

ESTTA Tracking number: **ESTTA460683**

Filing date: **03/08/2012**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Masco Corporation of Indiana
Granted to Date of previous extension	03/11/2012
Address	55 East 111th Street Indianapolis, IN 46280 UNITED STATES

Attorney information	LEON E REDMAN BROOKS KUSHMAN PC 1000 TOWN CENTER, 22ND FLOOR SOUTHFIELD, MI 48075 UNITED STATES iredman@brookskushman.com, ejbrooks@brookskushman.com, lscott@brookskushman.com, rtuttle@brookskushman.com Phone:248-358-4400
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**Applicant Information**

Application No	85265771	Publication date	09/13/2011
Opposition Filing Date	03/08/2012	Opposition Period Ends	03/11/2012
Applicant	Kohler Co. 444 Highland Drive Kohler, WI 53044 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 011. First Use: 2011/01/31 First Use In Commerce: 2011/01/31 All goods and services in the class are opposed, namely: Bathtubs
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**Grounds for Opposition**

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3114924	Application Date	12/23/2003
Registration Date	07/11/2006	Foreign Priority Date	NONE
Word Mark	BRIZO		

Design Mark	<b>BRIZO</b>		
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2004/02/00 First Use In Commerce: 2004/02/00 Plumbing Products, Namely Faucets, Showerheads And Bath Spouts		

U.S. Registration No.	3294610	Application Date	02/16/2004
Registration Date	09/18/2007	Foreign Priority Date	NONE
Word Mark	BRIZO		
Design Mark	<b>BRIZO</b>		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2005/03/00 First Use In Commerce: 2005/03/00 Bathroom Accessories, Namely, Towel Bars, Towel Rings, Tissue Holders And Toothbrush-tumbler Holders		

U.S. Registration No.	3428414	Application Date	01/19/2006
Registration Date	05/13/2008	Foreign Priority Date	NONE
Word Mark	BRIZO		

Design Mark	<h1>BRIZO</h1>
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2005/03/00 First Use In Commerce: 2005/03/00 Electric Lighting Fixtures

U.S. Registration No.	3269566	Application Date	05/16/2005
Registration Date	07/24/2007	Foreign Priority Date	NONE
Word Mark	ARZO		
Design Mark	<h1>ARZO</h1>		
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 2005/10/00 First Use In Commerce: 2005/10/00 Plumbing products, namely, faucets and shower heads		

Attachments	78344598#TMSN.jpeg ( 1 page )( bytes ) 78368429#TMSN.jpeg ( 1 page )( bytes ) 78794479#TMSN.jpeg ( 1 page )( bytes ) 78630235#TMSN.jpeg ( 1 page )( bytes ) notice of opposition - ABRAZO.pdf ( 7 pages )(149555 bytes ) Exhibit A to Opposition - REG. 3114924.pdf ( 3 pages )(91547 bytes ) Exhibit B to Opposition - REG. 3294610.pdf ( 3 pages )(91064 bytes ) Exhibit C to Opposition - REG. 3428414.pdf ( 3 pages )(95095 bytes ) Exhibit D to Opposition - ARZO US Reg.pdf ( 3 pages )(95402 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Leon E. Redman/
Name	LEON E REDMAN
Date	03/08/2012

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

In re Trademark Application Serial No. 85/265,771  
Filed: March 14, 2011  
Trademark: ABRAZO  
Published for Opposition on September 13, 2011

MASCO CORPORATION OF INDIANA )  
 )  
                   Opposer,                    )  
 )  
v.    )  
 )  
KOHLER CO.                                    )  
 )  
                   Applicant.                    )

Opposition No. \_\_\_\_\_

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**NOTICE OF OPPOSITION**

VIA ELECTRONIC FILING  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

Sir:

Masco Corporation of Indiana d/b/a Delta Faucet Company (“Opposer”), an Indiana corporation with a place of business at 55 East 111<sup>th</sup> Street, Indianapolis, IN 46820, believes that it is and will continue to be damaged by the Applicant’s registration of the mark “ABRAZO” for goods in Class 11 as set forth in Application Serial No. 85/265,771, and hereby opposes registration of this mark.

As grounds for opposition, the Opposer alleges as follows:

1. The Applicant, Kohler Co., is seeking to register the mark “ABRAZO” as a trademark for the following goods in Class 11: Bathtubs. This is evidenced by the publication of the mark in the *Official Gazette* on September 13, 2011. This Application Serial No. 85/265,771 was filed on March 14, 2011, based upon use claimed as of January, 31, 2011.

