

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, v.</p> <p>KEITH CANGIARELLA, Applicant.</p>	<p>Opposition No. 91162780</p> <p>Cancellation No. _____</p> <p>APPLICANT'S MOTION FOR SUMMARY JUDGMENT/MOTION FOR NOT SUSPENDING PROCEEDINGS</p>
<p>In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE</p> <p>KEITH CANGIARELLA, Petitioner, v.</p> <p>Gold Shells, Inc, Assignee</p>	

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

Applicant, Keith Cangiarella, (hereinafter "Applicant") pursuant to Fed. R. Civ. P. 56 hereby moves this Honorable Board for summary judgment in its favor. Based on material facts at to which there are no genuine issues to be tried, Opposition No. 91162780 should be dismissed as a matter of law. Applicant presents the following brief in support of its Motion for Summary Judgment.

BACKGROUND

Applicant filed Trademark Application Serial No. 78/229,875 (hereinafter "Applicant's mark" on March 25, 2003 seeking registration of the mark MESSAGE IN A BOTTLE for novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of others; kits comprising of bottles, paper for creating promotional messages, advertising messages,

greetings, messages and invitations and packing and boxes for mailing in International Class 16. Applicant's application was based on actual use of the mark beginning at least as early as March 10, 1998. The application was published for opposition on June 29, 2004.

On October 21, 2004, Assignee filed the present opposition (captioned above) based upon its Trademark Registration No. 2,243,269 (hereinafter "Opposer's mark" for the mark MESSAGE IN A BOTTLE for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others in International Class 38. In its Notice of Opposition, Opposer asserted Applicant's application should be denied registration apparently under Section 7(c), alleging priority rights, likely to cause or to cause mistake or to deceive, and under Section 2(a) may disparage and falsely suggest a connection. Applicant thereafter timely filed an Answer to Notice of Opposition and a Petition to Cancel Opposer's Mark.

The discovery period in this opposition opened on March 30, 2005 and closed on September 30, 2005. The parties conducted extensive discovery throughout that period. The first testimony period in the opposition is set to commence on July 29, 2005. This Motion for Summary Judgment, having been filed prior to commencement of the first testimony period is timely. See 37 C.F.R. § 2.127(e).

SUMMARY OF SUPPORTING EVIDENCE

Applicant's motion is supported by the following:

1. The pleading of record to date; including but not limited to, Opposer'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 Opposer as the basis for this opposition;
4. Exhibit A: Opposer's Trademark Research Report November 18, 1996, cover only, for environment conservation and the Board's time;
5. Exhibit B: Roger Rojas' Intent to Use application date of filing January 6, 1997;
6. Exhibit C: 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;
7. Exhibit D: 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;
8. Exhibit E: Print out of International Schedule of Classes of Goods and Services from the USPTO.gov website;
9. Exhibit H: Business license issued June 30, 1999 to Roger and Adriana Rojas;
10. Exhibit F: Web search Yahoo Local conducted on October 12, 2004;
11. Exhibit G: Email received from Yahoo Local explaining how data is collected;
12. 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;
13. Exhibit I: Examples of numerous telecommunications on the internet using the term MESSAGE IN A BOTTLE;

LAW

Summary judgment is a salutary method of disposition "designed to secure just, speedy and inexpensive determination of every action." *Sweats Fashions Inv. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987) quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986)). Summary judgment is appropriate in trademark opposition proceedings where, as in the present opposition, there are no genuine issues of material fact to be tried and more evidence than is already available could not reasonably be expected to change the result. See, e.g. *Pure Gold Inc. v. Syntex (U.S.A.) Inc.*, 221 USPQ 151 (TTAB 1983), *aff'd*, 739 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984). The burden is on the party moving for summary judgment as a matter of law. See *Celotex Corp.*, 477 U.S. 317. The moving party may meet this burden by demonstrating that there is absence of evidence to support the nonmoving party's case. *Celotex Corp.*, 477 U.S. 317. Further, a dispute over a fact that should not alter the Honorable Board's decision on the legal issue will not prevent entry of summary judgment. See, e.g., *Kellogg Co. v. Pack'em Enterprises Inc.*, 14 USPQ2d 1545 (TTAB 1990), *aff'd*, 951 F.2d 330, 21 USPQ2d 1142 (Fed Cir. 1991)

In a case such as the present opposition, in which the Opposer alleges priority rights, likelihood of confusion, or to cause mistake or to deceive, the Board may grant a summary judgment where the confusion is not likely a matter of law. *Pure Gold, Inc.*, 221 USPQ at 154

