

# TTAB

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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**MOTION OF OPPOSER GOLD SHELLS, INC., TO COMPEL  
PRODUCTION OF DOCUMENTS FROM APPLICANT IN  
RESPONSE TO OPPOSER'S FIRST REQUEST TO APPLICANT FOR  
PRODUCTION OF DOCUMENTS AND THINGS**

**FACTUAL BACKGROUND**

Opposer Gold Shells, Inc. (hereafter "Opposer"), hereby moves for an order requiring Applicant Keith Cangiarella (hereafter "Applicant") to produce documents and provide Opposer with an opportunity to inspect and copy them in response to



request numbers 19 and 22 of Opposer's first request to Applicant for production of documents and things (hereafter "Opposer's document requests").

On June 29, 2005, Opposer's counsel served Opposer's document requests on Applicant regarding the present opposition proceeding. Attached hereto as Exhibit A is a true copy of Opposer's document requests and the certificate of service thereof demonstrating that Opposer's document requests were served on Applicant by first-class mail on June 29, 2005. Opposer's document requests therein directed to Applicant were relevant to the issues in this opposition proceeding.

On August 12, 2005, Applicant's counsel served a response on Opposer's counsel, a copy of which is attached hereto as Exhibit B, including objections to producing any documents in response to document request nos. 19 and 22.

Opposer's request number 19 was for "All trademark search and evaluation documents which make reference to the Trademark." "The Trademark" was defined in paragraph I(B) (by reference to Opposer's interrogatories) as follows: "the mark MESSAGE IN A BOTTLE, regardless of (a) the style of lettering in which the mark appears, (b) the spacing or capitalization of the letters, and (c) whether or not the mark is used in connection with any design."

Applicant produced no documents in response to this request, but instead responded as follows:

“RESPONSE: The request is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or material covered by the attorney-client privilege and/or other commercially and competitively sensitive information which should not be produced without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access.”

Opposer’s request number 22 was for “All documents referring or relating to use or registration of the Trademark by Opposer and Roger Rojas.” “Opposer” was defined in paragraph I(B) (by reference to Opposer’s interrogatories) as Opposer Gold Shells, Inc. Applicant produced no documents in response to this request, but instead responded as follows:

“RESPONSE: Objection. This request is unduly burdensome and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or the [sic] refer to or reflect the contents of communications between attorney and client herein, which shall not be produced herein, without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access.”

On November 28, 2005, in an attempt to informally resolve this dispute prior to filing, Opposer’s counsel sent a letter to Applicant’s counsel asking him to “meet

and confer” in regard to his failure to document request numbers 19 and 22. A copy of this letter is attached hereto as Exhibit C. Because of the deadline for filing this motion to compel, and the need to mail the motion by November 28, 2005, Applicant’s counsel has not yet had an opportunity to respond. If documents are produced as requested, Opposer will promptly notify the Trademark Trial & Appeal Board that this motion has been resolved.

### **APPLICABLE RULES**

“The production of documents and things under the provisions of Rule 34 of the Federal Rules of Civil Procedure will be made at the place where the documents and things are usually kept, or where the parties agree, or where and in the manner which the Trademark Trial and Appeal Board, upon motion, orders.” 37 C.F.R. Section 2.120(d)(2).

“If a party . . . fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel . . . production and an opportunity to inspect and copy. The motion must be filed prior to the commencement of the first testimony period as originally or as reset. The motion shall include . . . a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of

the documents or things that were not produced for inspection and copying. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. . . .” 37 C.F.R. Section 2.120(e)(1).

### **OPPOSER’S ARGUMENT**

(a) Document Request No. 19.

Opposer maintains that the request is not vague, ambiguous, and uncertain. The words “trademark search and evaluation documents” are intended to refer to those documents relating to any search conducted by or on behalf of Applicant as to the availability of MESSAGE IN A BOTTLE as a trademark or service mark, including any evaluation of the search.

The request is not compound because the “search and evaluation” process in regard to trademarks is an integrated process of conducting a search and evaluating it.

The request is not unduly burdensome or overbroad. It seeks only the documentation for any trademark search and evaluation in connection with Applicant’s decision to use (or continue use of) the phrase MESSAGE IN A BOTTLE in commerce.

