

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.

Gold Shells, Inc,
Assignee

Opposition No. 91162780

Cancellation No. _____

**PETITIONER'S MOTION FOR SUMMARY
JUDGMENT/MOTION FOR
NOT SUSPENDING PROCEEDINGS**

PETITIONER'S MOTION FOR SUMMARY JUDGEMENT
"IN PRO PER"

Petitioner, Keith Cangiarella, (hereinafter "Petitioner") moves for summary judgment for fraud on the grounds that Registrant/Opposer/Assignor/Assignee, Gold Shells, Inc., (hereinafter Assignee) filed a knowingly false statement of use and has never used the mark on or in connection with the goods and services identified in the notice of allowance for and in U.S trademark registration No. 2, 243,269.

This motion is based on the pleadings, Assignee's responses to Petitioner's interrogatories, copies of Assignee's statement of use, Assignee's Section 8 & 15, as well as the following Exhibits from the extensive discovery between parties.

SUMMARY OF SUPPORTING EVIDENCE

Applicant's motion is supported by the following:

1. The pleading of record to date; including but not limited to, Assignee's Notice of Opposition dated October 21, 2004;
2. Trademark Application Serial No. 78/229,875, which is the subject of this opposition action;
3. Registration No. 2,243,269 relied upon by Assignee as the basis for this opposition;
4. Exhibit A: Assignee's Response to Applicant's First Set of Interrogatories, title page and signature page, along with necessary pages of Interrogatories referred to in this motion, in a conservation effort for the environment and the Board's time.
5. Exhibit B: Assignee's Trademark Research Report November 18, 1996, cover only, for environment conservation and the Board's time;
6. Exhibit C: Roger Rojas' Intent to Use application date of filing January 6, 1997;
7. Exhibit D: Office Action from Patent and Trademark office mailed September 15, 1997 on Application Serial No. 75/226,521 which matured into Registration No. 2,243,269;
8. Exhibit E: Examiner's Amendment dated March 6, 1998 with regards to Application Serial # 75/226521; Notice of Allowance; Statement of Use; Notice of Acceptance of Statement of Use; Certificate of Registration; Notice of Acceptance and Acknowledgement of §§ 8 & 15;
9. Exhibit G: Print out of International Schedule of Classes of Goods and Services from the USPTO.gov website;
10. Exhibit H: Application Serial No. 78/434,862 Mini Message in a Bottle filing date June 14, 2004 and Office Action sent January 18, 2005;
11. Exhibit I: Action of Unanimous Written consent of Board of Director, in lieu of Organizational meeting of Gold Shells, Inc dated July 7, 2003; Licensing Agreement dated July 7, 2003;

12. Exhibit J: Registrant's Application Serial No. 76/556,304 applied for on October 22, 2003; Office Action received December 17, 2004; Withdrawal of Trademark Application No. 76/556,304;
13. Exhibit K: Message in a Bottle Trademark Application Serial Number 73/342,921, filing date December 21, 1981, first use in commerce June 1, 1977; Message in a Bottle Trademark Application Serial Number 73/599,935 first use in commerce April 1, 1986, Registration No. 1499093, Registration date August 2, 1988; Message in a Bottle Trademark Application Serial Number 74/480,875, filing date January 21, 1994;

STATEMENT OF UNDISPUTED FACTS

The following facts are undisputed:

1. Trademark Registration No. 2,243,269 issued from trademark application, serial no. 76/326,255 filed on January 6, 1997 (the "application").
2. The application was based upon a bona fide intention of to use the mark "Message in a Bottle" in commerce on or in connection with written communication services, namely, the telephonic, electronic, or mail receiving of text, the recording of text utilizing print media, and arrangements for delivery of the recorded text to other in International Class 38.
3. An Office Action was mailed September 15, 1997, it states "the recitation of services is unacceptable as indefinite".
4. Examiner's Amendment mailed March 16, 2006, states "The recitation of services is amended to read as follows: Receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, in International Class 38.
5. Notice of Allowance was issued on August 25, 1998
6. The notice of allowance list the good/services as Receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, in International Class 38.
7. Registrant filed statement of use on January 25, 2006
8. The declaration in the statement of use acknowledged that:

Willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is executing this statement as the applicant; he believes that he is the owner of the service mark sought to be registered; the service mark is now in use in commerce; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

9. Trademark Registration No. 2, 243,269 was registered on May 4, 1999
10. The registration lists goods and services as Receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, in International Class 38.
11. Registrant filed Trademark Application no. 76/556,304 mark "Message in a Bottle" on October 22, 2003 goods and services listed as "communication device, namely, text and graphic images printed on paper and enclosed in a glass container, in International Class 09. First use of mark at least as early as January 16, 1999 and first used the mark in interstate commerce at least as early as January 16, 1999 and the mark is now used in such commerce.

12. Interrogatory No. 1 and Assignee's response thereto are set forth below (see also Exhibit A):

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

13. Interrogatory No. 2 and Assignee's response thereto are set forth below (see also Exhibit A):

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.

14. Interrogatory No. 3 and Registrant's response thereto are set forth below (See also Exhibit A):

INTERROGATORY NO. 3

Describe each product produced or marketed by Registrant under the designation MESSAGE IN A BOTTLE.

Response:

See the to Interrogatory Number 1

15. Interrogatory No. 4 and Registrant's response thereto are set forth below (See also Exhibit A):

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 the same as those of Opposer.

ARGUMENT

Summary judgment is appropriate in a trademark cancellation proceeding where, as in this case, there are no genuine issues of material fact and movant is entitled to judgment as a matter of law. Rule 56(c), Fed. R. Civ. P.; *Celotex Corp. v. Catrett*, 477 U.S. 317 (1987).

**A. The Registration Should Be Cancelled Because
It was Procured Through Fraudulent Representations**

The facts in the present case are very similar to those of *Medinol Ltd. V. Neuro Vasx Inc.*, 67 USPQ2D 1205 (TTAB 2003) this case involved a false Statement of Use filed to procure registration. In each instance, a material representation of fact with regard to the use of the mark on particular good and services was made by the owner of the mark

and that statement was relied upon by the United States Patent and Trademark Office in determining the registrant's rights to registration.

In this case, as in Medinol, the material misrepresentation of fact was made in a declaration signed by the owner of the mark and submitted to the United States Patent and Trademark Office. Here, the registrant, a person who was in a position to have personal knowledge of the facts concerning the use of the mark on goods and services in the United States. Accordingly, as in Medinol, the declarant here knew or should have known that the representation made as to the use of the mark on particular goods and services was false and misleading. Registrant's registration was relied upon and accepted by the United States Patent and Trademark Office. The statement of use would not have been accepted and the registration would not have issued but for the Registrant's misrepresentation.

Registrant's statement of use was signed under penalty of "fine or imprisonment, or both.. and [knowing] that such willful false statements may jeopardize the validity of the application or any resulting registration. Statement made with such degree of solemnity should be investigated thoroughly prior to signature and submission to the Office. See *Medinol, Ltd. V. Neuro Vasx, Inc.*, 67U.S.P.Q 2d 1205 (TTAB 2003)

There is no question that the Application would not have provided a basis for registration with the very fact that the application makes no mention of communication devices, namely text and graphic images printed on paper and enclosed in a glass container, as well as being misclassified in International Class 38. By not stating these goods and misclassifying the class of goods, the Registrant avoided being barred from registration and avoiding the earlier-filed applications rejection, Message in a Bottle Trademark Application Serial Number 73/342,921, filing date December 21, 1981, first use in commerce June 1, 1977; Message in a Bottle Trademark Application Serial Number 73/599,935 first use in commerce April 1, 1986, Registration No. 1499093, Registration date August 2, 1988; Message in a Bottle Trademark Application Serial Number 74/480,875, filing date January 21, 1994. (See Exhibit K) The Registrant made no attempt to amend recitation when it had an opportunity to on March 6, 1998. (See Exhibit E)

Registrant was represented by seasoned legal counsel in its procurement of the registration. It can be reasonably expected that experienced legal counsel knew the applicable law. Further, it can be reasonably expected that the Registrant's declaration in the statement of use under penalty of perjury was taken seriously.

In Medinol, the registrant argued that the statement as to the use of the stent was an error and this it did not intend any misrepresentation. The Board considered the question of the intent of the individual making the false representation of fact, holding that it is not the registrant's subjective intent that is significant but instead the objective manifestations of that intent, citing *General Car and Truck Leasing Systems, Inc. v General Rent-A-Car Inc.*, 17 USPQ2d at 1400:

"... proof of specific intent to commit fraud is not required, rather fraud occurs when an applicant or registrant makes a false material representation that the applicant or registrant knew or should have known was false." The Board also cited *Western Farmers Ass'n v Loblaw Inc.*, 180 USPQ 345, 347 (TTAB 1973) in that regard.

Fraud in procuring a trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with its application. See *Metro Traffic Control, Inc v. Shadow Network Inc.*, 104 F.3d 336,340 (Fed. Cir. 1997) *Torres v. Cantine Torresella S.r.l.* 808 F.2d 46, 1 U.S.P.Q. 1483 (Fed. Cir. 1986); *General Car and Truck Leasing Systems, Inc.*, 17 U.S.P.Q.2d at 1401

Here, Registrant's alleged inadvertent failure to amend goods and services constitutes, at the very least, reckless disregard for the truth amounting to fraud.

Further, the certificate of registration gave Registrant notice of the false statement in the statement of use, since it identifies the wrong class and it fails to identify the goods.

CONCLUSION

For all the foregoing reasons, Petitioner's motion for summary judgment should be granted and the Registration No. 2,243,269 should be cancelled in its entirety.

MOTION FOR NOT SUSPENDING PROCEEDINGS

"IN PRO PER"

Applicant hereby requests the Honorable Board not suspend proceedings as this Motion is decided. The Assignee's counsel has delayed these proceedings with numerous delay tactics. The Applicant alleges the Assignee's counsel has delayed these proceedings as followed:

1. Mailing in answer to counterclaim, at the latest possible date, which the envelope was received but to this date neither the USPTO, nor the Board has found the documents which were to be housed in it. The Assignee's counsel provided the Board with delivery confirmation of the envelope, but the documents were never found by the USPTO or the TTAB.
2. The Assignee's counsel filed Interrogatories during discovery which were excessive. Assignee's Counsel whom has access to the internet and over 30 plus years of legal experience delayed these proceedings for over between 3-6 months. Applicant received a letter dated June 7, 2006(See Exhibit A) which attest to the fact that Assignee's counsel has access to the world wide web and is familiar with the USPTO.gov and TTAB website. It is hard for the Applicant to believe that a lawyer with over 30 years experience would not have been familiar with the Trademark Trial and Appeals Board Manual of Procedure, Chapter 400, Section 405, Subsection 405.3 Limit on Number.
3. On May 1, 2006 Assignee's counsel filed a Notice of Unavailability, (See Exhibit B) stating he would be unavailable from Monday, May 15, 2006 continuing through Friday, May 19, 2006 and again commencing Thursday, June 15, 2005 continuing through Monday, July 10, 2006. Assignee's counsel is currently representing another party in an Exparte Appeal, Number 758314, the appeal is still pending but the Assignee's counsel filed no Notice of Unavailability in this proceeding. (See Exhibit C) Also on June 15, 2006 Assignee's counsel mailed a correspondence to the Applicant on June 15, 2006 which is postmarked June 15, 2006 as well, the date which counsel was to be unavailable. (See Exhibit D)

4. Assignee's Testimony period is set to begin July 29, 2006, this is motion is being mailed via priority mail on June 30, 2006. The statutory requirement for a response is 30 days, this will give counsel ample time to reply.

CONCLUSION

In view of the facts above Applicant requests that no further unnecessary delays in these proceedings be allowed. The Applicant prays this Motion is granted and no further unnecessary delays are allowed.



Keith Cangiarella

"In Pro Per"

331 N. Harrington Dr
Fullerton, CA. 92831

Date June 30, 2006
DreamWeaver Studios
Keith Cangiarella
331 N. Harrington Dr
Fullerton, CA. 92831
714-441-3442 phone
714-464-4112 fax
1mib@dreamweaverstudios.com

I hereby certify that this correspondence is being deposited with the US postal service as Priority mail in an envelope addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board P.O. Box 1451 Alexandria, VA 22313-1451

Certificate of Service

I hereby certify a copy of the foregoing **MOTION FOR SUMMARY JUDGEMENT/ MOTION FOR NOT SUSPENDING PROCEEDING**, was priority mailed to Mr. Peter H. Smith Attorney at law, 1535 J Street, Suite A, PO Box 1867, Modesto, CA. 95353.



