

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

In the Matter of Trademark Application  
Serial No.: 78/229,875  
Mark: MESSAGE IN A BOTTLE

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

v.

KEITH CANGIARELLA,  
Applicant.

Opposition No. 91162780

Cancellation No. \_\_\_\_\_

**MOTION TO DISMISS OPPOSITIONS AND  
AFFIDAVIT OF ROGER ROJAS**

In the Matter of Trademark  
Registration No.: 2,243,269  
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,  
Petitioner,

v.

Roger Rojas,  
Opposer

**MOTION TO DISMISS OPPOSITIONS AND AFFIDAVIT OF ROGER ROJAS**  
**"IN PRO PER"**

Applicant Keith Cangiarella, hereby requests the Opposition # 91162780 be dismissed on the grounds that the corporation named as the Opposer, no longer exists. On July 19, 2007 Gold Shells, Inc, ceased to exist, and became known as Message in a Bottle, Inc. Please find attached original Statement of Information for Gold Shells, Inc, and print out from California Business website. The Corporation numbers are the same C2545928. Gold Shells Inc ceased to exist in July 19, 2007 and neither the Opposer nor its counsel notified the Board, the United States Patent and Trademark Office or the Applicant. It has been over 70 days since this occurred and no parties were made aware of this, the Applicant came across this doing his due diligence to keep the Applicant informed on all aspects of this case.

The Applicant hereby moves that the Opposition be dismissed, on the basis the Opposer no longer exists, and has no rights in this matter. The Opposer's predecessor failed to notify the Board or the USPTO, and has forfeited its rights to Oppose as well. The Registrant Roger Rojas, further continued with the charade of the existence of Gold Shells, Inc., in both its Opposition to



10-10-2007

the Motion for Summary Judgment, and his sworn Affidavit of Roger Rojas in support of Opposition to Applicant's Motion for Summary Judgment.

It states, I Roger Rojas being sworn, say:

1. I am the Chief Executive Officer of Gold Shells, Inc. . . . hereinafter called "GSI"
2. GSI is a California corporation, doing business as "Message in a Bottle" at..

Each point recites Gold Shells, INC, which the Applicant has demonstrated does not exist, and this further verifies the Applicant's motion for fraud, deceiving the Board and the general public.

The Applicant moves for an immediate dismissal of the Opposition, Opposition to Motion for Summary Judgment, and Affidavit of Roger Rojas in Support of Opposition to Applicant's Motion for Summary Judgment. The Applicant humbly request its Motion for Summary Judgment to cancel Registrant's mark be allowed and Registrant's mark is immediately cancelled.

Dated October 5, 2007



Keith Cangiarella

"In Pro Per"

331 N. Harrington Dr  
Fullerton, CA. 92831

Date October 1, 2007  
DreamWeaver Studios  
Keith Cangiarella  
331 N. Harrington Dr  
Fullerton, CA. 92831  
714-441-3442 phone  
714-464-4112 fax  
1mib@dreamweaverstudios.com

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

Certificate of Service

I hereby certify a copy of the foregoing **Motion to Dismiss Opposition** was first class 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, reading "Keith Cangiarella", is written over a horizontal line.

Keith Cangiarella  
October 5, 2007



# State of California

S

04-490188

## Kevin Shelley Secretary of State



### STATEMENT OF INFORMATION (Domestic Stock Corporation)

FEES (Filing and Disclosure): \$25.00. If amendment, see instructions.

**IMPORTANT — READ INSTRUCTIONS BEFORE COMPLETING THIS FORM**

**FILED**  
In the office of the Secretary of State  
of the State of California

OCT 27 2004

*Kevin Shelley*  
KEVIN SHELLEY, SECRETARY OF STATE

1. CORPORATE NAME (Please do not alter if name is preprinted)

C2545928 NOTICE 09/17/04 15669S NPT  
GOLD SHELLS, INC.  
PO BOX 581113  
MODESTO CA 95358

*Message in a Bottle, Inc*

*JULY 19, 2007*

This Space For Filing Use Only

#### CALIFORNIA CORPORATE DISCLOSURE ACT (Corporations Code section 1502)

2.  Check here if the corporation is publicly traded. If publicly traded, complete this form and the Corporate Disclosure Statement (Form SI-PTSUPP). See Item 2 of instructions.

