



TO: News editors, assignment editors, reporters and columnists: business, finance and investment news

FROM: Mega Bloks Inc.

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RE: News release – For immediate distribution

MEGA BLOKS CONFIRMS CANCELLATION OF LEGO SHAPE MARK BY EUROPEAN UNION TRADEMARK OFFICE

MONTREAL, August 2, 2004 — Mega Bloks Inc. (TSX: MB) confirmed today that on July 30, 2004 the Cancellation Division of the European Union Office for Harmonization in the Internal Market, Trademarks and Designs ("OHIM") upheld Mega Bloks' request and declared invalid a three-dimensional trademark registration of the Lego-related company Kirkbi A/S for a block design in relation to "construction toys". The block was originally created by Harry Fisher Page of the UK company Kiddicraft Ltd. in the late 1930's, and later reproduced and marketed by Lego, Mega Bloks and other traders in the toy business.

OHIM issued a fifteen-page decision which closely examined the principles governing the registrability of non-traditional marks such as the impugned brick design and concluded, on the basis of the evidence before it, that Mega Bloks' request was well-founded as the subject matter of the mark was prohibited by the absolute ground set out in Article 7(1)(e)(ii) of the Community Trademark Regulation ("CTMR"), namely "signs which consist exclusively of...the shape of goods which is necessary to obtain a technical result."

In conducting its analysis, the Cancellation Division applied the leading case law of the European Court of Justice, which in 2002 - approximately three years after Kirkbi obtained its registration - decided the matter of *Koninklijke Philips Electronics NV v. Remington Consumer Products Ltd.* (C-299/99 of June 18, 2002). As OHIM noted, the *Philips v. Remington* case held that the shape of a product is unregistrable if the essential functional features of that shape are attributable only to a technical result, even where other shapes would allow the same technical result to be obtained. OHIM properly concluded that the Lego block was such a shape, and also found that the public policy rationale of *Philips v. Remington*, which involved the shape of an electric shaver, correspondingly applied to the Lego brick: individual traders should not be allowed to use a trademark registration to acquire or perpetuate exclusive rights relating to technical solutions. Patents can protect technical solutions, such as the means of connection of a toy brick, but patents are limited in time and Lego's patents for the basic brick have long expired. Put simply, a trademark registration cannot be used to confer a monopoly on a useful product configuration, which the Lego block design was proven to be on all the evidence, including admissions by Lego's own engineering and legal executives as well as their counsel.

Lego's defence that the brick design was well known and had inherent or acquired distinctiveness was not considered relevant by OHIM. OHIM did not acknowledge or deny any



distinctiveness but simply referred to the text of the CTMR which excludes any shape from registration if the essential functional features of that shape are attributable only to a technical result, while adding that even acquired distinctiveness cannot overcome a finding of technical necessity under Article 7(1)(e)(ii).

Mega Bloks has learned that Lego has announced its intention to appeal the OHIM decision. Mega Bloks expects that Lego's appeal would be fruitless given the sound basis for OHIM's decision, the precedent set by the ECJ in the *Philips v. Remington* case and its consistency with the decisions of most other trademark offices and the courts where Mega Bloks and others have challenged Lego's claims to ownership of the block design.

About Mega Bloks

Mega Bloks creates high quality, fun and educational construction toys that inspire kids and parents to play and learn together. The MEGA BLOKS® system features basic and themed construction toys for boys and girls of all ages. Headquartered in Montreal, Mega Bloks is a global organization employing approximately 1000 people with sales in over 100 countries.

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Source: Mega Bloks Inc.

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