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TTAB

October 31, 2005

Cheryl Butler
Trademark Trial and Appeal Board
P. O, Box 1451
Alexandria, VA 22313-1451

Re: Mattel, Inc. v. Patricia G. Briden
Opposition No. 91-160087

Dear Ms. Butler:

Please file the enclosed Motion for Summary Judgment with this case.

Please give me a call if you have any questions or if you need additional information. Thank you!

Sincerely,

William G. Sykes

cc: Jill M. Pietrini, Esquire
Patricia G. Briden

11-02-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #64

Docket No. 12838-163

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Matter of Application No. 78/223,428 for the mark: SOCK-UM Mattel, Inc., Opposer, Vs. Patricia G. Briden, Applicant.	Opposition No. 91-160087 **APPLICANT'S MOTION OF SUMMARY JUDGMENT**

Pursuant to Federal Civil Procedure Rules 56 and the Trademark Trial and Appeal Board ("TTAB"), Applicant, Patricia G. Briden ("Briden"), hereby moves the Board for Summary Judgment against Opposer, Mattel, Inc.,("Mattel") on the following grounds:

1. Opposer, Mattel, has submitted all of their evidence to the Applicant, Briden. There is no evidence in this case to show that anyone would be confused to believe that Briden's Mark, SOCK-UM, is confusingly similar to Mattel's Mark, ROCK'EM SOCK'EM ROBOTS. Mattel has not proved Briden's application would cause a likelihood of confusion, mistake, or deception as to the source or origin of Mattel's goods and Briden's goods.

2. Mattel has not submitted any evidence to show that an average purchaser will have the likelihood of confusion as to the source or origin of Mattel's

goods and Briden's goods. The test of likelihood of confusion is not whether the marks can be distinguished when subjected to a side-by-side comparison, but whether the marks are sufficiently similar that there is a likelihood of confusion as to the source of the goods or services. When considering the similarity of the marks, "[a]ll relevant facts pertaining to the appearance and connotation must be considered." *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000). In evaluating the similarities between marks, the emphasis must be on the recollection of the average purchaser who normally retains a general, rather than specific, impression of trademarks. *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

3. Mattel has not submitted any evidence to prove that the public will be confused as to whether the goods belong to Mattel or Briden. The goods or services do not have to be identical or even competitive in order to determine that there is a likelihood of confusion. The inquiry is whether the goods are related, not identical. The issue is not whether the goods will be confused with each other, but rather whether the public will be confused about their source. *See Safety-Kleen Corp. v. Dresser Indus., Inc.*, 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975). It is sufficient that the goods or services of the applicant and the registrant are so related that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source. *See, e.g., On-line Careline Inc. v. America Online Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000) (ON-LINE TODAY for Internet connection services held likely to be confused with ONLINE TODAY for Internet content); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984) (MARTIN'S for wheat bran and honey bread held likely to be confused with MARTIN'S for cheese); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985) (CONFIRM for a buffered solution equilibrated to yield predetermined dissolved gas values in a blood gas analyzer held likely to be confused with CONFIRMCELLS for diagnostic blood reagents for laboratory use); *In re Jeep Corp.*, 222 USPQ 333 (TTAB 1984) (LAREDO for land vehicles and structural parts therefor held likely to be confused with LAREDO for

pneumatic tires).

4. The burden in this case is for Mattel to prove that the consumer will erroneously believe that Briden's goods are produced by or associated with Mattel. Mattel has not met this burden of proof.

5. Applicant further alleges that there is no longer any material fact in this action genuinely in dispute.

WHEREFORE, Applicant, Patricia G. Briden, prays that she have summary judgment against Opposer, Mattel, Inc., and her costs expended in this action.

Respectfully submitted,

William G. Sykes, Esquire
USPTO Registration No. 50704
3669 Seagull Bluff Drive
Virginia Beach, VA 23455-1721

Attorney for Patricia G. Briden

Dated:
October 31, 2005

CERTIFICATE OF MAILING

I hereby certify that this Motion for Summary Judgment is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to Commissioner for Trademarks, Attn: Cheryl Butler, Trademark Trial and Appeal Board, Box 1451, Alexander, Virginia 22313-1451 and Jill M. Pietrini, Esquire at MANATT, PHELPS & PHILLIPS, LLP, 11355 W. Olympic Blvd., Los Angeles, California 90064 on this 31st day of October, 2005

William G. Sykes, Esquire