#### NO CHANGE STATEMENT

3.  If there has been no change in any of the information contained in the last Statement of Information filed with the Secretary of State, including any information contained in Form SI-PTSUPP, if applicable, check the box and proceed to Item 16. If there have been any changes to the information contained in either form, or no Statement of Information has been previously filed, this form (and Form SI-PTSUPP, if publicly traded) must be completed in its entirety.

#### COMPLETE ADDRESSES FOR THE FOLLOWING (Do not abbreviate the name of the city. Items 4 and 5 cannot be P.O. Boxes.)

4. STREET ADDRESS OF PRINCIPAL EXECUTIVE OFFICE	CITY AND STATE	ZIP CODE
3401 Shawnee #61	Modesto, CA	95356
5. STREET ADDRESS OF PRINCIPAL BUSINESS OFFICE IN CALIFORNIA, IF ANY	CITY	STATE
3401 Shawnee #61	Modesto, CA	CA 95356

#### NAMES AND COMPLETE ADDRESSES OF THE FOLLOWING OFFICERS (The corporation must have these three officers. A comparable title for the specific officer may be added; however, the preprinted titles on this form must not be altered.)

6. CHIEF EXECUTIVE OFFICER/	ADDRESS	CITY AND STATE	ZIP CODE
Roger Rojas	3401 Shawnee #61	Modesto, CA	95356
7. SECRETARY/	ADDRESS	CITY AND STATE	ZIP CODE
Adriana Rojas	3401 Shawnee #61	Modesto, CA	95356
8. CHIEF FINANCIAL OFFICER/	ADDRESS	CITY AND STATE	ZIP CODE
Adriana Rojas	3401 Shawnee #61	Modesto, CA	95356

#### NAMES AND COMPLETE ADDRESSES OF ALL DIRECTORS, INCLUDING DIRECTORS WHO ARE ALSO OFFICERS (The corporation must have at least one director. Attach additional pages, if necessary.)

9. NAME	ADDRESS	CITY AND STATE	ZIP CODE
Roger Rojas	3401 Shawnee #61	Modesto, CA	95356
10. NAME	ADDRESS	CITY AND STATE	ZIP CODE
Adriana Rojas	3401 Shawnee #61	Modesto, CA	95356
11. NAME	ADDRESS	CITY AND STATE	ZIP CODE

12. NUMBER OF VACANCIES ON THE BOARD OF DIRECTORS, IF ANY:

#### AGENT FOR SERVICE OF PROCESS (If the agent is an individual, the agent must reside in California and Item 14 must be completed with a California address. If the agent is another corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 14 must be left blank.)

13. NAME OF AGENT FOR SERVICE OF PROCESS	STATE	ZIP CODE
Roger Rojas	CA	95358
14. ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA, IF AN INDIVIDUAL	CITY	STATE
P.O. Box 581113	Modesto	CA

#### TYPE OF BUSINESS

15. DESCRIBE THE TYPE OF BUSINESS OF THE CORPORATION  
*Wholesale and Retail sales*

16. BY SUBMITTING THIS STATEMENT OF INFORMATION TO THE SECRETARY OF STATE, THE CORPORATION CERTIFIES THE INFORMATION CONTAINED HEREIN, INCLUDING ANY ATTACHMENTS IS TRUE AND CORRECT

<i>Roger Rojas</i>	<i>Roger Rojas</i>	CEO	10/25/04
TYPE OR PRINT NAME OF PERSON COMPLETING THE FORM	SIGNATURE	TITLE	DATE

# California Business Portal

Secretary of State DEBRA BOWEN

**DISCLAIMER:** The information displayed here is current as of SEP 21, 2007 and is updated weekly. It is not a complete or certified record of the Corporation.

## Corporation

MESSAGE IN A BOTTLE, INC.

**Number:** C2545928

**Date Filed:** 7/7/2003

**Status:** active

**Jurisdiction:** California

## Address

432 BITRITTO WAY STE 5

MODESTO, CA 95356

## Agent for Service of Process

ROGER ROJAS

432 BITRITTO WAY STE 5

MODESTO, CA 95356

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Serial No.: 78/229,875  
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GOLD SHELLS, INC.,  
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KEITH CANGIARELLA,  
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KEITH CANGIARELLA,  
Petitioner,  
v.

Roger Rojas,  
Opposer

Opposition No. 91162780

Cancellation No. \_\_\_\_\_

**MOTION FOR LENIENCY AND TO  
AMEND PETITION TO CANCEL**

**MOTION FOR LENIENCY AND TO AMEND PETITION TO CANCEL**  
**"IN PRO PER"**

Applicant Keith Cangiarella, acting pro se, asks the Board for leniency if a Motion to Amend was to be filed. As the Applicant, believed the Counterclaim/Petition to Cancel filed on December 10, 2004 made the argument for generic in the following statement and see attached page from Counterclaim/Petition to Cancel on file in these proceedings.

