

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

Mailed: February 23, 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 motion (filed via certificate of Express Mail dated January 12, 2006) to reopen discovery for the limited purpose of serving a revised first set of interrogatories. Applicant filed a brief in opposition to opposer's motion. In addition, opposer filed a reply brief which the Board has exercised its discretion to entertain. See Trademark Rule 2.127(a).

The Board has carefully considered the arguments of both parties with regard to the above motion. However, an exhaustive review of those arguments would only serve to delay the Board's disposition of this matter. The Board turns then to its determination of opposer's motion to reopen.

Discovery, as reset in the Board's July 12, 2005 order, closed on September 30, 2005. From October 2005 until

December 2005 this proceeding remained largely suspended pending the disposition of applicant's subsequently withdrawn motion to compel and opposer's motions to compel. On January 3, 2006, the Board issued an order denying opposer's motions to compel and finding, *inter alia*, that opposer's first set of interrogatories was excessive in number.

When, upon determining a motion to compel filed in response to a general objection to interrogatories on the ground of excessive number, the Board finds that the interrogatories are excessive in number, and that the propounding party has not previously used up its allotted 75 interrogatories, the Board normally will allow the propounding party an opportunity to serve a revised set of interrogatories not exceeding the numerical limit. The revised set of interrogatories serves as a substitute for the excessive set, and thus is deemed timely if the excessive set was timely. *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636 (TTAB 1990); and *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055 (TTAB 1990).

In this case, opposer timely served applicant with its first set of interrogatories on June 29, 2005. In addition, inasmuch as opposer filed a single set of interrogatories herein, it had not previously used up its allotted 75

interrogatories under Trademark Rule 2.120(d)(1), prior to filing the June 29, 2005 set. Accordingly, opposer is entitled to serve a revised set of interrogatories not exceeding 75 in number.

Nonetheless, it is settled that if the revised set is not served until after the close of the discovery period, the scope of the revised set may not exceed the scope of the excessive set, that is, the revised set may not seek information not sought in the first set of interrogatories previously found to be excessive. *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc., supra.* As noted above, discovery in this proceeding closed on September 30, 2005. Thus, opposer's revised set of interrogatories, though deemed timely because the original set was timely served, nonetheless will be served upon applicant after the close of the discovery period.

In view of the foregoing, opposer's motion to reopen discovery for the purpose of serving a revised first set of interrogatories is hereby granted to the extent that opposer is allowed until 30 days herefrom in which to serve upon applicant a revised first set of interrogatories in accordance with Trademark Rule 2.120(d)(1) and, consistent with the above discussion, not exceeding the scope of its originally served first set of interrogatories. Discovery otherwise remains closed.

Applicant's responses to opposer's revised first set of interrogatories will be due in accordance with Trademark Rule 2.120(a) and Trademark Rule 2.119(c).

Dates Reset

THE PERIOD FOR DISCOVERY TO CLOSE: CLOSED

Testimony period for plaintiff in the opposition to close: (open for thirty days) 6/30/06

Testimony period for defendant in the opposition and as plaintiff in the counterclaim to close: (open for thirty days) 8/29/06

Testimony period for defendant in the counterclaim and its rebuttal testimony as plaintiff in the opposition to close: (open for thirty days) 10/28/06

Rebuttal testimony period for plaintiff in the counterclaim to close: (open for fifteen days) 12/12/06

Briefs shall be due as follows:
[See Trademark rule 2.128(a)(2)].

Brief for plaintiff in the opposition shall be due: 2/10/07

Brief for defendant in the opposition and as plaintiff in the counterclaim shall be due: 3/12/07

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

4/11/07

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

4/26/07