Neither the attorney work product doctrine nor the attorney-client privilege provides a basis for objection. Any trademark search would not have been “attorney work product prepared in anticipation of litigation”, but would have been sought for the purpose of evaluating the availability of the phrase MESSAGE IN A BOTTLE, and Opposer is entitled to production of that and any other related documents which are not communications between Applicant and his attorney.

Also, there is clearly no issue of “commercially and competitively sensitive information” here.

(b) Document Request No. 22

This request is not unduly burdensome and overbroad. Opposer simply wants to have copies of any documents which refer to its use or registration of MESSAGE IN A BOTTLE or that of its predecessor, Roger Rojas. Applicant need not include copies of any documents which have gone back and forth between Applicant and Opposer or their counsel. However, if Applicant has other documents which refer to the use or registration of MESSAGE IN A BOTTLE by Opposer or its predecessor, Opposer is entitled to see them.

Any attorney work product or attorney-client privileged communications are exempt from this request.

I have made a good faith effort, by correspondence to Applicant’s counsel, to

resolve these issues with him, and we have been unable to reach agreement.

Discovery ended in this proceeding on September 30, 2005. Opposer's testimony period is soon to begin. The following is a list of a brief description of the documents sought: (1) Applicant's trademark search and evaluation documents; and (2) any documents Applicant may have which refer or relate to the use and registration of the trademark/service mark MESSAGE IN A BOTTLE by Opposer or its predecessor, Roger Rojas. I ask that the Board issue an order compelling production of such documents and an opportunity to inspect and copy them.

Respectfully submitted,

A handwritten signature in black ink that reads "Peter H. Smith". The signature is written in a cursive style with a large initial "P" and "S".

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

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>Opposition No. 91162780 and Counterclaim for Cancellation</p>
<p>GOLD SHELLS, INC., a California corporation, Opposer,  v. KEITH CANGIARELLA, Applicant.</p>	
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<p>In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE</p>	
<p>KEITH CANGIARELLA, Petitioner,  v. ROGER ROJAS, Respondent.</p>	

**OPPOSER'S FIRST REQUEST TO APPLICANT FOR  
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Gold Shells, Inc., and Counterclaim Respondent Roger Rojas hereby request that Applicant Keith Cangiarella respond within the time allowed by law to produce at the place where the documents and things are usually kept, which Opposer understands to be 331 N. Harrington Drive,

Fullerton, California 92831, or alternatively at the office of Peter H. Smith, Attorney at Law, 1535 J Street, Suite A, Modesto, California 95354, the documents and things hereinafter described in Applicant's possession, custody, or control, or within the possession, custody, or control of his agents or attorneys, and permit Applicant to inspect and copy or cause to be copied each of the following documents and things.

I.  
**INSTRUCTIONS AND DEFINITIONS**

A. As used herein, "Opposer's First Set of Interrogatories to Applicant" means the first set of interrogatories served by Opposer on Applicant simultaneously herewith.

B. All instructions and definitions contained in and pertaining to Opposer's First Set of Interrogatories to Applicant are incorporated by reference and apply herein.

II.  
**REQUESTS FOR PRODUCTION**

1. All documents requested to be identified or described in Opposer's first set of interrogatories to Applicant, served concurrently herewith.

2. Documents sufficient to show Applicant's first use in commerce of the Trademark on each category of goods and services on which Applicant has used the Trademark.

3. Documents sufficient to show that Applicant has continued to use the

Trademark on each of the categories on which it has used the Trademark on and after the date of Applicant's alleged first use in commerce.

4. All documents which refer or relate to your awareness of any instance or occasion in which any person inquired of you whether there was a connection, affiliation, sponsorship, or association between you and Opposer or Roger Rojas, or between any of your products or services and the products or services of Opposer or Roger Rojas.

5. All documents comprising or relating to market studies or plans, consumer testing, or any other analysis relating to the manufacture, licensing, distribution, advertising, promotion, marketing, or sale of each category of goods and services sold by you under the Trademark.

