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Filing date: **06/30/2008**

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

Proceeding	91162780
Party	Defendant KEITH CANGIARELLA
Correspondence Address	KEITH CANGIARELLA 331 N. HARRINGTON DRIVE FULLERTON, CA 92831 UNITED STATES 1mib@dreamweaverstudios.com, kccandrgn@sbcglobal.net
Submission	Opposition/Response to Motion
Filer's Name	Keith Cangiarella
Filer's e-mail	kccandrgn@sbcglobal.net
Signature	/Keith Cangiarella/
Date	06/30/2008
Attachments	opposition to motion to strkie with mail.pdf (11 pages)(289661 bytes)

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 MESSAGE IN A BOTTLE, INC, a California corporation, Opposer, v. KEITH CANGIARELLA, Applicant.	Opposition No. 91162780 Cancellation No. _____
In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE KEITH CANGIARELLA, Petitioner, v. MESSAGE IN A BOTTLE, INC, Opposer	

Patent and Trademark Office

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA. 22313-1451

APPLICANT'S OPPOSITION TO OPPOSER MESSAGE IN A BOTTLE, INC'S MOTION TO STRIKE APPLICANT'S NOTICE OF RELIANCE

Come Now!, APPLICANT, KEITH CANGIARELLA ("Applicant") hereby objects to the motion to strike the Applicant's Notice of Reliance and Declaration of Keith Cangiarella("Declaration").

1. Notice of Reliance is a separate document from the Declaration, The Notice of Reliance makes no mention of the Declaration, nor should the two documents be intertwined as Opposer's Counsel has done so.

2. A Declaration is the only method of presenting testimony by an individual acting pro se and is allowable per 37 CFR 1.68 – Declaration in lieu of Oath.

3. The Board nor Opposer's counsel would expect the Applicant to question himself!, via oral testimony?

4. The only method put in testimony is via a Declaration for one acting pro se.

5. The Opposer counsel himself even stated in Opposition to Opposer's Motion to Reopen Discovery Period and Extend Trial Schedule – Date 02-09-2006 page 1-2 "Applicant's counsel has again displayed an apparent desire to make a simple matter seem like a complex one, filing a verbose and unwieldy diatribe in an effort to obfuscate the simple and adequate bases for Opposer's motion to reopen discovery. Applicant's counsel even attaches an irrelevant and *self-serving declaration* from the Applicant himself, Keith Cangiarella, which can have no purpose other than to attempt to prejudice the record by *presenting premature testimony* to the TTAB before of Applicant's scheduled period for so." (*emphasis added*), see attached Exhibit A. The Opposer's counsel admits the declaration is testimony and all evidence presented by the Applicant should be allowed.

6. The Notice of Reliance and the Declaration were submitted to the Opposer and TTAB as separate documents, with there own set of exhibits.

7. The Applicant has not presented the Declaration as being blanketed by the Notice of Reliance.

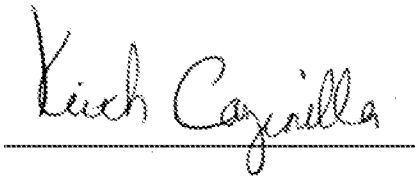
8. In its entirety the Opposer's Motion to strike rests on the notion that the Notice of Reliance blankets the Declaration, which the any person can see they are two completely separate documents and presented in that fashion.

9. The Opposer has once again gone through great lengths to waste the valuable time of the TTAB and the time of the Applicant. A simple email or phone between the parties could have cleared up these issues.

10. Clearly, the Notice of Reliance has been presented in correct legal fashion as a separate document with its own exhibits. The Declaration of Keith Cangiarella has been presented as a separate document with its own exhibits, in essence written testimony of the Applicant. Most importantly the Notice of Reliance does not mention the Declaration, nor does the Declaration mention the Notice of Reliance. These are two separate documents, the Notice of Reliance being just that, and the Declaration of Keith Cangiarella, being the Testimony of Keith Cangiarella.

The Motion to Strike should be dismissed and be given no merit in the decision of this case.

