

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

In the Matter of Trademark Application
Serial No. 78/229,875
For the mark MESSAGE IN A BOTTLE
Published in the Official Gazette on
June 29, 2004

GOLD SHELLS, INC.,
a California corporation,
Opposer,

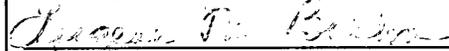
v.

KEITH CANGIARELLA,
Applicant.

Opposition No. _____

CERTIFICATE OF EXPRESS MAILING UNDER 37 CFR §2.198

I hereby certify that the Notice of Opposition is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR §2.198, mailing label number ED448781783US, in an envelope addressed to: U.S. Patent & Trademark Office, Assistant Commissioner for Trademarks, Box TTAB Fee, 2900 Crystal Drive, Arlington, VA 22202, on October 21, 2004.


Lugene M. Borba

Date: October 21, 2004

NOTICE OF OPPOSITION

Opposer, Gold Shells, Inc., a California corporation, doing business as "Message in a Bottle" at 3401 Shawnee Drive, #61, Modesto, California 95356, and formerly at 725 Paradise Road, Modesto, California 95351, believes that it will be damaged by registration of the mark shown in Trademark Application Serial No. 78/229,875, and hereby opposes the same.

Applicant's application was filed on March 25, 2003, and was published for opposition in the Official Gazette on June 29, 2004. Opposer timely filed with the Trademark Trial & Appeal Board a request for extension of the time for filing a notice of opposition, and on August 27, 2004, the Trademark Trial & Appeal Board granted to Opposer an extension of time until October 27, 2004. The mark applied for is the trademark MESSAGE IN A BOTTLE in Class 16 for novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; kits comprised of bottles,

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paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing, claiming first use on March 10, 1998, and first use in commerce on June 10, 1998.

As grounds of opposition, Opposer alleges as follows:

1. Opposer is the owner of U.S. service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in Class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, which was registered on the Principal Register on May 4, 1999. Said registration was based on an intent-to-use application filed in the U.S. Patent & Trademark Office on January 6, 1997, which is a date prior to the date of the filing of Applicant's application and prior to the date of Applicant's claimed dates of first use. Under Section 7(c) of the Lanham Act, Opposer has a priority right to the mark based on the filing date of its predecessor's original intent-to-use service mark application, January 6, 1997, which is prior to either Applicant's filing date, which was March 25, 2003, or Applicant's claimed first use, which was March 10, 1998. Said registration of Opposer is valid and subsisting and is conclusive evidence of Opposer's exclusive right to use said mark in commerce on the services specified in said registration, Opposer's predecessor having timely filed a combined affidavit of continuing use under Sections 8 and 15 of the Lanham Act between the fifth and sixth anniversaries of Opposer's registration date. In view of the fact that the respective marks of Opposer and Applicant are identical, and in view of the related nature of the services for which Opposer's mark was registered and the goods for which Applicant's application has been filed, it is alleged that Applicant's mark so resembles Opposer's registered mark as to be likely to cause confusion, or to cause mistake, or to deceive.

2. Opposer's ownership of its registration is based on an assignment from its predecessor, Roger Rojas, who is a principal of Opposer and its Chief Executive Officer, said assignment having been executed on October 5, 2004, and mailed to the Patent & Trademark Office for recording on October 6, 2004, accompanied by the appropriate recording fee.

3. Since January 16, 1999, Opposer or its predecessor have been, and Opposer is now,

actually using the mark MESSAGE IN A BOTTLE in connection with the sale of services as described in the registration and as a trademark in connection with the sale of goods consisting of novelty, favor, and souvenir bottles containing messages and greetings, identical to some of the goods set forth in Applicant's application. Under Section 7(c) of the Lanham Act, Opposer has a priority right to the mark through constructive use based on the filing date of its predecessor's original intent-to-use service mark application, January 6, 1997, which is prior to either Applicant's filing date, which was March 25, 2003, or Applicant's claimed first use in commerce, which was June 10, 1998. Use by Opposer and its predecessor has been valid and continuous since the date of first use and has not been abandoned. Furthermore, Applicant uses the mark on services which are identical to those for which Opposer has registered its mark, namely receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others. Said mark of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer and its predecessor through a substantial amount of time and effort in advertising and promotion. In view of the fact that the respective marks at issue are identical and that the nature of the goods and services of the respective parties are substantially similar, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake, or to deceive.

