

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

In the Matter of Trademark
Application Serial No. 78/229,875
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.

Opposition No. 91162780 and
Counterclaim for Cancellation



12-27-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

**OPPOSER'S REPLY TO APPLICANT'S RESPONSE TO
OPPOSER'S MOTION TO COMPEL DOCUMENTS**

Opposer herein, Gold Shells, Inc., filed herein by express mail on November 28, 2005, a Motion to Compel Production of Documents from Applicant in Response to Opposer's First Request to Applicant for Production of Documents and Things. Applicant's counsel has acknowledged receipt thereof on November 30, 2005, and has filed a response dated December 14, 2005. Opposer replies as follows:

I. OPPOSER'S "MEET-AND-CONFER" LETTER TO OPPOSING COUNSEL DATED NOVEMBER 28, 2005, COMPLIES WITH THE RULES.

Opposer's motion to compel was in conformance with 37 CFR Section 2.120(e)(1) in that it included a written statement from Opposer that he had made a good faith effort, by correspondence, to resolve with opposing counsel the issues presented in the motion and had been unable to reach agreement. The basis for this statement, as stated in the motion, was a letter to opposing counsel on the same date as the motion, November 28, 2005. Since that letter was mailed at the same time as the motion to compel, the statement in the motion was true and correct and should be deemed to be in compliance with the rules.

In fact, opposing counsel acknowledges receipt of the "meet-and-confer" letter, yet has made no response to it, thereby highlighting the fact that the parties have been unable to reach agreement. Indeed, opposing counsel, though essentially admitting in his response that my letter had removed the basis for his objections, has chosen to file argument against the motion rather than simply agreeing to make the requested documents available. He then has the effrontery to say, ". . . The public policy issues strongly favor the Applicant herein." In fact, the reverse is true, as public policy strongly favors the exchange of information between the parties through the discovery process.

I was candid in stating the factual background in the motion, including the fact that I was faced with a filing deadline for the motion to compel and had satisfied the “meet-and-confer” requirement on the same date. Applicant’s response clearly illustrates that the motion was necessary as no voluntary compliance would be forthcoming.

II. OPPOSER’S MOTION TO COMPEL WAS TIMELY FILED WITH THE TTAB ON NOVEMBER 28, 2005.

Applicant’s counsel argues that Opposer’s motion to compel was untimely since it was filed after the beginning of the first testimony period. However, the first testimony period opened on November 29, 2005, and Opposer’s motion was filed with a certificate of mailing by express mail on November 28, 2005, pursuant to 37 CFR §2.198. A copy of the certificate of mailing is attached hereto as Exhibit A. While Applicant says that the motion was filed on December 6, 2005, this is not true. The TTAB’s record shows November 28, 2005, as the filing date for “Plaintiff’s Motion to Compel Discovery,” which is clearly the motion under discussion.

* * * *

Opposer submits that there are no procedural impediments to its motion, and the TTAB should proceed to rule on the merits of the motion based on the arguments therein.

Dated: December 21, 2005.

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 REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO COMPEL DOCUMENTS 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 December 21, 2005.

Dated: December 21, 2005.



LUGENE M. BORBA

CERTIFICATE OF FIRST CLASS MAILING
UNDER 37 CFR §2.197

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: Opposer's Reply to Applicant's Response to Opposer's Motion to Compel Documents

Date of Deposit: December 21, 2005

I hereby certify that the above-identified Opposer's Reply to Applicant's Response to Opposer's Motion to Compel Documents, which is attached, is being deposited on December 21, 2005, with the United States Postal Service by first class mail, postage prepaid, under 37 CFR §2.197, in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.



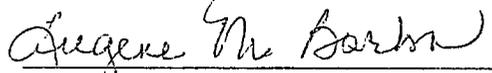
Lugene M. Borba

Date: December 21, 2005

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