

6666-72189

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

SHELL OIL COMPANY

Opposer,

v.

VAN DYKE TECHNOLOGIES, INC.

Applicant.

) Opposition No.: _____
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12-05-2001

U.S. Patent & TMO/TM Mail Ropt Dt. #70

Mark: VSHELL
Serial No.: 76/147,058
Filed: October 13, 2000
Published in Official Gazette
of August 28, 2001

DEC 10 AM 9:50

NOTICE OF OPPOSITION

Shell Oil Company, a corporation of Delaware having a principal place of business at One Shell Plaza, Houston, Texas 77252, (hereinafter "Shell"), will be damaged by the Registration on the Principal Register of the trademark VSHELL, Application Serial No.76/147,058, by Van Dyke Technologies, Inc., and hereby opposes the same on the following grounds:

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

1. In its Application Serial No.76/147,058, Applicant is seeking to obtain Registration on the Principal Register of the mark "VSHELL" as a trademark for "Computer

encryption and decryption software used for providing secure connections to computer networks, with authorization mechanisms to prevent unauthorized access” in International Class 9.

2. Since at least as early as 1904, Shell has used the mark SHELL in connection with gasoline, kerosene, gas oil, diesel oil, furnace fuel oil, motor lubricating oils, transmission oils lubricating greases and other goods and services related to the petroleum industry being of such quality and styling as to earn Shell an enviable reputation and substantial goodwill in its SHELL mark.

3. Since at least as early as 1904, Shell adopted and began using the mark SHELL in the petroleum industry and the mark has been marketed in commerce throughout the United States and the world. Such use had made “SHELL” a famous mark within the definition of Section 43(c) of the Lanham Act.

4. Shell owns the following trademarks attached hereto as Exhibit “A.”

5. Each Registration listed in Exhibit “A” is presently valid and subsisting and is owned by Shell and is *prima facie* evidence of Shell's exclusive right to use said marks in commerce on the goods specified in each registration and in connection with the services specified in each registration.

6. Shell, the owner of the mark SHELL and a family of derivative marks, adopted and has continuously used said marks on and in connection with various goods and services in commerce throughout the United States beginning at least as early as 1904.

7. Through Shell Services International (a wholly owned affiliate of Shell Oil Company), Shell offers information technology (“IT”) services to third parties and IT enabled business solutions via the Internet in the U.S. and throughout the world.

8. Shell has expended substantial monies in marketing, advertising and promoting its SHELL marks and SHELL family of marks on its goods and in connection with its services including its IT services.

9. Shell has for several years enjoyed sales of goods and services with the SHELL marks in excess of a billion dollars per year of gross sales.

10. By reason of its extensive marketing, advertising and promotion of goods and services using the SHELL marks and the high quality of those goods and services, Shell has developed extremely valuable goodwill associated with its marks long prior to the filing of Application Serial No.76/147,058 for the mark "VSHELL" by Applicant and for which the Applicant now seeks registration.

11. On information and belief, the earliest date of constructive or actual use of the "VSHELL" mark by Applicant upon which it can rely is January 31, 2000, the date of first use asserted on its Federal Trademark Application Serial No.76/147,058.

12. Applicant's adoption of the "VSHELL" mark has been without the consent or permission of Shell.

13. On information and belief, Applicant's adoption of the "VSHELL" mark has been with actual or constructive knowledge of Shell's prior Registrations and use of its aforesaid marks.

LIKELIHOOD OF CONFUSION

14. Paragraphs 1-13 are incorporated by reference herein.

15. On information and belief, Applicant is seeking Registration of the mark "VSHELL" in connection with services which are likely to be sold to the same customers and

through the same channels of trade in which Shell sells at least some of its goods and services in association with the aforesaid SHELL family of marks.

16. The “VSHELL” mark for which the Applicant seeks Registration is substantially similar to Shell's aforesaid family of marks which are used by Shell to sell its goods and services in the United States.

17. Applicant's “VSHELL” mark is confusingly similar to Shell’s aforesaid family of marks specified herein, and use thereof by the Applicant in connection with the services specified in Application Serial No.76/147,058 is likely to cause confusion, mistake or deception that Applicant's services are those of Shell or are otherwise endorsed, affiliated with, sponsored or approved by Shell, whereby Shell will be damaged by Registration of Applicant's “VSHELL” mark on the Principal Register of the United States Patent & Trademark Office.

18. If Applicant is granted registration of its claimed “VSHELL” mark as shown in Application Serial No. 76/147,058, Applicant will thereby obtain the prima facie exclusive right to use such mark in the United States, and such registration will impair and diminish Shell's goodwill and rights in its SHELL marks and SHELL family of marks thereby causing irreparable damage and injury to Shell. Therefore Shell opposes registration of Applicant’s “VSHELL” mark pursuant to 15 U.S.C. §§ 1052 and 1063(a), as amended by the Trademark Act of 1999.

COUNT II- DILUTION

19. Paragraph nos. 1-18 are incorporated by reference herein.

20. Shell has expended substantial monies in marketing, advertising and promoting its SHELL marks on its goods and in connection with its services.

21. By reason of its extensive use, marketing, publicity, advertising, geographical extent of its trading area, and promotion of goods and services using the SHELL marks and the high quality of those goods and services, Shell earned extremely valuable goodwill associated with its marks long prior to the filing of the Application Serial No.76/147,058 for Applicant's "VSHELL" mark.

22. Shell has for nearly 90 years made sales of goods and services with the SHELL marks.

23. For at least the last five years Shell has made sales of goods and services with the SHELL marks in excess of a billion dollars per year.