A determination of whether a likelihood of confusion exists is made by evaluating and balancing the *du Pont* evidentiary factors shown to be applicable to a particular case and, as noted in the *du Pont* decision itself, different factors may play a dominant role in any particular case. In *re E.I. du Pont de Nemours*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) Indeed, in an appropriate case, a single *du Pont* factor may be dispositive in the likelihood of confusion analysis. See, e.g. *Pure Gold, Inc.*, 221 USPQ 151 (dissimilarity of the goods held dispositive); *Kellogg Co.*, 14 USPQ2d 1545 (dissimilarity of the marks held dispositive). In fact, although other of the *du Pont* factors may involve genuine issues of fact, these facts are not material if they would not change the result. *Pure Gold, Inc.*, 221 USPQ 151, *aff'd*, 222 USPQ 741.

ARGUMENT

I. THERE IS NO LIKELIHOOD OF CONFUSION AS A MATTER OF LAW

A. The Dissimilarity of the Goods is Dispositive

One of the *du Pont* factors is the similarity or dissimilarity, and nature, of the goods or services as described in an application or registration or in connection with which a prior mark is in use. In this case, as in *Pure Gold, Inc.*, the dissimilarity of the goods sold in connection with the parties' marks alone is dispositive of the Section 2(d) claim, even where the parties' marks apparently overlap.

The goods recited in the subject application for registration of Applicant's mark are novelty, favor, and souvenir bottle containing messages and greetings, invitations, promotional materials of others, and advertising materials of other; kits comprised of bottles, paper for creating promotional messages, advertising messages, greetings, messages and invitations and packaging and boxes for mailing in International Class 16. Opposer's Notice of Opposition ¶2 (October 21, 2004): U.S. Trademark Application Serial No. 78/229,875. Opposer's services recited in Opposer's Registration No. 2,243,269 is receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others in International Class 38. Opposer's Notice of Opposition ¶3 (October 21, 2004) Registration No. 2,243,269. This is further substantiated by US Patent and Trademark Office Examiner's Amendment March 6, 1998, US Patent and Trademark Office's Notice of Allowance, August 25, 1998, Registrant's Statement of Use, January 26, 1999, US Patent and Trademark Office's Notice of Acceptance of Statement of Use, March 25, 1999, US Patent and Trademark Office's Certificate of Registration, for Trademark Reg. No. 2,234,269, and US Patent and Trademark Office's Notice of Acceptance and Acknowledgement of §§ 8 & 15 Declaration December 9, 2004.

The goods recited in the Applicant's trademark application are clearly distinct from the services recited in the Opposer's trademark registration. First, Applicant

recited goods in International Class 16 while Opposer's recites services in International Class 38. Moreover, Applicant's goods are novelty, favor, and souvenir bottles used as gifts, promotional products, invitations and numerous other uses. In contrast, Opposer's services are receiving and transmitting communications, telephone, radio, TV, satellite, and other electronic methods of communication. A tangible product like the Applicant's is completely different than electronic transmissions, a non tangible product. The Opposer's recitation of goods and services as well as its International Class 38, is clearly understood by the United States Patent and Trademark Office a service that is sending electronic communications, via telephone, radio, TV, computer. (See Exhibits B, C, & D) The International Class 38 is classified by the US Patent and Trademark office as "Telecommunications". (See Exhibit E). The Opposer own business license dated June 30, 1999 services as computer related services. (See Exhibit H) Yahoo.com, one of the leading internet search engines, list the Opposer as an Internet Access Provider, Data processing and management services, computer business solutions. The Applicant contacted Yahoo.com to find out how this information is collected, "we aggregate the content listed on Yahoo! Local from many different public databases". (See Exhibit F and G)

The Opposer's own trademark research report lists the goods and services as a "message delivery service" (See Exhibit A) The Applicant's recitation of good and services are clear and specific, the Applicant is offering a tangible product and the Patent and Trademark Office has demonstrated that it understands the Applicant's goods and services are completely different than the goods and services of the Assingee. Trademark Application Serial No. 78/434862, filed June 14, 2004, Mini Message in a Bottle was sent an office action on January 18, 2005 demonstrates the clear understanding the Patent and Trademark office has of the dissimilarity of the good and services. The Applicant's mark is referenced as an "Earlier Filed Application", this application was filed in International Class 09, a similar class to the Opposer's mark, yet the goods and services are dissimilar as the examining attorney makes no reference to the Opposer's registration. (See Exhibit H)

Numerous companies on the world wide web(internet) offer electronic greeting cards, which clearly representation of the goods and services listed in the Opposer's goods and services in its Trademark Registration. (See Exhibit I)

The Applicant's good and services are clearly different from the Opposer's goods and services. The Applicant has never received communications from others, recorded such communications in written or printed form, and transmitted such communications to others. The Applicants goods and services are clearly and definitively defined in its Application.

