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

Proceeding	91162780
Party	Defendant Keith Cangiarella
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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  
Mark: MESSAGE IN A BOTTLE

Message in a Bottle, INC.,  
a California corporation,

Opposer,  
v.

KEITH CANGIARELLA,  
Applicant.

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In the Matter of Trademark  
Registration No.: 2,243,269  
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,  
Petitioner,  
v.

Message in a Bottle, Inc,  
Opposer

Opposition No. 91162780

Cancellation No. \_\_\_\_\_

**APPLICANT'S MOTION FOR  
RECONSIDERATION OF THE DECISION**

**APPLICANT'S MOTION FOR RECONSIDERATION OF THE DECISION**  
**"IN PRO PER"**

Applicant, Keith Cangiarella, (hereinafter "Applicant") pursuant to 37 CFR § 2.127(b) hereby moves this Honorable Board reconsider its decision on June 15, 2010.

1. In the Board's order, page seven it states - "Included with the notice of reliance were documents from the file of the registration sought to be cancelled (Exhibits H, I, and a second Ex. J)." Exhibit H is in fact an Office Action sent to the Opposer, for a new trademark application Serial # 76/556304 for "Message in a Bottle", applied for on November 3, 2003. This was given no weight in the decision and was made available to the Boards review.

In reviewing this office action the Examiner illuminates and highlights numerous of the Applicant's points from the Applicant's Briefs;

The examining attorney refused the mark under "Descriptive Refusal" - " The applicant's MESSAGE IN A BOTTLE immediately tells something about the goods - a message in the form of text or graphics images printed on paper," enclosed in a container, presumably a "bottle"(per the applicant's identification of goods). No imagination, thought or perception is required to determine the nature of the goods from the terminology." This simple statement demonstrates the Opposer's fraud perpetrated upon the United States Patent and Trademark Office, in the Opposer's Registration. This also shows that had the Examiner of the Original application of the Registration in question, had any hint that the opposer would have been placing a piece of paper into a bottle, or more aptly put by the board "a communication in a bottle", the examiner would have required an amendment of the goods and services and a reclassification.

Further, "Identification of Goods/Services - The identification of goods and services is unacceptable as indefinite. The applicant may adopt the following identification, if accurate; Printed products, namely text and/or graphics images printed on paper featuring(identify subject matter) enclosed in a glass container in Class 16. TMEP § 1402.01." This further illuminates the Fraud perpetrated by the Opposer, clearly the USPTO was misled by the good and services in the Opposer's Registration.

The Opposer in application Serial # 76/556304 classified the goods and services under Class 9, Class 9 is Electrical and Scientific Apparatus, the examiner stated, "Classification - If applicant adopts the suggested amendment to the identification of the goods, the applicant must amend the classification to International Class 16. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401 et seq." This clearly demonstrates the Opposer's intent to commit fraud once again, both times the Opposer was represented in by learned and qualified legal counsel, and yet they clearly intentionally committed fraud.

Finally, in the Applicant's notice of Reliance filed May 27, 2008, Exhibit A, "Interrogatory No 1: Describe each product sold by Opposer under designation MESSAGE IN A BOTTLE?

Response: Communication devices, namely text and graphic images printed on paper and enclosed in a glass container, which may or may not be decorated with text or and/or images, as requested by customers. Opposer's products are further described at Opposer's Website, messageinabottle.com." Clearly the USPTO found issue with those goods and services, and they

are a far cry from communications in a novelty, favor, and souvenir bottle containing message and greetings, invitations, promotional materials of other, and advertising materials of other.

2. Regarding Exhibits W, X and Y completely comply with Trademark 704.08 Printed Publications 37 CFR § 2.122(e) Printed publications and official records, In lieu of the actual "printed publication or a copy of the relevant portion thereof," the notice of reliance may be accompanied by an electronically generated document which is the equivalent of the printed publication or relevant portion, as, for example, by a printout from the **NEXIS computerized library of an article published in a newspaper or magazine of general circulation.**

Weyerhaeuser Co. v. Katz, 24 USPQ2d 1230 (TTAB 1992); and International Ass'n of Fire Chiefs, Inc. v. H. Marvin Ginn Corp., 225 USPQ 940, 942 n.6 (TTAB 1985) (NEXIS printout of excerpted stories published in newspapers, magazines, etc. are admissible because excerpts identify their dates of publication and sources and since complete reports, whether through the same electronic library or at a public library, are available for verification), rev'd on other grounds, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). Exhibits W, X and Y are clearly market at the end of each article ©2009 Nexis. Since these exhibits were so dismissed and no full weight given to them, the Applicant asks the Board to revisit them.