24. The SHELL marks are famous and distinctive marks within the meaning of the Lanham Act, and are entitled to the protection of the anti-dilution provisions of the Lanham Act, including 15 U.S.C. §1125(c).

25. Based upon information and belief, Applicant's Application Serial No.76/147,058 was filed at a period of time after which Shell marks became famous and distinctive.

26. If Applicant is granted registration of its "VSHELL" mark as shown in Application Serial No.76/147,058, Applicant will thereby obtain the *prima facie* exclusive right to use such mark, and such registration will impair, diminish and dilute Shell's goodwill and rights in its SHELL marks and SHELL family of marks thereby causing irreparable injury to Shell. Therefore, Shell opposes registration of Applicant's "VSHELL" mark pursuant to 15 U.S.C. §§ 1052 and 1063(a), as amended by the Trademark Amendments Act of 1999.


PRAYER FOR RELIEF

WHEREFORE, Shell prays that Application Serial No.76/147,058 be rejected and that Registration of the "VSHELL" mark for the goods specified therein be refused.

Respectfully Submitted,

FITCH, EVEN, TABIN & FLANNERY

December 5, 2001

By: 
Edward W. Gray, Jr., Esquire
Joseph T. Nabor, Esquire
Attorneys for Opposer

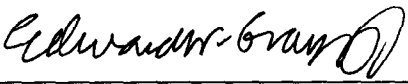
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CERTIFICATE OF OPPOSER'S ATTORNEYS

We hereby certify that we are trademark attorneys for Shell Oil Company, Opposer herein, and that we have been instructed to file the foregoing Opposition. We are, therefore, filing this Opposition under Section 13 of the Trademark Act of 1946 and under Trademark Rule 2.101.

FITCH, EVEN, TABIN & FLANNERY

December 5, 2001

By:  _____

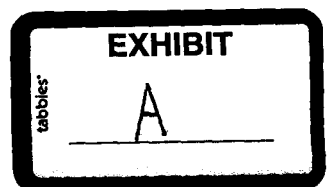
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SHELL'S U.S. TRADEMARK REGISTRATIONS
(Partial List)

MARK	Registration Number	Class
SHELL FLEET PLUS	2287977	36
SHELL FLEET SERVICES	2268681	25 & 35
SHELL FLEET SERVICES	2268679	25 & 35
SHELL FLEET	2198391	04
SHELL FLEET FUELER	2099237	39
SHELL FLEET FUELER	2097454	39
FORMULASHELL	1857449	04
FORMULASHELL	1848477	04
SHELL	1808315	04
SHELL	1760294	37
AEROSHELL	1742664	04
SHELL	1726617	04
SHELL	1720747	37
SHELL CARE	1683364	42
SHELL	1663096	01
SHELLTRANS	1661404	04
SHELL	1657964	04
SHELL	1652113	04
SHELL	1633684	06
SHELL	1630055	18
SHELL	1619957	21
SHELL	0966072	12
SHELL	0852113	01
SHELL	0714288	01
SHELL TURBO	0655992	04



MARK	Registration Number	Class
SHELL	0074007	04

SHELL'S COMMON LAW TRADEMARKS
(Partial List)

MARK	SERVICES
SHELL	Information technology services and IT enabled business solutions via the Internet and offices throughout the world;
SHELL SERVICES INTERNATIONAL	<p>Enterprise resource planning, project management, consulting, and complete life cycle support for a variety of software packages;</p> <p>Infrastructure services and solutions in the form of scalable services from the operations and maintenance of low-cost, high-quality, global IT infrastructure and applications to complete infrastructure business solutions that cover the entire spectrum;</p> <p>Consulting, implementation, and support services to deliver comprehensive, end-to-end eBusiness solutions and integration with Enterprise Resource Planning, Supply Chain Management, and Information Management systems;</p> <p>Supply chain management, creating customer value through the integrated management of the flow of materials, services, and information extending from the procurement of goods and services from suppliers, through to the delivery of finished products to customers;</p> <p>Management consulting services offering in-depth industry knowledge combined with consulting experience and the delivery of</p>

	<p>innovative business solutions to help improve its customers' business performance. Expertise includes organization development and change management, business process design and strategy development, IT strategy development and management, and comprehensive information security services;</p> <p>Information management consultancy services and products to companies around the world. The Information Management team serves its customers by helping them to organize, manage and deliver business information, transforming raw data into useful business tools, thereby expanding and exploiting its full value.</p>
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TAB

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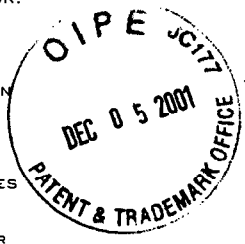
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VIA U.S. MAIL

Assistant Commissioner of Trademarks
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Re: Notice of Opposition of Shell Oil Company
Applicant: VAN DYKE TECHNOLOGIES, INC.
Mark: VSHELL
Serial No. 76/147,058
Filed: October 13, 2000
Our File No.: 6666-72189

12-05-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #70



Sir:

We enclose the Notice of Opposition of Shell Oil Company against the trademark VSHELL. The Commissioner is hereby authorized and requested to charge the \$300.00 filing fee required for this Notice of Opposition to Deposit Account No. 06-1135.

The Commissioner is hereby authorized to charge any additional fees which may be required in this Notice of Opposition, or otherwise during the pendency of this opposition, or credit any overpayment, to Deposit Account No. 06-1135.

Sincerely,
FITCH, EVEN, TABIN & FLANNERY

By: Edward W. Gray, Jr.
Edward W. Gray, Jr.

Enclosure

DD