There cannot possibly be a likelihood of confusion given the inescapable fact that the goods and services in connection with the Applicant's mark and Opposer's mark are so different. Certainly, the differences between the goods and services are at least as great, if not greater, than those in the *Pure Gold, Inc.* cited above, where the Federal Circuit held that the dissimilarity of the goods alone was dispositive and thus, there was no likelihood of confusion as a matter of law.

Hence, here, as in the *Pure Gold, Inc.*, case, there is no evidence that Opposer may adduce at trial in support of its opposition that would be persuasive of a result to that of finding no likelihood of confusion. In other words, no matter what evidence Opposer may present or "facts" that Opposer may allege are in dispute, Opposer cannot change the inescapable conclusion that Applicant's good and services and Opposer's goods and services as stated in the recitation, are so vastly different that as a matter of law there cannot be a likelihood of confusion. Even if Opposer can establish disputed "facts" with respect to other of the *du Pont* factors, and on this basis alone, summary judgment in favor of Applicant must be granted as a matter of law.

B. Analysis of Other du Pont Factors Indicates no Likelihood of Confusion

Analysis of other of the *du Pont* factors support the conclusion that there is no likelihood of confusion as a matter of law. One such factor is the nature and extent of any actual confusion. No actual confusion can occur, since the goods and services listed in the recitation are completely different. In light of the fact that Applicant and Opposer have been using the respective marks for their

respective goods and services concurrently since at least as early as June 10, 1998(Applicant has used its mark at least as early as June 10, 1998; Opposer's first use as early as January 16 1999(priority claim of January 6, 1997)), the parties have concurrently used their marks for over five years without any actual confusion. Hence, there is no genuine issue of material fact as to the actual confusion from 1998-2003. Hence, there is no genuine issue of material fact as to the issue of actual confusion, which weighs in favor of a finding of no likelihood of confusion as a matter of law.

II. THE RIGHT TO PRIORITY UNDER SECTION 7(C) UNDER THE LANHMAM ACT IS MOOT

The goods and services recited in the Opposer's recitation of service mark registration No. 2,243, 269 in International Class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others, are greatly dissimilar of the goods and services recited in the recitation of Applicant's marks Serial No. 78/229,875 in International 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, paper for creating promotional messages, advertising messages, greetings, messages and invitation and packaging and boxes for mailing. The United States Patent and Trademark Office understands the marks are completely different as proven above. (See Exhibit H) The claim of priority under section 7(c) is moot.

CONCLUSION

Based upon the great dissimilarity between the goods and services in connection with Applicant's mark and the goods and services in connection with the Opposer's mark as recited in each recitation, as a matter of law there cannot be a likelihood of confusion. Further, there are no genuine issues of material fact with respect to other *du Pont* factors such that a finding of likelihood of confusion as a matter of law is proper. No genuine issue of material facts exists, and

hence Applicant is in entitled to judgment in its favor as a matter of law. Therefore, Applicant's motion for summary judgment should be granted in full.

WHEREFORE, Applicant respectfully request that the Honorable Board grant this Motion for summary judgment.

MOTION FOR NOT SUSPENDING PROCEEDINGS

"IN PRO PER"

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

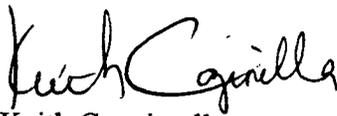
1. Mailing in answer to counterclaim, at the latest possible date, which the envelope was received but to this date neither the USPTO, nor the Board has found the documents which were to be housed in it. The Opposer's counsel provided the Board with delivery confirmation of the envelope, but the documents were never found by the USPTO or the TTAB.
2. The Opposer's counsel filed Interrogatories during discovery which were excessive. Opposer'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 Opposer'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 Opposer'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. Opposer's counsel is currently representing another party in an Exparte Appeal, Number 758314,

the appeal is still pending but the Opposer's counsel filed no Notice of Unavailability in this proceeding. (See Exhibit C) Also on June 15, 2006 Opposer'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. Opposer'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
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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.

A handwritten signature in cursive script that reads "Keith Cangiarella". The signature is written in black ink and is positioned above the printed name and date.

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,

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300.00 OP

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10-21-2004

U.S. Patent & TMO/PTM 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.