7. All documents comprising or relating to customer or consumer complaints or inquiries regarding the products and services sold by you under the Trademark.

8. A sample of each product and service marketed by you under the Trademark.

9. All documents referring or relating to or comprising your marketing and production plans for your products and services on which the Trademark is used.

10. Documents sufficient to identify all distributorship and licensing arrangements you have regarding the distribution of any type of products or services

sold by you.

11. Documents sufficient to show the current wholesale and suggested resale or actual price for all products and services sold by you under the Trademark.

12. Documents sufficient to show the sales outlets or channels of trade in which you have marketed, attempted to market, or intend to market any product or service under the Trademark.

14. Documents sufficient to show the intended class of consumers for each product and service which you have marketed, attempted to market, or intend to market under the Trademark.

16. Documents sufficient to show the advertising channels and media in which you have promoted or advertised, attempted to promote or advertise, or intend to promote or advertise each product or service sold under the Trademark.

18. A representative sampling of documents and things you use or have used at any time since March, 1998, to advertise or promote any product or service you sell or have sold under the Trademark.

19. All trademark search and evaluation documents which make reference to the Trademark.

20. All documents referring or relating to or comprising your trademark applications pending in or trademark registrations issued by the United States Patent and Trademark Office or any state and featuring the Trademark.

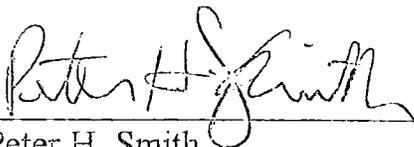
21. A representative sampling of the various depictions of the Trademark on your labels, tags, or packaging from March, 1998, to the present time.

22. All documents referring or relating to use or registration of the Trademark by Opposer and Roger Rojas.

24. Documents sufficient to show your sales of each product and service sold under the Trademark for 1999, 2000, 2001, 2002, 2003, 2004, and 2005 (to June 1, 2005).

25. All reports, advertisements, and features in newspapers and magazines of general circulation and the Internet which have made reference to your products and services sold under the Trademark.

Dated: June 29, 2005.

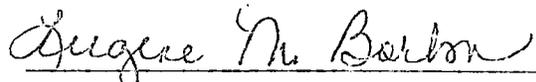
  
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Peter H. Smith  
Attorney for Opposer  
Gold Shells, Inc., and  
Counterclaim Respondent Roger Rojas

1535 J Street, Suite A  
P.O. Box 1867  
Modesto, CA 95353  
Telephone: (209) 579-9524

**PROOF OF SERVICE**

The person whose signature appears below confirms that the **OPPOSER'S FIRST REQUEST TO APPLICANT FOR PRODUCTION OF DOCUMENTS AND THINGS** was served upon the Applicant herein as follows:

- \_\_\_\_\_ By delivering a copy of the paper to the person served.
- \_\_\_\_\_ By leaving a copy at the usual place of business of the person served, with someone in his employment.
- \_\_\_\_\_ By leaving a copy at the residence of the person served, with a member of his family over the age of 14 years and of discretion, since the person served is not believed to have the usual place of business.
- X   By transmitting a copy of the document by overnight courier California Overnight prepaid, to the Attorney for the Applicant, Stephen L. Anderson, Esq., Anderson & Associates, 27349 Jefferson Avenue, Suite 211, Temecula, California 92590, which transmittal was made on June 29, 2005, at Modesto, California.

  
\_\_\_\_\_  
Lugene M. Borba



contentions and legal contentions, all of which may lead to substantial additions to, changes in, and variations from the responses herein set forth.

The following responses are given without prejudice to Applicant's right to produce evidence of any subsequently discovered fact or facts which may later be developed. The answers contained herein are made in a good faith effort to supply as much factual information and as much specification as is presently known, which in no way is to be considered prejudicial in relation to further discovery, research, analysis or production of evidence.

These responses are made solely for the purpose of, and in relation to this action. Applicant does not waive in whole or in part the attorney-client privilege, work product protection, or any right of privacy or confidentiality provided for by law with respect to any matter whatsoever. In responding to this discovery, responding party will not undertake to provide any information protected by the attorney-client privilege or work product doctrine.

