

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

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Mailed: June 18, 2007

Opposition No. 91162780

GOLD SHELLS, INC.

v.

KEITH CANGIARELLA

Before Hohein, Drost, and Walsh,  
Administrative Trademark Judges.

By the Board:

Keith Cangiarella ("applicant") seeks to register the mark MESSAGE IN A BOTTLE<sup>1</sup> 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" in International Class 16.

Gold Shells, Inc. ("opposer") has opposed registration of applicant's mark on the grounds that applicant's applied-for mark so resembles opposer's registered mark that it is likely to cause confusion, mistake, or deception of

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<sup>1</sup> Application Serial No. 78229875, filed on March 25, 2003, alleging March 10, 1998 as a date of first use and June 10, 1998 as a date of first use in commerce.

prospective consumers under Section 2(d) of the Lanham Act and consists of matter which may falsely suggest a connection between applicant and opposer in violation of Sections 2(a). In its notice of opposition, opposer pleaded ownership of the mark MESSAGE IN A BOTTLE<sup>2</sup> for "receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others" in International Class 38.

Applicant, in his answer, has denied the salient allegations of the notice of opposition and asserted certain affirmative defenses. In addition, applicant asserted a counterclaim to cancel opposer's pleaded registration on the ground of fraud in obtaining its registration. Opposer, in its answer to applicant's counterclaim, has denied the salient allegations thereof and asserted various affirmative defenses.

This case now comes up for consideration of applicant's motions (filed July 5 and 6, 2006) for summary judgment in his favor on the ground of likelihood of confusion and with respect to the cancellation of opposer's pleaded registration on the ground of fraud. Opposer filed a combined response to both motions.

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<sup>2</sup> Registration No. 2243269, issued May 4, 1999, alleging January 16, 1999 as the date of first use anywhere and in commerce.

Summary judgment is an appropriate method of disposing of cases that present no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). Here, applicant, as the moving party, has the burden of demonstrating the absence of any genuine issue of material fact, and that he is entitled to judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The evidence must be viewed in a light favorable to the nonmoving party, and all justifiable inferences are to be drawn in the nonmovant's favor. See *Lloyd's Food Products, Inc. v. Eli's, Inc.*, 987 F.2d 766, 767, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland USA Inc. v. Great American Music Show, Inc.*, 970 F.2d 847, 852, 23 USPQ2d 1471 (Fed. Cir. 1992).

After reviewing the arguments and supporting evidence, we find that applicant has failed to meet his burden of establishing that there are no genuine issues of material fact and that he is entitled to judgment as a matter of law. At a minimum, genuine issues of material fact exist as to whether the parties' respective goods and services are similar in nature, whether they travel in similar channels of trade, and to what extent they are marketed to overlapping classes of customers. Additionally, genuine



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Brief for plaintiff in the opposition shall be due: 5/3/2008

Brief for defendant in the opposition and as  
Plaintiff in the counterclaim shall be due: 6/2/2008

Brief for defendant in the counterclaim and its reply  
brief (if any) as plaintiff in the opposition  
shall be due: 7/2/2008

Reply brief (if any) for plaintiff in the  
counterclaim shall be due: 7/17/2008

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.