Exhibit X clearly demonstrates Roger Rojas was using the mark Liquor Stores and Retail Alcoholic Beverages, clearly not for communications in a bottle - the sending and receiving of messages, printed on paper, inserted into a bottle and transmitted to others.

Exhibits W and Y, clearly demonstrate that Exhibit V would have been available to the general public as the information was released to the general public via Press Releases, and further the telecommunication general public would have had reason to read information in Exhibit V. Thusly, the consuming public in general and in the telecommunication field would have had knowledge of the internet, and the Message in a Bottle project that clearly demonstrates the receiving of communications of other, recorded in written form and transmitted to others. Also exhibits O and V, are from archival journals for the computer and telecommunications industry, prior to the Opposer clarifying his registration with his statement of use, third parties researching trademarks would have considered the goods and services to point to computers, the internet and telecommunications, both O and V exhibits demonstrates what third parties would have come

across in that general public arena. The applicant or any other party had no idea that those communications would end up in a bottle until 1999.

3. The Board states in its decision page 13, "Request for admission No. 12. Applicant also states the opposer is not rendering "telecommunications" services and, in his response to Interrogatory 26, which asked for the applicant's basis for denying opposer's registration was valid, stated that "applicant has no information that would suggest that Opposer or its predecessor has ever engaged in any services that would properly or legally be characterized as telecommunication services or which would otherwise be properly classified within international Class 38".

The applicant is correct, the services of the opposer constitute receiving communication from others, recording such communications in written or printed form and transmitting such communications to others.

The Hon'ble Board has relied on the decision in *Kemin Indus Inc. v. Watkins Prods. Inc.* 192 USPQ 327, 329 (TTAB 1976) which states that 'Class 38 includes mainly services allowing at least one person to communicate with another by a sensory means. Such services includes those which transmit messages from one person to another.'

The service of the opposer is characterized as 'receiving communication from others, recording such communication in written or printed form and transmitting such communication to others.'

It is humbly submitted that in this case there is intervention of a third person in the communication between two persons communicating with one another. And the intermeddler constitute the opposer who receives communications from the person who wishes to send his message to another person, records such communication in written or printed form and then transmit such communication to the other. The sequence of the communication from the sender to receiver is thus broken by the infiltration by the intermeddler and the final receipt of the message takes the form of written messages incorporated into decorative bottles.

See pages 158 - 159 of Opposer's Testimony part one April 16, 2008, Exhibit V, states clearly that the US postal service will be delivering the communication in a bottle not Roger Rojas, or Message in a Bottle, Inc. Western Union receives communications from other, records them in written or printed form, and transmits them to others, via Western Union offices, and Western Union delivery people direct communication. The Opposer did not advise the USPTO that it would not be transmitting the messages indirectly but directly.

Moreover the applicant most humbly raise an apprehension as to the ambiguity and wide interpretation that could be attributed to the term 'sensory means'. Even by limiting ourselves to a literal interpretation the word 'sensory means', it is so wide so as to encompass in itself the touch of a mother of her child as constituting telecommunication.

It is also humbly submitted that giving utmost importance to such an ambiguous verdict which erroneously describes the perception by sensory means as telecommunication would most alarmingly stand in the doorsteps of legal interpretation of such expressly precise term as the word 'telecommunication'.

4. Page 16 of the Board's Decision, "In fact, his testimony that the heading of this class was merely "communications" at the time he filed the application supports his good faith belief that his services belonged in Class 38" Please kindly revisit the reasons stated above in point 3, and revisit the opposer brief filed Dec. 19, 2009, Page 19, " I represented Rojas...I used a version of the International Schedule of Trademark Classification which was published in Appendix A of Hawes, James E., Trademark Registration Practice which listed Class 38 as a service class entitled "Communications". I did not consult any other text or publications.... presented TTAB proceeding of August 11, 2006." The Opposer's skilled attorney admits he did not properly do the research to correctly classify the services.

More overly important is the statement from page 18 of the same brief, " However, this is not the case. In fact, the evidence shows that there is no change in form or content of the information sent and received by Opposer or Applicant in the transmission of their communications." This is a most fraudulent statement, as the Applicant can see the Board has reviewed the print outs of the websites, if carefully reviewed the Board would see, the Opposer receives orders via internet, in standard Times new roman font, that text is then taken reviewed cut and pasted into a word document or some other word processing program, the font is changed, spelling errors are corrected, spacing may be revised, it is then printed, inserted into a bottle, the bottle is place inside a decorative box, which is placed in an outer protective carton, which is then labeled with the address of the recipient of the product, finally it is given to the US postal service for delivery to the recipient. A dramatic change from a simple text message delivered via the world wide web or telephone.