2. The Opposer, Masco Corporation of Indiana manufactures and sells plumbing products, including bath spouts, bathroom accessories and electric lighting fixtures under the mark “BRIZO.”

3. The Opposer manufactures and sells plumbing products, including faucets and shower heads under the mark “ARZO.”

4. The Opposer is the owner of U.S. Trademark Registration No. 3,114,924 for the mark “BRIZO” for use on plumbing products, namely faucets, showerheads and bath spouts in Class 11, which issued on July 11, 2006. A copy of this incontestable registration is attached as Exhibit A. This registration is valid and subsisting, uncancelled and unrevoked.

5. The Opposer is the owner of U.S. Trademark Registration No. 3,294,610 for the mark “BRIZO” for use on bathroom accessories, namely towel bars, towel rings, tissue holders and toothbrush-tumbler holders in Class 21, which issued on September 18, 2007. A copy of this registration is attached as Exhibit B. This registration is valid and subsisting, uncancelled and unrevoked.

6. The Opposer is the owner of U.S. Trademark Registration No. 3,428,414 for the mark “BRIZO” for use on electric lighting fixtures in Class 11, which issued on May 13, 2008. A copy of this registration is attached as Exhibit C. This registration is valid and subsisting, uncancelled and unrevoked.

7. Opposer is the owner of U.S. Trademark Registration No. 3,269,566 for the mark “ARZO” for use on plumbing products, namely faucets and showerheads in Class 11, which issued on July 24, 2007. A copy of this registration is attached as Exhibit D. This registration is valid and subsisting, uncancelled and unrevoked.

8. The Opposer has used “BRIZO” as a significant product line mark since at least as early as February 2002 in connection with its plumbing products, and has used the mark “BRIZO” extensively in connection with such goods.

9. The Opposer has used “BRIZO” as both a significant product line mark since at least as early as March 2005 in connection with its bathroom accessory products, and has used the mark “BRIZO” extensively in connection with such goods.

10. The Opposer has used “BRIZO” as both a significant product line mark since at least as early as March 2005 in connection with its electric lighting fixtures, and has used the mark “BRIZO” extensively in connection with such goods.

11. The Opposer has used “ARZO” as a mark since at least as early as October 2005 in connection with its plumbing products, and has used the mark “ARZO” extensively in connection with such goods.

12. The Opposer has expended considerable effort and expense in promoting its “BRIZO” house and product mark and the goods associated with this mark, with the result that the purchasing public has come to know and recognize the products of the Opposer by this mark. The Opposer has an exceedingly valuable good will established in its “BRIZO” mark.

13. The Opposer has expended considerable effort and expense in promoting its “ARZO” mark and the goods associated with this mark, with the result that the purchasing public has come to know and recognize the products of the Opposer by this mark. The Opposer has an exceedingly valuable good will established in its “ARZO” mark.

14. There is no issue as to priority. The Opposer used the mark “BRIZO” in connection with its Class 11 and Class 21 goods long prior to the January 31, 2011 use dates claimed in Application Serial No. 85/265,771.

15. The Opposer used the mark “ARZO” in connection with its Class 11 and goods long prior to the January 31, 2011 use dates claimed in Application Serial No. 85/265,771.

16. The mark for which the Applicant seeks registration, namely “ABRAZO” is closely similar in appearance and commercial impression to Opposer’s marks “BRIZO” and “ARZO” and both parties’ marks are designated for use on plumbing products in Class 11.

17. Opposer’s use of the mark “BRIZO” in connection with bath and plumbing related products and accessories was well known to Applicant, prior to Applicant’s adoption and use of “ABRAZO” for bath related plumbing products.

18. Opposer's use of the mark "ARZO" in connection with bath related plumbing products was well known to Applicant, prior to Applicant's adoption and use of "ABRAZO" for bath and plumbing products.

19. Since the mark and goods as described in the application are closely related to the Opposer's marks and goods, confusion and deception as to the origin of the Applicant's goods bearing the mark would occur, all to the damage and detriment of the Opposer. Such use would cause confusion in the trade resulting in damage and injury to the Opposer.

20. The Applicant's "ABRAZO" mark so resembles the previously registered marks "BRIZO" and "ARZO" of Opposer as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d).