4. Applicant is not a person who has used the mark MESSAGE IN A BOTTLE prior to the application filing date of Opposer's predecessor, or has filed an application to register the mark or has registered the mark prior to said date, or has filed a foreign application to register the mark on the basis of which he has acquired a right of priority, and therefore Applicant does not fit any of the exceptions to Opposer's right of priority under Section 7(c) of the Lanham Act.

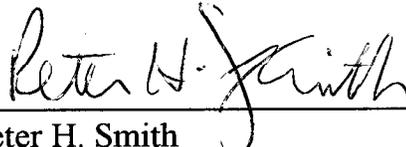
5. Since January 16, 1999, and through constructive use since January 6, 1997, Opposer and its predecessor have been, and Opposer is now, operating under the designation MESSAGE IN A BOTTLE in selling communication services which include the transmission of communications through goods which are the same as some of those recited in Applicant's

application. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Opposer with said designation. In view of the fact that Applicant's mark is identical to Opposer's designation, and in view of the substantially similar nature of the uses thereof, it is alleged that Applicant's mark consists of and comprises matter that may disparage and falsely suggest a connection with Opposer, and therefore is not registrable under Section 2(a) of the Lanham Act.

6. Opposer is informed and believes and therefore alleges that Applicant's application is not supported by actual use of the mark on the goods described in the application, and that Applicant's specimens submitted in support of his application are not genuine samples of uses of the mark which have been made in commerce.

WHEREFORE, Opposer prays that said application serial no. 78/229,875 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Dated: October 21, 2004.



Peter H. Smith
Attorney for Gold Shells, Inc., Opposer

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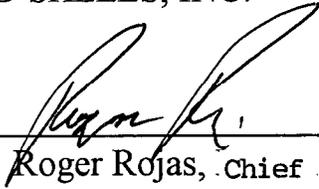
APPOINTMENT OF ATTORNEY

Opposer hereby appoints Peter H. Smith, Attorney at Law, a member of the Bar of the State of California, to act as the attorney for Opposer herein, in place and stead of Jeffrey C. Cannon, Attorney at Law, with full power to prosecute this opposition, to transact all relevant business with the Patent & Trademark Office and in the United States Courts and to receive all official communication in connection with this opposition.

Dated: October 21, 2004.

GOLD SHELLS, INC.

By: _____


Roger Rojas, Chief Executive Officer



10-21-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. # 2:

TTAB

PETER H. SMITH

ATTORNEY AT LAW

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& OREGON STATE BARS

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October 21, 2004

VIA EXPRESS MAIL

U.S. Patent & Trademark Office
Assistant Commissioner for Trademarks
Box TTAB Fee
2900 Crystal Drive
Arlington, VA 22202

Re: Notice of Opposition
Gold Shells, Inc. v. Cangiarella
Application Serial No. 78/229,875

Ladies/Gentlemen:

I am enclosing an original and three copies of a notice of opposition as referenced above. Please note that an extension of time to file this opposition was previously granted by the Trademark Trial & Appeal Board on August 27, 2004, extending the time for opposition to October 27, 2004.

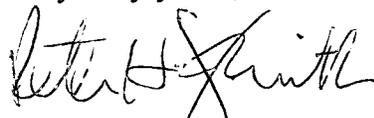
Since the opposer obtained the extension of time through other counsel, I am also enclosing an original and three copies of an appointment of myself as attorney, signed by the opposer.

I am also enclosing a check in the amount of \$300.00, payable to the Commissioner of Patents and Trademarks, as the filing fee.

Please file this notice of opposition and the appointment of attorney ^{and} give notice thereof to the applicant. Please mark one of the enclosed copies of each of the enclosed documents with the case number and your filing stamp and return them to me in the enclosed stamped, self-addressed envelope, and issue a schedule for the opposition proceeding.

Thank you.

Very truly yours,


Peter H. Smith

PHS/lmb

Enclosures

cc: Mr. Roger Rojas, Gold Shells, Inc.

10-21-2004

U.S. Patent & TMO/c/TM Mail Rpt: Dt. #22

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