Applicant party does not concede the admissibility, relevance or materiality of the discovery or the subject matter referred to therein. Except for facts specifically admitted herein, no admission of any nature, whatsoever, it to be implied or inferred, the fact that any request has been responded to or answered should not be taken as an admission, or concession of the existence of any fact set forth or assumed by the request, or that the answer constitutes evidence of any facts thus set forth or assumed.

In addition to the specific objections to each request or category, Applicant makes certain General Objections to the set of requests and each request contained therein, which, along with this Prefatory Statement are incorporated by reference into each

Response. Each response is subject to all objections as to competency, relevancy, materiality, propriety, and admissibility, and any and all other objections and grounds that would require the exclusion of any document hereinat trial. All such objections and ground are reserved.

Applicant reserves the right, but accepts no obligation beyond that required by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, to supplement its response to any of the requests as further investigation, discovery, and the Federal Rules of Civil Procedure or the Trademark Rules of Practice may warrant.

Applicant objects to the Requests as they are insufficient as failing to specify a time, place and manner of making the inspection and performing related acts, and therefore fails to comply with FRCP 34(b). All responses are made without in any way waiving or intending to waive but on the contrary intending to preserve and preserving the following:

A. All objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose, of the response or subject matter thereof, in any subsequent proceeding in, or in the trial of, this or any other action;

B. The right to object to the use of any of these responses or the subject matter thereof, in any subsequent proceeding in, or in the trial of, this or any other action;

C. The right to object on any ground at any time for further response to these or any other discovery requests involving or relating to the subject matter of the interrogatories responded to herein;

D. The right to elicit appropriate evidence, beyond the discovery responses themselves, regarding the subjects referred to in or in response to any discovery request; and

E. The right at any time to supplement or modify any of the responses set forth below.

Applicant's responses to Opposer Gold Shells Inc.'s requests are made to the best of present knowledge, information and belief. Said responses are at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Applicant's recollection, is subject to refreshing of recollection and such additional knowledge or fact as may result from further discovery or investigation. Applicant reserves the right to make any use of, or introduce at any hearing and at any TTAB proceeding or subsequent trial, information and/or documents responsive to Gold Shells Inc.'s interrogatories and/or requests but discovered subsequent to the date of these responses, Applicant generally objects to the "General Instructions" contained in Opposer's requests to the extent that they seek to impose obligations on Applicant beyond those set forth in the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

Applicant objects to Opposer's alleged "Definitions" of terms and terminology, and notes that they were not actually provided within the Requests themselves. In these responses, Applicant has disregarded and thus, does not rely on, use, or make any reference to, or consider any such term, terminology or meaning of any such words, other than as is consistent with their common understanding and meaning.

## REQUESTS

**REQUEST NO. 1.** All documents requested to identified or described in Opposer's first set of interrogatories to Applicant, served concurrently herewith.

**RESPONSE:** Applicant objects to this Request on the following grounds: Request No. 1 refers to Opposer's first set of interrogatories which themselves are excessive and unreasonable and violate 37 C.F.R. § 2.120(d)(1) and therefore this request is similarly objected to on such grounds. Furthermore, Request No. 1 is insufficient, compound, and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is overly broad, unduly burdensome, annoying and harassing. The request fails to set forth a reasonable time, place and manner of making the inspection. The request includes information and documents not relevant to these proceedings, nor likely to lead to the discovery of relevant and admissible evidence in this matter. The request includes matters and seeks information beyond the scope of F.R.C.P. Rule 26(b). Further, the requested production would be extremely expensive, time consuming and unnecessary in view of the relatively narrow issues presented. Opposer's interests in obtaining Applicant internal documentation go beyond the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, no documents will be produced absent a showing of need and inability to reasonably obtain same from the appropriate governmental agencies or third parties in possession of such document. Applicant further withholds production until an appropriate protective order, limiting access to Applicant's proprietary data and commercially sensitive information and

documents is entered herein. Finally, the request seeks production of certain attorney-client privileged documents and certain work product documents. Applicant reserves the right to identify such documents and withhold them from production if, and when, further production of additional documents is made and an inspection is conducted.