Keith Cangiarella
June 30, 2006

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
For the mark MESSAGE IN A BOTTLE
Published in the Official Gazette on
June 29, 2004

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

v.

KEITH CANGIARELLA,
Applicant.

Opposition No. _____

CERTIFICATE OF EXPRESS MAILING UNDER 37 CFR §2.198

I hereby certify that the Notice of Opposition is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR §2.198, mailing label number ED448781783US, in an envelope addressed to: U.S. Patent & Trademark Office, Assistant Commissioner for Trademarks, Box TTAB Fee, 2900 Crystal Drive, Arlington, VA 22202, on October 21, 2004.

Lugene M. Borba
Lugene M. Borba

Date: October 21, 2004

NOTICE OF OPPOSITION

Opposer, Gold Shells, Inc., a California corporation, doing business as "Message in a Bottle" at 3401 Shawnee Drive, #61, Modesto, California 95356, and formerly at 725 Paradise Road, Modesto, California 95351, believes that it will be damaged by registration of the mark shown in Trademark Application Serial No. 78/229,875, and hereby opposes the same.

Applicant's application was filed on March 25, 2003, and was published for opposition in the Official Gazette on June 29, 2004. Opposer timely filed with the Trademark Trial & Appeal Board a request for extension of the time for filing a notice of opposition, and on August 27, 2004, the Trademark Trial & Appeal Board granted to Opposer an extension of time until October 27, 2004. The mark applied for is the trademark MESSAGE IN A BOTTLE in Class 16 for novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; kits comprised of bottles,

10/28/2004 ZCLIFT01 00000066 78229875

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300.00 OP

Page 1 of 4

10-21-2004

U.S. Patent & TMO/TM Mail Rcpt. Dt. # 2:

paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing, claiming first use on March 10, 1998, and first use in commerce on June 10, 1998.

As grounds of opposition, Opposer alleges as follows:

1. Opposer is the owner of U.S. service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in Class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, which was registered on the Principal Register on May 4, 1999. Said registration was based on an intent-to-use application filed in the U.S. Patent & Trademark Office on January 6, 1997, which is a date prior to the date of the filing of Applicant's application and prior to the date of Applicant's claimed dates of first use. Under Section 7(c) of the Lanham Act, Opposer has a priority right to the mark based on the filing date of its predecessor's original intent-to-use service mark application, January 6, 1997, which is prior to either Applicant's filing date, which was March 25, 2003, or Applicant's claimed first use, which was March 10, 1998. Said registration of Opposer is valid and subsisting and is conclusive evidence of Opposer's exclusive right to use said mark in commerce on the services specified in said registration, Opposer's predecessor having timely filed a combined affidavit of continuing use under Sections 8 and 15 of the Lanham Act between the fifth and sixth anniversaries of Opposer's registration date. In view of the fact that the respective marks of Opposer and Applicant are identical, and in view of the related nature of the services for which Opposer's mark was registered and the goods for which Applicant's application has been filed, it is alleged that Applicant's mark so resembles Opposer's registered mark as to be likely to cause confusion, or to cause mistake, or to deceive.
2. Opposer's ownership of its registration is based on an assignment from its predecessor, Roger Rojas, who is a principal of Opposer and its Chief Executive Officer, said assignment having been executed on October 5, 2004, and mailed to the Patent & Trademark Office for recording on October 6, 2004, accompanied by the appropriate recording fee.
3. Since January 16, 1999, Opposer or its predecessor have been, and Opposer is now,

actually using the mark MESSAGE IN A BOTTLE in connection with the sale of services as described in the registration and as a trademark in connection with the sale of goods consisting of novelty, favor, and souvenir bottles containing messages and greetings, identical to some of the goods set forth in Applicant's application. Under Section 7(c) of the Lanham Act, Opposer has a priority right to the mark through constructive use based on the filing date of its predecessor's original intent-to-use service mark application, January 6, 1997, which is prior to either Applicant's filing date, which was March 25, 2003, or Applicant's claimed first use in commerce, which was June 10, 1998. Use by Opposer and its predecessor has been valid and continuous since the date of first use and has not been abandoned. Furthermore, Applicant uses the mark on services which are identical to those for which Opposer has registered its mark, namely receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others. Said mark of Opposer is symbolic of extensive good will and consumer recognition built up by Opposer and its predecessor through a substantial amount of time and effort in advertising and promotion. In view of the fact that the respective marks at issue are identical and that the nature of the goods and services of the respective parties are substantially similar, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely to cause confusion, or to cause mistake, or to deceive.

4. Applicant is not a person who has used the mark MESSAGE IN A BOTTLE prior to the application filing date of Opposer's predecessor, or has filed an application to register the mark or has registered the mark prior to said date, or has filed a foreign application to register the mark on the basis of which he has acquired a right of priority, and therefore Applicant does not fit any of the exceptions to Opposer's right of priority under Section 7(c) of the Lanham Act.

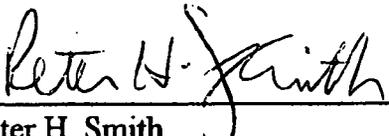
5. Since January 16, 1999, and through constructive use since January 6, 1997, Opposer and its predecessor have been, and Opposer is now, operating under the designation MESSAGE IN A BOTTLE in selling communication services which include the transmission of communications through goods which are the same as some of those recited in Applicant's

application. Said use has been valid and continuous since said date of first use and the relevant class of the public has come to associate Opposer with said designation. In view of the fact that Applicant's mark is identical to Opposer's designation, and in view of the substantially similar nature of the uses thereof, it is alleged that Applicant's mark consists of and comprises matter that may disparage and falsely suggest a connection with Opposer, and therefore is not registrable under Section 2(a) of the Lanham Act.

6. Opposer is informed and believes and therefore alleges that Applicant's application is not supported by actual use of the mark on the goods described in the application, and that Applicant's specimens submitted in support of his application are not genuine samples of uses of the mark which have been made in commerce.

WHEREFORE, Opposer prays that said application serial no. 78/229,875 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Dated: October 21, 2004.



Peter H. Smith
Attorney for Gold Shells, Inc., Opposer

Drawing Page

Serial Number:

78229875

Applicant:

Keith Cangiarella
331 N. Harrington Drive
Fullerton CA USA 92831



Date of First Use:

03/10/1998

Date of First Use in Commerce:

06/10/1998

Goods and Services:

sauce bottle, wozy bottle, greeting card, mailer, novelty, souvenir,
promotional product, invitation, favor, kit, advertising

Mark:

MESSAGE IN A BOTTLE



Internet Transmission Date:

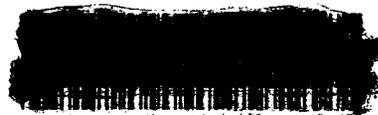
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Serial Number:

78229875

Filing Date:

2003/03/25

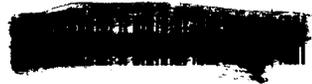


TRADEMARK APPLICATION

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

TOTAL FEES PAID: \$335

RAM SALE NUMBER: 358
RAM ACCOUNTING DATE: 03/26/2003



NO OCR



DOCUMENT INFORMATION**TRADEMARK/SERVICEMARK APPLICATION****VERSION 1.24****APPLICANT INFORMATION**

NAME	Keith Cangiarella
STREET	331 N. Harrington Drive
CITY	Fullerton
STATE	CA
COUNTRY	USA
ZIP/POSTAL CODE	92831
TELEPHONE NUMBER	714-441-3442
FAX NUMBER	714-464-4112
E-MAIL ADDRESS	mib@dreamweavertudios.com
AUTHORIZE E-MAIL COMMUNICATION	Yes

APPLICANT ENTITY INFORMATION

INDIVIDUAL: COUNTRY OF CITIZENSHIP	USA
--	-----

TRADEMARK/SERVICEMARK INFORMATION

MARK	MESSAGE IN A BOTTLE
TYPED FORM	Yes

BASIS FOR FILING AND GOODS/SERVICES INFORMATION

USE IN COMMERCE: SECTION 1(a)	Yes
SPECIMEN	Yes
SPECIMEN	sauce or woozy bottle

DESCRIPTION	
LISTING OF GOODS AND/OR SERVICES	sauce bottle, wozy bottle, greeting card, mailer, novelty, souvenir, promotional product, invitation, favor, kit, advertising
FIRST USE ANYWHERE DATE	03/10/1998
FIRST USE IN COMMERCE DATE	06/10/1998
OPTIONAL INFORMATION	
MISCELLANEOUS STATEMENT	A claim is made to the exclusive right to use Message in a Bottle for sauce bottles, often referred to as wozy bottles.
FEE INFORMATION	
TOTAL FEES PAID	335
NUMBER OF CLASSES PAID	1
NUMBER OF CLASSES	1
LAW OFFICE INFORMATION	
E-MAIL ADDRESS FOR CORRESPONDENCE	mib@dreamweavertudios.com
SIGNATURE AND OTHER INFORMATION	
SIGNATURE	/Keith Cangiarella/
DATE	03/25/2003
NAME	Keith Cangiarella
TITLE	Owner
MAILING ADDRESS	
LINE	Keith Cangiarella
LINE	331 N. Harrington Drive
LINE	Fullerton CA USA 92831

SERIAL NUMBER INFORMATION

SERIAL NUMBER 78229875

RAM INFORMATION

RAM SALE NUMBER 358

RAM ACCOUNTING
DATE 03/26/2003INTERNET
TRANSMISSION
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FOR
ACKNOWLEDGMENT mib@dreamweaverstudios.com

<SERIAL NUMBER> 78229875

<FILING DATE> 03/25/2003

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.24>

<APPLICANT INFORMATION>

<NAME> Keith Cangiarella
<STREET> 331 N. Harrington Drive
<CITY> Fullerton
<STATE> CA
<COUNTRY> USA
<ZIP/POSTAL CODE> 92831
<TELEPHONE NUMBER> 714-441-3442
<FAX NUMBER> 714-464-4112
<E-MAIL ADDRESS> mib@dreamweavertudios.com
<AUTHORIZE E-MAIL COMMUNICATION> Yes

<APPLICANT ENTITY INFORMATION>

<INDIVIDUAL: COUNTRY OF CITIZENSHIP> USA

<TRADEMARK/SERVICEMARK INFORMATION>

<MARK> MESSAGE IN A BOTTLE

<TYPED FORM> Yes

~Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended).~

<BASIS FOR FILING AND GOODS/SERVICES INFORMATION>

<USE IN COMMERCE: SECTION 1(a)> Yes

~The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.~

Applicant attaches one SPECIMEN for each class showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services.

<SPECIMEN> Yes

<SPECIMEN DESCRIPTION> sauce or wozy bottle

<LISTING OF GOODS AND/OR SERVICES> sauce bottle, wozy bottle, greeting card, mailer, novelty, souvenir, promotional product, invitation, favor, kit, advertising

<FIRST USE ANYWHERE DATE> 03/10/1998

<FIRST USE IN COMMERCE DATE> 06/10/1998

<OPTIONAL INFORMATION>

<MISCELLANEOUS STATEMENT> A claim is made to the exclusive right to use Message in a Bottle for sauce bottles, often referred to as wozy bottles.

<FEE INFORMATION>

<TOTAL FEES PAID> 335
<NUMBER OF CLASSES PAID> 1
<NUMBER OF CLASSES> 1

<LAW OFFICE INFORMATION>

~The USPTO is authorized to communicate with the applicant's attorney at the below e-mail address~

<E-MAIL ADDRESS FOR CORRESPONDENCE> mib@dreamweavertudios.com

<SIGNATURE AND OTHER INFORMATION>

~The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.~

<SIGNATURE>	/Keith Cangiarella/
<DATE>	03/25/2003
<NAME>	Keith Cangiarella
<TITLE>	Owner

<MAILING ADDRESS>

<LINE> Keith Cangiarella
<LINE> 331 N. Harrington Drive
<LINE> Fullerton CA USA 92831

<SERIAL NUMBER INFORMATION>

<SERIAL NUMBER> 78229875

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<RAM ACCOUNTING DATE> 03/26/2003

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E-MAIL ADDRESS FOR ACKNOWLEDGMENT> mib@dreamweaverstudios.com

Response to Office Action

The table below presents the data as entered.

