

ESTTA Tracking number: **ESTTA852967**

Filing date: **10/18/2017**

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	Mirage Granito Ceramico S.P.A.
Granted to Date of previous extension	10/18/2017
Address	Via Giardini Nord, 225 Pavullo nel Frignano, I-41026 ITALY

Attorney information	Wesley W. Whitmyer, Jr. Whitmyer IP Group LLC 600 Summer Street Stamford, CT 06901 UNITED STATES Email: litigation@whipgroup.com, cwinsor@whipgroup.com
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Applicant Information

Application No	87323235	Publication date	06/20/2017
Opposition Filing Date	10/18/2017	Opposition Period Ends	10/18/2017
Applicant	Mid-American Salt, LLC 4528 Hillegas Road Fort Wayne, IN 46818 UNITED STATES		

Goods/Services Affected by Opposition

Class 019. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Portland cement; concrete mix
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3360020	Application Date	09/18/2006
Registration Date	12/25/2007	Foreign Priority Date	08/10/2006
Word Mark	INFINITY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 019. First use: First Use: 0 First Use In Commerce: 0 Ceramic tiles; porcelain stoneware tiles; ceramic slabs; porcelain stoneware slabs; tiles not of metal

Attachments	79032286#TMSN.png(bytes) 06395-N0014A Notice of Opposition.pdf(284189 bytes)
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Signature	/Wesley W. Whitmyer, Jr./
Name	Wesley W. Whitmyer, Jr.
Date	10/18/2017

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

Mirage Granito Ceramico S.P.A.	:	
	:	
Opposer,	:	
v.	:	Opposition No.
	:	[not yet assigned]
Mid-American Salt, LLC	:	
	:	
Applicant.	:	

U.S. Trademark Application Serial No. 87323235
Mark: INFINITY

NOTICE OF OPPOSITION

Mirage Granito Ceramico S.P.A., ("Opposer") believes it will be damaged by the allowance and subsequent registration of the mark "INFINITY," Serial No. 87323235, referenced above, and hereby opposes registration thereof pursuant to Section 13 of the 1946 Trademark Act (15 U.S.C. §1063) and pursuant to 37 CFR §§ 2.101 and 2.104 on the grounds enumerated below, alleging as grounds for opposition that:

1. Opposer, Mirage Granito Ceramico S.P.A. ("Opposer") is a joint stock company organized under the laws of Italy with a business address at: Via Giardini Nord, 225 Pavullo nel Frignano I-41026 ITALY.

2. Opposer is the owner of the following U.S. federal trademark registration:

Mark	Reg. No.	Reg. Date	Priority Filing Date	Goods
INFINITY	3360020	12/25/07	8/10/06	CL 19: Ceramic tiles; porcelain stoneware tiles; ceramic slabs; porcelain stoneware slabs; tiles not of metal

("the INFINITY Mark"). A copy of the registration from the USPTO online TESS database is

attached as **Exhibit A** and made of record in this proceeding pursuant to Trademark Rule 2.122(d).

3. Opposer’s ceramic tiles, porcelain stoneware tiles, ceramic slabs, porcelain stoneware slabs, and tiles not of metal can all be used for residential or commercial use, including on the exterior or interior of building structures and for other related purposes (“Opposer’s Goods”).

4. Opposer’s Goods come in various finishes, including large slab tiles made to look like concrete that can be used outside for driveways, patios, around pools, etc. as well as on the exterior of structures and buildings. These tiles can also be used as interior flooring and wall coverings.

5. The INFINITY Mark registered on December 25, 2007 and Opposer has used the INFINITY Mark extensively and continuously in U.S. commerce long before applicant filed its trademark application as set forth in paragraph 7 below. As a result of such use, the public has come to know the INFINITY Mark, in connection with Opposer’s Goods, as originating with Opposer and the mark has developed substantial goodwill.

6. The records of the USPTO indicate that Applicant Mid-American Salt, LLC (“Applicant”) is a limited liability company organized under the laws of Indiana with an address at 4528 Hillegas Road, Fort Wayne Indiana 46818.

7. The records of the USPTO indicate that Applicant is the owner of the following trademark application:

Mark	Serial No.	Filing Date	Goods-Services
INFINITY	87323235	02/03/2017	IC 019: Portland cement; concrete mix

(“Opposed Application”).

8. The Opposed Application was filed under 15 U.S. Code § 1051(b), Section 1(b), intent-to-use.

9. Opposer’s INFINITY Mark was filed and issued prior to the filing date of the Opposed Application.

10. Opposer’s rights in the INFINITY Mark predate any date that Applicant may rely upon in this proceeding.

11. Opposer’s INFINITY Mark and the Opposed Application are identical, in sound, appearance, meaning, connotation, and commercial impression.

12. In the Opposed Application, the term “INFINITY” is identical to the Opposer’s INFINITY Mark.

13. The goods identified in the Opposed Application are highly related to Opposer’s Goods which are being sold under the INFINITY Mark because concrete can be used for driveways, patios, and surrounding pools, etc., as well as interior flooring and subflooring.

14. The goods identified in the Opposed Application are offered for sale and sold to the same consumers and travel in the same channels of trade and as such can directly compete with each other.

15. In view of the similarities between Opposer’s INFINITY Mark and the INFINITY mark in the Opposed Application, compounded by the relatedness of the parties’ respective goods and trade channels, there is a likelihood that Applicant’s products will be seen as being sponsored by, affiliated with, or originating from Opposer.

COUNT I
Likelihood of Confusion, 15. U.S.C. § 1052(d)

16. The INFINITY mark in the Opposed Application so resembles Opposer's INFINITY Mark that it will likely cause confusion, mistake, or deceive consumers as to the source of the identified goods within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

17. The use and registration of the mark in the Opposed Application will damage Opposer in the selling of its goods by causing a likelihood of confusion.

WHEREFORE, Opposer prays that the Trademark Trial and Appeal Board deny registration to U.S. Trademark Application Serial No. 87323235, "INFINITY," and otherwise sustain this opposition.

Respectfully submitted,

MIRAGE GRANITO CERAMICO S.P.A.

October 18, 2017

/s/ Wesley W. Whitmyer, Jr.

Wesley W. Whitmyer, Jr.

Christina Winsor

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ATTORNEYS FOR OPPOSER

EXHIBIT A



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INFINITY

Word Mark	INFINITY
Goods and Services	IC 019. US 001 012 033 050. G & S: Ceramic tiles; porcelain stoneware tiles; ceramic slabs; porcelain stoneware slabs; tiles not of metal
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	79032286
Filing Date	September 18, 2006
Current Basis	66A
Original Filing Basis	66A
Published for Opposition	October 9, 2007
Registration Number	3360020
International Registration Number	0906933
Registration Date	December 25, 2007
Owner	(REGISTRANT) MIRAGE GRANITO CERAMICO S.P.A. JOINT STOCK COMPANY ITALY Via Giardini Nord, 225 Pavullo nel Frignano I-41026 ITALY
Attorney of Record	Wesley W. Whitmyer, Jr.,
Priority Date	August 10, 2006
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECTION 71
Live/Dead Indicator	LIVE

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing **NOTICE OF OPPOSITION** was served by first class mail, postage prepaid on the Correspondent for the Applicant at the address identified in USPTO records:

Louis T. Perry
Faegre Baker Daniels LLP
300 N. Meridian Street, Suite 2700
Indianapolis, Indiana 46204

October 18, 2017
Date

/s/ Joan M. Burnett
Joan M. Burnett