Dated : June 30, 2008



KEITH CANGIARELLA
"Pro Se"
331 N. Harrington Dr
Fullerton, CA. 92831

Certificate of Service

I hereby certify that a copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER MESSAGE IN A BOTTLE, INC'S MOTION TO STRIKE APPLICANT'S NOTICE OF RELIANCE was mailed via first class mail to Mr. Peter H. Smith Attorney at law, 1535 J Street, Suite A, Modesto, CA. 95353.

Date June 30, 2008

Keith Cangiarella

Keith Cangiarella

TTAB

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

In the Matter of Trademark Application Serial No. 78/229,875 Mark: MESSAGE IN A BOTTLE GOLD SHELLS, INC., a California corporation, Opposer, v. KEITH CANGIARELLA, Applicant. - In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE KEITH CANGIARELLA, Petitioner, v. ROGER ROJAS, Respondent.	Opposition No. 91162780 and Counterclaim for Cancellation 02-09-2006 Patent & TMOfc/TM Mail Rcpt Dt. #30

REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD AND EXTEND TRIAL SCHEDULE

Opposer Gold Shells, Inc., hereby replies to Applicant's Opposition to Opposer's Motion to Reopen Discovery Period and Extend Trial Schedule, a copy of which was served by mail on Opposer on January 30, 2006.

Applicant's counsel has again displayed an apparent desire to make a simple matter seem like a complex one, filing a verbose and unwieldly diatribe in an effort

to obfuscate the simple and adequate bases for Opposer's motion to reopen discovery. Applicant's counsel even attaches an irrelevant and self-serving declaration from the Applicant himself, Keith Cangiarella, which can have no purpose other than to attempt to prejudice the record by presenting premature testimony to the TTAB before of Applicant's scheduled period for doing so.

Opposer submits that its motion provides sufficient grounds for the TTAB to grant the motion, but Opposer wishes to make the following points in rebuttal to Applicant's opposition:

1. There is a need for reopening the discovery period. While Opposer has received some documents in discovery, and some answers to Opposer's request for admissions, Opposer has a right to receive from Applicant answers to basic questions about Applicant's business so as to be able to compare Applicant's goods and services with the services recited in Opposer's registration for the same mark.

2. Every document filed by Opposer in this proceeding has been timely filed, despite Applicant's counsel's attempt to make it seem otherwise.

3. Applicant's counsel attempts to prejudice the TTAB against Opposer by citing "a past history of dilatory and repeatedly neglectful conduct," but there is absolutely nothing in the record (or in the facts outside of the record) to support this inflammatory allegation.

4. The basis for Opposer's claim of "excusable neglect" is specific. Under the TTAB's rules, and the schedule in this proceeding, Opposer's motion to compel discovery was timely even though the discovery period had already closed. The record already contains my explanation of my good faith belief that my first set of interrogatories (which I have used in other TTAB proceedings without objection) was proper, and that the objections of Applicant's counsel were simply an improper attempt to stonewall the interrogatories altogether. (This belief seems to be bolstered by the extent and ferocity by which counsel is opposing the present motion.) Because of a turn of events which I believe I had no reason to anticipate, I am left going into the testimony period with no answers to interrogatories.

5. Applicant's counsel appears to find fault with the fact that I have not attached the interrogatories which I propose to serve. However, there is no requirement for doing so, and the preparation of such interrogatories would be futile unless the discovery period is reopened. My first set of interrogatories, which was the subject of Opposer's motion to compel, is already on record with the TTAB, and I will be selecting the most important of those interrogatories from my standpoint to re-serve on Applicant's counsel, with an acute awareness of the need to keep the number (including anything that might possibly be viewed as a "subpart") under 75.

6. For reasons set forth in my prior motion to compel, I found it absurd that

Applicant's counsel counted 154 interrogatories, counting subparts, where I counted 68. I acknowledge that the TTAB counted more than 75 (though I am not sure how), and therefore denied my motion, but I have been in good faith throughout and submit that my difference of opinion with Applicant's counsel and the TTAB on the counting of interrogatories is indeed evidence of "excusable neglect" so as to justify the granting of my motion to reopen discovery.