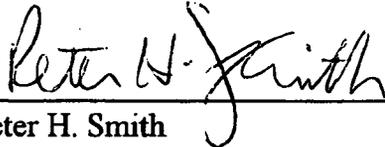
5. Since January 16, 1999, and through constructive use since January 6, 1997, Opposer and its predecessor have been, and Opposer is now, operating under the designation MESSAGE IN A BOTTLE in selling communication services which include the transmission of communications through goods which are the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

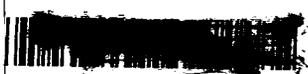
06/10/1998

Goods and Services:

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

Mark:

MESSAGE IN A BOTTLE



NO OCR



Internet Transmission Date:

2003/03/25

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 wozy bottle

DESCRIPTION	
LISTING OF GOODS AND/OR SERVICES	sauce bottle, woozy 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 woozy 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	03/26/2003
INTERNET TRANSMISSION DATE	Tue Mar 25 18:08:52 EST 2003
TEAS STAMP	USPTO/BAS-693128159-20030325180852894451-78229875-2001e559e8fa01969672cb2613f52883bb-RAM-358-20030325180536173227
E-MAIL ADDRESS FOR ACKNOWLEDGMENT	mib@dreamweaverstudios.com

<SERIAL NUMBER> 78229875

<FILING DATE> 03/25/2003

<DOCUMENT INFORMATION>

<TRADEMARK/SERVICEMARK APPLICATION>

<VERSION 1.24>

<APPLICANT INFORMATION>

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<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

<RAM INFORMATION>

<RAM SALE NUMBER> 358

<RAM ACCOUNTING DATE> 03/26/2003

<INTERNET TRANSMISSION DATE> Tue Mar 25 18:08:52 EST 2003

<TEAS STAMP>

USPTO/BAS-693128159-20030325180852894451-78229875-

2001e559e8fa01969672cb2613f52883bb-RAM-358-20030325180536173227

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 e9be4e6a2ca-N-N-200403191 70331419540

PTO Form 1966 (Rev. 9/2002)
ONIB Control 90651-0150 (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

TEAS Stamp: USPTO/OA-67101171240-2004031917045621810

8-78229875-200d4aec912f9aff26595d5ae9be4

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.

Our File: 26584321-55
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: 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.

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.

01/97
JG
1

16

Exhibit
B

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

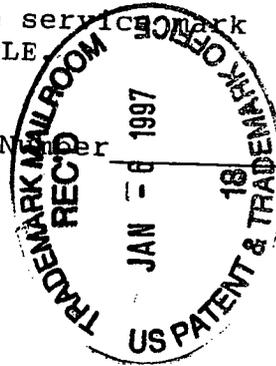
Date: _____

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

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

December 30, 1996

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

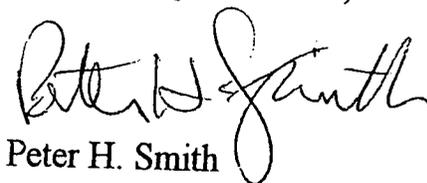
Dear Sir:

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.

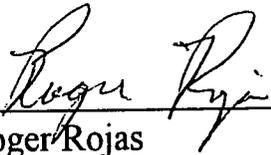
Please direct all communications pertaining to this application to:

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

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

cc: Roger Rojas

Exhibit C

SERIAL NO. 75/226521 Rojas, Roger	APPLICANT	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.



RH:iis

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

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

✓ cc: Roger Rojas

SERIAL NO. 75/226521 Rojas, Roger		APPLICANT Exhibit D		PAPER NO.	
MARK MESSAGE IN A BOTTLE		ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353		ADDRESS: Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513	
ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353		ACTION NO. 02		If no fees are enclosed, the address should include the words "Box Responses - No Fee."	
ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353		MAILING DATE 03/16/98		Please provide in all correspondence:	
ADDRESS PETER H SMITH PO BOX 1867 MODESTO CA 95353		REF. NO.		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.	

FORM PTO-1525 (5-90)

U.S. DEPT. OF COMM. PAT. & TM OFFICE

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

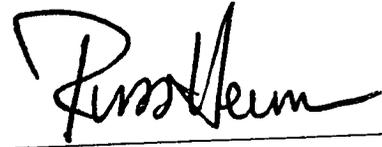
OFFICE SEARCH: The examining attorney has searched the Office records and has found no similar registered or pending mark which would bar registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d). TMEP section 1105.01.

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)308-9000. 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

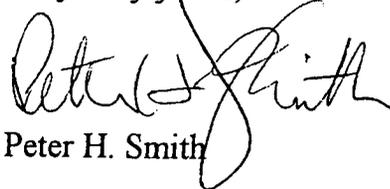
Ladies/Gentlemen:

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.

