

ESTTA Tracking number: **ESTTA329627**

Filing date: **01/29/2010**

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

Proceeding	91170977
Party	Plaintiff Mattel, Inc.
Correspondence Address	Edward T. Colbert, William M. Merone Kenyon & Kenyon LLP 1500 K Street, NW Washington, DC 20005 UNITED STATES tmdocketdc@kenyon.com, wmerone@kenyon.com, ekane@kenyon.com, cstull@kenyon.com, ecolbert@kenyon.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	William M. Merone
Filer's e-mail	wmerone@kenyon.com, ekane@kenyon.com, tmdocketdc@kenyon.com
Signature	/William M. Merone/
Date	01/29/2010
Attachments	Pages from NOR - Cases and Articles Part 3 of 3.pdf ( 71 pages )(667371 bytes )

Barbie's most notable crony is Ken, with whom she has shared an undefined relationship since 1961. In the 1985 Mattel catalog, Barbie's canopy "dream bed" remains, like Barbie herself, a single. About 20 million Barbie fashion outfits also were sold in 1984.

If Barbie appears even more glamorous these days, Berard contends, it is because the times are that way. "When you came into the '80s," she says, "women returned to romance, to fashion. When the mod look was in, in the '60s, Ken had that long hair that stood up, and we say now, 'God, that was awful.' But that was what people were wearing."

Because Barbie's life is mapped two years in advance, Mattel is now conceptualizing her 1987 activities. This two-year lag helps to explain why there wasn't a Barbie physical workout center until this year, deep into America's fitness boom.

The legend of Barbie, as told by Mattel, began in 1958 when Ruth Handler, the wife of one of the company's founders, conceived the idea of a "fashion" doll and named it after her daughter. The first Barbie, sold a year later, was a rather sickly looking white figure with a ponytail, high-heeled shoes, hoop earrings, bright red lips, heavy eyeliner, pointed eyebrows and a zebra-striped swimsuit. Ironically, she looked like someone who would feel perfectly at home in a new wave dance club, circa 1985, which is something no one would say about the current Barbie.

Since her birth, Barbie has acquired an entire family tree of friends, relatives and pets. She has lived in at least nine different residences, changed her style several times and undergone three distinct face-lifts. She went off to college in 1970, when Mattel offered a "campus" that did not include a classroom. She has gone from Jackie Kennedy pillbox hats to Jane Fonda workout clothes. She ice skated in the 1960s, jogged in the '70s and now, of course, pumps iron. She learned to move her legs in 1964, first twisted at the waist in 1967, spoke her first words in 1968, acquired a suntan in 1971 and learned to make kissing sounds in 1979.

Barbie has become a hot investment, with any doll over 10 years old valued at from \$30 to \$1,000.

There have been, among others, Fashion Queen Barbie and Fashion Jeans Barbie, Talking Barbie and Spanish Talking Barbie, Sun Valley Barbie and Sun Lovin' Barbie, Malibu Barbie and Newport Barbie -- not to mention Irish Barbie, Swiss Barbie, Spanish Barbie, Swedish Barbie, Black Barbie, Hispanic Barbie, Eskimo Barbie and East India Barbie. Such international Barbies have basically required only costume changes, although Japanese Barbie was given Oriental facial features three years ago.

Now Barbie has joined the computer age, in a line of action toys known as Epyx's Computer Activity Toys. In Barbie's game, the player races the clock to get Barbie ready for her date with Ken. The player needs to choose from hundreds of clothing styles, colors and patterns as well as decide which hairstyle to choose.

But Barbie is no revolutionary, no wave maker. You will see no Single Parent Barbie nor Gay Ken. Anything that surrounds Barbie, Berard emphasizes, must be "very positive." It must "really benefit Barbie's image." As a result, Barbie is never on the cutting edge, despite the fact that Mattel likes to point out she had an astronaut outfit in 1965. More typical was Western Barbie, who was issued in 1981, fully a year after the "urban cowboy" look peaked under the weight of the movie of the same name.

Barbie is ageless, without parents, asexual. "She is not from a place or from a time," Berard says. "She's whatever you want her to be. And that's so, so important to her success."

But Irish Barbie and the other foreign versions notwithstanding, she is also the American Dream taken to its limits, a miniature representation of much that is good or bad about America. She stands, in exaggerated form, for the things Americans most respect and fear about themselves. Her apparently sensual body is actually a paean to the belief

that, along with being too rich, you can never be too thin. If her measurements were translated into human terms -- assuming she was an average 18-year-old girl standing 5 feet, 4 1/2 inches tall -- she would be a sickly 29 1/2-16 3/4-26 3/4.