**REQUEST NO. 2.** Documents sufficient to show Applicant's first use in commerce of the Trademark on each category of goods and services on which Applicant has used the Trademark.

**RESPONSE:** Request No. 2 is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. *Notwithstanding and without waiver of the aforesaid objections and limitations, Applicant hereby agrees to make such responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31, 2005 at 10:0 a.m.. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

**REQUEST NO. 3:** Documents sufficient to show that Applicant has continued to use the Trademark on each categories on which it has used the Trademark on and after the date of Applicant's alleged first use in commerce.

**RESPONSE** Request No. 3 is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request

is unduly burdensome, and overbroad. *Notwithstanding and without waiver of the aforesaid objections and limitations, Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

**REQUEST NO. 4:** All documents which refer or relate to your awareness of any instance or occasion in which any person inquired of you whether there was a connection, affiliation, sponsorship, or association between you and Opposer or Roger Rojas, or between any of your products or services and the products or services of Opposer or Roger Rojas.

**RESPONSE:** After a diligent search and inquiry Applicant has not located any documents responsive to this Request in his possession.

**REQUEST NO. 5:**

All documents comprising or relating to market studies or plans, consumer testing, or any other analysis relating to the manufacture, licensing, distribution, advertising, promotion, marketing, or sale of each category of goods and services sold by you under the Trademark.

**RESPONSE:** *Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005.*

**REQUEST NO. 6:** (Omitted)

**RESPONSE:** As request number six was therein omitted, no response is required.

REQUEST NO. 7: All documents comprising or relating to customer or consumer complaints or inquiries regarding the products and services sold by you under the Trademark.

RESPONSE: Request No. 7 is vague, relatively ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. *Notwithstanding and without waiver of the aforesaid objections and limitations, Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

REQUEST NO. 8: A sample of each product and service marketed by you under the trademark.

RESPONSE: Applicant objects to this Request as unduly burdensome. Applicant agrees to provide Opposer with samples of his products available to Opposer upon payment by the Opposer *at cost* for such samples. Opposer may also order such samples on Applicant's website, <http://www.bottlemeamessage.com> at their respective retail prices.

REQUEST NO. 9: All documents referring or relating to or comprising your marketing and production plans for your products and services on which the Trademark is used.

RESPONSE: Request No. 9 is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request

is unduly burdensome, and overbroad. In addition, many of the specifications in the request would require the production of commercially and competitively sensitive information which should not be produced without the protection of a court order restricting access. As a competitor of Applicant, Opposer's interests in obtaining Applicant's internal documentation go beyond the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, beyond the documents produced herewith, no further documents will be produced absent a protective order and a further showing of need and inability to reasonably obtain same from the appropriate governmental agencies or third parties in possession of such documents. FRCP 26(c). Applicant reserves the right to identify such documents and withhold them from production if, and when, further production of additional documents is made and an inspection is conducted. *Notwithstanding aforesaid objections and limitations, Applicant has not located any documents responsive to this Request in his possession.*

REQUEST NO. 10: Documents sufficient to identify all distributorship and licensing arrangements you have regarding the distribution of any type of products or services sold by you.

RESPONSE: Applicant objects to this request on the grounds that it is overbroad, unduly burdensome and was filed for the purpose of harassing, oppressing, and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein. Applicant further objects on the basis that the Opposer seeks information and documents which are of minimal, if any, evidentiary value in determining the issues in this action. Applicant further objects as the information sought under such interrogatory may include a range of confidential and non-confidential materials which would require the production of commercially and competitively sensitive information which should not be produced

without the protection of an order restricting access. Applicant further objects on the grounds that as a competitor of Applicant, Opposer's interests in obtaining Applicant's documents relating to distribution of goods and services and use of marks other than the MESSAGE IN A BOTTLE trademark, distribution and licensing go well beyond the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, Applicant will not further respond to this Request unless Opposer makes some preliminary explanation of the relevance or showing as to need for said information and further agrees to the entry of an adequate protective Order restricting access. *Notwithstanding and without waiver of the aforesaid objections and limitations, after a diligent search and inquiry Applicant has not located any documents responsive to this Request in his possession.*

REQUEST NO. 11:

Documents sufficient to show current wholesale and suggested resale or actual price for all products and services sold by you under the Trademark.