SERIAL NUMBER	78229875
MARK SECTION (no change)	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	016
DESCRIPTION	
Bottle sold for the purposes of containing seasonal greetings and messages, invitations, promotional materials of others, and advertising materials of others; Novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	03/10/1998
FIRST USE IN COMMERCE DATE	06/10/1998
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	016
DESCRIPTION	
Novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	03/10/1998
FIRST USE IN COMMERCE DATE	06/10/1998
SIGNATURE SECTION	
SIGNATURE	/Keith Cangiarella/
SIGNATORY NAME	Ketih Cangiarella
SIGNATORY POSITION	Owner
SIGNATORY DATE	03/19/2004
SIGNATURE	/Ketih Cangiarella/
SIGNATORY NAME	Ketih Cangiarella
SIGNATORY POSITION	Keith Cangiarella

SIGNATORY DATE	03/19/2004
FILING INFORMATION SECTION	
SUBMIT DATE	Fri Mar 19 17:04:56 EST 2004
TEAS STAMP	USPTO/OA-67101171240-2004 0319170456218108-78229875 -200d4ace912f9aff26595d5a e9be4e6a2ea-N-N-200403191 70331419540

TD Form 1960 (Rev. 2002)
OMB Control #0651-6050 Exp. 04-30-2006

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. 78229875 is amended as follows:

Classification and Listing of Goods/Services

Applicant hereby amends the following class of goods/services in the application as follows:

Current: Class 016 for Bottle sold for the purposes of containing seasonal greetings and messages, invitations, promotional materials of others, and advertising materials of others; Novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing
Original Filing Basis: 1(a).

Proposed: Class 016 for Novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; Kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing

Declaration Signature

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this amendment/response on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, and that the mark is in use in commerce, and was in use in commerce on the application filing date, on or in connection with the goods and/or services listed in the application; or, if the application is being filed under 15 U.S.C. Section 1051(b), 1126(d) or 1126(e), he/she believes applicant to be entitled to use such mark in commerce, and that the applicant has a bona fide intention, and had a bona fide intention on the application filing date, to use the mark in commerce on or in connection with the goods and/or services listed in the application; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods and/or services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true as set forth within the original application and/or the submitted amendment/response.

Signature: /Keith Cangiarella/ Date: 03/19/2004
Signatory's Name: Ketih Cangiarella
Signatory's Position: Owner

Response Signature

Signature: /Ketih Cangiarella/ Date: 03/19/2004
Signatory's Name: Ketih Cangiarella
Signatory's Position: Keith Cangiarella

Serial Number: 78229875

Internet Transmission Date: Fri Mar 19 17:04:56 EST 2004

FEAS Stamp: USPTO/OA-67101171240-2004031917045621810

3-78229875-200d4ae912f9aff26595d5ae9be4

e6a2ea-N-N-20040319170331419540

Int. Cl.: 38

Prior U.S. Cls.: 100, 101, and 104

Reg. No. 2,243,269

United States Patent and Trademark Office

Registered May 4, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

MESSAGE IN A BOTTLE

**ROJAS, ROGER (UNITED STATES CITIZEN)
725 PARADISE ROAD
MODESTO, CA 95351**

**FOR: RECEIVING COMMUNICATIONS
FROM OTHERS, RECORDING SUCH COMMU-
NICATIONS IN WRITTEN OR PRINTED
FORM, AND TRANSMITTING SUCH COMMU-
NICATIONS TO OTHERS, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).**

**FIRST USE 1-16-1999; IN COMMERCE
1-16-1999.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MESSAGE", APART FROM
THE MARK AS SHOWN.**

SN 75-226,521, FILED 1-6-1997.

RUSS HERMAN, EXAMINING ATTORNEY

Exhibit
A

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.</p> <p>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.</p> <p>ROGER ROJAS, Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p>
---	--

**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

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

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.

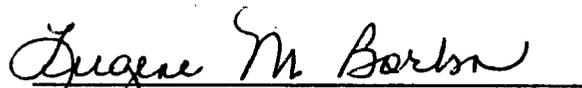
Also, the following definitions apply to these responses:

- 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.

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

Our File: 26584321-55
Your File: _____



Exhibit
B

Trademark Research Report

Client Name: PETER H SMITH ATTY AT LAW

Attention: PETER H SMITH

Date Received: November 18, 1996

Received by: Telephone

Date Mailed:

Mark Searched: MESSAGE IN A BOTTLE

Type of Search: ONLINE/SLOGANS

Goods/Services: MESSAGE DELIVERY SERVICE

We have taken all reasonable steps to ensure the completeness and accuracy of this report. However, for various reasons -- including the subjective nature of trademark searches, and incomplete or inaccurate data provided by the U. S. Patent and Trademark Office, the Secretary of State Offices, Industry Canada / Canadian Intellectual Property Office, Mexican Institute for Industrial Property, Dun & Bradstreet, American Business Information, the various publishers of information used for our Common Law reports, and Network Solutions, Inc. -- we cannot warrant that this report is complete or error-free. AS A RESULT, WE DISCLAIM ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This search is valid only for the mark and goods noted above. If the mark or goods which were the subject of this search are changed, even slightly, a new search should be conducted.

Any liability arising out of the preparation of this report is limited to a refund of the search fee paid. Acceptance of this search constitutes an acceptance of the aforesaid terms, conditions, and limitations. This report in no way constitutes a legal opinion.

Our File: 26584311-55

Your File: _____



Trademark Research Report

Client Name: PETER H SMITH ATTY AT LAW

Attention: PETER H SMITH

Date Received: November 18, 1996

Received by: Telephone

Date Mailed:

Mark Searched: MESSAGE IN A BOTTLE

Type of Search: FULL SEARCH

Goods/Services: MESSAGE DELIVERY SERVICE.

We have taken all reasonable steps to ensure the completeness and accuracy of this report. However, for various reasons -- including the subjective nature of trademark searches, and incomplete or inaccurate data provided by the U.S. Patent and Trademark Office, the Secretary of State Offices, Industry Canada / Canadian Intellectual Property Office, Mexican Institute for Industrial Property, Dun & Bradstreet, American Business Information, the various publishers of information used for our Common Law reports, and Network Solutions, Inc. -- we cannot warrant that this report is complete or error-free. AS A RESULT, WE DISCLAIM ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. This search is valid only for the mark and goods noted above. If the mark or goods which were the subject of this search are changed, even slightly, a new search should be conducted.

Any liability arising out of the preparation of this report is limited to a refund of the search fee paid. Acceptance of this search constitutes an acceptance of the aforesaid terms, conditions, and limitations. This report in no way constitutes a legal opinion.

H26

FILING RECEIPT FOR TRADEMARK APPLICATION

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark is contingent upon the collection of any payment made by check or draft. Your application will be considered you will be notified as to the examination thereof. Correspondence should be expected from the Patent and Trademark Office within 3 months. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and ATTORNEY REFERENCE NUMBER.

01/97
JG
1

16

Exhibit
C

PETER H SMITH
PO BOX 1867
MODESTO CA 95353

TMPRE

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Office of Trademark Program Control. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 75/226521

DATE OF FILING: 01/06/1997

MARK: MESSAGE IN A BOTTLE

MARK TYPE(S): SERVICE MARK

DRAWING TYPE: WORDS, LETTERS, OR NUMBERS IN TYPED FORM

SECTION 1(A): NO

SECTION 1(B): YES

SECTION 44: NO

ATTORNEY: PETER H SMITH

OWNER NAME: Rojas, Roger

OWNER ADDRESS: 725 Paradise Road

Modesto

CALIFORNIA 95351

ENTITY: INDIVIDUAL

CITIZENSHIP/DOMICILE: UNITED STATES

INTERNATIONAL CLASS

DATE OF FIRST USE

DATE OF FIRST USE IN COMMERCE

ONLY THOSE DATES OF USE AND CLASSES FILED UNDER SECTION 1(A) ARE LISTED

GOODS/SERVICES BY INTERNATIONAL CLASS

038-written communication services, namely, the telephonic, electronic, or mail receiving of text, the recording of text utilizing print media, and arrangements for delivery of the recorded text to others

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

To the Comm. of Pats. & Tmks.
Washington, D.C. 20231

Date: _____

NEW APP
CHECK \$ 245.00
DRAWING

Please confirm receipt of the service mark
application for MESSAGE IN A BOTTLE

Date Rec'd: _____

Serial Number _____



75226521

PETER H. SMITH

ATTORNEY AT LAW

1538 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

December 30, 1996

Commissioner of Patents & Trademarks
Washington, D.C. 20231

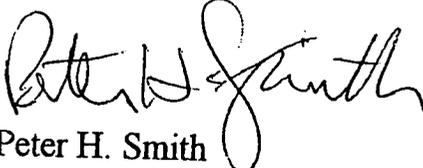
Dear Sir:

I am enclosing an intent-to-use application to register the following service mark
in the U.S. Patent & Trademark Office:

Applicant: Roger Rojas
Mark: MESSAGE IN A BOTTLE
International Class: 38

I am enclosing the required drawing of the mark and a check in the amount of
\$245.00 for the filing fee for one class. Please address correspondence on this file to
me at P.O. Box 1867, Modesto, CA 95353.

Respectfully submitted,


Peter H. Smith

PHS:sp
Enclosures

cc: Mr. Roger Rojas

SERVICE MARK
(Intent to use, 15 U.S.C. §1051(b))

MARK: MESSAGE IN A BOTTLE

INTERNATIONAL CLASS NO.: 38

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

I, Roger Rojas, the applicant herein, am an individual with a business address and situs at 725 Paradise Road, Modesto, California 95351. I am a citizen of the U.S.A.

The applicant requests that the above-identified service mark shown in the accompanying drawing be registered in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended) for the following services: written communication services, namely the telephonic, electronic, or mail receiving of text, the recording of text utilizing print media, and arrangements for delivery of the recorded text to others.

The applicant has a bona fide intention to use the service mark in commerce on or in connection with the above-identified services.

The service mark will be applied to Internet web page advertising, other advertising, business cards, and letterheads.

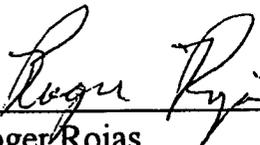
Please direct all communications pertaining to this application to:

Peter H. Smith
Attorney at Law
1535 J Street, Suite A
P.O. Box 1867
Modesto, CA 95353
Telephone: (209) 579-9524

Being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 8 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, I declare that I am the applicant herein; that I believe that I am entitled to use the service mark sought to be registered in commerce; said mark is intended for use

in the type of commerce specified in this application; and to the best of my knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

DATED: December 30, 1996



Roger Rojas
Telephone: (209) 522-4739

Applicant : Roger Rojas

Address : 725 Paradise Road, Modesto, California 95351

Goods/Services : Written communication services, namely the telephonic, electronic, or mail receiving of text, the recording of text utilizing print media, and arrangements for delivery of the recorded text to others.

MESSAGE IN A BOTTLE

Peter H. Smith
Attorney at Law
1535 J Street, Suite A
P.O. Box 1867
Modesto, CA 95353
(209) 579-9524

cc: Rojas Ro

3

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

SERIAL NO. 75/226521 Rojas, Roger	APPLICANT <i>Exhibit</i> D	PAPER NO.
MARK MESSAGE IN A BOTTLE		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513
ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353	ACTION NO. 01	<small>If no fees are enclosed, the address should include the words "Box Responses - No Fee." Please provide in all correspondence:</small>
	MAILING DATE 09/15/97	<ol style="list-style-type: none">1. Filing Date, serial number, mark and Applicant's name.2. Mailing date of this Office action.3. Examining Attorney's name and Law Office number.4. Your telephone number and ZIP code.
FORM PTO-1525 (5-90)	REF. NO.	
U.S. DEPT. OF COMM. PAT. & TM OFFICE		

A PROPER RESPONSE TO THIS OFFICE ACTION MUST BE RECEIVED WITHIN 6 MONTHS FROM THE DATE OF THIS ACTION IN ORDER TO AVOID ABANDONMENT. For your convenience and to ensure proper handling of your response, a label has been enclosed. Please attach it to the upper right corner of your response. If the label is not enclosed, print or type the Trademark Law Office No., Serial No., and Mark in the upper right corner of your response.