Mattel has heard all the criticisms of this way of life and is publicly unimpressed. Barbie as Sybarite? "I don't think that's true," Berard counters. "The fact that little girls think in idealistic ways is what dreaming is all about. You don't dream the reality because the reality often isn't much fun to dream about. So you try to get a little bit above reality. Which is where I think Barbie is."

Nor is Mattel ready to accept the notion that Barbie has, through her new career, become America's tiniest yuppie. "We can honestly say that when we developed the career theme we never thought of yuppies," Wszalek says. "That's just a faddish thing that's happened coincidentally."

Copyright ? 1985 Sun-Sentinel

--- INDEX REFERENCES ---

COMPANY: [MATTEL INC](#)

INDUSTRY: (Entertainment (1EN08); Consumer Products & Services (1CO62); Games & Toys (1GA85))

REGION: (USA (1US73); Americas (1AM92); North America (1NO39))

Language: EN

OTHER INDEXING: (ADAPTING; AMERICAN DREAM; IRISH BARBIE; MATTEL; MATTEL INC) (Barbie; Barbies; Black Barbie; Eskimo Barbie; Fashion Jeans Barbie; Gay Ken; Hispanic Barbie; Jane Fonda; Ken; Newport Barbie; Sun Lovin; Sybarite; Talking Barbie; Tanning; Tom Wszalek; Wszalek)

KEYWORDS: TOYS; DOLLS

EDITION: SUN-SENTINEL

Word Count: 1549

4/23/85 SFLSUN-SENT 1E

END OF DOCUMENT

# Exhibit 80

550 F.Supp.2d 657, 233 Ed. Law Rep. 606  
(Cite as: 550 F.Supp.2d 657)



United States District Court,  
W.D. Texas,  
Austin Division.  
The BOARD OF REGENTS, the UNIVERSITY OF  
TEXAS SYSTEM, on Behalf of the UNIVERSITY  
OF TEXAS AT AUSTIN  
v.  
KST ELECTRIC, LTD.  
No. A-06-CA-950 LY.

Feb. 25, 2008.

**Background:** University, as registered trademark holder, brought action against electric company asserting a number of state and federal trademark claims alleging company's logos infringed university's logo. Electric company moved for summary judgment.

**Holdings:** The District Court, [Lee Yeakel, J.](#), adopted the opinion of [Andrew W. Austin](#), United States Magistrate Judge, which held that United States Magistrate Judge held that:

- (1) genuine issue of material fact as to whether university knew about company's logo at least six years prior to filing suit precluded summary judgment on laches defense;
- (2) genuine issue of material fact as to whether university's delay in asserting its rights was inexcusable precluded summary judgment on laches defense;
- (3) genuine issue of material fact as to whether company's logos created a likelihood of confusion with respect to university's logo precluded summary judgment on trademark infringement and unfair competition claims; and
- (4) evidence failed to demonstrate extremely high recognition of university's logo necessary to show fame, as required to entitle logo to anti-dilution protection.

Motions granted in part and denied in part.

West Headnotes

[\[1\] United States Magistrates 394](#) [27](#)

[394](#) United States Magistrates

[394k24](#) Review and Supervision by District Court  
[394k27](#) k. De Novo Hearing or Review. [Most Cited Cases](#)

A party's failure to timely file written objections to a magistrate judge's proposed findings, conclusions, and recommendations in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court.

[\[2\] Trademarks 382T](#) [1534](#)

[382T](#) Trademarks

[382TVIII](#) Violations of Rights

[382TVIII\(D\)](#) Defenses, Excuses, and Justifications

[382Tk1533](#) Delay in Assertion of Rights; Laches

[382Tk1534](#) k. In General. [Most Cited Cases](#)

Laches, in a trademark infringement action, comprises three elements: (1) delay in asserting one's trademark rights, (2) lack of excuse for the delay, and (3) undue prejudice to the alleged infringer caused by the delay.

[\[3\] Trademarks 382T](#) [1539](#)

[382T](#) Trademarks

[382TVIII](#) Violations of Rights

[382TVIII\(D\)](#) Defenses, Excuses, and Justifications

[382Tk1539](#) k. Acquiescence. [Most Cited Cases](#)

In order to establish the defense of acquiescence in a trademark infringement action, a defendant must prove that: (1) the plaintiff knew or should have known of the defendant's use of the trademark; (2) the plaintiff made implicit or explicit assurances to the defendant; and (3) the defendant relied on the assurances.

[\[4\] Trademarks 382T](#) [1535](#)

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.