From 1997 to 1999, the USPTO had no clear vision of what the Opposer's intents were, any third party or the applicant would not have been able to determine the exact nature of the services until the Opposer filed its statement of use in 1999. That is when it was partially clarified, in 1999, twelve plus months after the Applicant began using the mark on his products.

The USPTO, nor the applicant or any other party had any knowledge that the Opposer would be placing its communications into a novelty, favor, and souvenir bottle containing message and greetings, invitations, promotional materials of other, and advertising materials of other, until 1999. The Board has rendered no evidence nor has the Opposer placed any exhibits into evidence that show that would have been clear before 1999, twelve plus months after the Applicant began using the Mark.

5. The Board has placed great weight and importance on the emails submitted by Roger Rojas, Ex. X., Ex Z, and Ex. Y. These emails make no direct mention of the Applicant, the applicant's company 'DreamWeaver Studios', the applicant's website <http://www.bottlemeamessage.com>. The board states in its order, page 31, " For example, it includes the statement, "Although it is said imitation is the sincerest form of flattery, Messageinabottle.com, wants to assure you that we are the only company legally registered to sell and distribute the Message in a bottle ® service and product" This clearly demonstrates that there are many users of the term message in a bottle, and those emails could have been directed to any website, company, or individual.

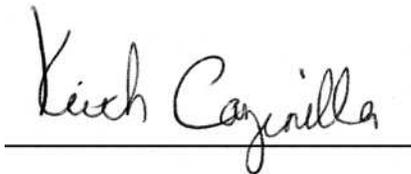
6. The examiner of the Opposer's intent to use application did not understand the goods and services being rendered by the Opposer, and the applicant finds it hard to believe had the Opposer's Counsel told the Examiner that his communications would end up on a piece of paper in a bottle, the examiner surely would have recommended further clarification of the goods and services and a class change

7. The Board stated had the Original examiner of the Opposer's intent to use application or when the Opposer sent in its statement of use if the Examiner felt cause to have the application amended they would have. Yet, when the applicant applied for his mark, the USPTO Examiner did a trademark search compared the Applicant's mark and goods and services to all marks on file, and found that none of the marks or the goods and services were Likely to Cause Confusion.

8. The opposer has only opposed part of the applicant's good and services, the Opposer makes clear in its brief and testimony, they do not provide kits. See Opposer's Brief and Testimony. Since the Opposer has no opposition to the following goods and services - kits comprised of bottles, paper for creating promotional messages, advertising messages, greeting messages and invitations and packaging and boxes for mailing - the applicant requests if the Board still finds reason to believe a likelihood of confusion for - novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others and advertising materials of others or the Opposer did not commit fraud. The Applicant request the Board allow the registration for the mark for the following good and services - kits comprised of bottles, paper for creating promotional messages, advertising messages, greeting messages and invitations and packaging and boxes for mailing. As the Opposer has not made any claim against those goods and services, nor that his mark encompasses those goods or services, he denies both these in his testimony and brief.

#### CONCLUSION

In view of the facts above Applicant respectfully request and prays the Board reconsider its order, and dismiss the Opposition and grant the Motion to cancel the registration on the grounds of Fraud

A handwritten signature in black ink that reads "Keith Cangiarella". The signature is written in a cursive style and is positioned above a solid horizontal line.

Keith Cangiarella  
"In Pro Per"  
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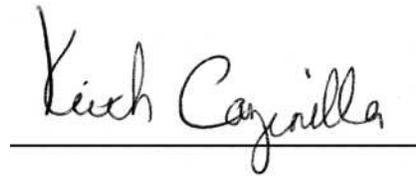
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I hereby certify that this correspondence is being deposited with the US postal service as Priority mail in an envelope addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board P.O. Box 1451 Alexandria, VA 22313-1451

Certificate of Service

I hereby certify a copy of the foregoing **MOTION FOR RECONSIDERATION OF THE DECISION** was priority mailed to Mr. Peter H. Smith Attorney at law, 3436 Beckwith Road, Modesto, CA. 95358 and on July 13, 2010

A handwritten signature in cursive script that reads "Keith Cangiarella". The signature is written in black ink and is positioned above a solid horizontal line.

Keith Cangiarella  
February 20, 2008