*RESPONSE: Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof. Opposer may also obtain such information on Applicant's website,*

<http://www.bottlemeamessage.com>.

REQUEST NO. 12: Documents sufficient to show the sales outlets or channels of trade in which you marketed, attempted to market, or intend to market any product or service under the Trademark.

RESPONSE: Request No. 12 is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. In addition, many of the specifications in the request would arguably require the production of commercially and competitively sensitive information which should not be produced without the protection of an order restricting access. As a competitor of Applicant, Opposer's interests in obtaining Applicant's internal documentation go beyond the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, beyond the documents produced herewith, no responsive documents will be produced absent a protective order and a further showing of need and inability to reasonably obtain same elsewhere. Applicant reserves the right to identify such documents and withhold them from production if, and when, further production of additional documents is made and an inspection is conducted. *Notwithstanding and without waiver of the aforesaid objections and limitations, Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof. Opposer may also obtain such information on Applicant's website,*

REQUEST 13: (Omitted)

RESPONSE: As request number thirteen was therein omitted, no response is required.

REQUEST NO. 14: Documents sufficient to show the intended class of consumers for each product or service which you have marketed, attempted to market, or intend to market under the Trademark.

RESPONSE: This request No. 14 is vague, ambiguous and uncertain, therefore Applicant is unable to frame any response thereto. The request is further insufficient,

compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). Applicant objects to this request on the grounds that it is overbroad, unduly burdensome and was filed for the purpose of harassing, oppressing, and annoying rather than seeking discovery relevant to this action, or information reasonably calculated to lead to the discovery of admissible and relevant evidence herein. Applicant further objects on the basis that the Opposer seeks information and documents which is not relevant to the instant action, nor reasonably calculated to lead to the discovery of relevant evidence herein.

*Notwithstanding and without waiver of the aforesaid objections and limitations after a diligent search and inquiry Applicant has not located any documents responsive to this Request in his possession.*

REQUEST NO. 15: (Omitted)

RESPONSE: As request number fifteen was therein omitted, no response is required.

REQUEST NO. 16: Documents sufficient to show the advertising channels and media in which you have promoted or advertised, attempted to promote or advertise, or intend to promote or advertise each product or service sold under the Trademark

RESPONSE: *Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005 at 10:0 a.m.. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

REQUEST NO. 17: (Omitted)

RESPONSE: As request number seventeen was therein omitted, no response is required.

REQUEST NO 18: A representative sampling of documents and things you use or have used at any time since March 1998, to advertise or promote any product or service you sell or have sold under the Trademark.

RESPONSE: Request No. 18 is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). Notwithstanding and without waiver of said objection, *Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005 at 10:00 am. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

REQUEST NO. 19: All trademark search and evaluation documents which make reference to the Trademark.

RESPONSE: The request is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or material covered by the attorney-client privilege and/or other commercially and competitively sensitive information which should not be produced without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access.

REQUEST NO. 20: All documents referring or relating to or comprising your trademark applications pending in or trademark registrations issued by the United States Patent and Trademark Office or any state and featuring the Trademark.

RESPONSE: The request is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). *Notwithstanding and without waiver of said objections, Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

REQUEST NO. 21: A representative sampling of the various depictions of the Trademark on your labels, tags, or packaging from March, 1998 to present time.

RESPONSE: *Applicant hereby agrees to make certain responsive documents currently in his possession available for inspection and copying by the Opposer at his place of business on August 31 2005. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

REQUEST NO. 22: All documents referring or relating to use or registration of the Trademark by Opposer and Roger Rojas.

RESPONSE: Objection. This request is unduly burdensome and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or the refer to or reflect the contents of communications between attorney and client herein, which shall not be produced herein, without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access.

REQUEST NO. 23: (Omitted)

RESPONSE: *As request number twenty-three was omitted, no response is required.*

REQUEST NO. 24 : Documents sufficient to show your sales of each product and service sold under the Trademark for 1999, 2000, 2001, 2002, 2003, 2004, 2005 (to June 1, 2005).

