

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

In the Matter of Trademark Application
Serial No. 73/229,875
Mark: MESSAGE IN A BOTTLE

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

v.

KEITH CANGIARELLA,
Applicant.

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

KEITH CANGIARELLA,
Petitioner,

v.

ROGER ROJAS,
Respondent.

TTAB

Opposition No. 91162780 and
Counterclaim for Cancellation

RESPONSE OF OPPOSER GOLD
SHELLS, INC., TO APPLICANT KEITH
CANGIARELLA'S MOTION TO
COMPEL RESPONSES TO FIRST SET
OF INTERROGATORIES
AND REQUEST FOR STAY OF
PROCEEDINGS

**OPPOSER'S RESPONSE TO MOTION TO COMPEL DISCOVERY
RESPONSES AND STAY THE PROCEEDINGS**

Opposer Gold Shells, Inc., hereby responds as follows to Applicant Keith Cangiarella's motion dated October 18, 2005, to compel responses of Opposer to Applicant's first set of interrogatories, and to request a stay in all discovery and testimony periods pending a resolution of this motion:



BACKGROUND FACTS

10-28-2005
U.S. Patent & TMO/TM Mail Rcpt Dt. #64

Applicant has stated in his motion that on August 17, 2005, his counsel served his first set of interrogatories on Opposer in the above-referenced opposition. Applicant has

produced a certificate of service with that date. However, neither this statement nor the certificate of service are correct. Opposer admits that Applicant's counsel served a request for admissions and a request for documents on that date, as those documents were received by Opposer's counsel on August 25, 2005, but those documents were not accompanied by interrogatories. See the declaration of Lugene M. Borba submitted herewith.

Opposer's counsel first learned of Applicant's interrogatories on September 16, 2005, when Opposer's counsel called Applicant's counsel to discuss Opposer's responses to Applicant's request for admissions and request for documents. During that telephone conversation, Applicant's counsel inquired if Opposer's counsel was also asking about Applicant's interrogatories. Opposer's counsel replied that no interrogatories had been received. Applicant's counsel asserted that such interrogatories were mailed on the same date as the request for admission and request for documents. Opposer's counsel said that they were not received and asked Applicant's counsel to fax the interrogatories to him, which Applicant's counsel did on September 16, 2005, which was the first and only date on which Opposer's counsel received them.

During the telephone conversation of September 16, 2005, Opposer's counsel advised that he was leaving imminently for vacation and would not return until October 6, 2005. He further advised that he would attempt on September 17 to serve Opposer's response to the interrogatories if they were received on September 16, 2005, but if he was unable to do so before his vacation, he would serve them within 30 days after the date of his receipt of them.

Opposer's counsel followed up with a letter to Applicant's counsel dated

September 16, 2005, a copy of which is attached hereto as Exhibit A. In that letter, it was stated, in part, "If I receive them [the interrogatories] and it is feasible for me to prepare responses to the interrogatories and send them to you by September 19 with the responses to your requests for admission and document requests, I will do so. If not, I will get interrogatory responses to you sometime following my return from vacation on October 6, 2005, but not later than 30 days from the date you serve them on me." Opposer's counsel later acknowledged service of the interrogatories by fax on the same day, September 16, 2005. Thus, Opposer's counsel had promised that responses would be served not later than October 16, 2005, 30 days from September 16, 2005.

On Saturday, September 17, 2005, which was Opposer's counsel's last day in the office before October 6, 2005, Opposer's counsel sent a further letter to Applicant's counsel on another subject, with the following postscript: "I acknowledge receipt of your interrogatories on September 16, 2005, but am unable to compile responses with my client until after my return from vacation; so I am on September 19 serving you only with responses to your admission requests and document requests."

After return from vacation, on October 7, 2005, Opposer's counsel received and reviewed for the first time a letter from Applicant's counsel dated September 29, 2005, a copy of which is attached to Applicant's motion as Exhibit B, asking for a response to Applicant's interrogatories "within the next 10 days", which would have been by October 9, 2005 (a Sunday).

