

ESTTA Tracking number: **ESTTA960974**

Filing date: **03/18/2019**

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	03/17/2019
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 litigation@whipgroup.com, rkeeler@whipgroup.com 203-703-0800
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**Applicant Information**

Application No	87893558	Publication date	09/18/2018
Opposition Filing Date	03/18/2019	Opposition Period Ends	03/17/2019
Applicant	Bath Authority LLC 75 Hawk Road Warminster, PA 18974 UNITED STATES		

**Goods/Services Affected by Opposition**


Class 011. First Use: 2011/07/04 First Use In Commerce: 2011/07/04 All goods and services in the class are opposed, namely: Bathtub enclosures; Shower doors; Shower enclosures; Showers
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**Grounds for Opposition**

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

U.S. Registration No.	1332166	Application Date	06/15/1982
Registration Date	04/23/1985	Foreign Priority Date	NONE
Word Mark	MIRAGE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 019. First use: First Use: 1974/06/20 First Use In Commerce: 1974/06/20 CERAMIC TILES APPLIED AS COVERING TO FLOORS AND WALLS; CERAMIC BASEBOARDS AND STEPS

U.S. Registration No.	2873131	Application Date	07/25/2001
Registration Date	08/17/2004	Foreign Priority Date	NONE

Word Mark	MIRAGE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 019. First use: First Use: 1974/06/20 First Use In Commerce: 1974/06/20 CERAMIC TILES; CERAMIC BASEBOARD AND STEPS; PORCELAIN STONEWARE TILE; CERAMIC MATERIALS, NAMELY, PORCELAIN STONEWARE BASEBOARD AND STEPS
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U.S. Registration No.	5505454	Application Date	04/07/2017
Registration Date	07/03/2018	Foreign Priority Date	03/31/2017

Word Mark	MIRAGE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 020. First use: First Use: 0 First Use In Commerce: 0 Work surfaces; table tops made of ceramic and porcelain; work tops, namely kitchen work tops; wall shelves made of ceramic and porcelain
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Attachments	73369708#TMSN.png( bytes )
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	76290273#TMSN.png( bytes ) 79214685#TMSN.png( bytes ) 06395-N0021A Notice of Opposition.pdf(353092 bytes )
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Signature	/Wesley W. Whitmyer, Jr./
Name	Wesley W. Whitmyer, Jr.
Date	03/18/2019

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

<b>Mirage Granito Ceramico S.P.A.</b>	:	
	:	
<b>Opposer,</b>	:	
<b>v.</b>	:	<b>Opposition No.</b>
	:	<b>[not yet assigned]</b>
<b>Bath Authority LLC</b>	:	
	:	
<b>Applicant.</b>	:	


**U.S. Trademark Application Serial No. 87893558**  
**Mark: MIRAGE**

**NOTICE OF OPPOSITION**

Mirage Granito Ceramico S.P.A., (“Opposer”) believes it will be damaged by the allowance and subsequent registration of the mark “MIRAGE,” Serial No. 87893558, 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	Goods
	1332166	04/23/1985	CL 19: Ceramic tiles applied as covering to floors and walls; ceramic baseboards and steps
MIRAGE	2873131	08/17/2004	CL 19: ceramic tiles; ceramic baseboard and steps; porcelain stoneware tile; ceramic materials, namely, porcelain stoneware baseboard and steps

MIRAGE	5505454	07/03/2018	CL 20: Work surfaces; table tops; counter tops for kitchens; counter tops for use with sinks; wall shelves; furniture shelves
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(“the MIRAGE Marks”). A copy of the registrations from the USPTO online TESS database are attached as **Exhibit A** and made of record in this proceeding pursuant to Trademark Rule 2.122(d).

3. Opposer’s goods include ceramic tiles, including applied as covering to floors and walls, ceramic baseboards and steps, porcelain stoneware tiles, ceramic materials, namely, porcelain stoneware baseboard and steps, and work surfaces, table tops, counter tops for kitchens, counter tops for use with sinks, wall shelves, and furniture shelves (“Opposer’s Goods”).

5. The MIRAGE Marks registered as early as April 23, 1985 and Opposer has used the MIRAGE Marks 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 MIRAGE Marks, 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 Bath Authority LLC (“Applicant”) is a limited liability company organized under the laws of Pennsylvania with an address at 75 Hawk Road, Warminster, Pennsylvania 18974.

