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

Proceeding	91190169
Party	Defendant Susino USA, LLC
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Submission	Motion to Dismiss - Rule 12(b)
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Attachments	Susino USA's Motion to dismiss - 8-27-09.pdf (4 pages)(22443 bytes)

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

In The Matter of App. Ser. No. 77/355,544)	
)	
SUSINO UMBRELLA CO., LTD.)	
)	
Opposer,)	
)	
v.)	Opposition No. 91190169
)	
SUSINO USA, LLC)	
)	
Applicant,)	

**APPLICANT’S MOTION TO DISMISS NOTICE OF OPPOSITION AND
MEMORANDUM OF LAW**

Pursuant to Rule 12(b)(6) of the Federal Rules of civil Procedure, Applicant Susino USA, LTD (“Applicant”) or (“Susino USA”) through it is undersigned representative, submits this motion to dismiss the Notice of Opposition filed by the Oppose Susino Umbrella Co, Ltd (“Opposer”) or (“Susino China”) for failure to state a claim upon which relief can be granted.

INTRODUCTION

It is crystal clear from the facts plead in Susino China’s Notice of Oposition including facts incorporated

OPPOSER HAS FAILED TO STATE A CLAIM AGAINST SUSINO USA FOR
LIKELIHOOD OF CONFUSION

In an opposition proceeding alleging likelihood of confusion, the opposer must allege facts sufficient to establish that (1) opposer has priority of rights in and to the mark at issue and (2) applicant's mark, as applied for, is so similar to opposer's mark as to be likely to cause confusion, mistake or deception. *Bongrain Int'l (Am.) Corp. v. Moquet, Ltd.*, 230 U.S.P.Q. 626, 626 (T.T.A.B. 1986) . In the instant case, Opposer fails to properly allege applicant's mark, as applied for, is so similar to in the mark SUSINO because the facts plead in its Notice of Opposition and incorporated by reference by virtue of Susino USA's SUSINO Application support the conclusion that Susino USA and not Susino China has priority of rights in the SUSINO mark. Therefore, Susino China cannot maintain an action against Susino USA for likelihood of confusion.

**I. The Facts In The Notice Of Opposition and Opposers's
Application Establish The Referenced Abandoned Application of JiangJang
Hengshun Gungham Other Than That of the Opposers.**

In considering the instant motion to dismiss, the Board is required to consider not only the specific facts alleged in Susino China's Notice Of Opposition, but also the particulars of the Application being relayed upon in claiming rights and goodwill, since that application is central to the issues presented in this opposition proceeding and is incorporated by reference in Susino China's Notice Of Opposition. See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 127 S.Ct. 2499, 2509 (2007) ("courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling

on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."); *Pani v. Empire Blue Cross Blue Shield*, 152 F.3d 67, 75 (2d. Cir 1998) (court may consider matters of public record and documents integral to plaintiff's complaint when deciding a motion to dismiss). (Attached hereto as Exhibit A is a copy of JinJiang Hengshun Gingham Company, LTD SUSINO Application and the PTO's TARR online records for that application.) In the instant case, Susino China's Notice Of Opposition alleges the following facts with respect to JinJiang Hengshun Gingham Company's SUSINO Application and its use of the mark SUSINO:

- On March 26, 2004 Jinjiang Hengshun Gingham Company filed application with Serial Number 79001855, not the Opposer, Susino China. (Susino China's Notice Of Opposition ¶ 4) Based on these alleged facts, Susino China claims priority of rights in the mark SUSINO not only to Susino USA but also to Jinjiang Hengshun Gingham Company's rights, if any still exist.

- On April 26, 2005 Jinjiang Hengshun Gingham Company was issued a final disposal notice as to IB Disposal (ID# 337612601) with a transaction type Final Decision "refusing all goods and services".

On June 7 2005, a notice of abandonment was issued to Jinjiang Hengshun Gingham Company who applied for the application on the referenced application.

Other than in the Notice of Opposition is there is no application, assignment, notice, or reference to Susino China's claim as to having any rights or goodwill in the application of Jianjiang Hengshun Gingham Company, if any still exist. To make such a claim more than 5 years after the initial application is disingenuous. Furthermore Susino China has no standing to oppose Susino USA's mark SUSINO.

CONCLUSION

For the forgoing reasons, it is evident that Susino USA has priority with respect to the mark SUSINO over Susino China, and therefore the Board should grant Susino USA's motion to dismiss this Opposition.

Respectfully Submitted:

By: /s/ /Todd Nadrich/

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Certificate of Service

I hereby certified that the above and forgoing APPLICANT'S MOTION TO DISMISS NOTICE OF OPPOSITION AND MEMORANDUM OF LAW was served upon Opposers by depositing a copy of same in the United States Mail, first class postage prepaid, on this 28 day of June, 2009, addressed to:

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/s/ /Todd Nadrich/
Todd Nadrich