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

Proceeding	91264338
Party	Defendant Mattel, Inc.
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Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	02/22/2021
Attachments	Amended Petition to Cancel EMOJI in 12 Classes - Mattel v. Emoji Comp any GmbH.pdf(673968 bytes )

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

<p><i>In re Registration No. 4,868,832 for the trademark EMOJI in Classes 3, 16, 17, 18, 21, 22, 25, 26, 27, 29, 30 and 32</i></p> <p>Mattel, Inc.,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>emoji company GmbH,</p> <p style="text-align: center;">Registrant.</p>	<p>Opposition No.: 91-264338 (parent) Cancellation No.: 92-074645 Cancellation No.: 92-075957</p> <p><b>AMENDED PETITION FOR CANCELLATION</b></p>
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Commissioner for Trademarks  
ATTN: Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Commissioner:

Petitioner, Mattel, Inc., a Delaware corporation, having its principal place of business at 333 Continental Blvd., El Segundo, CA 90245 (“Mattel”), believes that it will be damaged by the trademark shown in Reg. No. 4,868,832 of EMOJI in Classes 3, 16, 17, 18, 21, 22, 25, 26, 27, 29, 30, and 32 (the “Registration”), and hereby petitions to cancel the Registration on the following grounds:

**BACKGROUND AND MATTEL’S ALLEGATIONS**

**A. Mattel and its UNO EMOJI Trademark**

1. Mattel is an American multinational toy and consumer products company founded in 1945. Mattel, through its family of companies, is a world leader in the design, manufacture and marketing of toys, games, playthings, entertainment, clothing, and various consumer products. Mattel’s portfolio of consumer brands includes American Girl®, Barbie®, Fisher-

Price<sup>®</sup>, Hot Wheels<sup>®</sup>, and many others. Mattel has a presence in more than 35 countries and territories, and sells products in more than 100 nations.

2. On April 18, 2016, Mattel filed an application to register UNO EMOJI for “Card games and accessories therefor” in Class 28, which was assigned Serial No. 87/005,050.

3. Mattel disclaimed the exclusive right to use EMOJI apart from UNO EMOJI as shown.

4. On April 21, 2020, Mattel’s application to register UNO EMOJI was published for opposition.

**B. Registrant’s Assertion of its Alleged Rights in EMOJI Against Mattel**

5. On April 29, 2020, Registrant filed a 90-day extension of time to oppose Mattel’s application to register UNO EMOJI.

6. On or around May 29, 2020, Registrant sent Mattel a letter. In the letter, Registrant alleges that it “is the sole and legitimate owner of the trademark “emoji<sup>®</sup>”. [Registrant] company owns almost 1,000 trademarks and trademark applications for the designation emoji <sup>®</sup>, standalone and with other word and/or figurative elements in nearly any and all relevant jurisdictions of the world including (but not limited to) the U.S. ...” Based on these rights, Registrant alleges that Mattel’s use of UNO EMOJI infringes Registrant’s purported rights in the EMOJI mark and demands that it cease use of the mark or take a license. A true and correct copy of this letter is attached hereto as **Exhibit A**.

7. On August 19, 2020, Registrant filed a notice of opposition to Mattel’s application to register UNO EMOJI, which case was assigned Opposition No. 91-264338.

**FIRST BASIS FOR CANCELLATION  
(Abandonment)**

8. Mattel incorporates by reference the allegations contained in Paragraphs 1 to 7 herein.

9. On information and belief, Registrant has never used or is not currently using the EMOJI mark for the goods and services identified in the Registration in the United States.

10. On information and belief, if Registrant has used the EMOJI mark, it does not intend to resume use of the EMOJI mark for the goods and services listed in the Registration within the reasonably foreseeable future.

11. On information and belief, Registrant has not used the EMOJI mark for the goods or services listed in the Registration in the United States for more than three consecutive years, thereby demonstrating a *prima facie* case of abandonment under 15 U.S.C. § 1127.

### **SECOND BASIS FOR CANCELLATION (Failure to Function as a Mark)**

12. Mattel incorporates by reference the allegations contained in Paragraphs 1 to 11 herein.

13. Registrant's EMOJI mark, if used on or in connection with the goods and services identified in the Registration, is not perceived by the relevant public as identifying Registrant's goods and services from those manufactured or sold by others and to indicate the source of the goods and services, even if that source is unknown.

