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

Proceeding	91204465
Party	Defendant Vito Laera
Correspondence Address	VITO LAERA 5960 SW 32ND TERRACE FORT LAUDERDALE, FL 33312 6325 UNITED STATES vito@sinksrus.com
Submission	Other Motions/Papers
Filer's Name	Vito Laera
Filer's e-mail	vito@sinksrus.com
Signature	/vito laera/
Date	09/05/2012
Attachments	motiontodismiss91206218_9-5-12.pdf ( 15 pages )(5566099 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
P.O. Box 1451 Alexandria, VA 22313-1451**

Mailed: August 28, 2012

**Opposition No. 91204465  
(PARENT CASE)**

<b>Opposition</b>	<b>No.</b>	<b>91205767</b>
<b>Opposition</b>	<b>No.</b>	<b>91205768</b>
<b>Opposition</b>	<b>No.</b>	<b>91206218</b>
<b>Opposition</b>	<b>No.</b>	<b>91206219</b>
<b>Opposition</b>	<b>No.</b>	<b>91206391</b>
<b>Opposition</b>	<b>No.</b>	<b>91206512</b>

Blanco GmbH + Co KG

v.

Vito Laera

**Cancellation No. 92054358**

Vito Laera

v.

Blanco GmbH + Co KG

**VITO LAERA'S MOTION TO DISMISS BLANCO GmbH + Co KG'S NOTICE OF**

**OPPOSITION 91206218 PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Vito Laera (hereon referred to as respondent or defendant) files this Motion to Dismiss Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and in support thereof avers as follows:

1. BLANCO GmbH + Co KG (hereon referred to as petitioner) filed a Notice of

Opposition on July 24, 2012 against “LINEA LAV BY VLANCO” Serial number 85531741.

2. Petitioner alleges the following grounds for opposition of “LINEA LAV BY VLANCO”: 1) Priority and likelihood of confusion; and 2) Dilution.

3. None of the allegations in the Notice of Opposition demonstrate that Petitioner has a real interest in the proceeding or that Petitioner has a reasonable basis for belief that he will suffer any kind of damage if “LINEA LAV BY VLANCO” registers. Petitioner has not alleged that he has made common law use of the mark LINEA LAV BY VLANCO anywhere, or in particular in the United States or its territories; nor has Petitioner pled ownership of a registration for, or application to register, the mark LINEA LAV BY VLANCO. Petitioner has not pled that he has a proprietary interest in the mark.

4. A real interest in the proceeding and a reasonable belief of damage may be found, for example, where plaintiff pleads a claim of likelihood of confusion that is not wholly without merit. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943 (Fed. Cir. 2000).

5. Petitioner’s claim of likelihood of confusion here is wholly without merit. Petitioner has alleged only that there is “evidence of a likelihood of confusion between the use of BLANCO and VLANCO.” The mark subject to the instant cancellation proceeding is LINEA LAV BY VLANCO, not VLANCO. Petitioner’s claim is wholly without merit as he has failed to allege a likelihood of confusion with the correct mark LINEA LAV BY VLANCO.

6. In view of the foregoing, for pleading purposes, Petitioner has failed to allege facts which, if proven, would demonstrate his standing to bring the current proceeding.

## GROUNDS

7. A complaint must “contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984) (internal quotations omitted; emphasis in original).

8. None of the allegations contained in the Petition for Cancellation contain all the material elements necessary to sustain recovery under any viable legal theory.

9. In regard to a likelihood of confusion, Petitioner does not allege that the LINEA LAV BY VLANCO mark and BLANCO mark are similar. Nor does Petitioner allege that there is a likelihood of confusion as to the source of the goods covered by the LINEA LAV BY VLANCO mark and BLANCO mark.

10. In regard to dilution, “blanco” and/or, “Blanco” and/or “BLANCO” is/are commonly used in the industry as a description of sinks and faucets as demonstrated by the pictures shown as exhibit A, B, C and D of sinks and faucets readily available on shelves at Lowes and the Home Depot stores.

11. None of statements in the notice of opposition contain the requisite allegations for recovery under any grounds, including: 1) Priority and likelihood of confusion; and 2) Dilution.

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Accepting as true Petitioner's allegations and drawing all reasonable inferences in favor of the Petitioner, Petitioner has not and cannot sustain a claim against Respondent based on any of the foregoing grounds.

WHEREFORE, Vito Laera, respectfully requests that the Petitioner's Notice of Opposition be dismissed.

Respectfully submitted on September 5, 2012.

