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HEADLINE: Supreme Court spurns **Barbie** suit;

'Blond bimbo' song doesn't infringe on Mattel trademark doll, justices say

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Forget about Barrister **Barbie, or Barbie** Takes the Bar Exam. The supreme symbol of American girlhood won't be appearing, even by proxy, before the U.S. Supreme Court.

The justices, without comment, denied a request from toymaker Mattel Inc. that the high court decide if its trademark on the doll was infringed by the suggestive 1997 pop song "**Barbie** Girl."

The song, by the Danish band Aqua, featured the baby-doll voice of lead singer Lene Nystroem proclaiming, "I'm a blond bimbo girl, in a fantasy world," and imploring boyfriend Ken to "make me walk, make me talk, do whatever you please."

It was a worldwide hit and Aqua's biggest success before the group disbanded in 2001 after a four-year run. In its damages suit against MCA Records, Mattel argued that the song was an attempt to exploit the doll's success and appeal to the same market of preteen girls.

Mattel said MCA ran television ads for the song during Saturday morning children's shows as well as after-school time slots; sold many CDs with the title in the same bright pink associated with the doll; and made a promotional video with

scenes that resembled Barbie products. Mattel said its surveys showed that many customers were confused about whether the song was part of a Mattel advertising campaign.

"Mattel received e-mails from young girls who believed that 'Barbie' had written or performed the song, and asked for copies of it," the company's lawyers said in written arguments to the Supreme Court.

But the court declined to review July's ruling by the U.S. Court of Appeals in San Francisco, which said "Barbie Girl" was a parody protected by the constitutional right to free speech.

No one hearing the song or seeing its title would be misled into thinking Mattel had anything to do with it, said the three-judge appellate panel, which upheld a district court judge's dismissal of the suit.

"Nor, upon hearing Janis Joplin croon, 'Oh Lord, won't you buy me a Mercedes-Benz,' would we suspect that she and the carmaker had entered into a joint venture," said Judge Alex Kozinski of the Court of Appeals.

"To be sure, MCA used Barbie's name to sell copies of the song," Kozinski said. "However . . . the song also lampoons the Barbie image and comments humorously on the cultural values Aqua claims she represents" -- expression that is protected, the court said, by the First Amendment to the Constitution.

Mattel attorney Seth Waxman said Monday's Supreme Court rebuff did not reflect the court's approval or disapproval of the appellate ruling, and should not affect Mattel's vigorous efforts "to protect its valuable intellectual property."

The El Segundo (Los Angeles County) company has filed other suits to protect Barbie's honor and \$1.5 billion a year in worldwide sales. The San Francisco appeals court refused in 2001 to stop a Utah artist from selling picture postcards showing Barbie in sexual poses. Another suit against an artist who sold modified Barbies as artworks was settled out of court.

MCA, based in Santa Monica, said it was pleased with the Supreme Court's action. "We always contended that the suit involved creative expression and free speech," the company said in a statement. The case is Mattel Inc. vs. MCA Records, No. 02-633. E-mail Bob Egelko at begelko@sfchronicle.com.

GRAPHIC: PHOTO, The popular Barbie doll racks up \$1.5 billion a year in worldwide sales. / Carlos Avila Gonzalez/The Chronicle 1998

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