14. "Emoji" is a common term used in an informational and/or ornamental manner on a variety of goods and services offered by third parties that does not function as a trademark or service mark to indicate the source of goods or services and to identify or distinguish them from others. Consumers are accustomed to seeing "Emoji" from multiple sources, and they perceive the word as used on these goods and services as conveying information regarding the content, nature, or quality of the goods and services. The Office has registered at least eleven trademarks on the Principal Registrar with the word EMOJI disclaimed, and registered at least fourteen trademarks with the word EMOJI on the Supplemental Register. These twenty-five trademarks containing the word EMOJI are not owned by Registrant.

15. Registrant's alleged EMOJI trademark does not function as a trademark and is therefore not registrable or protectable under 15 U.S.C. §1127 and other sections of the Lanham Act.

**THIRD BASIS FOR CANCELLATION  
(Descriptiveness)**

16. Mattel incorporates by reference the allegations contained in Paragraphs 1 to 15 herein.

17. On information and belief, Registrant's alleged EMOJI trademark, when used on or in connection with the goods and services identified in the Registration, is merely descriptive of said goods or services. Specifically, each of the goods or services at issue depict or feature emoji, that is, "any of various small images, symbols, or icons used in text fields in electronic communication (as in text messages, e-mail, and social media) to express the emotional attitude of the writer, convey information succinctly, communicate a message playfully without using words, etc." Definition of "Emoji", Merriam-Webster.com, July 6, 2020, <https://www.merriam-webster.com/dictionary/emoji>.

18. Registrant's alleged EMOJI trademark is descriptive without secondary meaning and is therefore not registrable or protectable under 15 U.S.C. §1052(e).

**FOURTH BASIS FOR CANCELLATION  
(Lack of Bona Fide Intent to Use)**

19. Mattel incorporates by reference the allegations contained in Paragraphs 1 to 18 herein.

20. Mattel has conducted an online investigation of Registrant's use of the EMOJI mark for the goods identified in the Registration in the United States and has not discovered any use of the mark by Registrant for the goods at issue.

21. Based on Mattel's investigation, Registrant filed the application underlying the Registration not based on an intent to use the mark for the goods identified in the Registration but for the purpose of expanding its efforts to monopolize use of the term "emoji" into the United States.

22. Based on Mattel's investigation, Registrant's business model is not based upon developing products or services under its purported EMOJI mark, but licensing its purported

rights in the EMOJI mark to companies that are using or plan to use the term “emoji” generically or to describe characteristics of their products and services.

23. On information and belief, Registrant did not have a bona fide intent to use the mark shown in the Registration at the time of filing the application that resulted in the Registration in the United States or at any relevant time thereafter.

24. As a result of having no bona fide intent to use at the time of filing or any relevant time thereafter for any of the goods and services identified therein, the Registration is void ab initio under 15 U.S.C. §1051(b).

\* \* \*

25. Mattel is damaged by the continued registration of the mark shown in the Registration, in that such Registration gives Registrant a *prima facie* exclusive right to the use of “Emoji” for the goods and services identified in the Registration throughout the United States, despite the fact that the mark has been abandoned, fails to function as a trademark, and/or is descriptive, and Registrant did not have the requisite bona fide intent to use the mark in the United States at the time of filing or any relevant time thereafter. Registrant is wrongfully attempting to leverage its alleged broad rights in the “Emoji trademarks” against Mattel’s use of the term as well as the registration of any mark that contains the term EMOJI.

26. Mattel therefore petitions to cancel the Registration under Section 14 of the Lanham Act, 15 U.S.C. § 1064.

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WHEREFORE, Mattel prays that Reg. No. 4,868,832 issued on December 15, 2015 be canceled.

Respectfully submitted,

SHEPPARD MULLIN RICHTER & HAMPTON LLP

Dated: February 22, 2021

/Jill M. Pietrini/

Jill M. Pietrini

Paul A. Bost

1901 Avenue of the Stars, Suite 1600

Los Angeles, California 90067-6017

(310) 228-3700

*Attorneys for Petitioner Mattel, Inc.*

### **CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that this **AMENDED PETITION FOR CANCELLATION** is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 22<sup>nd</sup> day of February, 2021.

Paul A. Bost

Paul A. Bost

### **CERTIFICATE OF SERVICE**

I hereby certify that this **AMENDED PETITION FOR CANCELLATION** is being sent by email to [m.hucke@huckelaw.com](mailto:m.hucke@huckelaw.com) and [e.sal@huckelaw.com](mailto:e.sal@huckelaw.com) on this 22<sup>nd</sup> day of February, 2021.