7. Applicant's counsel submits argument and cites various citations as to why "follow-up discovery" should not be allowed. However, I am not seeking follow-up discovery. I am seeking merely an opportunity to have a slimmed-down version of my initial set of interrogatories answered. I am seeking basic answers to simple questions about Applicant's business which have not yet been answered.

8. Applicant's counsel has decorated his opposition with many pages of citations, but none of them is pertinent to the present facts.

9. Applicant's counsel complains about my failing to meet and confer in regard to reopening discovery. Indeed, upon receipt of the faxed copy of my motion on January 12, 2006, counsel called me and attempted to bully me into withdrawing the motion by asserting that there was a "meet and confer" prerequisite to such a motion, an assertion which I was unable to substantiate. Furthermore, I asked counsel on that occasion if he would stipulate to reopening discovery, and he stated

emphatically that he would not. Based on my dealings with counsel since the outset of this proceeding, it is clear that an attempt to seek his cooperation on almost anything is futile.

10. Applicant's counsel incorrectly attributes my "surprise" at the denial of my motion to compel on "failure to read and understand the procedural rules of discovery". On the contrary, I was well familiar with the TTAB rules on this subject, and specifically attempted to draft my interrogatories in such a way that they could not be found to be in excess of the 75-interrogatory maximum. There was no inadvertence or ignorance of the rules, but merely a good faith interpretation of the rules which turned out to be different from that of the TTAB.

11. Applicant's counsel claims that Applicant would be prejudiced by further delay of this proceeding, but this claim is disingenuous in light of counsel's own short-lived motion to compel discovery, filed herein on October 19, 2005, which was accompanied by a request for extension of the trial schedule (which was opposed by Opposer). Furthermore, the business issues complained of by Applicant and his counsel are not issues which will disappear simply because of the conclusion of the present proceeding. Opposer is interested in having this proceeding concluded at the earliest possible time, but believes that it is worthwhile to have some further delay in order to have an opportunity to get answers to Opposer's basic interrogatories. The

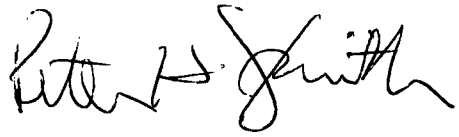
need for this basic discovery outweighs the need to stick to the present schedule.

12. As a footnote, Opposer notes that Applicant has used January 23, 2006, as the filing date for the present motion. In fact, Opposer mailed the motion on January 12, 2006, with an express mailing certificate, and therefore submits that January 12 should be deemed to be the filing date for the motion.

In closing, I note that Opposer is already in its testimony period, which is currently scheduled to end February 28, 2006. While I am presently preparing Opposer's testimony for filing, and will timely file it in any event, Opposer would appreciate it if the Board can act promptly on the present motion so that if the motion is granted, and the schedule extended, Opposer will have the opportunity to use the answers to its interrogatories as part of its testimony.

Dated: February 9, 2006.

Respectfully submitted,



PETER H. SMITH
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Modesto, CA 95354
(209) 579-9524

Certificate of Service

I hereby certify that a copy of the foregoing REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO REOPEN DISCOVERY PERIOD AND EXTEND TRIAL SCHEDULE was mailed 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 February 9, 2006.

Dated: February 9, 2006.

Lugene M. Borba

LUGENE M. BORBA

CERTIFICATE OF EXPRESS MAILING
UNDER 37 CFR §2.198

Mark: MESSAGE IN A BOTTLE
Serial No.: 78/229,875
Opposition No. 91162780
Name of party filing paper: Opposer Gold Shells, Inc.
Type of paper being filed: Reply to Applicant's Opposition to Opposer's Motion to Reopen Discovery Period and Extend Trial Schedule

Express Mail Mailing Label Number: EQ 041849410 US
Date of Deposit: February 9, 2006

I hereby certify that the above-identified Reply to Applicant's Opposition to Opposer's Motion to Reopen Discovery Period and Extend Trial Schedule, which is attached, is being deposited on February 9, 2006, with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §2.198 in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.

Lugene M. Borba

Lugene M. Borba
Date: February 9, 2006