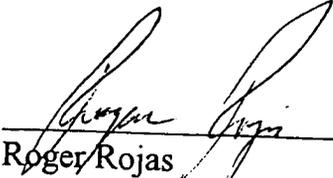
The date of first use of the mark in commerce which the U.S. Congress may regulate was January 16, 1999.

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 miab@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

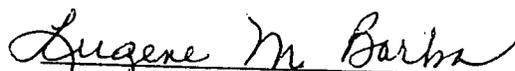
Serial No.: 75/226521

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

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.

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).

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

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.

*vet: Roger
Rujas*

#24

*Card 15/04
Rujas*

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 E

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.

3

07

VIA

- THIS LICENSE MUST BE POSTED
- VOID IF ANY UNAUTHORIZED CHANGES MADE.
- NOT TRANSFERABLE.

**CITY OF MODESTO
BUSINESS LICENSE**

NO. 0060786

THIS LICENSE IS EVIDENCE THAT THE FEES REQUIRED UNDER TITLE VI OF THE MUNICIPAL CODE HAVE BEEN PAID TO THE CITY OF MODESTO FOR THE CONDUCT AND OPERATION OF THE BUSINESS AT THE PREMISES, AND BY THE PERSON OR FIRM INDICATED BELOW.



CITY OF MODESTO

Paul A. Long
DIRECTOR OF FINANCE

For Period Ending
06/30/1999

THIS LICENSE SHALL NOT ENTITLE LICENSEE TO OPERATE THIS BUSINESS WITHOUT COMPLYING WITH ALL REQUIREMENTS OF THE MODESTO MUNICIPAL CODE AND ALL OTHER APPLICABLE LAWS. IT HAS BEEN ISSUED WITHOUT VERIFICATION THAT THE LICENSEE IS SUBJECT TO OR EXEMPT FROM LICENSING BY THE STATE OF CALIFORNIA.

MESSAGE IN A BOTTLE
P O BOX 581113
Modesto, CA 95358

L
O
C
A
T
I
O
N

ROJAS, ADRIANA; ROJAS, ROGER
00725 PARADISE RD
COMPUTER RELATED SVCS NOT ELSEWHE

#14
Exhibit H

YAHOO! LOCAL

Search for:
Internet Access Providers

address, city & state, or zip Search Tips
Modesto, CA

Local Results Results 1 - 10 out of 19 total results for Internet Access Providers in Modesto, CA (About these Results)

Exhibit F

Sorted by: Top Results

[View Results on Map](#)



Name	Rating	Distance
------	--------	----------

- 1. Access Internet Media**

(209) 238-3560 1500 J St
Modesto, CA [Map](#)

Category: Internet Access Providers

Rate this 0.35 mi
- 2. American Info Metrics**

(209) 549-8333 802 14th St Ste N
Modesto, CA [Map](#)

...UNLIMITED ! ACCELERATED ! Spam & virus filtering! Member-only services and perks! NATIONWIDE access! Check connectivity Check for viruses Apply security updates Dialup or DSL Get... prepaid... annually WEB DESIGN ~... [more on web site](#)

Category: Internet Access Providers - Communications and Networking - Computer Communications - Data Processing and Management Services - Department Stores

www.ainet.com/

Rate this 0.19 mi
- 3. Arrival Communications**

(209) 571-2100 1012 11th St Ste 101
Modesto, CA [Map](#)

Category: Internet Access Providers - Long Distance Carriers - Data Processing and Management Services - Voice Mail Equipment - Computer Business Solutions

www.arrival.com

Rate this 0.31 mi
- 4. Justaskhow Com**

(209) 526-6883 1801 H St Ste B5
Modesto, CA [Map](#)

Category: Internet Access Providers - Data Processing and Management Services - Computer Business Solutions

Rate this 0.44 mi
- 5. Net Ease**

(209) 522-3225 Modesto, CA [Map](#)

Category: Internet Access Providers - Data Processing and Management Services - Computer Business Solutions

www.neteze.com/

Rate this 1.10 mi
- 6. Kemar Enterprises**

Rate this 1.24 mi

Distance Within:
5 miles

Refine Results

You have refined by:
Internet Access
Providers [undo]

Name:
0 to 9 A B C D E F G H
I J K L M N O P Q R
S T U V W X Y Z

* Distances are set from the center of Modesto, CA

(209) 578-2823 730 Elm Ave
Modesto, CA [Map](#)

Category: **Internet Access Providers** - Data Processing and Management Services - Computer Business Solutions

7. **Message in A Bottle**  [Rate this](#) 1.59 mi

(209) 521-3653 725 Paradise Rd
Modesto, CA [Map](#)