Paul A. Bost

Paul A. Bost

SMRH:4814-7384-8541.1

# EXHIBIT A





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Hamburg, Germany  
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20148 Hamburg  
Germany

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emoji company GmbH Necklenbroicher Straße 52-54 D-40667 Meerbusch

**Michael Moore**  
**MATTEL, Inc.**  
333 Continental Boulevard  
M1-1518

El Segundo, CA 90245

**United States**

**By email only**

Email:

**Infringement of the registered emoji® trademark**  
**Deadline to React: 12 June 2020**

Dear Sir or Madam,

In this unprecedented time, I sincerely hope this email finds you well.  
Please let me introduce ourselves to you.

We are the emoji company GmbH - “emoji company” -, a well-known and established international licensing company, owner of the globally awarded **emoji®** brand with more than 900 global licensing partnerships, operating DTR programs across the globe with leading retailers such as Walmart or Lidl and owner of the “emoji” trademark ( for more information please see [www.emoji.com](http://www.emoji.com) ).

The reason for contacting you personally today is that we became recently aware that Mattel, Inc. has filed for a trademark application for the mark UNO EMOJI with the USPTO under Serial No. 87005050 and that said application has been published by the USPTO. We have instructed our attorney to file extension to oppose said trademark. The deadline to file opposition against the captioned trademark has been extended until **August 19, 2020**.

emoji company GmbH  
Geschäftsführer: Marco Hüsches  
USt-IdNr. / VAT: DE296964490  
HRB 145161  
Amtsgericht Hamburg

IBAN:  
DE 80 3055 0000 0093 472 751  
BIC: WELADEDNXXX  
Bank: Sparkasse Neuss

Upon further investigation we have become aware that Mattel is using the trademark UNO EMOJI™ for a card game. The use of our federally registered trademark EMOJI in a style and size that is particularly larger than the term UNO and using the indication ™ behind the combined mark UNO EMOJI ™ on card games infringes our federally registered trademarks.

Moreover, Mattel, Inc. is also offering the infringing card game outside of the United States and therefore also violates emoji company's rights in its registered trademark **emoji** ® in those territories, in particular but not limited to the European Union.

emoji company is the sole and legitimate owner of the trademark "emoji®". emoji company owns almost 1,000 trademarks and trademark applications for the designation emoji ®, standalone and with other word and / or figurative elements in nearly any and all relevant jurisdictions of the world including (but not limited to) the U.S., Canada, Europe, China, Japan, South Korea, Australia, Russia, Mexico, Brazil, Turkey, Colombia, Argentina and many other countries across the world.

Please let us be clear from the outset that we reject any argument according to which our trademark shall supposedly be descriptive as clearly misconceived and stress that our trademarks are distinctive, valid and enforceable.

Our trademarks are registered all over the world. They have been examined hundreds of times by the relevant trademark offices in the course of the registration processes. And in all those various countries and trademark systems, the "emoji" trademarks have been found to be distinctive and therefore registrable. Beyond that the trademark has been enforced in opposition and court proceedings where equally the competent authorities have confirmed the trademark's distinctiveness.

Furthermore, we have extensive survey evidence, undertaken by renowned expert surveyors, which confirms and proves beyond doubt that the average consumer conceives the trademark "emoji" arbitrary and not descriptive.

To the questions at hand it is without any relevance that the Oxford dictionary or any other dictionary for that matter might define the term "emoji" as a *digital* image used in *electronic communication*. Mattel's card games are neither digital nor do they concern electronic communication.

With regard to Mattel's use of "emoji" we are therefore clearly facing an infringement of our exclusive trademark rights.