Despite the previous assurance from Opposer's counsel, and the notice to him that

Opposer's counsel would be out of the office until October 6, 2005, Applicant's counsel, apparently without further attempt to reach Opposer's counsel by telephone, faxed a note to Opposer's counsel on October 11, 2005 (Exhibit B to Applicant's motion), advising his intent to "promptly prepare and file a motion to compel your client's responses to such interrogatories at this time." In reply, on October 11, 2005, Opposer's counsel telephoned Applicant's counsel and assured him that there was no need for a motion to compel because Opposer's responses were in preparation and would be served within the time frame previously stated. Opposer's counsel also sent to Applicant's counsel on that date a written response, a copy of which is attached hereto as Exhibit B, stating in part, "Since I never received your interrogatories until September 16, I have not failed to timely respond and I have not waived any objections. As I told you in my September 16 letter, I will get interrogatory responses out to you not later than 30 days from the date you served them on me, which was September 16." (This is also Exhibit C to Applicant's motion.)

Opposer's counsel then served Opposer's response to Applicant's interrogatories by mail on October 13, 2005. A copy of the response and the certificate of mailing is attached hereto as Exhibit C.

On October 24, 2005, Opposer's counsel received a telephone message from Steven Johnson, identifying himself as a law clerk for Stephen L. Anderson, Applicant's counsel, confirming receipt of Opposer's responses to Applicant's interrogatories and noting that the responses had been sent to the previous address for Applicant's counsel and had been forwarded from there.

Also on October 24, 2005, Opposer's counsel received a copy of the present motion.

OPPOSER'S POSITION

A. APPLICANT'S MOTION IS MOOT.

Applicant's motion is moot because Opposer served its responses to Applicant's interrogatories on October 13, 2005, five days before the date of this motion. Applicant's counsel apparently made no effort after October 11, 2005, to confirm whether Opposer's counsel had in fact mailed a response to the interrogatories, but simply mailed the present motion on October 18, 2005.

B. OPPOSER'S RESPONSE WAS TIMELY SERVED.

Applicant takes the position that Opposer failed to respond to interrogatories "within the requisite time" because it failed to do so by September 17, 2005, 30 days from the date specified on Applicant's certificate of service. However, Opposer's counsel made it clear to Applicant's counsel on September 16, 2005, that the interrogatories had not been received before that date, and that responses would be served within 30 days after receipt, which they were on October 13, 2005. See the declaration of Lugene M. Borba, secretary to Opposer's counsel, submitted herewith.

Opposer's counsel's only shortcoming was in serving the interrogatory responses to Applicant's counsel at the address which he had used prior to September 1, 2005, rather than his new address. Opposer apologizes for this oversight.

C. THERE IS NO NEED FOR A STAY.

There is no need to stay discovery and testimony periods pending a resolution of this

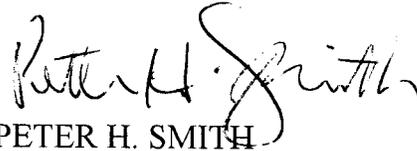
discovery motion. The Trademark Trial and Appeal Board already extended the schedule on a prior occasion. Opposer is proceeding pursuant to the discovery and testimony periods presently in effect.

* * * *

As a footnote, Applicant's counsel has declined to answer Opposer's entire set of interrogatories, and this will be the subject of a motion to compel by Opposer.

It is respectfully submitted that Applicant's motion to compel is without foundation and a waste of time for Applicant, Opposer, and the Trademark Trial and Appeal Board, and it should be denied.

Respectfully submitted,

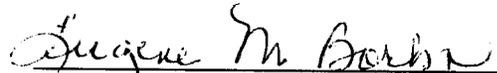


PETER H. SMITH
Attorney for Opposer Gold Shells, Inc.
1535 J Street, Suite A
Modesto, CA 95354
(209) 579-9524

Certificate of Service

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSE TO MOTION TO COMPEL DISCOVERY RESPONSES AND STAY THE PROCEEDINGS was mailed first-class mail, postage prepaid, to Stephen L. Anderson, Esq., Anderson & Associates, 32605 Highway 79 South, Suite 208, Temecula, California 92592, attorney for Applicant, on October 28, 2005.

Dated: October 28, 2005.