Point # 11. Applicant on information and belief further alleges that the Registrant, Roger Rojas intentional mischaracterized his goods as "telecommunication services" with the intent to avoid a potential **descriptiveness refusal**(emphasis added)(with respect to the sale and offering of "messages in a bottle," and/or with the intent to mislead potential third party opposers, including Applicant, as to the nature of the goods and services used in connection with his purported MESSAGE IN A BOTTLE mark to extent that his goods and services were no similar in nature to those of the Applicant here in, but instead were "telecommunications services" In fact, Applicant is informed and believes that the goods and services used in connection with the Registrant's alleged MESSAGE IN A BOTTLE trademark application file under Serial No.

75226521 and subsequently registered under Registration No. 2,243,269 were not properly classified as “telecommunications services” but rather actually consist of the sale of novelty and souvenir gift bottles containing personalized messages of others.

Thusly the Applicant believed at the time of the filing of the Motion of Summary Judgment the issue had been pleaded.

If the issue had not been plead per the TBMP;

**Per 528.07(a) Not Basis for Entering Summary Judgment**

A party may not obtain summary judgment on an issue that has not been pleaded. Moreover, at the summary judgment stage of a proceeding before the Board, there has not yet been a trial of any issue, whether pleaded or unpleaded, and therefore the requirements of Fed. R. Civ. P. 15(b) for an amendment to conform the pleadings to the evidence cannot have been met. Generally, a party that seeks summary judgment on an unpleaded issue may move to amend its pleading to assert the matter. Alternatively, if the parties, in briefing summary judgment motion, have treated an unpleaded issue on its merits, and the nonmoving party has not objected to the motion on the ground that it is based on an unpleaded issue, the Board may deem the pleadings to have been amended, by agreement of the parties, to allege the matter.

Vaughn Russell Candy Co. and Toymax Inc. v. Cookies in Bloom Inc., supra at 1635;

Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, supra; Paramount Pictures Corp. v. White, 31 USPQ2d 1768, 1772 (TTAB 1994), aff'd (unpub'd), 108 F.3d 1392 (Fed. Cir. 1997);

**528.07(b) Not Defense Against Summary Judgment**

A party may not defend against a motion for summary judgment by asserting the existence of genuine issues of material fact as to an unpleaded claim or defense. However, a party which seeks to defend against a motion for summary judgment by asserting the existence of genuine issues of material fact regarding an unpleaded claim or defense, may move to amend its pleading to allege the matter. Alternatively, if a party seeks to defend against a motion for summary judgment by asserting the existence of genuine issues of material fact regarding an unpleaded claim or defense, and the party moving for summary judgment treats the unpleaded matter on its merits, and does not object thereto on the ground that the matter is unpleaded, the Board may deem the pleadings to have been amended, by agreement of the parties, to allege the matter.

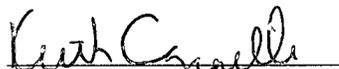
Cf. *Blansett Pharmacal Co. v. Carmrick Laboratories Inc.*, 25 USPQ2d 1473, 1477 (TTAB 1992), and *Perma Ceram Enterprises Inc. v. Preco Industries Ltd.*, 23 USPQ2d 1134, 1135 n.2 (TTAB 1992).; Cf. TBMP § 528.07(a);

The Opposer did not object to this unplead claim(which the Applicant believed was plead), in its Opposition to the Motion of Summary Judgment, the Opposer did cite law and call the motion defective, the Opposer did not **object**(emphasis added). The Opposer did instead file a lengthy argument for the “unplead” issue of genericness, thusly the Opposer based on its actions has agreed and allows amendment if necessary to the uplead matter.

In the event the Applicant whom is acting pro se did misinterpret the statement or verbiage from original Answer/Counterclaim, the Applicant asks the Board for leniency in this Motion to Amend Answer and Counterclaim to included the argument that the term “Message in a Bottle” as applied the goods and services listed in the Opposer’s registration have been and have become generic.

The Applicant wishes to apologize to the Board, the Opposer’s counsel and to all parties concerned in this matter for his mistake if any. The Applicant prays for the Boards leniency and asks if the Petition needs to be amended it is allowed.