/Vito Laera/  
Vito Laera  
5960 SW 32 Terrace  
Fort Lauderdale, FL 33312  
Tel 954-592-9476  
vito@sinksrus.com

OPPOSITION: 91206218

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing VITO LAERA'S MOTION TO DISMISS BLANCO GmbH + Co KG'S NOTICE OF OPPOSITION 91206218 PURSUANT TO FED. R. CIV. P. 12(b)(6) was served upon Petitioner by depositing a copy of same with the United States Postal Service, first class postage prepaid, on this date, addressed to:

HANLEY, FLIGHT & ZIMMERMAN, LLC  
ATT: Joseph T. Jasper  
150 South Wacker Drive, Suite 2100  
Chicago, Illinois 60606

Dated September 5, 2012

/Vito Laera/  
Vito Laera  
5960 SW 32 Terrace  
Fort Lauderdale, FL 33312  
Tel 954-592-9476  
[vito@sinksrus.com](mailto:vito@sinksrus.com)

# EXHIBIT A



# EXHIBIT B





# EXHIBIT C



# EXHIBIT D



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
P.O. Box 1451 Alexandria, VA 22313-1451**

Mailed: September 10, 2012

**Opposition No. 91204465  
(PARENT CASE)**

<b>Opposition</b>	<b>No.</b>	<b>91205767</b>
<b>Opposition</b>	<b>No.</b>	<b>91205768</b>
<b>Opposition</b>	<b>No.</b>	<b>91206218</b>
<b>Opposition</b>	<b>No.</b>	<b>91206219</b>
<b>Opposition</b>	<b>No.</b>	<b>91206391</b>
<b>Opposition</b>	<b>No.</b>	<b>91206512</b>

Blanco GmbH + Co KG

v.

Vito Laera

**Cancellation No. 92054358**

Vito Laera

v.

Blanco GmbH + Co KG

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS**

**PETITIONER'S NOTICE OF OPPOSITION PURSUANT TO FED. R. CIV. P. 12(b)(6)**

**I. FACTS**

Petitioner filed a Notice of Opposition on July 24, 2012 against Respondent's mark LINEA LAV BY

VLANCO, Serial No. 85531741. Petitioner alleges the following grounds for cancellation of LINEA LAV BY

VLANCO: 1) Priority and likelihood of confusion; and 2) Dilution. The other facts outlined in the Respondent's Motion to Dismiss Petitioner's Petition for Cancellation Pursuant to Fed. R. Civ. P. 12(b)(6) are incorporated herein.

## **II. STANDARD OF REVIEW**

A motion to dismiss shall be granted where it appears that the plaintiff can prove no set of facts which would support her claim and would entitle her to relief. *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). A complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 562 (2007) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984) (internal quotations omitted; emphasis in original)). To survive a motion to dismiss, a complaint must state a claim to relief that is plausible on its face. *Id.* at 570. For purposes of resolving the motion, courts accept all allegations of material fact as true and construe the complaint in the light most favorable to the nonmoving party. *Nat'l Wildlife Fed'n v. Espy*, 4 F.3d 1337, 1380 (9th Cir. 1995).

## **III. ARGUMENT**

According to Fed. R. Civ. P. 12(b)(6), a pleader may raise the defense of failure to state a claim upon which relief can be granted by motion. In deciding a 12(b)(6) motion, the court must "accept as true all allegations and reasonable inferences that can be drawn from them after construing them in a light most favorable to the non-movant." *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994). A complaint may be dismissed when the facts as pleaded and the reasonable inferences drawn therefrom are legally insufficient to support the relief sought. See, e.g., *Pennsylvania ex rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 179 (3d Cir. 1988). To survive a motion to dismiss, a plaintiff need only allege sufficient factual matter as would, if proved, establish that (1) the plaintiff has standing

to maintain the proceeding, and (2) a valid ground exists for cancelling the mark. *Lipton Industries, Inc. v. Ralston Purina Co.*, 670 F.2d 1024 (CCPA 1982).

**a. Standing**

A party has standing to cancel a registration if it can demonstrate a “real interest” in the proceeding and a “reasonable basis” for its belief that it would suffer some kind of damage if the mark remains registered. See *Ritchie v. Simpson*, 170 F.3d 1092 (Fed. Cir. 1999). To plead a “real interest,” petitioner must allege a “direct and personal stake” in the outcome of the proceeding. *Id.*

Petitioner has not alleged that he has made common law use of the mark LINEA LAV BY VLANCO anywhere, or in particular in the United States or its territories; nor has Petitioner pled ownership of a registration for, or application to register, the mark LINEA LAV BY VLANCO. Petitioner has not pled that he has a proprietary interest in the mark. See *Books on Tape, Inc. v. Booktape Corp.* 836 F.2d 519 (Fed. Cir. 1987). Petitioner has failed to allege that he has a real interest in the proceeding and a reasonable basis for belief that he will suffer any kind of damage based on the registration of LINEA LAV BY VLANCO.