Category: **Internet Access Providers** - Data Processing and Management Services - Computer Business Solutions
www.messageinabottle.com

8. **Inn Room Guides**  [Rate this](#) 1.80 mi

(209) 549-7737 Po Box 4097
Modesto, CA [Map](#)

Category: **Internet Access Providers** - Data Processing and Management Services - Computer Business Solutions

9. **Specialty Keepers**  [Rate this](#) 2.07 mi

(209) 523-3734 310 El Vista Ave
Modesto, CA [Map](#)

Category: **Internet Access Providers** - Data Processing and Management Services - Computer Business Solutions

10. **Hoopsters Online**  [Rate this](#) 2.43 mi

(209) 575-3426 1716 Beverly Dr
Modesto, CA [Map](#)

Category: **Internet Access Providers** - Data Processing and Management Services - Computer Business Solutions

Results Page: 1 2  [Next](#)

Search for: address, city & state, or zip [Search Tips](#)



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YAHOO! LOCAL

Search for: Internet Access Providers address, city & state, or zip Modesto, CA Search Tips

Search

Add to Address Book Send to Friend

Message in A Bottle

(209) 521-3653

Address:
725 Paradise Rd
Modesto, CA 95351

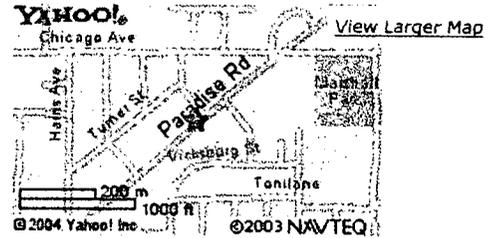
www.messageinabottle.com

Ratings
Not yet rated

Rate it:
☆☆☆☆☆

Reviews
[Write a Review](#)

How to get there



Get Driving Directions
[To this location](#) | [From this location](#)

- Find nearby:
- ATMs
 - Hotels
 - Parking
 - Public Transportation
 - Restaurants

[Map it](#)

More About Message in A Bottle

Category Types:
Internet Access Providers, Data Processing and Management Services, Computer Business Solutions

User Reviews

[Write a review](#) and tell everyone how you felt about this business or service.

Search the Web for:
[Message in A Bottle in Modesto, CA](#)

Have you considered...
[Access Internet Media](#)
[American Info Metrics](#)
[Arrival Communications](#)
[Justaskhow Com](#)
[more...](#)

Add to Address Book Send to Friend

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[Privacy Policy](#) | [Terms of Service](#) | [Add/Edit a Business](#) | [Yahoo! Maps Terms of Use](#) | [Tell us How to Improve](#) | [Survey](#) | [Help](#)

Subject: Re: Feedback - General Feedback (KMM22787036V14749L0KM)
From: Yahoo! Local <local-feedback@cc.yahoo-inc.com>
Date: Wed, 27 Oct 2004 03:01:43 -0700
To: <lmib@dreamweaverstudios.com>

Exhibit
Exhibit G

Hello,

Thank you for writing to Yahoo! Local.

We aggregate the content listed on Yahoo! Local from many different public databases, and don't have a date stamp on when this information might have been added to the Yahoo! Local database. If it needs to be edited, you may make a request to do so here:

http://add.yahoo.com/fast/help/us/local/cgi_change

Thank you again for contacting Yahoo! Customer Care.

Regards,

Madison

Yahoo! Customer Care

For assistance with all Yahoo! services please visit:

<http://help.yahoo.com/>

New and Improved Yahoo! Mail - better than ever!

Original Message Follows:

Mail-Id: 1098314212-6306
Name: Keith

Subject: General Feedback

Feedback: Is it possible for you to advise when the information listed below was generated or added to your listing.

It would be greatly appreciated if you can forward that information to me as quickly as possible.

Thank you for your time and efforts.

7. Message in A Bottle
(209) 521-3653
725 Paradise Rd Modesto, CA Map
Rate this 1.59 mi
Category: Internet Access Providers - Data
Processing and Management Services - Computer
Business Solutions www.messageinabottle.com

Keith C.
DWS

While Viewing: <http://help.yahoo.com/help/us/local/local-04.html>

Exhibit H



United States Patent and Trademark Office

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](#)
- [NEW USER](#)
- [STRUCTURED](#)
- [FREE FORM](#)
- [BROWSE DICT](#)
- [SEARCH OG](#)
- [BOTTOM](#)
- [HELP](#)
- [PREV LIST](#)
- [CURR LIST](#)
- [NEXT LIST](#)
- [FIRST DOC](#)
- [PREV DOC](#)
- [NEXT DOC](#)
- [LAST DOC](#)