Dated October 5, 2007



Keith Cangiarella

“In Pro Per”

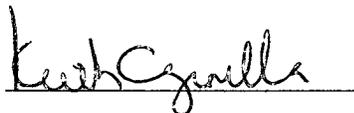
331 N. Harrington Dr  
Fullerton, CA. 92831

Date October 1, 2007  
DreamWeaver Studios  
Keith Cangiarella  
331 N. Harrington Dr  
Fullerton, CA. 92831  
714-441-3442 phone  
714-464-4112 fax  
1mib@dreamweaverstucios.com

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A handwritten signature in cursive script, appearing to read "Keith Cangiarella", is written over a horizontal line.

Keith Cangiarella  
October 5, 2007

10. On information and belief, Registrant fraudulently obtained the registration by purposefully providing a false and misleading description of the goods and/or services covered by his application. The specification in the formal application papers filed by Registrant under oath stated that the goods and/or services were being used in International Class 38 as "telecommunication services" and was further described as "receiving communications from others, recording such communications in written or printed form, and transmitting such communications to others." Notwithstanding such representations, Applicant is informed and believes that the goods and/or services actually used by Registrant, if any, were actually more properly described as within International Class 16, as related to, similar, or identical to the goods that were then in use, and remain in use by the Applicant herein.

11. Applicant on information and belief further alleges that the Registrant, Roger Rojas intentionally mischaracterized his goods as "telecommunication services" with the intent to avoid a potential descriptiveness refusal (with respect to the sale and offering of "messages in a bottle,") and/or with the intent to mislead potential third party opposers, including Applicant, as to the nature of the goods and services used in connection with his purported MESSAGE IN A BOTTLE mark to the extent that his goods and services were not similar in nature to those of the Applicant herein, but instead were "telecommunications services." In fact, Applicant is informed and believes that the goods and services used in connection with Registrant's alleged MESSAGE IN A BOTTLE trademark application filed under Serial No. 75226521 and subsequently registered under Registration No. 2,243,269 were not properly classified as "telecommunications services" but rather actually consisted of the sale of novelty and souvenir gift bottles containing personalized messages of others.

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Gold Shells, Inc,  
Opposer

Opposition No. 91162780

Cancellation No. \_\_\_\_\_

**APPLICANT'S REPLY BRIEF IN SUPPORT  
OF APPLICANT'S MOTION FOR  
SUMMARY JUDGMENT**

**APPLICANT'S REPLY BRIEF IN SUPPORT OF APPLICANT'S  
MOTION FOR SUMMARY JUDGEMENT**  
**"IN PRO PER"**

On August 17, 2007, Applicant Keith Cangiarella, filed a Motion for Summary Judgment seeking a grant of summary judgment in its favor. Opposer, Gold Shells, Inc subsequently filed Opposer Gold Shells, Inc Response to Applicant's Motion for Summary Judgment on September 26, 2007. Applicant hereby responds by filing this Reply Brief in Support of Applicant's Motion for Summary Judgment. Applicant maintains that the Opposer did commit fraud, Opposer's mark is generic and genuine issues of material fact do not exist, based on the motion, the facts reiterated here and the Board should grant summary judgment in Applicant's favor.

The Opposer's counsel has performed as a grand magician performs a masterful illusion, with distraction, slight of hand, smoke, and mirrors.

TBMP Manual of Procedure §528.05(a) and §528.05(e) demonstrates all evidence provided by the Applicant meets these requirements are authenticated and should be considered by the Board.

### **528.05(a) In General**

The types of evidence that may be submitted in support of, or in opposition to, a motion for summary judgment include "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any."

The evidentiary record upon summary judgment in an inter partes proceeding before the Board also includes, without action by any party, the file of any application or registration which is the subject of the proceeding as provided in 37 CFR § 2.122(b) and a copy of any registration pleaded and made of record by the plaintiff with its complaint, in the manner prescribed in 37 CFR § 2.122(d)(1). In addition, a party may make of record, for purposes of summary judgment, copies of other registrations; documents or things produced in response to a request for production; official records, if competent evidence and relevant to an issue; printed publications, such as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue, if the publication is competent evidence and relevant to an issue; and testimony from other proceedings, so far as relevant and material. A party need not submit these materials under a notice of reliance in order to make them of record for purposes of a summary judgment motion. Rather, the materials may be submitted as attachments or exhibits to a party's brief on the motion.