RE: Serial Number: 75/226521

The assigned examining attorney has reviewed the referenced application and determined the following.

The recitation of services is unacceptable as indefinite. The applicant may adopt the following recitation, if accurate: "Electronic mail services, namely, the recording, storage and subsequent transmission of written messages by telephone" in Int. Class 38. TMEP section 1301.05.

The applicant must disclaim the descriptive wording "MESSAGE" apart from the mark as shown. Trademark Act Section 6, 15 U.S.C. Section 1056; TMEP sections 1213 and 1213.02(a). The wording is merely descriptive because it describes a feature of applicant's service which consists of recording, storing and transmitting messages in text form.

The computerized printing format for the *Trademark Official Gazette* requires a standard form for a disclaimer. TMEP section 1213.09(a)(i). A properly worded disclaimer should read as follows:

No claim is made to the exclusive right to use MESSAGE apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm'r Pats. 1983).

The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.



Russ Herman
Trademark Attorney
Law Office 102
(703) 308-9102 ext 167

RH:iis

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

✓ cc: Roger Rojas

<p>SERIAL NO. 75/226521 Rojas, Roger</p> <p>MARK MESSAGE IN A BOTTLE</p> <p>ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353</p>	<p>PAPER NO.</p> <p>ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513</p> <p><small>If no fees are enclosed, the address should include the words "Box Responses - No Fee."</small></p> <p>Please provide in all correspondence:</p> <ol style="list-style-type: none"> 1. Filing Date, serial number, mark and Applicant's name. 2. Mailing date of this action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and ZIP code.
<p>APPLICANT <i>Exhibit</i></p> <p>MARK <i>E</i></p>	<p>ACTION NO. 02</p> <p>MAILING DATE <i>M</i> 03/16/98</p> <p>REF. NO.</p>
<p>FORM PTO-1525 (5-90) U.S. DEPT. OF COMM. PAT. & TM OFFICE</p>	

EXAMINER'S AMENDMENT

EXAMINING ATTORNEY	PERSON CALLED/INTERVIEWED	TELEPHONE NUMBER
Russ Herman	Peter Smith	209-579-9524
<input checked="" type="checkbox"/> TELEPHONE CALL	INTERVIEW DATE	<input checked="" type="checkbox"/> ATTORNEY
<input type="checkbox"/> PERSONAL INTERVIEW	March 6, 1998	<input type="checkbox"/> APPLICANT

CALL RECORD/NOTES

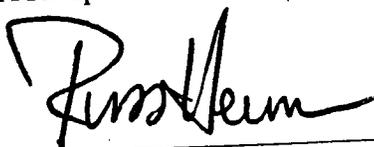
OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMPEP section 1105.01.

RE: Serial Number 75/226521

In accordance with the authorization granted by the above Applicant or attorney, the application has been AMENDED as indicated below. No response is necessary unless there is an objection to the amendment.

The recitation of services is amended to read as follows: Receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, in Int. Class 38.

No claim is made to the exclusive right to use MESSAGE apart from the mark as shown.


 Russ Herman
 Examining Attorney
 Law Office 102
 (703) 308-9102 ext. 167

U.S. Patent and Trademark Office (PTO)

NOTICE OF ALLOWANCE

(NOTE: If any data on this notice is incorrect, please submit a written request for correction of the NOA to: Assistant Commissioner for Trademarks, Box ITU, 2900 Crystal Drive, Arlington, VA 22202-3513. Please include the serial number of your application on ALL correspondence with the PTO. 15 U.S.C. 1063(b)(2))

ISSUE DATE OF NOA: Aug 25, 1998

PETER H SMITH
PO BOX 1867
MODESTO CA 95353

**** IMPORTANT INFORMATION: 6 MONTH DEADLINE ****

To avoid ABANDONMENT of this application, either a "Statement of Use" (a.k.a. "Allegation of Use") or a "Request for Extension of Time to File a Statement of Use" (a.k.a. "Extension Request") and the appropriate fee(s) must be received in the PTO within six months of the issue date of this Notice Of Allowance (NOA). Failure to do so will result in the ABANDONMENT of this application.

Please note that both the "Statement of Use" and "Extension Request" have many legal requirements, including fees. These requirements are explained in the PTO booklet "Basic Facts About Trademarks", which can be obtained upon request at (703)908-9000. In addition, there are printed forms contained in this booklet (for "Statements of Use" and "Extension Requests") for your use.

The following information should be reviewed for accuracy:

SERIAL NUMBER: 75/226521
MARK: MESSAGE IN A BOTTLE
OWNER: Rojas, Roger
725 Paradise Road
Modesto, CALIFORNIA 95351

GOODS/SERVICES BY INTERNATIONAL CLASS

038—receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

MEMBER OF CALIFORNIA
& 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

January 26, 1999

Commissioner of Patents & Trademarks
Assistant Commissioner for Trademarks
U.S. Patent & Trademark Office
Box ITU
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Application for MESSAGE IN A BOTTLE
Application No. 75/226521
Owner: Roger Rojas
Notice of Allowance Mailing Date: August 25, 1998

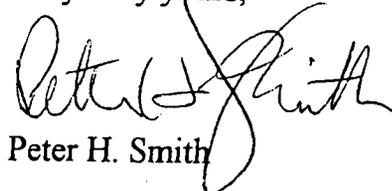
Ladies/Gentlemen:

I am enclosing a statement of use in connection with the above-referenced application for registration of MESSAGE IN A BOTTLE for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others in Class 38. I am also enclosing three samples of direct mail advertising letters with the service mark MESSAGE IN A BOTTLE as specimens in support of the statement of use.

I am also enclosing a check in the amount of \$100.00 as the fee for filing the statement of use.

Please file the statement of use and issue a certificate of registration.

Very truly yours,


Peter H. Smith

PHS:lmb

Enclosures

cc: Mr. Roger Rojas

STATEMENT OF USE UNDER 37 C.F.R. §2.88, WITH DECLARATION

TO THE ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND
TRADEMARKS:

APPLICANT NAME: ROGER ROJAS

NOTICE OF ALLOWANCE ISSUE DATE: August 25, 1998

Applicant requests registration of the above-identified service mark in the United States Patent and Trademark Office on the Principal Register established by the act of July 5, 1946 (15 U.S.C. §1051 et seq., as amended). Three (3) specimens showing the mark as used in commerce are submitted with this statement.

Applicant is using the mark in commerce on or in connection with the services identified in the Notice of Allowance in this application as receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others.

The date of first use of the mark anywhere was January 16, 1999.

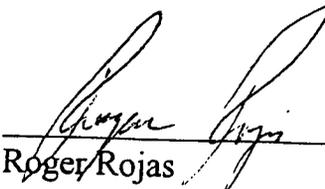
The date of first use of the mark in commerce which the U.S. Congress may regulate was January 16, 1999.

The type of commerce is interstate commerce.

The manner or mode of use of the mark in connection with the services is on advertising flyers, letterheads, business cards, computer screen displays in electronic commerce, and labels and containers used in carrying out the services.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is executing this statement as the applicant; he believes that he is the owner of the service mark sought to be registered; the service mark is now in use in commerce; and all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

DATE: January 19, 1999.



Roger Rojas

Telephone: (209) 521-3653

MESSAGE IN A BOTTLE™

Roger Rojas, Proprietor - P.O. Box 581113 - Modesto, CA 95358 - U.S.A.
Email mlab@ainet.com

Visit our website at www.messageinabottle.com

Valued customer,

Our service is sending art quality greetings in unique and distinctive bottles to that someone special. You let us know the communication you want to send, and who you want it sent to, and we will record your communication in beautifully hand-written form, insert it in a bottle, and transmit it for you. To receive our service visit our website at www.messageinabottle.com and fill out the order form.

Sincerely,

Roger Rojas

CERTIFICATE OF MAILING UNDER 37 CFR §1.8(a)

Mark: MESSAGE IN A BOTTLE

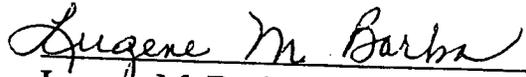
Serial No.: 75/226521

Filing Date: January 6, 1997

Name of party filing paper: Lugene M. Borba, Assistant to Attorney for Applicant.

Type of paper being filed: Statement of Use

I hereby certify that the above-identified Statement of Use under 37 C.F.R. §2.88, with Declaration, which is attached, is being deposited on January 25, 1999, with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents & Trademarks, Assistant Commissioner for Trademarks, U.S. Patent & Trademark Office, Box ITU, 2900 Crystal Drive, Arlington, VA 22202-3513.



Lugene M. Borba

Date: January 25, 1999

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



J. Todd Johnson

Acting Commissioner of Patents and Trademarks

Int. Cl.: 38

Prior U.S. Cls.: 100, 101, and 104

United States Patent and Trademark Office

Reg. No. 2,243,269

Registered May 4, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

MESSAGE IN A BOTTLE

ROJAS, ROGER (UNITED STATES CITIZEN)
725 PARADISE ROAD
MODESTO, CA 95351

FOR: RECEIVING COMMUNICATIONS
FROM OTHERS, RECORDING SUCH COMMU-
NICATIONS IN WRITTEN OR PRINTED
FORM, AND TRANSMITTING SUCH COMMU-
NICATIONS TO OTHERS, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).

FIRST USE 1-16-1999; IN COMMERCE
1-16-1999.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MESSAGE", APART FROM
THE MARK AS SHOWN.

SN 75-226,521, FILED 1-6-1997.

RUSS HERMAN, EXAMINING ATTORNEY

UNITED STATES DEPARTMENT OF COMMERCE
ASSISTANT COMMISSIONER FOR TRADEMARKS
2900 CRYSTAL DRIVE
ARLINGTON, VIRGINIA 22202-3513
Mar 25, 1999

cc: Roger Rojas

NOTICE OF ACCEPTANCE OF STATEMENT OF USE

PETER H SMITH
PO BOX 1867
MODESTO CA 95353

TM102

ATTORNEY
REFERENCE NUMBER:

SERIAL NUMBER: 75/226521
MARK: MESSAGE IN A BOTTLE
OWNER: Rojas, Roger

The statement of use filed in regard to the above-identified application has been accepted. This acceptance signifies that the statement of use is accepted in all respects and that the mark is entitled to be registered. Accordingly, the registration will issue in due course barring any extraordinary circumstances.



**NOTICE OF ACCEPTANCE AND
ACKNOWLEDGEMENT OF §§8 & 15
DECLARATION**
MAILING DATE: Dec 9, 2004

*vec: Roger
RWJAS*

#24

The combined declaration of use and incontestability filed in connection with the registration identified below meets the requirements of Sections 8 and 15 of the Trademark Act, 15 U.S.C. §1058 and 1065. The combined declaration is accepted and acknowledged. The registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>.
To review information regarding the referenced registration, go to <http://tarr.uspto.gov/>.

REG NUMBER: 2243269
MARK: MESSAGE IN A BOTTLE
CLASS(ES): 038.

*rev'd 12/15/04
RWJAS*

16

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2004-10-20 13:06:10 ET

Serial Number: 75226521

Registration Number: 2243269

Mark (words only): MESSAGE IN A BOTTLE

Standard Character claim: No

Current Status: Registered.

Date of Status: 1999-05-04

Filing Date: 1997-01-06

Transformed into a National Application: No

Registration Date: 1999-05-04

Register: Principal

Law Office Assigned: LAW OFFICE 102

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 2004-10-04

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Rojas, Roger

Address:

Rojas, Roger
725 Paradise Road
Modesto, CA 95351
United States

Legal Entity Type: Individual
Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 038

receiving communications from others, recording such communications in written or printed form, and



Exhibit
6

Other trademark resources (International)

International Schedule of Classes of Goods and Services

GOODS

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.
5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.
7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.
8. Hand tools and implements (hand-operated); cutlery; side arms; razors.
9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending

<p>machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.</p>
<p>10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.</p>
<p>11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.</p>
<p>12. Vehicles; apparatus for locomotion by land, air, or water.</p>
<p>13. Firearms; ammunition and projectiles; explosives; fireworks.</p>
<p>14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.</p>
<p>15. Musical instruments.</p>
<p>16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.</p>
<p>17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.</p>
<p>18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.</p>
<p>19. Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.</p>
<p>20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.</p>
<p>21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel-wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.</p>
<p>22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.</p>
<p>23. Yarns and threads, for textile use.</p>
<p>24. Textiles and textile goods, not included in other classes; beds and table covers.</p>

25. Clothing, footwear, headgear.
26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.
27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.
30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.
31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.
32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
33. Alcoholic beverages (except beers).
34. Tobacco; smokers' articles; matches.