[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](#)
[TDR](#)
[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@ev1.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@ev1.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

In 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. Example 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)

EE 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

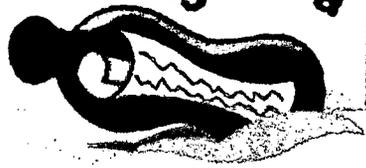
Goods/Services
Class Status -- ACTIVE. IC 016. US 002 005 022 023 029 037 038 050.
G & S: Novelty, favor, and souvenir bottle containing messages and
greetings, invitations, promotional materials of others, and
advertising materials of others; Kits comprised of bottles, paper for
creating promotional 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

message in a Bottle



Toss a message in a bottle into the surf of the Internet sea. Eventually, it may wash up in the form of E-mail on someone's personal beach.

And one day soon, you may be walking in the crisp early morning air along the shore freshly swept clean by the high tide, and at your feet you'll catch the glimmer of

something half-buried in the sand. Could it be...?

Scribble your note and seal it up, then cast it out into the currents as hard as you can.

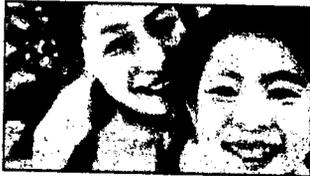
What is your name and e-mail address?

Name: _____ E-mail: _____

What do you want to write on your message in a bottle?



Designed and created by Wes Modes.
Copyright © 1996 Wes Modes
E-mail to: WebMaster@thespoon.com



Get health care for your family
that's anything but expected
[click here](#)

KAISER PERMANENTE **thrive**

123 Greetings Search

Your search for message in a bottle has displayed 5 results. "in", "a" being common words were not included in the Search results.

Search

message in a bottle

[Find](#)

[\[Tips \]](#)

Popular Summer Searches

- [Happy Summer](#)
- [Summer Flowers](#)
- [Summer Love](#)
- [Summer Vacation](#)
- [Summer Party](#)
- [Summer Friends](#)

This Day In 2005

- [Summer Solstice](#)
- [Chocolate Eclair Day](#)
- [Midsummer's Eve](#)
- [Flying Saucer Day](#)
- [Flower Festival \(California\)](#)
- [Strawberry Parfait Day](#)

Everyday Searches

- [Heart To Heart](#)
- [Birthday Balloons](#)
- [Friendship Quotes](#)
- [Change Of Address](#)
- [Love Poems](#)
- [Orchids](#)

<< Back

Pages 1

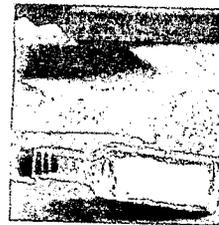
Next >>



Interactive [133 KB]
A Message In A Bottle !
[Love : Missing You : For Him](#)



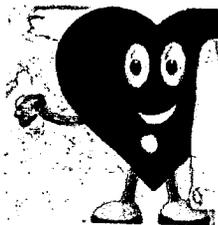
Interactive [155 KB]
A Message In A Bottle...
[Love : Love Notes](#)



Flash [39 KB]
A Message In A Bottle !
[Travel : Across The Miles](#)



Interactive [164 KB]
Message In The Bottle...
[Easter : Missing You](#)



Interactive [151 KB]
Message In A Bottle !
[Valentine's Day : Happy Valentine's Day](#)

<< Back

Pages 1

Next >>

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Summer



Birthday Songs



Love Notes



Our Anniversary

Should Bush support Gay Marriage?

Yes No

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*see details

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A Message In A Bottle !, Missing You Ecards - Netscape

File Edit View Go Bookmarks Tools Window Help

http://www.123greetings.com/travel/across_the_miles/travel4.html

Home | Netscape | Search

New Tab | United States Patent & Trademark Office | A Message In A Bottle !, Missing You Ecards

Looking for a real travel deal?	\$83-199 AIR across USA	\$157+ 4-star LAS VEGAS trips
SHEERMAN'S TOP 25 This Week's Deal:	\$295+ Hi-season BERMUDA air	\$269+ 4-rt Beta CRUISE in Sept