A real interest in the proceeding and a reasonable belief of damage may be found, for example, where plaintiff pleads a claim of likelihood of confusion that is not wholly without merit. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943 (Fed. Cir. 2000). Petitioner’s claim of likelihood of confusion here is wholly without merit. Petitioner has alleged only that there is “evidence of a likelihood of confusion between the use of LINEA LAV BY VLANCO and BLANCO.” The mark subject to the instant cancellation proceeding is LINEA LAV BY VLANCO, not VLANCO. Petitioner’s claim is wholly without merit as he has failed to allege a likelihood of confusion with the correct mark LINEA LAV BY VLANCO.

In view of the foregoing, for pleading purposes, Petitioner has failed to allege facts which, if proven, would demonstrate his standing to bring the current cancellation proceeding.

**b. Grounds for Cancellation**

A petition to cancel a registration of a mark, stating the grounds relied upon, may be filed by any person who believes he is or will be damaged. 15 U.S.C. § 1064. As described above, Petitioner alleges seven separate grounds for cancellation, each will be considered in turn.

**vi. Likelihood of Confusion**

Petitioner alleges that “[t]here is evidence of a likelihood of confusion between the use of LINEA LAV BY VLANCO and BLANCO.” A trademark shall not be refused registration unless it comprises a mark which so resembles a registered mark, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion. 15 U.S.C. § 1052. The issue of likelihood of confusion typically revolves around the similarity or dissimilarity of the marks and the relatedness of the goods or services.

In re E. I. du Pont de Nemours & Co., 476 F.2d 1357 (C.C.P.A. 1973). The issue is not whether the actual goods are likely to be confused but, rather, whether there is a likelihood of confusion as to the source of the goods. In re Shell Oil Co., 992 F.2d 1204 (Fed. Cir. 1993).

Petitioner does not set forth the elements required to state a claim that the mark LINEA LAV BY VLANCO presents a likelihood of confusion with the mark BLANCO. Petitioner merely states that there is evidence of a likelihood of confusion between the use of the marks. Petitioner does not allege that the LINEA LAV BY VLANCO and VLANCO marks are similar or that the goods of the marks are similar so as to make confusion likely. Nor does Petitioner allege that there is a likelihood of confusion as to the source of the goods covered by the LINEA LAV BY VLANCO and BLANCO marks

A complaint must “contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory.” Twombly, 550

U.S. at 562. Petitioner’s Notice of Opposition on the ground that LINEA LAV BY VLANCO presents a likelihood of confusion with BLANCO does not contain the requisite allegations for recovery under any relevant legal theory. Accepting as true Petitioner’s allegations and drawing all reasonable inferences in favor of the Petitioner, Petitioner has not and cannot sustain a claim against Respondent based on the

ground that LINEA LAV BY VLANCO presents a likelihood of confusion with the mark BLANCO.

**vii. Dilution**

Petitioner's Notice of opposition alleges that LINEA LAV BY VLANCO may or will Dilute BLANCO. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment, may be canceled.

15 U.S.C. § 1052. To establish dilution, one must show that use of a "famous" mark by a third party causes the dilution of the "distinctive quality" of the mark. 15 U.S.C. § 1125.

In regard to dilution, "blanco" and/or, "Blanco" and/or "BLANCO" is/are commonly used in the industry as a description of sinks and faucets as demonstrated by the pictures shown as exhibit A, B, C and D of sinks and faucets readily available on shelves at Lowes and the Home Depot stores. If these don't suffice I can provide many more or a quick trip to a local store should prove more convincing. Petitions mark BLANCO Registration 1555655 is classified and/or by definition of the USPTO is a merely descriptive mark.

**IV. CONCLUSION**

Petitioners Notice of Opposition should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

Respectfully submitted on September 5, 2012.

/Vito Laera/  
Vito Laera  
5960 SW 32 Terrace  
Fort Lauderdale, FL 33312  
Tel 954-592-9476  
vito@sinksrus.com

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS PETITIONER'S NOTICE OF OPPOSITION PURSUANT TO FED. R. CIV. P. 12(b)(6) was served upon Petitioner by depositing a copy of same with the United States Postal Service, first class postage prepaid, on this date, addressed to:

HANLEY, FLIGHT & ZIMMERMAN, LLC  
ATT: Joseph T. Jasper  
150 South Wacker Drive, Suite 2100  
Chicago, Illinois 60606

Dated September 5, 2012

/Vito Laera/  
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