SERVICES

35. Advertising; business management; business administration; office functions.
36. Insurance; financial affairs; monetary affairs; real estate affairs.
37. Building construction; repair; installation services.
38. Telecommunications.
39. Transport; packaging and storage of goods; travel arrangement
40. Treatment of materials.
41. Education; providing of training; entertainment; sporting and cultural activities.
42. Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.
43. Services for providing food and drink; temporary accommodations.
44. Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.
45. Personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.



United States Patent and Trademark Office

Exhibit H

Home | Site Index | Search | FAQ | Glossary | Guides | Contacts | eBusiness | eBiz alerts | News | Help

Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Wed Jun 14 04:18:54 EDT 2006

[TESS HOME](#)
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[PREV LIST](#)
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[NEXT LIST](#)
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[PREV DOC](#)
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[Logout](#) Please logout when you are done to release system resources allocated for you.

[Start](#) | List At: OR [Jump](#) to record: **Record 4 out of 25**

[TARR Status](#)
[ASSIGN Status](#)
[TOR](#)
[TTAB Status](#)
 (Use the "Back" button of the Internet Browser to return to TESS)

Mini Message in a Bottle

Word Mark	MINI MESSAGE IN A BOTTLE
Goods and Services	(ABANDONED) IC 009. US 021 023 026 036 038. G & S: Communication device, namely, a greeting or message, including handwritten or printed text and graphic on paper, and enclosed in either a plastic or glass container. FIRST USE: 20040606. FIRST USE IN COMMERCE: 20040608
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Design Search Code	
Serial Number	78434862
Filing Date	June 14, 2004
Current Filing Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Holcomb, Rhonda D. Rhonda Holcomb DBA Roni D.esigns SOLE PROPRIETORSHIP 1610 Ave J Danbury TEXAS 77534
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD

To: Holcomb, Rhonda D. (chrisnrhonda@evl.net)
Subject: TRADEMARK APPLICATION NO. 78434862 - MINI MESSAGE IN A BOTTLE - N/A
Sent: 1/18/2005 11:24:37 AM
Sent As: ECOM108@USPTO.GOV
Attachments: Attachment - 1

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/434862

APPLICANT: Holcomb, Rhonda D.

78434862

CORRESPONDENT ADDRESS:
Holcomb, Rhonda D.
Roni D.esigns
1610 Ave J
Danbury, TX 77534

RETURN ADDRESS:
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MARK: MINI MESSAGE IN A BOTTLE

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:
chrisnrhonda@evl.net

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 78/434862

The assigned examining attorney has reviewed the referenced application and determined the following:

EARLIER-FILED APPLICATION

Although a search of Trademark Office records has found no similar *registered* mark which would bar registration under Trademark Act §2(d), 15 U.S.C. §1052(d), enclosed is information regarding pending Application Serial No. 78/229875. 37 C.F.R. §2.83.

The filing date of the referenced application precedes the applicant's filing date, and there may be a likelihood of confusion between the applicant's mark and the mark in the above-noted application. If the earlier#filed application matures into a registration, registration may be refused under §2(d).

REFUSAL TO REGISTER – GENERIC

Registration is refused because the proposed mark is merely descriptive of the identified goods. Trademark Act §2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.* Moreover, the proposed mark appears to be generic as applied to the goods and, therefore, incapable of functioning as a source identifier for the applicant's goods. *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987); *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

The goods consist of a "plastic or glass container" (bottle) in which a handwritten or printed note (message) is enclosed. Therefore, the proposed mark merely describes the nature of the goods. "Mini" merely indicates that the note is small.

Under these circumstances, neither an amendment to proceed under Trademark Act §2(f), 15 U.S.C. §1052(f), nor an amendment to the Supplemental Register, can be recommended.

If the applicant chooses to respond to this communication, the applicant must also address the following issues:

ENTITY AND CITIZENSHIP

The applicant's entity type is listed as a "sole proprietorship." However, the applicant did not include the state under whose laws the sole proprietorship is registered, or the citizenship of the sole proprietor. The sole proprietorship should be identified as follows:

"Rhonda D. Holcomb, a sole proprietorship of [insert state where the applicant is registered], composed of Rhonda D. Holcomb, dba Roni D.esigns, a United States citizen [if accurate]."

TMEP §§803.02 and 803.03(a).

IDENTIFICATION OF GOODS

The identification of goods is unacceptable because portions are unclear. The applicant may adopt the following identification, if accurate: **Novelty item, namely, handwritten or printed greeting enclosed in a plastic or glass container.** TMEP §1402.01.

CLASSIFICATION

On the preliminary review of this application, the Trademark Office classified the goods incorrectly. The applicant should amend the application to classify the goods in Class 16. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401.02(a) and

1401.03(b).

SUBSTITUTE SPECIMEN REQUIRED

The specimen is unacceptable as evidence of trademark use because it does not show where the label is affixed. The applicant must submit a specimen showing how the mark is used in connection with the goods. 37 C.F.R. §2.56. Examples of acceptable specimens are tags, labels, containers or photographs that show the mark on the goods or packaging. TMEP §904.04 *et seq.*

The applicant must verify, with an affidavit or a declaration under 37 C.F.R. §2.20, use of the substitute specimen in commerce at least as early as the filing date of the application. *Jim Dandy Co. v. Siler City Mills, Inc.*, 209 USPQ 764 (TTAB 1981); 37 C.F.R. §2.59(a); TMEP §904.09.

The statement supporting use of the substitute specimen must read as follows:

The substitute specimen was in use in commerce at least as early as the filing date of the application.

DECLARATION

Following is a properly worded declaration under 37 C.F.R. §2.20. At the end of the response, the applicant should insert the declaration signed by someone authorized to sign under 37 C.F.R. §2.33(a).

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

(Signature)

(Print or Type Name and Position)

(Date)

SEE CHANGE

Effective January 31, 2005, and pursuant to the Consolidated Appropriations Act, 2005, Pub. L. 108-447, the following are the fees that will be charged for filing a trademark application:

- (1) \$325 per international class if filed electronically using the Trademark Electronic Application System (TEAS) or
- (2) \$375 per international class if filed on paper.

These fees will be charged not only when a new application is filed, but also when payments are made to add classes to an existing application. If such payments are submitted with a TEAS response, the fee will be \$325 per class, and if such payments are made with a paper response, the fee will be \$375 per class.

The new fee requirements will apply to any fees filed on or after January 31, 2005.

TRADEMARK OPERATION RELOCATION

The Trademark Operation has relocated to Alexandria, Virginia. Effective October 4, 2004, all Trademark-related paper mail (except documents sent to the Assignment Services Division for recordation, certain documents filed under the Madrid Protocol, and requests for copies of trademark documents) must be sent to:

**Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451**

Applicants, attorneys and other Trademark customers are strongly encouraged to correspond with the USPTO online via the Trademark Electronic Application System (TEAS), at <http://www.uspto.gov/teas/index.html>.

/Sue Carruthers/

Trademark Attorney, Law Office 108

Phone: 571-272-9139

Fax: 571-273-9108 (formal responses only)

E-mail: sue.carruthers@uspto.gov (informal communications only)

How to respond to this office action:

You may respond using the Patent and Trademark Office's Trademark Electronic Application System (TEAS) (visit <http://www.uspto.gov/teas/index.html> and follow the instructions therein), but you **must** wait until at least **72 hours** after receipt of the e-mailed office action. **PLEASE NOTE:** *For those with applications filed pursuant to Section 66(a) of the Trademark Act, all responses to office actions that include amendments to the identifications of goods and/or services must be filed on paper, using regular mail (or hand delivery) to submit such response. TEAS cannot be used under these circumstances. If the response does not include an amendment to the goods and/or services, TEAS can be used to respond to the office action.*

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>.

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>.

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

TYPED DRAWING

Serial Number

78229875

Status

OPPOSITION PENDING

Word Mark

MESSAGE IN A BOTTLE

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Cangiarella, Keith INDIVIDUAL UNITED STATES 331 N. Harrington Drive
Fullerton CALIFORNIA 92831

Goods/Services

Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Novelty, favor, and souvenir bottle containing messages and
greetings, invitations, promotional materials of others, and
advertising materials of others; Kits comprised of bottles, paper for
creating promotional messages, advertising messages, greetings,
messages and invitations and packaging and boxes for mailing. First
Use: 1998/03/10. First Use In Commerce: 1998/06/10.

Filing Date

2003/03/25

Examining Attorney

WELLS, KELLEY

Exhibit I

ACTION OF UNANIMOUS WRITTEN CONSENT OF
BOARD OF DIRECTORS
IN LIEU OF ORGANIZATIONAL MEETING OF
GOLD SHELLS, INC.

The undersigned, being all the directors of Gold Shells, Inc., a California corporation, by their signature below or on a counterpart hereof, hereby adopt the following resolutions on behalf of this corporation, pursuant to the California Corporations Code, for the purpose of perfecting the organization of this corporation:

1. **CERTIFICATION AND FILING OF ARTICLES OF INCORPORATION.**

RESOLVED, that the Secretary of this corporation is hereby authorized and instructed to insert in the Minute Book of this corporation a copy of the Articles of Incorporation as filed in the Office of the California Secretary of State and certified by the Secretary of State.

2. **ADOPTION OF BYLAWS.**

RESOLVED FURTHER, that the Bylaws, which were adopted and approved by the incorporator of this corporation and attached as an exhibit to the Action of Incorporator, are hereby ratified, approved, and adopted as the Bylaws of this corporation;

RESOLVED FURTHER, that the Secretary of this corporation, when appointed, is authorized and directed to execute a Certificate of Adoption of these Bylaws and to insert them as certified in this corporation's Minute Book, and to see that a copy, similarly certified, is kept at this corporation's principal office for the transaction of its business.

3. **CORPORATE SEAL.**

RESOLVED FURTHER, that a corporate seal consisting of the following words:

Gold Shells, Inc.
Incorporated July 7, 2003
California

is adopted as the seal of this corporation.

4. **FORM OF STOCK CERTIFICATE.**

RESOLVED FURTHER, that the form of certificate for the common stock of this corporation in the form filed in the corporate Minute Book and incorporated herein by reference is adopted for use by this corporation.

5. **BANK ACCOUNT.**

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized and directed to establish on behalf of this corporation account(s) at a bank or banks ("Bank(s)" herein) which the officer acting may select in his or her discretion, and that funds from such account(s) may be withdrawn by means of checks or drafts of this corporation signed by any one of the following persons: Roger Rojas or Adriana Rojas.

RESOLVED FURTHER, that all form resolutions required by such Bank(s) are hereby adopted in the form utilized by Bank(s), and the Secretary is hereby authorized to certify such resolutions as having been adopted by this unanimous written consent and is directed to insert the form of such resolution in the Minute Book.

6. **LEGAL COUNSEL.**

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized and directed to engage Jeffrey C. Cannon, Attorney at Law, to serve as the attorney for this corporation on terms and conditions satisfactory to the officers.

7. **ACCOUNTANT.**

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized and directed to engage an accountant for this corporation on terms and conditions satisfactory to the officers.

8. **STATEMENT BY DOMESTIC STOCK CORPORATION.**

RESOLVED FURTHER, that the form entitled "Statement by Domestic Stock Corporation," as required to be filed with the California Secretary of State by California Corporation Code Section 1502, is hereby approved, and any officer or agent of this corporation, when appointed, is hereby authorized and directed to execute the form and forward it with the appropriate fee in accordance with the time requirements of this Section to the California Secretary of State; and

RESOLVED FURTHER, that any change in the agent for service of process (or in his or her address) as stated in the aforementioned statement shall cause the President or Secretary to execute a new statement and send it to the Secretary of State, and in addition, those officers are directed hereby to file a new statement annually in accordance with the provisions of Section 1502 of the California Corporations Code.

9. **PRINCIPAL EXECUTIVE OFFICE.**

RESOLVED FURTHER, that the principal executive office of this corporation shall be located at 725 Paradise Road, Modesto, California.

10. **EMPLOYER IDENTIFICATION AND WITHHOLDING.**

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized and directed to take all actions deemed necessary or advisable to secure federal and state employer identification numbers and to comply with all laws regulating payroll reporting, withholding and taxes.