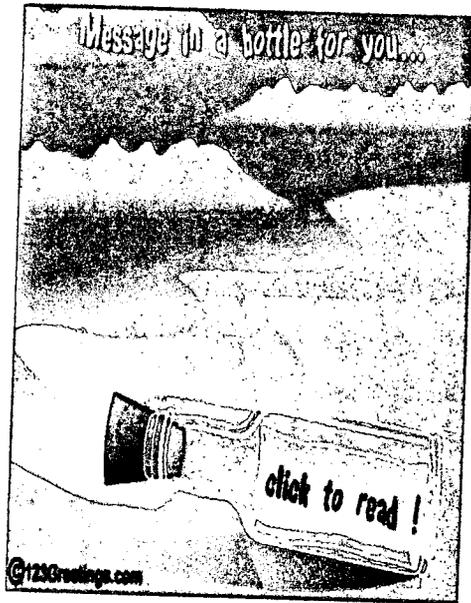
**123
Greetings**

FREE GREETINGS
FOR THE PLANET

Experience the joy of giving expression to your thoughts and emotions. Here you can explore your creativity and design ecards by using the following features. You can make changes to the background and message text to brighten your special ones' day with fun, color and music.

1. CUSTOMIZE
2. PERSONALIZE
3. PREVIEW & SEND

Home : Travel : Across The Miles : A Message In A Bottle !



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Your message will appear here.

Feel free to express yourself in as many words as you like.

↓ We are currently testing a new browser feature. If you are not able to view this ecard, please click here to view in its original format

start | 200acwies.doc - Mc... | Adobe Photoshop | A Message In A Bott... | Message in a Bottle... | Sherman's Travel - He... | 2:04 PM

Looking for a
real travel deal?
SHERMAN'S TOP 25
This Week's Deals:



\$83-199
AIR across USA
\$295+
Hi-season BERMUDA air

\$157+
4-star LAS VEGAS trips
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4-nt Baja CRUISE in Sept

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- 1. CUSTOMIZE
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Home : Travel : Across The Miles : A Message In A Bottle !

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**Feel free to express yourself in as many words as
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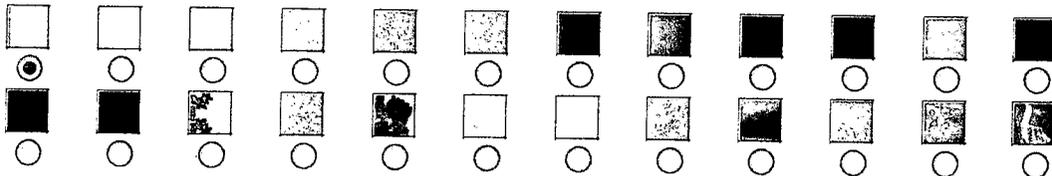
The recommended choices are pre-selected.

Customize Your ecard (Optional Features)

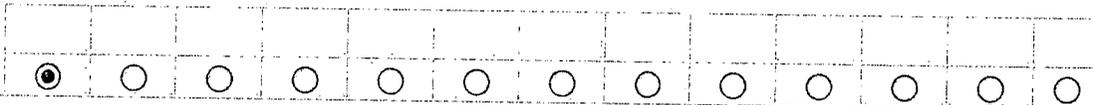
Music [[What is this?](#)]

Down In The Valley 

Background [[Tips](#)]



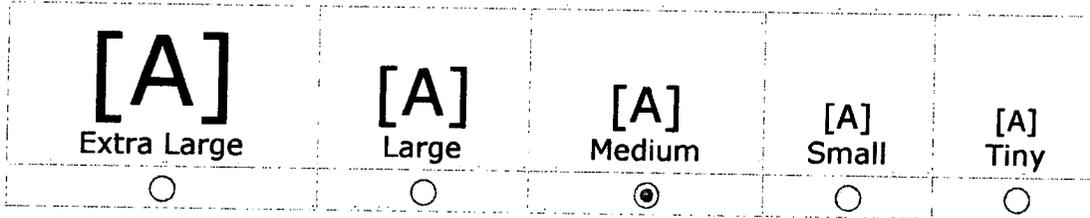
Font Color [[Tips](#)]



Font Style [[Tips](#)]



Font Size [[Tips](#)]



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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:

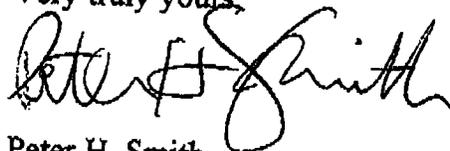
In response to your June 6 letter, I am not sure what documents you are referring to, but I did not state in my June 1 letter that I would forward any documents to you. I simply stated that I would reconsider whether to conduct Roger Rojas' deposition orally or by written questions. I have not decided 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. KEITH CANGIARELLA, Applicant.</p> <p>-----</p> <p>In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE</p> <p>KEITH CANGIARELLA, Petitioner,</p> <p>v. ROGER ROJAS, Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p> <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

Ex parte 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

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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
331 N. Harrington Drive
Fullerton, CA 92831



928314019-31 0031

