

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

Mailed: June 30, 2008

Opposition No. 91162780

Message In A Bottle, Inc.
f/k/a Gold Shells, Inc.

v.

Keith Cangiarella

**Robert H. Coggins,
Interlocutory Attorney:**

Applicant's brief in opposition to opposer's motion to strike fails to indicate acceptable proof of service on opposer as required by Trademark Rule 2.119. Applicant's certificate of mailing indicates that the document was emailed and faxed to counsel for opposer but that "a hard copy will not be mailed via first class mail" unless such copy is requested by counsel.

A party filing a document in a Board inter partes proceeding may always, as a courtesy, send a copy to an adverse party by email or telephone facsimile transmission (fax). However, barring an agreement by the parties to accept service by email or fax, transmission of a document

by email or fax does not constitute "service" thereof under the provisions of Trademark Rule 2.119. If there is no agreement by a party to accept service by email or fax, the paper must still be served upon the adverse party by one of the methods specified in Trademark Rule 2.119(b), and the date of service of the paper upon the adverse party is the date when service is made by one of those specified methods. See TBMP § 113.04(2nd ed. rev. 2004).

There is no indication in this proceeding that opposer has agreed to accept service of documents by email or fax. Therefore, applicant's filing fails to indicate acceptable proof of service on opposer as required by Trademark Rule 2.119. Accordingly, applicant's brief in opposition to the motion to strike will be given no consideration.¹

¹ To receive consideration of the document, applicant may refile his brief in opposition with an acceptable proof of service within the time remaining in the response period (which response period ends July 11, 2008 (See Trademark Rule 2.119(c))).

The Board notes that applicant resubmitted a copy of his brief with a pen-and-ink signature. This second copy, which also failed to indicate acceptable proof of service, was filed because applicant apparently believed that a pen-and-ink signature on the motion was necessary. However, applicant's electronic signature on the ESTTA transmission form was acceptable and is construed to pertain to all of the attachments to the transmission. See *PPG Industries, Inc. v. Guardian Industries Corp.*, 73 USPQ2d 1926 (TTAB 2005).