21. The Applicant's "ABRAZO" mark so resembles the previously registered marks "BRIZO" and "ARZO" of Opposer as to be likely, when used in connection with Applicant's goods, to falsely suggest a connection with Opposer under Section 2(a) of the Lanham Act, as amended, 15 U.S.C. § 1052(a).

22. If the Applicant were granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use of the "ABRAZO" mark in connection with the designated goods. Such registrations would be a source of injury and damage to the Opposer.

WHEREFORE, the Opposer, Masco Corporation of Indiana, requests that Application Serial No. 85/265,771 for the mark "ABRAZO" be rejected, denied and refused, and that this

U.S. SERIAL NO. 85/265,771

TRADEMARK

Opposition be sustained. The filing fee of \$300 and any additional fees as may be required under 37 C.F.R. § 2.6(a)(17), are to be charged to Deposit Account No. 502337.

Respectfully submitted,

By: /Leon E. Redman/  
Leon E. Redman  
Chanille Carswell  
Attorneys/Agents for Applicant

Date: March 8, 2012

**BROOKS & KUSHMAN P.C.**

1000 Town Center, 22<sup>nd</sup> Floor  
Southfield, MI 48075  
Phone: 248-358-4400  
Fax: 248-358-3351

**CERTIFICATE OF SERVICE**

I certify that I served:

**NOTICE OF OPPOSITION**

on March 8, 2012 by:

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a copy to:

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Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP  
311 S. Wacker Drive, Suite 5000  
Chicago IL 60606  
e-mail: jdavis@pattishall.com

*Attorney for Applicant*

/Leon E. Redman/  
Leon E. Redman

# **EXHIBIT A**



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BRIZO

**Word Mark** BRIZO  
**Goods and Services** IC 011. US 013 021 023 031 034. G & S: Plumbing Products, Namely Faucets, Showerheads And Bath Spouts. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 78344598  
**Filing Date** December 23, 2003  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** May 24, 2005  
**Registration Number** 3114924  
**Registration Date** July 11, 2006  
**Owner** (REGISTRANT) Masco Corporation of Indiana CORPORATION INDIANA 55 East 111th Street Indianapolis INDIANA 46280  
**Attorney of Record** Edgar A. Zarins  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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# **EXHIBIT B**



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BRIZO

<b>Word Mark</b>	BRIZO
<b>Goods and Services</b>	IC 021. US 002 013 023 029 030 033 040 050. G & S: Bathroom Accessories, Namely, Towel Bars, Towel Rings, Tissue Holders And Toothbrush-tumbler Holders. FIRST USE: 20050300. FIRST USE IN COMMERCE: 20050300
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78368429
<b>Filing Date</b>	February 16, 2004
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	October 4, 2005
<b>Registration Number</b>	3294610
<b>Registration Date</b>	September 18, 2007
<b>Owner</b>	(REGISTRANT) Masco Corporation of Indiana CORPORATION INDIANA 55 East 111th Street Indianapolis INDIANA 46280
<b>Attorney of</b>	

**Record** Edgar A. Zarins  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# BRIZO

<b>Word Mark</b>	BRIZO
<b>Goods and Services</b>	IC 011. US 013 021 023 031 034. G & S: Electric Lighting Fixtures. FIRST USE: 20050300. FIRST USE IN COMMERCE: 20050300
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78794479
<b>Filing Date</b>	January 19, 2006
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 18, 2006
<b>Registration Number</b>	3428414
<b>Registration Date</b>	May 13, 2008
<b>Owner</b>	(REGISTRANT) Masco Corporation of Indiana CORPORATION INDIANA 55 East 111th Street Indianapolis INDIANA 46280
<b>Attorney of Record</b>	Edgar A. Zarins
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# ARZO

<b>Word Mark</b>	ARZO
<b>Goods and Services</b>	IC 011. US 013 021 023 031 034. G & S: Plumbing products, namely, faucets and shower heads. FIRST USE: 20051000. FIRST USE IN COMMERCE: 20051000
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	78630235
<b>Filing Date</b>	May 16, 2005
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	February 21, 2006
<b>Registration Number</b>	3269566
<b>Registration Date</b>	July 24, 2007
<b>Owner</b>	(REGISTRANT) Masco Corporation of Indiana CORPORATION INDIANA 55 East 111th Street Indianapolis INDIANA 46280
<b>Attorney of Record</b>	Edgar A. Zarins
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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