LUGENE M. BORBA



PETER H. SMITH

ATTORNEY AT LAW

1535 J STREET, SUITE A

POST OFFICE BOX 1867

MODESTO, CALIFORNIA 95353

MEMBER OF CALIFORNIA
& OREGON STATE BARS

TELEPHONE (209) 579-9524
FACSIMILE (209) 579-9940

September 16, 2005

VIA FAX TO (951) 719-1372

Stephen Lee Anderson, Esq.
Anderson & Associates
32605 Highway 79 South, Suite 208
Temecula, CA 92592

Re: Gold Shells, Inc. v. Cangiarella
Trademark Trial & Appeal Board Opposition No. 91162780

Dear Mr. Anderson:

This will confirm our telephone conversation today in which you kindly consented to an extension of time (to the extent that an extension was necessary) to respond to your requests for admission and document requests in the above-referenced case to September 19, 2005, with me to place the responses in the course of transmission to you by that date, regardless of the fact that you have requested document production in your office at 10:00 a.m. on that date.

This will also confirm that you advised me that you had served me with interrogatories by mail at the same time as you served me with requests for admission and document requests. However, as I advised you, I have no record of having received any interrogatories from you. I suggested that you fax them to me, and you said that you would do so. If I receive them and it is feasible for me to prepare responses to the interrogatories and send them to you by September 19 with the responses to your requests for admission and document requests, I will do so. If not, I will get interrogatory responses to you sometime following my return from vacation on October 6, 2005, but not later than 30 days from the date you serve them on me.

I understand from our conversation that you will be responding soon to my letter of August 31, 2005, in regard to producing your client's documents in response to my document requests.

EXHIBIT A

Stephen Lee Anderson, Esq.

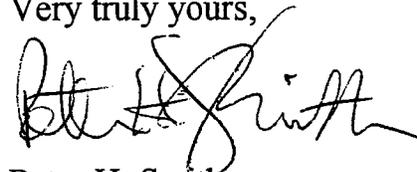
September 16, 2005

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I will write to you further to address your objections to my interrogatories and other discovery requests.

Thank you for your cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter H. Smith", written in a cursive style.

Peter H. Smith

PHS/lmb

cc: Gold Shells, Inc.



Member of California
and Oregon State Bars

PETER H. SMITH
ATTORNEY AT LAW
1535 J STREET, SUITE A
POST OFFICE BOX 1867
MODESTO, CALIFORNIA 95353

Telephone (209) 579-9524
Facsimile (209) 579-9940

Telephone: (209) 579-9524

Fax: (209) 579-9940

TELECOPIER TRANSMITTAL MEMO

DATE: October 11, 2005

✓ TO: Stephen Lee Anderson, Esq.

FAX NUMBER: (951) 694-1876

FROM: Peter H. Smith

ENCLOSED PLEASE FIND: Copy of letter being mailed to you today.

- For your information/files; no reply necessary.
- In accordance with your request.
- Per our discussion.
- For your review and comments.
- Comments: I am faxing this in response to your fax today. There is no need to file a motion to compel. I am working on the interrogatory answers today and will finalize and serve them in a timely manner as I said before.

TOTAL PAGES, INCLUDING THIS TRANSMITTAL: 3

cc: Gold Shells, Inc.

IF YOU DO NOT RECEIVE ALL THE PAGES,
PLEASE CALL : LUGENE BORBA (209) 579-9524.

WARNING:

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return this original message to us at the above address via the U.S. Postal Service.

Thank you.

PETER H. SMITH

ATTORNEY AT LAW

1535 J STREET, SUITE A

POST OFFICE BOX 1867

MODESTO, CALIFORNIA 95353

MEMBER OF CALIFORNIA
& OREGON STATE BARS

TELEPHONE (209) 579-9524
FACSIMILE (209) 579-9940

October 11, 2005

Stephen Lee Anderson, Esq.
Anderson & Associates
27349 Jefferson Avenue, #211
Temecula, CA 92590

Re: Gold Shells, Inc. v. Cangiarella
Trademark Trial & Appeal Board Opposition No. 91162780
Your Interrogatories

Dear Mr. Anderson:

As I expected, and as I advised you, I returned to the office from vacation on October 6, 2005, and I first saw your September 29 letter regarding your interrogatories on October 7, 2005. I am now responding as follows:

1. Contrary to your statement, I am not aware that Applicant's First Set of Interrogatories was served on me on August 17, 2005. Indeed, it was not served on me on that date, regardless of what is stated in your certificate of service. I advised you in our telephone conversation of September 16, 2005, that I had not received your interrogatories, and I documented that to you in my letter of the same date. You then faxed the interrogatories to me on September 16, and I acknowledged receipt of that faxed copy in my letter to you dated September 17, 2005.

