATORY NO. 21:** Identify each lay and expert witness Registrant has consulted with regard to the facts and circumstances of this matter and if expected to testify state the subject matter of each such witnesses' expected testimony, and identify each exhibit that Registrant intends to introduce or rely upon in connection with each such witness.

**ANSWER:**

**INTERROGATORY NO. 22:** Identify and describe all documents Registrant expects to use, introduce or rely upon at the time of trial in this matter.

**ANSWER:**

**INTERROGATORY NO. 23:** Identify all persons who were consulted or participated in the preparation of the answers to these interrogatories.

**ANSWER:**

**INTERROGATORY NO. 24:** Describe all facts and evidence upon which Registrant will rely to establish the defense set forth by Registrant that Petitioner's action fails to state a claim upon which relief may be granted.

**ANSWER:**

**INTERROGATORY NO. 25:** Has the Registrant taken legal action against a third party to police or enforce its alleged rights in Registrant's Mark? If so, please set forth, with particularity the following:

1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

**ANSWER:**

**INTERROGATORY NO. 26:** Aside from the instant litigation between the parties hereto, has a third-party taken legal action against the Registrant regarding the Registrant's use of Registrant's Mark?

If so, please set forth, with particularity the following:

1. The name and address of the party against whom the legal action was instituted;
2. the date(s) during which the legal action transpired;
3. a complete description of the legal action taken;
4. if the legal action took place before the United States Patent & Trademark Office or any state or federal court or agency, the name of the entity in which it took place including the proceeding number assigned thereto;
5. a complete description of the allegations included in the legal action;
6. the result of the legal action.

**ANSWER:**

Respectfully submitted this 19<sup>th</sup> day of December, 2012.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

mswyers@thetrademarkcompany.com

Counsel for Petitioner

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

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Petitioner,	:	
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vs.	:	Cancellation No. 92055672
	:	
Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**Certificate of Service**

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served this 19<sup>th</sup> day of December, 2012 upon the Registrant's Attorney of Record via first class mail at the address listed on the TARR database as reported this day as follows:

Michael G. Frey  
Wood, Herron & Evans LLP  
441 Vine Street  
2700 Carew Tower  
Cincinnati, OH 45202-2917

/Matthew H. Swyers/  
Matthew H. Swyers

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

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vs.	:	Cancellation No. 92055672
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Playmates Toys, Inc.,	:	
	:	
Registrant.	:	

**PETITIONER'S FIRST SET OF REQUEST FOR  
PRODUCTION OF DOCUMENTS TO REGISTRANT**

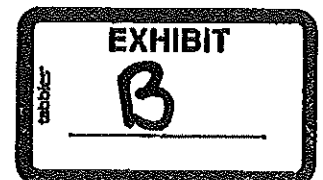
**TO:** Playmates Toys, Inc., c/o Michael G. Frey, Wood, Herron & Evans LLP, 441 Vine Street,  
2700 Carew Tower, Cincinnati, OH 45202-2917

**FROM:** Castleberry Toys, Inc., by and through counsel, Matthew H. Swyers, Esq., The  
Trademark Company, 344 Maple Avenue West, Suite 151, Vienna, VA 22180.

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and TBMP §408,  
Petitioner Castleberry Toys, Inc. (hereinafter "Petitioner") requests that Registrant Playmates  
Toys, Inc. (hereinafter "Registrant") produce and permit Petitioner to inspect and copy the  
Documents (as defined hereinafter) and things designated below at The Trademark Company,  
PLLC, 344 Maple Avenue West, Suite 151, Vienna, VA 22180 within the time permitted by the  
applicable rules.

**DEFINITIONS**

A. "Documents" includes "things" and is defined in the broadest sense permitted by  
the Federal Rules of Civil Procedure and the Trademark Rules of Practice, including without  
limitation, written documents, audio or video recordings, and computer data together with





printouts of screen displays. "Documents" includes each writing or record not identical to the original.

B. The term "Petitioner" shall mean Castleberry Toys, Inc., and/or any present or former servant, agent, attorney or other representative acting on its behalf.

C: The term "Registrant" shall mean Playmates Toys, Inc. and any present or former servant, agent, attorney or other representative acting on its behalf.

D. "Person(s)" means any individual, firm, partnership, corporation, proprietorship, association, governmental body or any other organization or entity.

E. "Concerning" means relating to, referring to, describing, evidencing or constituting.

F. The terms "Registrant's Mark" refers to the Mark as claimed to be a Mark by Registrant in its Answer to the subject Petition to Cancel.

### REQUESTS FOR PRODUCTION

With respect to any Document specified below for which a claim of privilege or work product is made, please indicate the nature of the Document; identify the name, address, occupation, title and business affiliation of the writer, the addressee and all recipients thereof, the general subject matter to which the Document relates, and its date.