11. **STOCK ISSUANCE.**

RESOLVED FURTHER, that this corporation sell and issue its common stock to the persons and for the consideration set forth below; that the consideration for these shares shall be paid in full before their issuance and delivery and that such shares shall be deemed fully paid and nonassessable; that the Board has determined that the consideration reflected below reflects fair value for the shares; and that the entire consideration shall be credited to the appropriate accounts as determined by the accountant for or Chief Financial Officer of this corporation.

<u>Name</u>	<u>Number of Shares</u>	<u>Consideration</u>
Roger Rojas	5,000,000	\$1,500.00
Adriana Rojas	5,000,000	\$1,500.00

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized and directed to issue to each shareholder of this corporation from time to time one or more share certificates of this corporation representing such shares of stock.

12. **SECURITIES LAWS COMPLIANCE.**

RESOLVED FURTHER, that it is contemplated that the offer and sale of this corporation's common stock shall be exempt from qualification under the California Corporations Code and any other applicable state securities laws, and each officer of this corporation is authorized and directed to take all steps necessary or desirable to comply with the applicable legal requirements, including causing any required notice to be prepared, executed, and timely filed with the appropriate regulatory agency.

RESOLVED FURTHER, that it is contemplated that the offer and sale of this corporation's common stock shall be exempt from the registration requirements of the federal Securities Act of 1933, as amended, pursuant to Section 4(2), Section 3(a)(11), or Regulation D of that Act, as may be applicable, and that each officer of this corporation acting alone is hereby authorized and directed to take all steps necessary or desirable to qualify under an applicable exemption, including the filing of any Form D with the Securities and Exchange Commission.

13. **ELECTION OF OFFICERS.**

RESOLVED, that the following persons are elected to the office(s) indicated next to their names to serve until their successor(s) shall be duly elected or appointed, unless he or she resigns, is removed from office or is otherwise disqualified from serving as an officer of this corporation, to take their respective office(s) immediately upon such election.

<u>Office</u>	<u>Name</u>
President and Chief Executive Officer	Roger Rojas
Vice President	Adriana Rojas
Secretary	Adriana Rojas
Chief Financial Officer	Adriana Rojas

14. **ACCOUNTING AND FISCAL YEAR.**

RESOLVED FURTHER, that, until changed by this Board or by the shareholder, the first accounting year of this corporation shall commence on its date of incorporation and shall end on the following date:

RESOLVED FURTHER, that each subsequent fiscal year of this corporation shall end on December 31.

15. **EXPENSES OF INCORPORATION.**

RESOLVED FURTHER, that the Chief Financial Officer is authorized and directed to pay the expenses of the incorporation and organization of this corporation and to reimburse the persons advancing funds to this corporation for this purpose.

16. **S CORPORATION ELECTION.**

WHEREAS, it is in the best interest of this corporation and its shareholders to elect to be treated as an S Corporation, pursuant to the Internal Revenue Code of 1986 and the California Revenue and Taxation Code;

NOW, THEREFORE, BE IT RESOLVED that the officers of this corporation are, and each acting along is, authorized and directed to execute all documents and to take such action as they may deem necessary or advisable in order to elect for S Corporation treatment, including but not limited to the submission of necessary corporation election documents to the Internal Revenue Service and the California Franchise Tax Board.

17. **QUALIFICATION OF STOCK UNDER IRC §1244.**

WHEREAS, the applicability of Internal Revenue Code §1244 to the corporation's common stock has been considered, and §1244 entitles shareholders to

ordinary loss tax treatment of losses from stock that qualifies as "section 1244 stock", and it was noted that the corporation is a small business corporation as defined in Internal Revenue Code §1244(c)(3)(A);

NOW, THEREFORE, BE IT RESOLVED that this corporation intends to qualify its common stock for treatment under Internal Revenue Code §1244, under which the corporation plans that its total equity capital and paid-in surplus shall in no event exceed \$1,000,000.00, that it shall be largely an operating company, with less than 50% of its gross receipts coming from passive sources (royalties, rents, dividends, interest, annuities, and sales or exchanges of stocks or securities), and that it shall conform in all other respects to the requirements necessary to qualify its common stock for treatment under Internal Revenue Code §1244; and the Secretary of this corporation is authorized and directed to keep all records, prepare all reports and returns, and take all other steps as may be necessary to qualify this corporation's common stock for treatment under Internal Revenue Code §1244.

18. **LICENSING OF INTELLECTUAL PROPERTY.**

WHEREAS, the corporation wishes to engage in the advertising and sale of gift bottle services and goods, and its Incorporator, President, and Chief Executive Officer, Roger Rojas, represents that he is the owner of the service mark and trademark MESSAGE IN A BOTTLE (and other intellectual property rights in connection therewith), and has used that mark for gift bottle services and goods in interstate commerce since 1999, and is the owner of U.S. service mark registration number 2,243,269, issued May 4, 1999, for MESSAGE IN A BOTTLE for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others; and Roger Rojas is willing to grant to the corporation an exclusive license to use said mark on the same goods and services (subject only to further use by him) as part of his consideration for the shares of stock which the corporation is issuing to him, and the corporation wishes to use this intellectual property;

NOW, THEREFORE, BE IT RESOLVED that this corporation enter into a licensing agreement with Roger Rojas in the form attached hereto as Exhibit A.

19. **OMNIBUS RESOLUTIONS.**

RESOLVED FURTHER, that the officers of this corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as said officers shall deem necessary or advisable, to carry out the purposes of the foregoing resolutions.

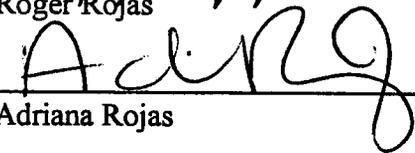
RESOLVED FURTHER, that any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of this corporation.

* * * *

This Unanimous Written Consent may be executed in one or more counterparts, each of which shall be an original and all of which together shall be one and the same instrument. This written consent shall be filed in the Minute Book of this corporation and become a part of the records of this corporation.



Roger Rojas



Adriana Rojas

Dated as of July 7, 2003.

LICENSING AGREEMENT

THIS AGREEMENT is by and between ROGER ROJAS, hereinafter called "Licensor", and GOLD SHELLS, INC., hereinafter called "Licensee".

Licensor represents that he is the owner of the service mark and trademark MESSAGE IN A BOTTLE and other intellectual property rights in connection therewith for gift bottle services and goods (hereinafter called "the products"). Licensor represents that he has used that mark for the products in interstate commerce since at least January 16, 1999, and is the owner of U.S. service mark registration number 2,243,269, issued May 4, 1999, for MESSAGE IN A BOTTLE for receiving communications from others, recording such communications in written or printed form, and transmitting such communication to others.

Licensor is the incorporator of Licensee and is willing to grant to Licensee a license to use said mark on the products on the terms and conditions set forth herein; and Licensee wishes to acquire such license.

With this background, and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **DEFINITION.** As used herein, the term "Trademark" shall mean the words MESSAGE IN A BOTTLE or a combination of words which includes those words, whether used as a trademark or as a service mark.

2. **GRANT OF LICENSE.** Subject to the terms and conditions specified herein, Licensor hereby grants to Licensee an exclusive license to use the Trademark and all intellectual property in connection therewith on and in connection with the advertising, marketing, and sale of the products, subject to Licensor's continuing right to concurrently use the Trademark for the products.

3. **CONSIDERATION.** Licensor grants the license herein to Licensee as partial consideration for Licensee's issuance of corporate stock to Licensor.

4. **QUALITY CONTROL.**

(a) All goods and services on which the Trademark is used by Licensee shall conform to such standards as may be established from time to time by Licensor. Licensee shall conform to all standards established from time to time by Licensor covering use of the Trademark in the acquisition, manufacture, processing, packaging, advertising, marketing, and sale of the products. In addition, Licensee warrants that the products will be made and sold in conformity with all local, state, and federal laws and regulations.

(b) When requested by Licensor, Licensee shall submit samples of any of its products or the advertising, labeling, packaging, or other materials with respect thereto, to Licensor to verify compliance with the applicable standards. The cost of sampling and shipping shall be borne by Licensee. Licensee also agrees to permit Licensor to enter Licensee's premises at all reasonable times to inspect Licensee's facilities and operations, collect samples, and inspect or test the products of Licensee and other materials relating to this agreement at Licensee's premises.

(c) If Licensor at any time determines that any use of the Trademark, or any acts or practices of Licensee, are not in conformity with Licensor's standards, Licensor may notify Licensee in writing of such deficiency, and Licensee shall have 30 days thereafter to cure the same. In the absence of such cure, Licensor may terminate this agreement immediately.

(d) All goods and services on which Licensee uses the Trademark shall be approved by Licensor prior to sale. Licensee shall furnish samples of same to Licensor in advance of use.

5. **PROTECTIVE INDICIA.** Licensee agrees to apply to its use of the Trademark such notice of intellectual property claim or indicia as Licensor may require in such form as Licensor may designate.

6. **THIRD-PARTY INFRINGEMENT.** Licensee agrees to police the rights to the Trademark and take such action as may be necessary to avoid and stop third-party infringement of the Trademark, but Licensor reserves the right to do the same in his discretion.

7. **INDEMNIFICATION.** Licensee agrees to indemnify and hold Licensor harmless from all third-party claims or actions, and all expenses incidental to the defense of such claims or actions, including attorney's fees, in connection with Licensee's performance of this agreement.

8. **NON-ASSIGNMENT.** Neither party may assign any interest in this agreement.

9. **ATTORNEY'S FEES.** In any action or proceeding by either party to enforce this agreement or any provision thereof, the prevailing party shall be entitled to all costs incurred and to reasonable attorney's fees.

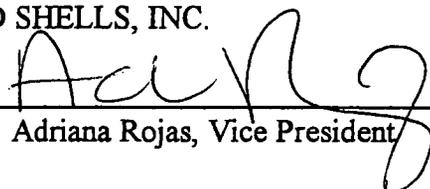
10. **OTHER PROVISIONS.** This agreement shall be effective as of the date set forth below. This agreement shall be construed and interpreted in accordance with the laws of the State of California. This agreement shall be binding on and enure to the benefit of the parties and their successors. This agreement contains all the agreements of the parties on the subject matter hereof and supercedes all prior agreements and understandings between the parties and cannot be amended or modified except by a written agreement signed by Licensee and Licensor. In the event that any litigation is necessary to enforce the terms of this agreement, the venue for such litigation shall be the federal district covering Stanislaus County, California, or Stanislaus County itself.

DATED: July 7, 2003.



Roger Rojas

GOLD SHELLS, INC.

By: 

Adriana Rojas, Vice President

Exhibit J.

11-03-2003

U.S. Patent & TMO/™ Mail Rcpt Dt. #10

DRAWING PAGE

APPLICANT : ROGER ROJAS, an individual

CITIZENSHIP : U.S.A.

ADDRESS : 725 Paradise Road
Modesto, CA 95351

MARK : MESSAGE IN A BOTTLE (and stylized text)

CLASS : (Int'l) 09
(U.S.) 21

DISCLAIMER : No claim is made to the exclusive right to use
the words "Message" or "Bottle" apart from their
use in the mark.

*Message
in a
Bottle*

U.S. Patent & TMO/™

76556304

76556304

TRADEMARK APPLICATION SERIAL NO. _____

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE
FEE RECORD SHEET

11/06/2003 SWILSON1 00000099 76556304

01 FC:6001

335.00 OP



CANNON
BUSINESS LAW GROUP

PACIFIC CENTER
1012 11TH STREET,
SUITE 103
MODESTO, CA 95354

209-550-5690
FAX: 209-550-5691
WWW.JCANNONLAW.COM

October 27, 2003

Box NEW APP FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

RE : Application for Registration of Mark Based Upon Actual Use
APPLICANT : ROGER ROJAS, an individual
CITIZENSHIP : U.S.A.
ADDRESS : 725 Paradise Road
 Modesto, CA 95351
MARK : MESSAGE IN A BOTTLE (and stylized text)
CLASS : (Int'l) 09
 (U.S.) 21
DISCLAIMER : No claim is made to the exclusive right to use the words
 "Message" or "Bottle" apart from their use in the mark.