2. Since I never received your interrogatories until September 16, I have not failed to timely respond and I have not waived any objections. As I told you in my September 16 letter, I will get interrogatory responses out to you not later than 30 days from the date you served them on me, which was September 16.

3. Contrary to your statement, I did not concede in a conversation on or about August 27, 2005, that I had received the interrogatories. My comments in that conversation were directed only to the discovery documents I had actually received (though I may have assumed at that point that you had served interrogatories, as I recall being surprised later to find that you had not when I examined what you had sent).

EXHIBIT B

Stephen Lee Anderson, Esq.

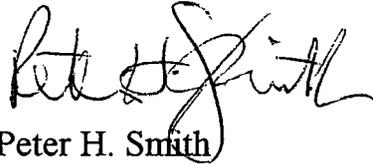
October 11, 2005

Page 2

4. I am offended by your reference to my so-called "prior dilatory conduct in failing to promptly file and serve an answer to the counterclaim". As you well know, I did indeed timely file and serve an answer to the counterclaim, and you have a copy of the answer I timely served with the proof of service. The only confusion was from the fact that the TTAB did not acknowledge having a record of the filing so I had to send it a second copy.

5. I also take offense to your reference in the same paragraph to "your further dilatory conduct" when there has been none.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter H. Smith", written in a cursive style.

Peter H. Smith

PHS/lmb

cc: Gold Shells, Inc.



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

<p>In the Matter of Trademark Application Serial No. 78/229,875 Mark: MESSAGE IN A BOTTLE</p> <p>GOLD SHELLS, INC., a California corporation, Opposer,</p> <p>v. KEITH CANGIARELLA, Applicant.</p> <p>-----</p> <p>In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE</p> <p>KEITH CANGIARELLA, Petitioner,</p> <p>v. ROGER ROJAS, Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p>
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**OPPOSER'S RESPONSE TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Opposer Gold Shells, Inc., hereby responds to Applicant Keith Cangiarella's first set of interrogatories pursuant to FRCP 33 and Rules 2.116 and 2.120 of the Trademark Rules of Practice, as follows:

PREFATORY COMMENTS

Each response herein is given subject to the general objections set forth below and all appropriate objections, including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility, and any and all other objections and grounds which would require exclusion of any statements and/or documents from evidence. All such objections and

grounds therefor are reserved and may be interposed at the time of testimony or final briefing.

Opposer has not fully completed its investigation of the facts relating to this case, has not fully completed discovery in this action and has not completed preparation for the presentation of evidence to the Trademark Trial & Appeal Board. Thus, all objections and responses contained herein are based only upon such information and documents which are presently available to and specifically known to Opposer. Opposer objects to Applicant's Interrogatories to the extent they seek to impose a continuing duty upon Opposer to update information and/or provide additional documents acquired or discovered subsequent to the response date for Applicant's Interrogatories. Nonetheless, Opposer reserves the right to change and/or supplement any and all responses herein as documents and information are discovered.

Opposer further objects to the interrogatories to the extent they call for disclosure of public information equally available and/or accessible to Applicant, information prepared in anticipation of litigation and/or for this proceeding; or protected by the attorney-client and/or the attorney work product privileges. Such information will not be disclosed, and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege with respect to such information.

Each of these objections is incorporated as though fully set forth in responding party's responses below.

Also, the following definitions apply to these responses:

- A. The term "Applicant" refers to Keith Cangiarella, an individual doing business under the fictitious name of "DreamWeaver Studios".
- B. The term "Opposer" refers to Gold Shells, Inc., a California corporation.
- C. The term "Registrant" refers to Roger Rojas, an individual.

D. The term “person” includes any corporation, division, agency or other entity, as well as an individual.

RESPONSES

Interrogatory No. 1: Describe each product sold by Opposer under the 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 and/or images, as requested by customers. Opposer’s products are further described at Opposer’s website, messageinabottle.com.

Interrogatory No. 2: Describe each service offered by Opposer under the designation MESSAGE IN A BOTTLE.

Response: Receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, using the communication devices described in the response to Interrogatory No. 1. Opposer’s services are further described at Opposer’s website, messageinabottle.com.

Interrogatory No. 3: Describe each product produced or marketed by Registrant under the designation MESSAGE IN A BOTTLE.

Response: See the response to Interrogatory Number 1.

Interrogatory No. 4: Identify each product and service produced or marketed by Registrant under the designation MESSAGE IN A BOTTLE.

