

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

Mailed: January 3, 2006

Opposition No. 91162780

GOLD SHELLS, INC.

v.

Cangiarella, Keith

Peter Cataldo, Attorney:

This case now comes before the Board for consideration of opposer's motions (filed via certificates of Express Mail dated November 23, 2005 and November 28, 2005)¹ to compel applicant's responses to opposer's first set of interrogatories and first set of requests for production. Applicant has filed briefs in opposition to opposer's motions.²

The Board has carefully considered the arguments of both parties with regard to the above motions. However, repeating those arguments herein would only serve to delay

¹ See Trademark Rule 2.119(c). Inasmuch as opposer's thirty-day testimony period, as reset in the Board's July 12, 2005 order, closed on December 29, 2005, opposer's motions to compel are timely. See Trademark Rule 2.120(e).

² The Board is exercising its discretion to consider opposer's motions to compel prior to the expiration of its time in which to file reply briefs with regard thereto. Consideration of reply briefs is discretionary on the part of the Board. See Trademark Rule 2.127(a).

the Board's disposition of this matter. The Board turns then to opposer's motions to compel.

Motion to Compel Responses to Interrogatories

The Board turns to opposer's first set of interrogatories, served upon applicant on June 29, 2005. Applicant has responded, *inter alia*, with a general objection thereto, under Trademark Rule 2.120(d)(1), on the ground that the interrogatories served by applicant are excessive in number. Applicant's objection is well taken.

Trademark Rule 2.120(d)(1) reads, in part, as follows: "[t]he total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts...". After careful review of opposer's first set of interrogatories, the Board has determined that the number of interrogatories exceeds seventy-five. In view thereof, the interrogatories served by opposer are excessive in number, and applicant need not provide answers thereto.

Accordingly, opposer's motion to compel responses to its first set of interrogatories is denied.

Inasmuch as the record before the Board on this motion does not support a finding that the motion was either frivolous or filed in bad faith, applicant's request for

sanctions relating to the filing thereof will be given no further consideration.

Motion to Compel Responses to Requests for Production

Turning to opposer's motion to compel responses to its request for production nos. 19 and 22, the Board finds that opposer has not satisfied its obligation under Trademark Rule 2.120(e) to make a good faith effort to resolve discovery disputes prior to seeking the Board's intervention. Specifically, opposer's showing of its effort consists of one letter to applicant's attorney with regard to its involved requests for production, written three months after service of applicant's assertedly insufficient responses and on the last day opposer could file its motion to compel. Obviously this is not an overwhelming showing of a good faith effort to attain a prompt and order resolution of the discovery dispute. It is clear from the foregoing that the parties have failed to make a substantial effort to resolve by agreement the issues raised in opposer's motion to compel responses to its involved requests for production. See TBMP §523.02 (2d ed. rev. 2004) and the authorities cited therein.

In view of the foregoing, opposer's motion to compel responses to its request for production nos. 19 and 22 is denied.

Opposition No. 91162780

Brief for defendant in the opposition and as
plaintiff in the counterclaim shall be due:

11/10/06

Brief for defendant in the counterclaim and its reply
brief (if any) as plaintiff in the opposition
shall be due:

12/10/06

Reply brief (if any) for plaintiff in the
counterclaim shall be due:

12/25/06