For various territories including the EU and the USA the emoji ® mark has been registered for various goods and services, in particular emoji company is the owner of Registration Nos:

Country	Registration No	Trademark	Classes
USA	5700040	emoji	28
USA	5778247	emoji	28
USA	5343650	emoji	9, 14, 20, 24, 28
Canada	TMA943604	emoji	3, 6, 8, 9, 14, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32, 33, 38, 41, 45
Canada	1970657	emoji	1, 2, 3, 4, 6, 7, 9, 13, 15, 17, 19, 23, 28, 29,

			30, 32, 37, 39, 40, 41, 42, 44
<b>EU</b>	017943017	emoji	28
<b>EU</b>	017941993	emoji	28
<b>EU</b>	013098348	emoji	28
<b>EU</b>	016665341	emoji THE ICONIC BRAND	3, 10, 11, 12, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 41
<b>EU</b>	017989050	emoji THE ICONIC BRAND	28
<b>EU</b>	016761983	emoji 1	3, 14, 16, 18, 24, 25, 28, 29, 30, 32
<b>Switzerland</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Switzerland</b>	1220980	emoji	28, 38, 41, 45
<b>Argentina</b>	2843539	emoji	28
<b>Australia</b>	1702972	emoji	28, 38, 41, 45
<b>Australia</b>	1689321	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Bosnia &amp; Herzegovina</b>	1220980	emoji	28, 38, 41, 45
<b>Bosnia &amp; Herzegovina</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Brazil</b>	908645759	emoji	28
<b>Costa Rica</b>	264512	emoji	16, 25, 28, 30
<b>China</b>	1220980	emoji	28, 38, 41, 45
<b>China</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Colombia</b>	16-22379	emoji	16, 18, 20, 24, 25, 28, 30
<b>Egypt</b>	1220980	emoji	28, 38, 41, 45
<b>Egypt</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>El Salvador</b>	2017160041	emoji	3, 9, 16, 18, 21, 24, 25, 28, 29, 30, 32, 41
<b>Guatemala</b>	2017-003532	emoji	28
<b>Honduras</b>	150964	emoji	28
<b>Hong Kong</b>	303383442AB	emoji	3, 14, 24, 28, 30, 32
<b>India</b>	1220980	emoji	28, 38, 41, 45
<b>India</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Indonesia</b>	IDM000620748	emoji	28
<b>Iran</b>	1220980	emoji	28, 38, 41, 45
<b>Iran</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Japan</b>	1220980	emoji	28, 38, 41, 45
<b>Japan</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32

<b>Mexico</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Mexico</b>	1220980	emoji	28, 38, 41, 45
<b>Mexico</b>	1464084	emoji	3, 9, 14, 16, 18, 21, 24, 25, 28, 29, 30, 32, 35, 41
<b>Morocco</b>	1220980	emoji	28, 38, 41, 45
<b>Morocco</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>New Zealand</b>	1233267	emoji	9, 14, 16, 18, 20, 24, 28, 30, 32
<b>Norway</b>	288180	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>OAPI</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Panama</b>	10683	emoji	3, 9, 11, 14, 16, 18, 20, 24, 25, 26, 28, 30, 32, 41
<b>Paraguay</b>	1773221	emoji	28
<b>Peru</b>	16052	emoji	3, 9, 11, 14, 16, 18, 20, 24, 25, 26, 28, 30, 41
<b>Chile</b>	1263235	emoji	28
<b>Philippines</b>	1233267	emoji	3, 9, 16, 18, 21, 24, 28, 29, 30, 32
<b>South Korea</b>	1220980	emoji	28, 38, 41, 45
<b>South Korea</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Russia</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Russia</b>	1220980	emoji	28, 38, 41, 45
<b>Serbia</b>	1220980	emoji	28, 38, 41, 45
<b>Serbia</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32
<b>Singapore</b>	1233267	emoji	3, 9, 16, 21, 24, 28, 29, 32
<b>South Africa</b>	2015/21763	emoji	28
<b>Taiwan</b>	01766256	emoji	3, 14, 16, 18, 24, 25, 28, 30, 32
<b>Thailand</b>	170113382	emoji	28
<b>Thailand</b>	1233267	emoji	9, 25, 28
<b>Turkey</b>	1219755	emoji	3, 14, 16, 18, 24, 25, 27, 28, 29, 30, 32, 33, 34
<b>Turkey</b>	12209800	emoji	28, 38, 41, 45
<b>Turkey</b>	1233267	emoji	3, 9, 14, 16, 17, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 32

<b>Ukraine</b>	1233267	emoji	3, 16, 18, 20, 24, 25, 28, 29, 30, 32
<b>United Arab Emirates</b>	268098	emoji	28
<b>Uruguay</b>	484218	emoji	28
<b>Vietnam</b>	1233267	emoji	3, 9, 16, 18, 21, 24, 25, 28, 29, 30, 32

The emoji ® marks are in full force and effect. The above registrations can be verified via the search tools of TMView.