Response: See the responses to Interrogatory Numbers 1 and 2. Registrant’s

products and services are the same as those of Opposer.

Interrogatory No. 5: Describe the manner of Opposer's first use of the term MESSAGE IN A BOTTLE as a successor in interest of Registrant in the trademark (Registration No. 2,243,269).

Response: The manner of Opposer's first use of the mark MESSAGE IN A BOTTLE was the same as shown on its current website, messageinabottle.com, as a trademark and service mark used to identify the source of the services and products of Opposer as described in the responses to Interrogatory Numbers 1 and 2.

Interrogatory No. 6: Identify the marketing plans or marketing studies created or implemented by Opposer concerning the use of the term MESSAGE IN A BOTTLE.

Response: Opposer has no documents which constitute marketing plans or marketing studies, but Opposer's marketing plans have included use of the mark MESSAGE IN A BOTTLE on its Internet website, in Internet advertising with Yahoo!, Inc., Google, Inc., and Findwhat.com, and in radio advertising.

Interrogatory No. 7: Identify the date of first use in commerce for each product on which Opposer has used the term MESSAGE IN A BOTTLE.

Response: Registrant's date of first use in commerce of the mark MESSAGE IN A BOTTLE for Registrant's products and services was January 16, 1999. Opposer's date of first use in commerce was on or about August 1, 2003, and no earlier than the date of its incorporation, July 7, 2003.

Interrogatory No. 8: Identify the date of first use in commerce for each service that

Opposer has used the MESSAGE IN A BOTTLE mark.

Response: Registrant's date of first use in commerce of the mark MESSAGE IN A BOTTLE for Registrant's products and services was January 16, 1999. Opposer's date of first use in commerce was on or about August 1, 2003, and no earlier than the date of its incorporation, July 7, 2003.

Interrogatory No. 9: Identify each person participating in the preparation or approval of advertisements or promotions of products and services bearing the mark MESSAGE IN A BOTTLE.

Response: (1) Roger Rojas, Gold Shells, Inc., P.O. Box 581113, Modesto, CA 95358; (2) Jump Fly, Inc., 2303 Randall Road, Suite 182, Carpentersville, Illinois 60110 (phone 877-239-9610).

Interrogatory No. 10: State the amount of money that Opposer has spent for each type of advertising or promotion Opponent has used in connection with each of its MESSAGE IN A BOTTLE products, goods, and services before October 4, 2004, if any, and since October 4, 2004.

Response: Before October 4, 2004, Opposer spent \$1,400.00 on radio advertising and \$1,400.00 on an advertising campaign with Yahoo!, Inc. Since October 4, 2004, Opposer has spent \$3,000.00 on website promotion on lovingyou.com and approximately \$15,000.00 on advertising campaigns with Yahoo!, Inc., Google, Inc., and Findwhat.com.

Interrogatory No. 11: Identify each third party use, former use, or claim of use of any term consisting of MESSAGE IN A BOTTLE known to Opposer and each person with knowledge of such use, former use or claim of use.

Response: See Exhibit A attached hereto. In addition to the persons named in Exhibit

A, Roger Rojas and Peter H. Smith are persons with knowledge of such use, former use, or claim of use.

Interrogatory No. 12: Identify each investigation which has been conducted relating to any term consisting of MESSAGE IN A BOTTLE and each person having knowledge relating thereto.

Response: (1) Trademark search through Thomson & Thomson, with Roger Rojas and Peter H. Smith being the persons having knowledge relating thereto; and (2) Internet searches, with Roger Rojas being the person having knowledge relating thereto.

Interrogatory No. 13: Identify any rights in the term MESSAGE IN A BOTTLE which Opposer has granted to any third party or acquired from any third party, and the persons most knowledgeable concerning each grant or acquisition.

Response: Opposer originally received rights in the mark MESSAGE IN A BOTTLE through a license agreement from Registrant, and later received an assignment of rights from Registrant. The person most knowledgeable concerning the license agreement is Roger Rojas. The persons most knowledgeable concerning the assignment are Roger Rojas and Peter H. Smith. No other rights to the mark have been granted by either Registrant or Opposer to any other party.

Interrogatory No. 14: Describe separately the nature of all objections made by or directed to Opposer that relate to use of or rights in, any term consisting in whole or part of MESSAGE IN A BOTTLE, and identify the persons most knowledgeable about each objection.