Dear Sir/ Madam:

Enclosed please find the following for registering the above-referenced Mark based upon Applicant's actual use of the mark in commerce:

- Application for registration based on intent-to-use pursuant to Section 1(b) of the Lanham Act, including signed Declaration and Power of Attorney;
- Drawing Page; and
- Check No. 2774 in the amount of \$335.00 per class, the fee for filing this Application.

Respectfully submitted,

Jeffrey C. Cannon
Attorneys for Applicant
ROGER ROJAS, an individual

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BOX NEW APP FEE

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

**Application for Registration of Trademark on the Principal Register
Based on Actual Use**

APPLICANT : **ROGER ROJAS, an individual**

CITIZENSHIP : **U.S.A.**

ADDRESS : **725 Paradise Road
Modesto, CA 95351**

MARK : **MESSAGE IN A BOTTLE (and stylized text)**

CLASS : **(Int'l) 09
(U.S.) 21**

DISCLAIMER : **No claim is made to the exclusive right to use
the words "Message" or "Bottle" apart from their
use in the mark.**

The above-identified Applicant hereby requests that the mark shown in the accompanying drawing be registered pursuant to Section 2(f) in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. § 1051 *et. seq.*, as amended) for the following goods:

**Communication device, namely, text and graphic images printed
on paper and enclosed in a glass container**

Applicant is using the mark in commerce on or in connection with the identified goods or services. Applicant first used the mark at least as early as January 16, 1999 and first used the mark in interstate commerce at least as early as January 16, 1999, and the mark is now used in such commerce.

The mark is used by affixing it to tags affixed to the goods, to packages in which the goods are sold, or to cartons used with the goods, or by applying it to advertising materials, promotional materials, signage, etc.; three (3) specimens showing the mark as actually used are presented herewith.

Applicant believes that this mark has acquired distinctiveness and is therefore entitled to registration pursuant to Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f), for the following reason:

The mark has become distinctive of the goods or services as a result of substantially exclusive and continuous use in interstate commerce for the five years next preceding the date of filing of this application.

Declaration

Roger Rojas, being duly warned that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application, document or any registration resulting therefrom, declares he is the Applicant and is authorized to make this declaration, that he believes Applicant to be the owner of the mark sought to be registered; that to the best of his knowledge and belief no other person, firm, corporation or association has the right to use that mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; that the accompanying specimens show the mark as used in commerce in connection with Applicant's goods or services; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

Date: 10/22/03


By: ROGER ROJAS

[Notary Page Below]

State of California }
 }
County of Stanislaus }



On this 22nd day of October, 2003,
before me a Notary Public personally appeared
Roger Rojas known to me either
personally or on the basis of satisfactory
identification to be the person ~~to~~ whose name ~~is~~
is subscribed to the above Application for
Trademark Registration and acknowledge that
she executed the same.

Witness my hand and official seal.

Elizabeth Jameson
Notary Public

*Message
in a
Bottle.*

*Message
in a
Bottle.*

*Message
in a
Bottle.*

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/556304

APPLICANT: ROJAS, ROGER

CORRESPONDENT ADDRESS:
 JEFFREY C. CANNON
 CANNON BUSINESS LAW GROUP
 PACIFIC CENTER
 1012 11TH STREET, SUITE 103
 MODESTO, CA 95354

RETURN ADDRESS:
 Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, VA 22202-3514

MARK: MESSAGE IN A BOTTLE

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

OFFICE ACTION

TO AVOID ABANDONMENT, WE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF OUR MAILING OR E-MAILING DATE.

Serial Number 76/556304

The assigned trademark examining attorney has reviewed the referenced application filed on 3 November 2003, and has determined the following.

Search Results

Information is enclosed concerning pending Application Serial No. 76-381872. Although the Office records have been searched and no similar *registered* mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d), there may be a likelihood of confusion under Section 2(d) of the Act between applicant's mark and the mark in the above noted application. The filing date of the referenced application precedes applicant's filing date. If the earlier-filed application registers, registration may be refused under Section 2(d). 37 C.F.R. §2.83.

Section 2(f) – Unacceptable

Additional evidence is needed to support the claim of distinctiveness. Applicant's allegation of five years' use alone is insufficient evidence of distinctiveness in this case because applicant's mark appears to be highly descriptive of the goods. TMEP §1212.05(a). *In re Kalmbach Publishing Co.*, 14 USPQ2d 1490 (TTAB 1989).

Applicant must establish acquired distinctiveness by a preponderance of the evidence. *Yamaha Int'l Corp. v. Hoshino Gakki Co.*, 840 F.2d 1572, 6 USPQ2d 1001 (Fed. Cir. 1988). This evidence may include specific dollar sales under the mark, advertising figures, samples of advertising, consumer or dealer statements of recognition of the mark, and any other evidence that establishes the distinctiveness

of the mark as an indicator of source. The Office will decide each case on its own merits.

If additional evidence is submitted, the following factors will be considered when assessing its sufficiency: (1) how long applicant has used the mark; (2) the type and amount of advertising of the mark; and (3) applicant's efforts to associate the mark with the goods and/or services. *See Ralston Purina Co. v. Thomas J. Lipton, Inc.*, 341 F. Supp. 129, 173 USPQ 820 (S.D.N.Y. 1972); *In re Packaging Specialists, Inc.*, 221 USPQ 917 (TTAB 1984); 37 C.F.R. §2.41; TMEP §§1212, 1212.01 and 1212.06 *et seq.*

Accordingly, the following refusal is made.

Section 2(e)(1) - Descriptive Refusal

The examining attorney refuses registration on the Principal Register because the proposed mark merely describes the goods. Trademark Act Section 2(e)(1), 15 U.S.C. §1052(e)(1); TMEP §§1209 *et seq.*

A mark is merely descriptive under Trademark Act Section 2(e)(1), 15 U.S.C. 1052(e)(1), if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the relevant goods. *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); *In re Bed & Breakfast Registry*, 791 F.2d 157, 229 USPQ 818 (Fed. Cir. 1986); *In re MetPath Inc.*, 223 USPQ 88 (TTAB 1984); *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979); TMEP section 1209.01(b).

The examining attorney must consider whether a mark is merely descriptive in relation to the identified goods, not in the abstract. *In re Omaha National Corp.*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Venture Lending Associates*, 226 USPQ 285 (TTAB 1985).

The applicant's MESSAGE IN A BOTTLE immediately tells something about the goods – a message in the form of “text or graphic images printed on paper,” enclosed in a container, presumably a “bottle” (per the applicant's identification of goods). No imagination, thought or perception is required to determine the nature of the goods from the terminology.

The applicant is advised that it is not necessary that a term describe all of the purposes, functions, characteristics or features of the goods to be merely descriptive. It is enough if the term describes one attribute of the goods. *In re H.U.D.D.L.E.*, 216 USPQ 358 (TTAB 1982); *In re MBAAssociates*, 180 USPQ 338 (TTAB 1973).

The applicant's disclaimer of MESSAGE and BOTTLE fails to overcome the refusal. These terms appear together in the mark as the unitary phrase “MESSAGE IN A BOTTLE.” A disclaimer of the individual component words of a complete descriptive phrase is improper. *See, e.g., In re Medical Disposables Co.*, 25 USPQ2d 1801, 1805 (TTAB 1992); *In re Wanstrath*, 7 USPQ2d 1412, 1413 (Comm'r Pats. 1987); *American Speech-Language-Hearing Association v. National Hearing Aid Society*, 224 USPQ 798, 804 n.3 (TTAB 1984); *In re Surelock Mfg. Co., Inc.*, 125 USPQ 23, 24 (TTAB 1960). This standard is applied strictly, and the disclaimer of individual words separately is generally appropriate only when the words being disclaimed are separated by registrable matter. TMEP §1213.08 (b). Therefore, as a disclaimer of the entire wording is required, the mark in its entirety is merely descriptive.

For the foregoing reasons, the applicant's MESSAGE IN A BOTTLE is refused registration under Section 2(e)(1) of the Trademark Act.

Although the trademark examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

Informalities

If applicant chooses to respond to the refusal(s) to register, then applicant must also respond to the following requirement(s).

Identification of Goods/Services

The identification of goods is unacceptable as indefinite. The applicant may adopt the following identification, if accurate: Printed products, namely, text and/or graphic images printed on paper featuring (identify subject matter) enclosed in a glass container in Class 16. TMEP §1402.01.

Please note that, while an application may be amended to clarify or limit the identification, additions to the identification are not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, the applicant may not amend to include any services that are not within the scope of the services recited in the present identification.

Classification

If the applicant adopts the suggested amendment to the identification of goods, the applicant must amend the classification to International Class 16. 37 C.F.R. §§2.32(a)(7) and 2.85; TMEP §§1401 *et seq.*

Request for Information

Applicant must submit samples of advertisements or promotional materials and a photograph of the identified goods because the nature of the goods on which applicant intends to use its mark is not clear from the present record. If such materials are not available, then applicant must submit samples of advertisements or promotional materials and a photograph of *similar* goods. In addition, applicant must describe in some detail the nature, purpose and channels of trade of the goods listed in the application. 37 C.F.R. §2.61(b); TMEP §§814 and 1402.01(d).

Specimen

Applicant must submit (1) a substitute specimen showing the mark as it is used in commerce on the goods or on packaging for the goods, and (2) a statement that "the substitute specimen was in use in commerce at least as early as the filing date of the application," verified with a notarized affidavit or a signed declaration under 37 C.F.R. §2.20. 37 C.F.R. §§2.56 and 2.59(a); TMEP §904.09.

The current specimen of record comprises photocopies of the mark of indeterminable origin and is unacceptable as evidence of actual trademark use because the nature of the specimens is not clear. Examples of acceptable specimens for goods are tags, labels, instruction manuals, containers, photographs that show the mark on the goods or packaging, or displays associated with the goods at their point of sale. TMEP §§904.04 *et seq.*

Basis for Filing

The applicant asserts use of the mark in commerce and that it has a bona fide intent to use the mark in commerce for the same goods. An applicant may not assert both use of the mark in commerce, under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and intent to use the mark in commerce, under Trademark Act Section 1(b), 15 U.S.C. §1051(b), for the same goods or services. 37 C.F.R. §2.34(b)(1); TMEP §806.02(b). The applicant must delete one basis or divide the goods/services between the two bases, as appropriate.

Claim of Ownership

If applicant is the owner of U.S. Registration No. 2243269, then applicant must submit a claim of ownership. 37 C.F.R. §2.36; TMEP §812. The following standard format is suggested:

Applicant is the owner of U.S. Registration No. 2243269.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Katherine Stoides/
Examining Attorney
Law Office 110
(703) 308-9110 ext.166

How to respond to this Office Action:

To respond formally using the Office's Trademark Electronic Application System (TEAS), visit <http://www.uspto.gov/teas/index.html> and follow the instructions.

To respond formally via regular mail, your response should be sent to the mailing Return Address listed above and include the serial number, law office and examining attorney's name on the upper right corner of each page of your response.

To check the status of your application at any time, visit the Office's Trademark Applications and Registrations Retrieval (TARR) system at <http://tarr.uspto.gov/>

For general and other useful information about trademarks, you are encouraged to visit the Office's web site at <http://www.uspto.gov/main/trademarks.htm>

FOR INQUIRIES OR QUESTIONS ABOUT THIS OFFICE ACTION, PLEASE CONTACT THE ASSIGNED EXAMINING ATTORNEY.

DESIGN MARK

Serial Number

76381872

Status

PUBLICATION/ISSUE REVIEW COMPLETE

Word Mark

MESSAGE IN A BOTTLE

Standard Character Mark

No

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Atronic International GmbH CORPORATION FED REP GERMANY Borsigstrasse
26 Lubbecke FED REP GERMANY 32312

Goods/Services

Class Status -- ACTIVE. IC 009. US 021 023 026 036 038. G & S:
Electric and electronic gaming, amusement and gambling apparatus,
devices and machines, namely, slot machine type games via video
display; gaming equipment, namely, gaming machines, slot machines,
video slot machines, casino gambling devices and parts therefore;
electric and electronic gaming and gambling machines; gaming machines;
gaming machines featuring slot machine type games via video displays;
coin-operated gaming equipment, namely, gambling machines, slot
machines, video slot machines, casino gambling machines; electronic
slot machines and operating software therefore; aforementioned
apparatus, devices, machines and simulators arranged for operation
upon payment by means of coins, bank notes, tokens, magnetic strip
cards and similar money surrogate carriers; pre-recorded magnetic data
carriers featuring computer operating programs for use with gaming,
amusement and gambling apparatus, devices and machines; video game
cartridges and discs; money exchange apparatus, namely token, jetton
providing token dispensing machines; firmware and software featuring
action films and simulated games for use in electric and electronic
game, amusement and gambling apparatus, devices and machines; firmware
and computer operating software for electric and electronic game,
amusement and gambling apparatus, devices and machines; data recording
apparatus, namely, magnetic disk drives, magnetic tape drives and
semiconductor memory for use with electric and electronic games,

amusement and gambling apparatus, devices and machines; vending machines featuring CD ROM games, cassette games, cartridge games, video games; data collection and data processing systems, namely, digital tape recorders, video-game recorders, video monitors, circuit boards, video game controllers, network server units, display terminal, data entry consoles for use in games, amusement and gambling and apparatus, devices and machines; data collection and data processing systems, namely, digital tape records for use in games, amusement and gambling and apparatus, devices and machines; replacement parts for all the aforementioned goods.