### **528.05(e) Printed Publications and Official Records**

Printed publications, as described in 37 CFR § 2.122(e), include such materials as books and periodicals, available to the general public in libraries or of general circulation among members of the public or that segment of the public which is relevant under an issue in a proceeding. The term "official records," as used in 37 CFR § 2.122(e), refers not to a party's company business records, but rather to the records of public offices or agencies, or records kept in the performance of duty by a public officer.

Materials which qualify as printed publications or official records under 37 CFR § 2.122(e) are considered essentially self-authenticating, that is, the nonoffering party is readily able to verify the authenticity of the proffered materials. As such, these materials may be relied on for purposes of summary judgment without further evidence of authenticity. A party may introduce evidence of this nature in connection with a summary judgment motion, if the evidence is

competent and relevant, by: specifying the official record or printed publication (including, with respect to the printed publication, information sufficient to identify the source and date of the publication) and the pages to be read; indicating generally the relevance of the material being offered; and including a copy of the proffered material with the party's brief.

The Applicant can clearly and properly authenticate the evidence and the evidence from the internet, as the Applicant took great care in documenting each website, each exhibit has a date, the website it was printed from and the time it was printed. It appears the Opposer counsel is using the abridged version of the TBMP.

As to the issue of the previous motion for summary judgment which was denied. That motion had a completely different argument and evidence; it has no bearing on this Motion for Summary Judgment and should be given no consideration.

The Applicant stands on the merits of the Motion with a few rebuttals of the Opposer's Opposition to Motion of Summary Judgment and Affidavit of Roger Rojas.

- A. Applicant's evidence meets all requirements of the TBMP as stated above
- B. The mark MESSAGE IN A BOTTLE clearly states what it is, a bottle with a message in it. The evidence presented by the Applicant, clearly demonstrates the receiving communications from others, by the sea, air, telephone or email, recording them in written or printed form, and transmitting them to others.
- C. The Opposer's domain name messageinabottle.com clearly demonstrates its services,
  1. receiving communications from others – ex.; logging onto the internet, one receives communications from others,
  2. recording such communications in written or printed form – ex.; appearing on computer screen, newspapers, magazines, newspapers,
  3. transmitting such communications to other – ex.; web browsers, email, newsgroups, newspapers, or magazines. All very generic and daily events. The Opposer is attempting to deceive the public and the Board, once again, whereas its mark is generic and has been in use in “telecommunications” as the class 38 refers.
- D. Each time the word MESSAGE IN A BOTTLE appears on a computer screen, newspaper, book or other form of publications the Opposer's services are being rendered.
- E. The Opposer statement “Serving our on-line customers since 1997” has been verified by the Opposer and once again submitted by Opposer in its Affidavit. The Opposer goes through great lengths to use smoke and mirrors to try to explain to the Board what this statement means, if services started in 1999 per the statement of use and

Section 8 and 15 then it would read "Serving our on-line customers since 1999". The statement does not read "Online since 1997", it states "**Serving our on-line customers** since 1997" It is clear to the Applicant this statement leads one to believe that the Opposer has been **servicing** customers online since 1997 with its services. It also leads one to believe the Opposer has been doing so earlier than 1997 but not online. This is clear and undeniable evidence if anything the Opposer is trying to confuse the Board and consumer and has clearly committed fraud with its statement of use and Section 8 and 15. The Applicant is not stating the services the Opposer now trying to convince the Board have been offered since 1997, simply that the services as stated in Registration have been provided since 1997, thus the word "Serving", providing service, the Opposer does not refute this.

- F. The disputed facts stated in the Opposer's Opposition to the Summary Judgment, were based on the Opposer's Opposition to the Applicant's mark. At the time of the Applicant's answer and counterclaim these facts were unclear. During the discovery process those facts have become undisputed. The Opposer states facts which it knows have become undisputed through discovery. The Opposer at the time of the filing of its Opposition to the mark, had filed the proper documents, with the USPTO, most of those details would have been made known to the Applicant and would not have been mentioned in the Applicant's Answer and Counterclaim, but through discovery, these facts are not disputed. Once again, the Opposer and its counsel wave their magic wand to perform a grand illusion of smoke and mirrors, causing nothing more than unnecessary confusion.
- G. The Opposer states several times "message in a bottle" involves castaways on desert islands who scrawl messages, destined for no one in particular, insert the messages into bottles, and cast them arbitrarily into the ocean". When in fact the evidence provided by the Applicant clearly demonstrates all classes of people utilize a message in a bottle to send a communication. One example is from the 1588 messages sent in bottles destined for the Queen of England, and all others whom have read the message would be killed. Exhibit N, page 53.

