

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: November 15, 2010

Opposition No. 91162780

Message In A Bottle, Inc.  
f/k/a Gold Shells, Inc.

v.

Keith Cangiarella

**Robert H. Coggins,  
Interlocutory Attorney:**

This case now comes up on applicant's second motion (filed October 1, 2010) for reconsideration of the Board's final decision. The motion is titled as one "for reconsideration of the decision," and asks in the first sentence that the "Board reconsider its decision on [sic.] June 15, 2010."

By way of background, the Board issued a final decision in this proceeding on June 15, 2010. Applicant filed his first request for reconsideration of the final decision on July 13, 2010. The July 13th request was fully considered by the Board and denied in an order dated September 7, 2010. Thereafter, on October 1, 2010, applicant filed the second request for reconsideration.

The filing of a request for reconsideration of a decision issued after final hearing is governed by Trademark Rule 2.129(c), 37 CFR § 2.129(c). See TBMP §§ 543 and 804 (2d ed. rev. 2004). Trademark Rule 2.129(c) provides that any request

for reconsideration of a decision issued after final hearing must be filed within one month from the date of the decision. Although applicant's first (July 13th) request was filed within one month from the date of the final decision, the second (October 1st) request was not filed within one month from the date of the final decision. Accordingly, the October 1st request is untimely. Moreover, Trademark Rule 2.129 makes no provision for a second request for reconsideration. Accordingly, the October 1st request is untimely and procedurally improper, and cannot be entertained by the Board.<sup>1</sup>

Applicant should note that an untimely request for reconsideration of a final Board decision does not toll the time to file an appeal to the Court of Appeals for the Federal Circuit. "Successive motions periods, which would encourage piecemeal attack on a judgment and delay appeals, are not authorized." *See Kraft, Inc. v. United States*, 85 F.3d 602, 605 (Fed. Cir. 1996).

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<sup>1</sup> Although the merits of the second request will not be considered, the Board notes that the substance of applicant's main argument therein - that applicant's trial evidence complies with *Safer Inc. v. OMS Investments Inc.*, 94 USPQ2d 1031 (TTAB 2010) - was considered by the Board (at fn 2) with respect to applicant's Exhibits W, X, and Y in the September 7th order denying the first request for reconsideration.