Goods/Services

Class Status -- ACTIVE. IC 028. US 022 023 038 050. G & S: Electric, electronic, electromechanical and electro pneumatic sporting activities and game playing simulators, namely, arcade games and hand-held units for playing electronic video games.

Foreign Country Name

ERPNTMNTY TM OFC

Foreign Priority

FOREIGN PRIORITY CLAIMED

Foreign Application Number

2433894

Foreign Filing Date

2001/10/31

Foreign Registration Number

2433894

Foreign Registration Date

2001/10/31

Foreign Expiration Date

2011/10/31

Filing Date

2002/03/14

Examining Attorney

STOIDES, KATHERINE

Attorney of Record

Horst M. Kasper

MESSAGE IN A BOTTLE

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

December 3, 2004

VIA EXPRESS MAIL ED448781797US

U.S. Patent & Trademark Office
Commissioner for Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Re: Withdrawal of Trademark Application No. 76/556,304

Ladies/Gentlemen:

I am enclosing the original and one copy of an express withdrawal of trademark application without prejudice in regard to application no. 76/556,304 for MESSAGE IN A BOTTLE.

Please file the enclosed withdrawal document, mark the enclosed copy with your filing stamp, and return it to me in the enclosed stamped, self-addressed envelope.

Very truly yours,


Peter H. Smith

PHS/lmb
Enclosures

cc: Mr. Roger Rojas, Gold Shells, Inc.

110000 10000 10000 10000 10000 10000 10000 10000 10000 10000

12-06-2004

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #77

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In the Matter of Application Serial No.
76/556304

Mark: MESSAGE IN A BOTTLE

Filed: November 3, 2003

REQUEST FOR EXPRESS WITHDRAWAL OF APPLICATION

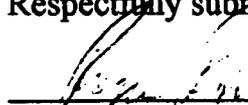
U.S. Patent & Trademark Office
Assistant Commissioner of Trademarks
P.O. Box 1451
Arlington, VA 22313-1451

Dear Sir or Madam:

The applicant in the above-referenced trademark application, Roger Rojas, and the assignee thereof, Gold Shells, Inc., hereby expressly withdraw the above-identified Application Serial No. 76/556304 without prejudice.

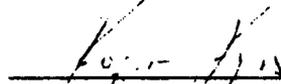
Dated: December 3, 2004.

Respectfully submitted,



Roger Rojas

GOLD SHELLS, INC.

By: 

Roger Rojas, Chief Executive Officer

Exhibit K



United States Patent and Trademark Office

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Mark Image

Word Mark MESSAGE IN A BOTTLE
Goods and Services (ABANDONED) IC 021. US 002. G & S: SMALL PLASTIC BOTTLES WITH IDENTITY LABELS CORK, AND SCROLL INSIDE THE BOTTLE. FIRST USE: 19770601. FIRST USE IN COMMERCE: 19770601
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code
Serial Number 73342921
Filing Date December 21, 1981
Current Filing Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) KCO ENTERPRISES PARTNERSHIP P. O. BOX 2156 SANTA BARBARA CALIFORNIA 93120
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Abandonment Date February 28, 1983

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Typed Drawing

Word Mark MESSAGE IN A BOTTLE
Goods and Services (CANCELLED) IC 020. US 050. G & S: NOVELTY ITEM, NAMELY PLASTIC BOTTLES CONTAINING PAPER. FIRST USE: 19860401. FIRST USE IN COMMERCE: 19860401
Mark Drawing Code (1) TYPED DRAWING
Design Search Code
Serial Number 73599935
Filing Date May 21, 1986
Current Filing Basis 1A
Original Filing Basis 1A
Supplemental Register Date March 30, 1988
Registration Number 1499093
Registration Date August 2, 1988
Owner (REGISTRANT) MONTGOMERY, JOHN R. INDIVIDUAL UNITED STATES 2830 NORTH BURLING CHICAGO ILLINOIS 60657
Attorney of Record EDWARD D. GILHOOLY
Type of Mark TRADEMARK
Register SUPPLEMENTAL
Live/Dead Indicator DEAD
Cancellation Date February 6, 1995

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Typed Drawing

Word Mark MESSAGE IN A BOTTLE

Goods and Services (ABANDONED) IC 016. US 037 038. G & S: occasion cards packaged in transparent bottles suitable for mailing

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 74480875

Filing Date January 21, 1994

Current Filing Basis 1B;44D

Original Filing Basis 1B;44D

Supplemental Register Date December 22, 1994

Owner (APPLICANT) S & C PUBLICATIONS LIMITED COMPANY UNITED KINGDOM Sovereign House 91-93 Buckingham Palace Road London SW1W 0RS ENGLAND

Attorney of Record Roger W. Parkhurst

Priority Date August 4, 1993

Type of Mark TRADEMARK

Register SUPPLEMENTAL

Live/Dead Indicator DEAD

Abandonment Date October 30, 1995

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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

June 7, 2006

Exhibit
A.

VIA FAX ONLY TO (714) 464-4112

Mr. Keith Cangiarella
DreamWeaver Studios
331 N. Harrington Drive
Fullerton, CA 92831

Dear Mr. Cangiarella:

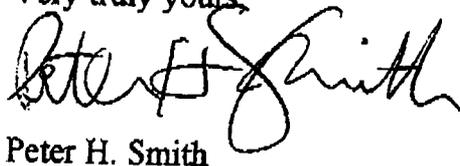
In response to your June 6 letter, I am not sure what documents you are referring to, but I did not state in my June 1 letter that I would forward any documents to you. I simply stated that I would reconsider whether to conduct Roger Rojas' deposition orally or by written questions. I have not decided yet, and may not decide for some time in light of the delay in the TTAB schedule. Either way, I will be conducting Mr. Rojas' deposition sometime in August and I will give you reasonable notice of the exact date, time, and place, and whether the deposition will be oral or by written questions.

As to our stipulation for a delay in the schedule, the TTAB approved the stipulation yesterday and has issued new dates. You can access this at the TTAB website, and I expect that we will each receive the new schedule by mail.

I will also respond in due course to the letter you faxed to me on June 1, 2006, which you re-faxed yesterday. At this point, however, I have not had an opportunity to review your allegations regarding our discovery responses.

On April 28, 2006, I sent your counsel a notice of unavailability, which I also filed with the TTAB. I am faxing a copy of it for you at this time to alert you that I will be out of the office from June 15 through July 10, 2006. I will try to respond to your discovery inquiry before my departure.

Very truly yours,


Peter H. Smith

PHS/lmb

Attachment
cc: Mr. Roger Rojas

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.</p> <p>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.</p> <p>ROGER ROJAS, Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p> <p>Exhibit B</p>
---	---

NOTICE OF UNAVAILABILITY

TO THE TRADEMARK TRIAL & APPEAL BOARD AND TO APPLICANT
KEITH CANGIARELLA AND HIS ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that commencing Monday, May 15, 2006 and continuing through Friday, May 19, 2006, and again commencing Thursday, June 15, 2006, and continuing through Monday, July 10, 2006, Peter H. Smith, Attorney at Law, will be unavailable for any purpose whatsoever, including but not limited to

receiving notices of any kind, responding to ex parte applications, appearing in court, or attending depositions.

Dated: April 28, 2006.



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 NOTICE OF UNAVAILABILITY was faxed to Stephen L. Anderson, Esq., attorney for Applicant at (951) 694-1876, and mailed by 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 April 28, 2006.

Dated: April 28, 2006.


LUGENE M. BORBA

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §2.197

Mark: MESSAGE IN A BOTTLE
Opposition No. 91162780
Name of parties filing paper: Gold Shells, Inc.
Type of paper being filed: Notice of Unavailability

I hereby certify that the above-identified Notice of Unavailability, which is attached, is being deposited on April 28, 2006, with the United States Postal Service by first-class mail, postage prepaid under 37 CFR §2.197 in an envelope addressed to: Trademark Trial & Appeal Board, U.S. Patent & Trademark Office, P. O. Box 1451, Alexandria, VA 22313-1451.



LUGENE M. BORBA

Date: April 28, 2006.



TTABVUE. Trademark Trial and Appeal Board Inquiry System

Exparte Appeal

Number: 76585314

Filing Date: 11/10/2005

Status: Pending

Status Date: 11/25/2005

Plaintiff

Name: Domecq, Raymond

Correspondence: PETER H. SMITH
P.O. BOX 1867
MODESTO, CA 95353

Exhibit C

Serial #: 76585314

Application Status: Ex Parte Appeal Pending

Mark: RODEO COLD

Prosecution History

#	Date	History Text
<u>7</u>	03/01/2006	<u>EXAMINER'S STATEMENT</u>
<u>6</u>	01/20/2006	<u>APPEAL FORWARDED TO EXAMINER FOR BRIEF</u>
<u>5</u>	01/09/2006	<u>APPEAL BRIEF</u>
<u>4</u>	01/06/2006	<u>APPEAL BRIEF</u>
<u>3</u>	11/25/2005	PENDING, INSTITUTED
<u>2</u>	11/25/2005	<u>BRIEF DUE</u>
<u>1</u>	11/10/2005	<u>APPEAL TO BOARD</u>

Results as of 06/19/2006 09:36 PM

Search: _____

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

June 15, 2006

Exhibit D

Mr. Keith Cangiarella
DreamWeaver Studios
331 N. Harrington Drive
Fullerton, CA 92831

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

Dear Mr. Cangiarella:

This will respond to your letter of June 1, 2006. You have noted that three documents identified in our response to your interrogatory number 18 were not sent to you as part of the document production. The fact that these documents were identified satisfied our obligation in responding to your interrogatory number 18. Copies of these documents were not previously submitted in response to your separate document request because the relevant document request, number 34, asked that we produce all documents identified in response to your interrogatories which had not otherwise been produced. However, we had just received your interrogatories at the time we were submitting the responses to the document requests. Therefore, we responded as follows: "Opposer has just received Applicant's first set of interrogatories on September 16, 2005, and will respond to this request at the same time as Opposer responds to Applicant's first set of interrogatories, reserving all potential objections."

Since these three documents were not previously produced in connection with our responses to the interrogatories, I am enclosing copies of them now as you have requested.

I have not yet decided whether to stipulate to depositions by written questions in place of oral depositions. At the time I originally suggested the possibility of written questions to your counsel, I was thinking that it would be easier and less expensive for both sides. However, having now reviewed the complex procedure for deposition by written questions, I am not sure which procedure is more efficient for our situation. The procedure appears to call for the deponent responding to the written questions with a court reporter transcribing

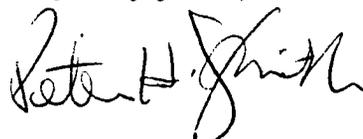
Mr. Keith Cangiarella

June 15, 2006

Page 2

the answers, just as in the case of an oral deposition. As I told you before, I will let you know when I make a decision on this.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Peter H. Smith".

Peter H. Smith

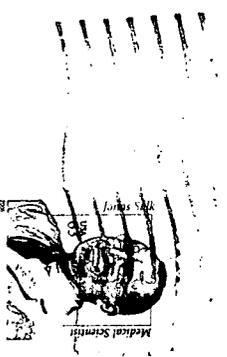
PHS/lmb

Enclosures

cc: Mr. Roger Rojas, Gold Shells, Inc.

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

Mr. Keith Cangiarella
Dream Weaver Studios
351 N. Harrington Drive
Fullerton, CA 92831



928314019-31 0021