Response: Objections have been made by Opposer as to infringement of its rights to the mark MESSAGE IN A BOTTLE. Such objections have been made to Applicant, Julie Steeper, dba Authentic Messages, ServerBeach.com regarding Authentic Messages, the attorney for

Personal Creations, and to Google, Inc., Overture Services, Inc., and Yahoo!, Inc., regarding various infringements by multiple users. The persons most knowledgeable about these objections, in addition to the persons noted above, are Roger Rojas, Peter H. Smith, and Jeffrey Cannon.

No objections have been directed to Opposer that relate to use of or rights in the mark MESSAGE IN A BOTTLE apart from this proceeding.

Interrogatory No. 15: If Opposer intends to rely on the opinion of an expert in connection with his defense of the cancellation proceeding, provide the information set forth in Rule 26(a)(2)(A) and (B), Fed.R.Civ.P., for each expert.

Response: Opposer does not presently intend to rely upon the opinion of an expert. If this changes, Opposer will amend its response by providing the designated information for each expert.

Interrogatory No. 16: Identify all facts which relate to Opposer's claim that it is the owner of the rights to the trademark Registration No. 2,243,269.

Response: Gold Shells, Inc., was incorporated as a California corporation on July 3, 2003. Registrant Roger Rojas was the incorporator. In connection with the formation of the corporation, and in partial consideration for Registrant's receiving stock from the new corporation, Registrant entered into a license agreement dated July 3, 2003, with Opposer which allowed Opposer exclusive use of the mark MESSAGE IN A BOTTLE except for continuing concurrent use by Registrant. On October 5, 2004, Rojas executed an assignment of U.S. service mark registration no. 2,243,269 to Opposer. On October 6, 2004, Opposer mailed the assignment to the U.S. Patent & Trademark Office for recording. On October 15, 2004, the assignment was recorded by the U.S. Patent & Trademark Office as document no. 102859988, and written notice of recordation was sent

to Opposer on April 8, 2005.

Interrogatory No. 17: Identify all documents that refer to, relate to, or reflect the decision to file the application for the trademark (Registration No. 2,243,269) including any opinion from or to counsel for Registration.

Response: Registrant obtained through Peter H. Smith a research report dated November 18, 1996, from Thomson & Thomson on the mark MESSAGE IN A BOTTLE for message delivery service, and that document related to Registrant's decision to file the application for registration no. 2,243,269. Attorney Peter H. Smith sent a letter to Registrant dated November 27, 1996, discussing the research report and stating an opinion as to registrability of the mark, and this letter is subject to the attorney-client privilege.

Interrogatory No. 18: Identify all documents in your possession, custody or control that relate to or mention the MESSAGE IN A BOTTLE trademark as used by the Applicant.

Response: All documents which are part of the record in the present proceeding; copies of Applicant's website; e-mail messages from Applicant to Registrant dated August 9, 2004, and September 29, 2004; a response from Registrant to Applicant dated on or about September 30, 2004; communications between counsel for Applicant and Registrant; a copy of Applicant's file for application serial no. 78/229,875 with the U.S. Patent & Trademark Office; a letter from Jeffrey Cannon to Overture Services, Inc., dated January 27, 2004; a letter from Peter H. Smith to Brinks, Hofer, Gilson and Lione, attorneys for Overture Services, Inc., dated May 31, 2005; a letter from Peter H. Smith to the Copyright Agent for Yahoo!, Inc., dated August 30, 2005; and an e-mail from Lisa Kramer dated February 11, 2005.

Interrogatory No. 19: Identify all documents that support YOUR contention stated in your

tenth affirmative defense in the Respondent's Answer to Applicant's Counterclaim for Cancellation that "Respondent has continuously used the registered mark MESSAGE IN A BOTTLE in commerce, for the services in connection with which it was registered, for over five consecutive years subsequent to the date of such registration".

Response: Copies of the website messageinabottle.com for the years 1999 through 2004; customer lists and invoices to customers for the years 1999 through 2004; bank account statements under the name "Message In A Bottle" for the years 1999 through 2004; copies of advertising used for "Message In A Bottle" during the years from 1999 through 2004; fictitious business name statement filed by Registrant for "Message In A Bottle"; affidavit of continuing use signed by Registrant October 1, 2004, and filed with the U.S. Patent & Trademark Office; notice of acceptance of same from the U.S. Patent & Trademark Office dated December 9, 2004; license agreement dated July 7, 2003, between Registrant and Opposer allowing continued use by mark by Registrant in connection with licensing of mark to Opposer; and corporate resolution of Opposer authorizing said license agreement.

