

TTAB

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

#78229875

Mailed: April 16, 2009

Opposition No. 91162780

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

v.

Keith Cangiarella

Robert H. Coggins,
Interlocutory Attorney:

Eleven days after opposer filed its motion for reconsideration, and one day after applicant filed his stipulated motion for an extension of time to file a brief in opposition to the motion for reconsideration, the above-signed attorney responsible for resolving interlocutory disputes in this case telephoned applicant, appearing *pro se*, and counsel for opposer to find a mutually agreeable time for a telephone conference between the parties and the Board for the purposes of quickly determining the motions and conserving the Board and parties' resources. The time agreed to by the parties and the Board was April 17, 2009, at 2:00 p.m., Eastern time. This date is prior to the time under Trademark Rules 2.119(c) and 2.127(a) in which applicant would have been allowed to file a brief in opposition to the motion had the Board not exercised its discretion to determine the motion by telephone and to



04-20-2009

specify another (shortened) time for response to the motion. Both parties made themselves available. However, by way of his April 15, 2009 brief (filed via ESTTA) in opposition to the motion, applicant has rescinded his agreement to participate in a telephone conference to determine the motion for reconsideration.¹ Notwithstanding applicant's withdrawal from the conference, the telephone conference will be held as scheduled.²

The parties are reminded that pursuant to Trademark Rule 2.120(i)(1), the Board may upon its own initiative resolve motions by telephone conference. The Board maintains discretion to determine motions by telephone conference whether or not one party agrees to such a conference. Board attorneys retain discretion to decide whether a particular matter can be heard or disposed of by telephone. TBMP § 502.06(a) (2d ed. rev. 2004). Additionally, the parties are reminded that Trademark Rule 2.127(a) permits the Board to lengthen or shorten the period for filing a brief in opposition to a motion. The Board may in its discretion order such briefs to be made orally or in writing.

¹ On April 15, 2009, applicant also filed -via facsimile- correspondence with the Board. Pursuant to Trademark Rule 2.195(d), such facsimile transmissions are not permitted. See TBMP § 107 (2d ed. rev. 2004). However, to the extent that the faxed correspondence was also included with applicant's ESTTA-filed motion, it has been considered.

² In addition to telephoning opposer as planned, the Board will telephone applicant at the scheduled time to see if he is available and (again) willing to participate.

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Notwithstanding the Board's exercise of this discretion and scheduling a conference, applicant has submitted a written brief in opposition to the motion.³ Although the arguments raised by applicant in his brief could have been stated orally during a telephone conference and did not need to be framed only in writing, the Board will consider the arguments during the course of the scheduled telephone conference. The motion for reconsideration remains one that easily can be disposed of by telephone without any further wasting of time or resources of the Board and the parties.

As noted hereinabove, the telephone conference will be held as scheduled on April 17, 2009, at 2:00 p.m., Eastern time. During the conference, opposer will be permitted to provide an oral brief in reply (should opposer choose to present such a reply).

³ In view thereof, the stipulated motion for an extension of time to file a brief in opposition to the motion for reconsideration is moot.

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