emoji company has been selling and licensing its “emoji”-Portfolio in connection with these goods and services through an international network of renowned agents and dealers in the U.S. and more than 130 other countries for many years. Companies such as The Hershey’s Company, Ferrero ( globally for KinderJoy and Nutella), Danone, Nestlé, Dole, Finsbury, Kellogg’s, Bimbo, Ragolds, Pepsico, license both, emoji® brand icons specifically developed by emoji company for the licensing market and the emoji® brand, to promote their respective products in advertising. Official emoji® products are being sold in more than 130 countries by more than 900 global corporations. These include firms such as Sony Pictures Animation Inc. (“The Emoji Movie”), Zara, Walmart ( DTR ), C&A, Nikon, Fuji, Random House, Universal Music, The Swiss Post amongst many others, amounting to sales in excess of \$ 500 million in 2017 and more than \$ 800 million in 2018 and 2019.

Accordingly, the emoji® brand has been voted on position 3 of the Most Influential Brands in the Power List of the licensing industry magazine directly behind Lego and Coca-Cola.

More recently, emoji company has granted Sony Pictures Animation a trademark license for its extensive merchandising business associated with “The Emoji Movie”. The entire merchandise is labeled and used under a trademark license of the emoji company. Quite obviously, the animated movie “The Emoji Movie” brought a particularly huge media response.

Our success did not come by chance, but is a result of tireless work on literally all continents and years of consistent product and brand building. In particular, we are proud of looking back on a very constructive, successful and long-lasting partnership with leading retailers all over the world.

As a result of the use of the emoji ® mark in connection with high quality goods and services, the mark has become widely known and famous, is closely identified with emoji company, and represents substantial, valuable goodwill.

Since we devoted very substantial time, money and effort in developing the global reputation of the emoji ® trademarks, you will certainly appreciate that we are sensitive to any third party uses of designations which could lead to consumer confusion as to the source or sponsorship of particular products or services, or which could negatively impact the trademark significance of the emoji ® trademarks.

emoji company consistently enforces its trademark rights against infringers through all appropriate legal means. However, under the circumstances, emoji company is prepared to try to resolve this matter amicably provided that Mattel cooperates fully with emoji company and establishes to emoji company's satisfaction that this was a one-time error of judgment on Mattel’s part and not a systematic effort to profit from or devalue emoji company's intellectual property. Given that we have filed an extension to oppose Mattel’s trademark application that

will expire on **August 19, 2020**, we would appreciate if you give this matter your immediate attention.

We have come to notice that as part of its card game "UNO", Mattel is licensing in third party IP rights, as for example UNO Wellie Wishers, UNO DC Super Hero Girls, UNO Cars, UNO Despicable Me, UNO Fast & Furious, UNO Justice League, UNO Dory, UNO Super Mario Bros., UNO Batman vs. Superman, UNO Teenage Mutant Ninja Turtles, etc. We, therefore, rest on the assumption that Mattel does respect third party IP rights.

Hence, emoji company proposes to enter into negotiations of terms regarding Mattel's continued use of emoji company's IP rights under a license agreement that reflects fair industry standards.

We therefore respectfully request your response by

**Thursday, June 12, 2020, 3:00 p.m. Central European Time**

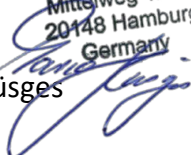
whether you are willing to pursue this cooperative approach and, if so, who shall be our contact for the details.

We would be pleased if we could resolve this matter quickly and amicably.

emoji company expressly reserves all of its legal and equitable rights and remedies, though, including the right to seek injunctive relief and recover monetary damages. Quite obviously, nothing in this letter shall be considered as a waiver of any rights and/or claims of emoji company and/or its agents and/or its licensees. Furthermore, this letter is not intended to give an exhaustive recitation of our and/or our agents' and/or licensees' rights. Therefore, we expressly reserve any rights and claims under both law and equity including, in particular, but not limited to claims for damages and penalties as well as the right to take further legal action without any further notice.

We are happy to hear back from you and seek to find a fast and amicable solution to this matter anticipating that Mattel who is expecting themselves that third parties respect its IP rights understands this industry well and does continue honor trademark rights of third parties.

Best regards,

emoji company GmbH  
Mittelweg 125c  
20148 Hamburg  
Germany  
  
Marco Hüsge  
( CEO )