RESPONSE: The request is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). Further, the requested production would be extremely expensive, time consuming and unnecessary in view of the relatively narrow issues presented. Opposer's interests in obtaining Applicant internal documentation go beyond the instant litigation. In order to protect Applicant from annoyance, oppression, undue burden and expense, and further due to the confidential and/or commercially sensitive nature of certain documents requested, no documents will be produced absent a showing of need and inability to reasonably obtain

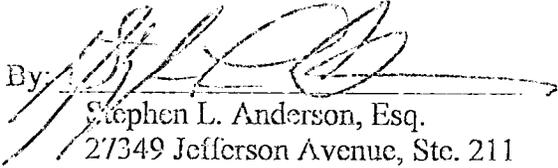
same from the appropriate governmental agencies or third parties in possession of such document. Applicant further withholds production until an appropriate protective order, limiting access to Applicant's proprietary data and commercially sensitive information and documents is entered herein. *Notwithstanding aforesaid objections and limitations, upon the entry of an adequate protective order herein designed to protect Applicant's commercial and proprietary interests, Applicant hereby agrees to make such documents available for limited inspection and copying.*

REQUEST NO. 25: All reports, advertisements, and features in newspapers and magazines of general circulation and the Internet which have made reference to your products and services sold under the Trademark.

RESPONSE: *Applicant hereby agrees to make certain responsive documents available for inspection and copying by the Opposer at his place of business on August 31, 2005 at 10:0 a.m. Alternatively, should Opposer agree to reciprocate, Applicant will copy and forward such documents to Opposer within thirty days hereof.*

ANDERSON & ASSOCIATES

Dated: August 12, 2005

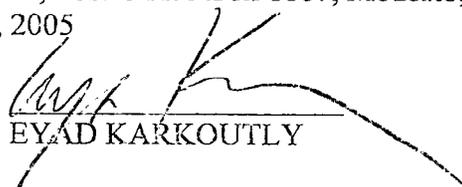
By:   
Stephen L. Anderson, Esq.  
27349 Jefferson Avenue, Ste. 211  
Temecula, CA 92590  
(951) 719-1371

Attorneys for Applicant/Petitioner  
KEITH CANGIARELLA

*Certificate of Service*

I hereby certify that a copy of the foregoing APPLICANT'S ANSWERS TO OPPOSER'S FIRST SET OF INTERROGATORIES was mailed first-class mail, postage prepaid, to Peter H. Smith, Attorney at law, 1535 J Street, Suite A, Post Office Box 1867, Modesto, California, 95353, attorney for Opposer, August 12, 2005

REQUESTS FOR  
PRODUCTION  
OF DOCUMENTS  
EX

  
EYAD KARKOUTLY

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

November 28, 2005

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:

I have been reviewing the documents which you produced in response to my document request in the above proceeding, and I would like to request further document production in response to my request numbers 19 and 22.

**DOCUMENT REQUEST NO. 19**

My document request number 19 asked for "All trademark search and evaluation documents which makes reference to the Trademark." "The Trademark" was defined by reference in paragraph I(B) as "The mark MESSAGE IN A BOTTLE, regardless of (a) the style of lettering in which the mark appears, (b) the spacing or capitalization of the letters, and (c) whether or not the mark is used in connection with any design." Your response was as follows:

"RESPONSE: The request is vague, ambiguous and uncertain. The request is insufficient, compound and fails to separately set forth each requested item and category with reasonable particularity, and therefore fails to comply with FRCP 34(b). The request is unduly burdensome, and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or material covered by the attorney-client privilege and/or other commercially and competitively sensitive information

Stephen Lee Anderson, Esq.

November 28, 2005

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which should not be produced without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access.”

I disagree with you that the request is vague, ambiguous, and uncertain. The words “trademark search and evaluation documents” are intended to refer to those documents relating to any search conducted by or on behalf of your client as to the availability of MESSAGE IN A BOTTLE as a trademark or service mark, including any evaluation of the search.

I also disagree that the request is compound since the “search and evaluation” process in regard to trademarks is an integrated process of conducting a search and evaluating it.