The Documents designated for production are the following:

1. All Documents evidencing, referring, or relating to the selection or adoption by Registrant of Registrant's Mark.

**RESPONSE:**

2. Documents sufficient to identify each Person who participated or was involved in the selection of Registrant's Mark, and with respect to each Person so identified, the nature and scope of his or her involvement.

**RESPONSE:**

3. All Documents evidencing, referring, or relating to the application to register Registrant's Mark by Registrant, and any communication(s) between Registrant or its attorneys and the United States Patent and Trademark Office in connection with Registrant's Mark.

**RESPONSE:**

4. All Documents evidencing, referring, or relating to measures taken by Registrant to determine the availability of Registrant's Mark at any time, including any investigative or background materials on Mark or entities reflected in any trademark search.

**RESPONSE:**

5. All Documents evidencing, referring, or relating to alternative names, phrases, logos, designs or words considered by Registrant, whether or not adopted, in connection with the process that resulted in the adoption of Registrant's Mark for any products or services of Registrant.

**RESPONSE:**

6. All Documents evidencing, referring, or relating to Registrant's first use of Registrant's Mark as trademark or service Mark or name in connection with any products, services, or business activities of Registrant.

**RESPONSE:**

7. All Documents evidencing, referring, or relating to Registrant's use of Registrant's Mark after the first use of Registrant's Mark as trademark or service Mark or name in connection with any products, services or business activities of Registrant.

**RESPONSE:**

8. All Documents evidencing, referring, or relating to goods or services offered by Registrant under or pursuant to Registrant's Mark.

**RESPONSE:**

9. All Documents evidencing, referring, or relating to agreements entered into by Registrant with third parties which relate or refer to the use of Registrant's Mark.

**RESPONSE:**

10. Examples of all advertising, promotional materials, packaging, labeling, data sheets, instructional materials, media documents, or other printed materials evidencing, relating to, or referring to use or promotion of the products or services offered under Registrant's Mark.

**RESPONSE:**

11. Examples of each screen display, link, frame, window, brochure, advertisement, flyer, business card or promotional material Registrant uses in connection with any products or services offered under Registrant's Mark.

**RESPONSE:**

12. Documents sufficient to identify the channels of trade through which Registrant distributes products or offers services under Registrant's Mark including, without limitation, documents sufficient to identify the customers, sales agents, dealerships, distributors or other outlets through which an products or services are or have been sold since Registrant's adoption of Registrant's Mark.

**RESPONSE:**

13. Documents sufficient to identify the geographic areas in which Registrant's products or services bearing Registrant's Mark are or at any time have been distributed or offered for sale.

**RESPONSE:**

14. Documents sufficient to identify the persons that have purchased products or services bearing Registrant's Mark.

**RESPONSE:**

15. Documents sufficient to identify each person who has received any offer of services under Registrant's Mark including any persons who have accessed Registrant's website.

**RESPONSE:**

16. Representative examples of price lists and other documents that show the prices, both wholesale, suggested retail, and any other price category utilized by Registrant, at which products or services under Registrant's Mark have been sold or offered for sale.

**RESPONSE:**

17. Documents sufficient to show Registrant's monthly, if available, or, if not, for each separate period reflected in Registrant's books and records, gross wholesale sales, in dollars and in units, of each of the products or services bearing Registrant's Mark.

**RESPONSE:**

18. All Documents evidencing, referring, or relating to any sales or marketing plans for products or services sold under Registrant's Mark.

**RESPONSE:**

19. All Documents evidencing, referring, or relating to any services sold or offered for sale under Registrant's Mark.

**RESPONSE:**

20. All Documents evidencing, referring, or relating to the types of purchasers or users of any products or services sold under Registrant's Mark, including, but not limited to, any research or studies related to such purchasers or users.

**RESPONSE:**

21. All Documents evidencing, referring, or relating to Registrant's expenditures for each advertising or promotional document, medium, or activity used to advertise or promote products or services under Registrant's Mark.

**RESPONSE:**

22. Documents sufficient to identify the types of purchasers or end users who are or may be expected purchasers or users of any products or services sold under Registrant's Mark in the United States, including, but not limited to, any research or studies related to such purchasers or users.

**RESPONSE:**

23. Documents sufficient to identify any alleged qualities or advantages of Registrant's products or services sold under Registrant's Mark.

**RESPONSE:**

24. Documents sufficient to identify any actual or threatened litigation involving trademark infringement or unfair competition claims in which Registrant has been engaged including any opposition or cancellation proceedings before the United States Patent and Trademark Office.

**RESPONSE:**

25. All Documents which relate or refer to all content displayed on any website maintained or used by Registrant which makes any use of Registrant's Mark.

**RESPONSE:**

26. Each and every document which Registrant will rely upon to establish the claims set forth in its Answer to the Petition to Cancel in this matter.