- H. The mark MESSAGE IN A BOTTLE, has become so common place it is the name of a movie starring Kevin Costner, the name of best selling novel by Nicholas Sparks which was adapted into the movie.
- I. The Opposer itself has allowed its mark to become generic, in the Affidavit of Roger Rojas, #11 GSI has obtained these listings from Yahoo!(formerly Overture Services, Inc.) which has assisted GSI in policing infringing uses of MESSAGE IN A BOTTLE pursuant to its trademark policies. I am attaching hereto as Exhibit F a letter from GSI's attorney to the Overture Services Inc.(predecessor to Yahoo!)

The Opposer's Exhibit F is dated May 31, 2005,(nine months after learning of the Applicant's Application) this is the first time the Opposer has attempted to police its so called rights, six years after the Opposer began using the mark,, from Exhibit F supplied by Opposer. The Board can see for six years the mark was used by 50 plus websites. For six years the Opposer did nothing, this alone makes the mark generic, as after six years the general public which is huge on the world wide web has come to know the mark. The Applicant's Exhibit D showing currently over 7 million plus uses of the trademark MESSAGE IN A BOTTLE.

- J. The Applicant's goods are not generic as the example of use of the mark submitted with the Applicant's trademark application clearly demonstrates that the Applicant's goods are unique and novel. Once the Opposer's mark is found generic the Applicant's mark will be allowed. The USPTO has allowed several other MESSAGE IN A BOTTLE marks over the years that are still alive and active, and they will not be affected by a generic decision here.
- K. The Opposer seems to be the confused party in this matter, as the Opposer now wishes the Board to believe the whole basis of its original Opposition was the examining attorney's failure to cite genericness or descriptiveness as a ground of refusal to the Applicant's Application.  
The examining attorney's actions clearly exemplify the Applicant's arguments in this motion and previous motions. The Examining Attorney compared all known marks of record to the Applicant's mark and good and services and found no marks similar or offering similar goods or services. The Opposer is the only party causing confusion by filing fraudulent application, statement of use, and Section 8 and 15.

The Opposer now looks to blame the USPTO examining attorney, of the Applicant's application, once again the Opposer is looking for a scapegoat for its own actions. The Opposer has committed fraud, and in the least has allowed its mark and services to become generic, by not policing of its rights for six years.

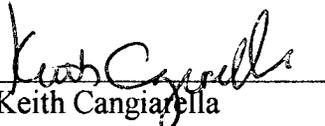
- L. The Applicant is not falling on his sword as the Opposer has stated, the Applicant's mark may be the same, but there are several marks on record that are the same, yet the class of goods and services, the goods and services offered, and statements of use are different, making them solid trademarks.
- M. Regarding Exhibit G of from the Affidavit of Roger Rojas, the Applicant wrote that without legal representation, without the knowledge the Applicant has garnered from four years of this process. The Applicant at the time believed the two were offering similar services when they were not per the Opposer's registration, the Applicant was upset, frustrated, and not thinking in a clear manner and afraid of the possible loss of his registration, the Applicant thinking that two business owners could work something out mutually beneficial. Any person reviewing that email can see the Applicant was not thinking clearly. Once again the Opposer is using smoke and mirrors to confuse the Board.
- N. Point 13 of the Affidavit of Roger Rojas, once again the grand illusionist waves his hand, had the Opposer provided the Board with a copy of this Application serial no. 76/556,304 and the response from the USPTO, the Board would have seen that the mark was refused due to descriptiveness, as well as not being properly classified in its class. The Board would have also seen that the examining attorney did not refuse the application with the Applicant's application. Clearly, the USPTO sees the Applicant's class of goods and services completely different than those of the Opposer's class of goods and services

#### CONCLUSION

The Applicant stands by the merits of its Motion as well as the points above; there are no genuine issues of facts that will abate the Board from granting this Motion. The Opposer has committed fraud, and the mark is generic for the services listed in the Opposer registration. The Applicant apologizes to the Board as its motions may not be as polished and articulate as the Opposer's counsel but the Applicant provides the truth in a clear and straight forward manner.

For all the above reasons stated here and in the Motion for summary judgment, the Applicant prays motion is granted.

Dated October 5, 2007



Keith Cangiarella  
"In Pro Per"

331 N. Harrington Dr  
Fullerton, CA. 92831

Date June 30, 2006  
DreamWeaver Studios  
Keith Cangiarella  
331 N. Harrington Dr  
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Keith Cangiarella  
October 5, 2007