I also disagree that the request is unduly burdensome and overbroad. All I am looking for is the documentation for any trademark search and evaluation in connection with your client’s decision to use (or continue use of) the phrase MESSAGE IN A BOTTLE in commerce.

I also disagree that attorney work product and the attorney-client privilege provide bases for objection. Any trademark search would not have been “attorney work product prepared in anticipation of litigation”, but would have been sought for the purpose of evaluating the availability of the phrase MESSAGE IN A BOTTLE, and I am clearly entitled to production of that and any other related documents which are not communications between you and your client. I am not asking you at this time to produce any communications between you and your client in regard to the search and evaluation process.

Also, there is clearly no issue of “commercially and competitively sensitive information” here.

I produced a full copy of a Thomson & Thomson trademark search report obtained by my client in response to a similar document request from you, and I expect that you will reciprocate to the extent that search and evaluation documents were obtained by or for your client.

Stephen Lee Anderson, Esq.  
November 28, 2005  
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**DOCUMENT REQUEST NO. 22**

I also request production of documents in response to my request number 22, which was for "All documents referring or relating to use or registration of the Trademark by Opposer and Roger Rojas." ("Opposer" refers to Gold Shells, Inc.) Your response to this request was as follows:

"RESPONSE: Objection. This request is unduly burdensome and overbroad. In addition, many of the specifications in the request would require the production of attorney work product prepared in anticipation of litigation and/or the refer to or reflect the contents of communications between attorney and client herein, which shall not be produced herein, without the showing of undue hardship, need and inability as well as subject to the protection of a court order restricting access."

I disagree that this request is unduly burdensome and overbroad. I simply want to have copies of any documents which refer to my clients' use or registration of MESSAGE IN A BOTTLE. You obviously do not need to include copies of any documents which have gone back and forth between us or our clients since direct communications began. However, if your client has other documents which refer to my clients' use or registration of MESSAGE IN A BOTTLE, I would like to see them.

Again, I furnished documents which referred to your client's use of and application for MESSAGE IN A BOTTLE in response to your document requests, and I ask that you reciprocate.

I am of course exempting from this request any attorney work product or attorney-client privileged communications.

\* \* \* \*

Please consider this a "meet and confer" letter. However, since I am up against a deadline for filing a motion to compel, I am proceeding with such a motion, and a copy is enclosed for you. If you will provide the requested documents voluntarily, I will notify the Trademark Trial & Appeal Board that the matter has been resolved.

Stephen Lee Anderson, Esq.

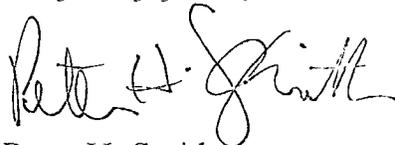
November 28, 2005

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As to the place of document production, please note that in the original request, I requested production "at the place where the documents and things are usually kept, which Opposer understands to be 331 N. Harrington Drive, Fullerton, California 92831," or alternatively at my office. It will be appreciated if you provide copies of the documents to my office, as you did with other documents, but let me know if it is necessary for me to arrange for a copy service to go to your client's premises to make the required copies.

Please let me know if you will voluntarily produce the documents requested.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter H. Smith". The signature is written in a cursive, flowing style with a large initial "P" and "S".

Peter H. Smith

PHS/lmb

cc: Gold Shells, Inc.

*Certificate of Service*

I hereby certify that a copy of the foregoing MOTION OF OPPOSER GOLD SHELLS, INC., TO COMPEL PRODUCTION OF DOCUMENTS FROM APPLICANT IN RESPONSE TO OPPOSER'S FIRST REQUEST TO APPLICANT FOR PRODUCTION OF DOCUMENTS AND THINGS 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 November 28, 2005.

Dated: November 28, 2005.

  
LUGENE M. BORBA

**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: Motion of Opposer Gold Shells, Inc., to Compel Production of Documents from Applicant in Response to Opposer's First Request to Applicant for Production of Documents and Things

Express Mail Mailing Label Number: EQ 041849383 US

Date of Deposit: November 28, 2005

I hereby certify that the above-identified motion to compel production of documents, which is attached, is being deposited on November 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: November 28, 2005