**RESPONSE:**

27. All specimens submitted to the USPTO in connection with the application for Registrant's Mark.

**RESPONSE:**

28. Each and every document which relates or refers to all bona fide uses of Registrant's Mark.

**RESPONSE:**



Respectfully submitted this 19<sup>th</sup> day of December, 2012.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esq.

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Tel. (800) 906-8626

Facsimile (270) 477-4574

[mswyers@thetrademarkcompany.com](mailto:mswyers@thetrademarkcompany.com)

Counsel for Petitioner





WOOD HERRON & EVANS LLP  
intellectual property law

J. Robert Chambers  
Gregory J. Lunn  
Kurt L. Grossman  
Clement H. Lukon, Jr.  
Thomas J. Burger  
Gregory F. Ahrens  
Wayne L. Jacobs  
Kurt A. Summo  
Kevin G. Rooney  
Keith R. Haupt  
Theodore R. Romaklus  
Thomas W. Humphrey  
Scott A. Stinobruner  
David H. Brinkman

Kristi L. Davidson  
Kathryn E. Smith  
P. Andrew Blatt, Ph.D.  
David E. Jefferies  
J. Dwight Poffenberger, Jr.  
William R. Allen, Ph.D.  
John Paul Davis  
Brett A. Schatz  
Sarah Olte Graber  
David W. Dorton  
Randall S. Jackson, Jr.  
Stephen E. Gillen  
Lori Kraffe  
Glenn D. Bellomy

Steven W. Benintendi, Ph.D.  
Kevin E. Kuehn  
Timothy D. Ardizzono, Ph.D.  
James P. Carey  
David A. Fitzgerald II  
Paul J. Linden  
Sean K. Owens  
W. Scott Gaines  
Jordan E. Morris  
Eric W. Volz  
Lisa M. A. Nolan  
Derek J. Somogy  
Jason D. Sapko  
Patrick J. Palascak

Bruce Tittel\*  
David J. Josephic\*  
Donald F. Frei\*  
David S. Stallard\*  
Joseph R. Jordan\*  
Kenneth B. Garmain\*  
Michael G. Frey\*

\* Of Counsel

EMAIL: MFREY@WHIE-LAW.COM

January 23, 2013

VIA FIRST CLASS MAIL

Matthew H. Swyers, Esq.  
The Trademark Company, PLLC  
344 Maple Avenue, West, Suite 151  
Vienna, VA 22180

Re: **Castleberry Toys, Inc. v. Playmates Toys, Inc.**  
**Cancellation No. 92055672**

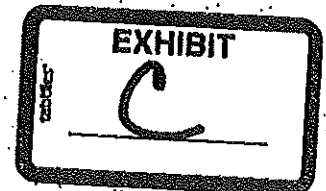
Dear Mr. Swyers:

Please be advised that my client, Playmates Toys, Inc., will not be responding to the discovery requests you served last month in connection with the *Castleberry Toys, Inc. v. Playmates Toys, Inc.* cancellation proceeding. Moreover, we do not have our client's instruction to participate further in the cancellation proceeding.

Very truly yours,

Michael G. Frey

1949840v1



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: May 2, 2013

Cancellation No. 92055672

Castleberry Toys, Inc.

v.

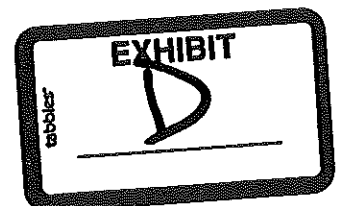
Playmates Toys Inc.

**Nicole Thier, Paralegal Specialist:**

Insofar as the Board is not in receipt of a responsive brief from registrant, petitioner's motion (filed February 28, 2013) to compel is hereby granted as conceded. See Trademark Rule 2.127(a).

In view thereof, registrant is hereby ordered to serve no later than June 1, 2013 its full and complete responses, without objection, to petitioner's interrogatories and request for production of documents. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, (TTAB 1987).

In the event registrant fails to respond to petitioner's discovery requests as ordered herein, the Board may entertain a motion for sanctions, including the entry of judgment pursuant to Trademark Rule 2.120(g), 37 CFR Section 2.120(g).



Cancellation No. 92055672

Trial dates, including the close of discovery  
are reset as follows:

Plaintiff's Pretrial Disclosures	6/1/2013
Plaintiff's 30-day Trial Period Ends	7/15/2013
Defendant's Pretrial Disclosures	7/30/2013
Defendant's 30-day Trial Period Ends	9/13/2013
Plaintiff's Rebuttal Disclosures	9/28/2013
Plaintiff's 15-day Rebuttal Period Ends	10/28/2013

In each instance, a copy of the transcript of  
testimony together with copies of documentary exhibits,  
must be served on the adverse party within thirty days  
after completion of the taking of testimony. See Trademark  
Rule 2.125.

Briefs shall be filed in accordance with Trademark  
Rules 2.128(a) and (b). An oral hearing will be set only  
upon request filed as provided by Trademark Rule 2.129.