

ESTTA Tracking number: **ESTTA360183**

Filing date: **07/27/2010**

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

Proceeding	91162780
Party	Plaintiff Message In A Bottle, Inc. f/k/a Gold Shells, Inc.
Correspondence Address	Peter H. Smith Peter H. Smith, Attorney at Law 3436 Beckwith Road Modesto, CA 95358 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Mark R. Leonard
Filer's e-mail	mleonard@davisandleonard.com
Signature	/mark r. leonard/
Date	07/27/2010
Attachments	miab.response.motion.recon.pdf (4 pages)(21603 bytes)

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

MESSAGE IN A BOTTLE, INC. Opposer, v. KEITH CANGIARELLA Applicant	Opposition No.: 91,162,780 Application Serial No.: 78/229,875 Mark: MESSAGE IN A BOTTLE
KEITH CANGIARELLA Petitioner, v. MESSAGE IN A BOTTLE, INC. Registrant	Counterclaim for cancellation Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE
OPPOSER MESSAGE IN A BOTTLE, INC.'S RESPONSE TO APPLICANT'S MOTION FOR RECONSIDERATION	

OPPOSER MESSAGE IN A BOTTLE, INC. (“Opposer”) hereby opposes Applicant Keith Cangiarella’s (“Applicant”) Motion For Reconsideration (“Applicant’s Motion”), filed July 13, 2010.

I. INTRODUCTION

Applicant filed an application to register the mark MESSAGE IN A BOTTLE. Opposer filed an opposition to that application based on likelihood of confusion with its prior registration for the identical mark. Applicant subsequently brought a counterclaim for cancellation of Opposer’s prior registration on the basis of alleged fraud on the PTO.

In its June 15, 2010 decision the Board sustained the opposition and denied Applicant's counterclaim. Applicant now seeks reconsideration of that decision, primarily arguing that the Board erred in denying his fraud claim. Because Applicant cannot show that the Board erred in its decision, Applicant's motion should be denied in its entirety.

II. ARGUMENT

A. Applicant Merely Restates His Fraud Arguments Without Addressing The Deficiencies In That Claim.

Applicant first argues that the Board erred in its decision by allegedly failing to consider an office action for an application which was not subject to this proceeding. A motion for reconsideration should not "be devoted simply to a reargument of the points presented in the requesting party's brief on the case." TBMP § 543. Applicant primarily contends that Opposer committed fraud on the PTO by misleading the examining attorney regarding the nature of Opposer's services. Applicant's Motion p. 2. The Board explicitly considered this argument and found that none of the examiners involved in Opposer's applications were misled. Board Order p. 18. Applicant is therefore merely rearguing points that he addressed in his brief and his motion should be denied.

B. Consideration of Applicant's Excluded Evidence Would Not Have Changed The Board's Decision.

Applicant next argues that the Board erred in upholding Opposer's objections to Applicant's Exhibits W, X, and Y. Applicant's Motion p. 3. The Board expressly stated that even if it had considered Exhibits W, X, and Y it would not change its decision. Board Order p. 8 n. 7. The Board therefore committed no error that is grounds for reconsideration of its decision.

C. Applicant's Arguments Regarding Opposer's Representations Regarding Its Services Were Considered And Rejected By The Board.

The bulk of Applicant's arguments in his motion appear to be a restatement of his claim that Opposer misstated the nature of its services. Applicant's Brief pp. 3-6. As, the Board found, even if Opposer's services do not fall in Class 38, Opposer made no false statements regarding its services nor was that classification material to the allowance of the application. Board Order p. 16. The Board expressly addressed these issues and Applicant is impermissibly rearguing points raised in his brief. His motion should be denied.

D. Applicant Misstates The Scope Of Opposer's Opposition.

Applicant finally contends, falsely, that Opposer is seeking only to oppose a portion of the goods in his application. Applicant's Motion p. 7. As stated in Opposer's Notice of Opposition, "Opposer prays that said application serial number 78/229,875 be rejected [and] that no registration be issued thereon to Applicant." Notice of Opposition p. 4. Because the notice of opposition is not limited to certain goods in the application, the Board correctly granted the opposition as to the entire application.

III. CONCLUSION

For the reasons set forth above, Opposer respectfully requests the Board to deny Applicant's motion for reconsideration of the Board's June 15, 2010 decision.

//
//
//
//
//

Respectfully submitted,

MESSAGE IN A BOTTLE, INC.

By its attorneys,

Date: July 27, 2010

By: /mark r. leonard/
Mark R. Leonard
DAVIS & LEONARD, LLP
8880 Cal Center Dr., Suite 180
Sacramento, CA 95826
Telephone: (916) 362-9000
mleonard@davisandleonard.com

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Response to Motion for Reconsideration and accompanying Appointment of Attorney has been served on Applicant by mailing said copies on July 27, 2010, via U.S. Mail, postage prepaid to: Keith Cangiarella, 331 N. Harrington Drive, Fullerton, California 92831

/mark r. leonard/
Mark R. Leonard