Dated: October 13, 2005.

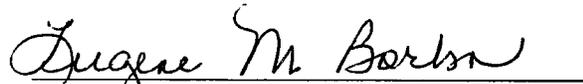


PETER H. SMITH
Attorney for Opposer
1535 J Street, Suite A
Modesto, CA 95354
(209) 579-9524

Certificate of Service

I hereby certify that a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES was mailed first-class mail, postage prepaid, to Stephen L. Anderson, Esq., Anderson & Associates, 27349 Jefferson Avenue, #211, Temecula, California 92590, attorney for Applicant.

Dated: October 13, 2005.


LUGENE M. BORBA

RESPONSE TO INTERRATORY NO. 11:

	<u>Domain Name</u>	<u>Contact Information</u>
1.	messageinabottle.com	Roger Rojas
2.	bottlemeamessage.com	Keith Cangiarella DreamWeaver Studios
3.	timelessmessage.com	Jeff Trott Timeless Message, LLC
4.	personalcreations.com	Geoffrey Smith PC Acquisition, Inc.
5.	sayitinabottle.com	Juan Certain
6.	sandartsupplies.com	Jay Massey SanBlast Entertainment
7.	specialtybottle.com	Shawn McBride Specialty Bottle, LLC
8.	instantstyle.com	Brooke Taylor
9.	ebottles.com	Gary Daniels Tucows, Inc.
10.	marketinginabottle.com	Chris Stanley KRJ Company, Inc.
11.	authenticmessage.com	Julie Steeper Authentic Message
12.	onepassionplace.com	Arlene Brown The Kemper Lake Group, Inc.
13.	lovepoemsunlimited.com	Gary Daniels Tucows, Inc.
14.	thinkingofyououtwo.com	Arlene Brown The Kemper Lake Group, Inc.
15.	obsessionboxcompany.com	No site.
16.	findgift.com	Robert Nakrzewski

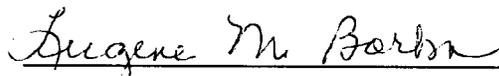
	<u>Domain Name</u>	<u>Contact Information</u>
17.	personalizationmall.com	Pete Pesce PersonalizationMall.com
18.	personalizedbirthdaygifts.com	Pete Pesce PersonalizationMall.com
19.	conwasa.demon.co.uk	Unknown contact information
20.	thegreetingstore.com	Unknown contact information
21.	yourweddingpartyfavors.com	Cornelius Buschi
22.	dogwoodsquare.com	Greg Cole Bright Builders, Inc.
23.	capeimages.com	Kate Meyer Cape Fear Images, Inc.
24.	weddinggift.net	Pete Pesce PersonalizationMall.com
25.	writingpapers.com	Pete Pesce PersonalizationMall.com
26.	walmart.com	Wal-Mart Stores
27.	allbirthdaygifts.com	Pete Pesce PersonalizationMall.com
28.	giftideasformom.com	Nameview, Inc.
29.	tradewindproducts.com	Trade Wind Products
30.	fraternity-sorority.com	Pete Pesce PersonalizationMall.com
31.	weddingfavorsetc.com	Chad Tuttle
32.	myweddingfavors.com	Brad Fallon
33.	giftlet.com	Unknown contact information
34.	textstyledesigns.com	Mindy Wogan Text Style
35.	granny1.com	Martha C. Haun

CERTIFICATE OF EXPRESS MAILING
UNDER 37 CFR §2.198

Mark: MESSAGE IN A BOTTLE
Serial No.: 78/229,875
Opposition No. 91162780
Name of party filing paper: Gold Shells, Inc.
Type of paper being filed: Response of Opposer Gold Shells, Inc., to Applicant
Keith Cangiarella's Motion to Compel Responses to
First Set of Interrogatories and Request for Stay of
Proceedings

Express Mail Mailing Label Number: ED 447628134 US
Date of Deposit: October 28, 2005

I hereby certify that the above-identified response to motion to compel responses, which is attached, is being deposited on October 28, 2005, with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §2.198 in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.



Lugene M. Borba

Date: October 28, 2005