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

Mark	Serial No.	Filing Date	Goods-Services
MIRAGE	87893558	04/25/2018	CL 11: Bathtub enclosures; Shower doors; Shower enclosures; Showers

(“Opposed Application”).

8. The Opposed Application asserts a first use date of July 4, 2011 and a first use in commerce date of July 4, 2011.

9. Opposer's MIRAGE Marks were filed and issued prior to the filing date of the Opposed Application and prior to the dates of first use and first use in commerce asserted in the Opposed Application.

10. Opposer's rights in the MIRAGE Marks predate any date that Applicant may rely upon in this proceeding.

11. Opposer's MIRAGE Marks and the Opposed Application are identical, in sound, appearance, meaning, connotation, and commercial impression.

12. In the Opposed Application, the term "MIRAGE" is identical to the Opposer's MIRAGE Marks.

13. The goods identified in the Opposed Application are highly related to Opposer's Goods which are being sold under the MIRAGE Marks because Opposer's Goods can be used for or with bathtub enclosures, shower enclosures, and showers.

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 MIRAGE Marks and the MIRAGE 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 MIRAGE mark in the Opposed Application so resembles Opposer's MIRAGE Marks 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. 87893558, "MIRAGE," and otherwise sustain this opposition.

Respectfully submitted,

MIRAGE GRANITO CERAMICO S.P.A.

March 18, 2019

/s/ Wesley W. Whitmyer, Jr.

Wesley W. Whitmyer, Jr.

WHITMYER IP GROUP LLC

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Stamford, CT 06901

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ATTORNEYS FOR OPPOSER

## **EXHIBIT A**





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**Word Mark** MIRAGE  
**Goods and Services** IC 019. US 012. G & S: CERAMIC TILES APPLIED AS COVERING TO FLOORS AND WALLS; CERAMIC BASEBOARDS AND STEPS. FIRST USE: 19740620. FIRST USE IN COMMERCE: 19740620  
**Mark Drawing Code** (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM  
**Serial Number** 73369708  
**Filing Date** June 15, 1982  
**Current Basis** 1A;44E  
**Original Filing Basis** 1A;44E  
**Published for Opposition** February 12, 1985  
**Change in Registration** CHANGE IN REGISTRATION HAS OCCURRED  
**Registration Number** 1332166  
**Registration Date** April 23, 1985  
**Owner** (REGISTRANT) "CERAMICA **MIRAGE** - SOCIETA PER AZIONI" CORPORATION ITALY VIA GIARDINI, FRAZIONE CHIOZZA 41026 PAVULLO NEL FRIGNANO, MODENA ITALY  
 (LAST LISTED OWNER) **MIRAGE GRANITO CERAMICO** S.P.A. JOINT STOCK COMPANY ITALY VIA GIARDINI 449/A PAVULLO NEL FRIGNANO (MO) ITALY 41026  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** STEWART BELLUS  
**Description of Mark** THE LINING ITSELF DESIGNATES NO PARTICULAR COLOR.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20050414.  
**Renewal** 1ST RENEWAL 20050414  
**Live/Dead Indicator** LIVE

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# MIRAGE

<b>Word Mark</b>	MIRAGE
<b>Goods and Services</b>	IC 019. US 001 012 033 050. G & S: CERAMIC TILES; CERAMIC BASEBOARD AND STEPS; PORCELAIN STONEWARE TILE; CERAMIC MATERIALS, NAMELY, PORCELAIN STONEWARE BASEBOARD AND STEPS. FIRST USE: 19740620. FIRST USE IN COMMERCE: 19740620
<b>Mark Drawing Code</b>	(1) TYPED DRAWING
<b>Serial Number</b>	76290273
<b>Filing Date</b>	July 25, 2001
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	May 25, 2004
<b>Registration Number</b>	2873131
<b>Registration Date</b>	August 17, 2004
<b>Owner</b>	(REGISTRANT) <b>Mirage Granito Ceramico</b> S.P.A. CORPORATION ITALY Via Giardini Nord, 225 41026 Pavullo nel Frignano ITALY
<b>Attorney of Record</b>	Wesley W. Whitmyer, Jr.
<b>Prior Registrations</b>	1332166

**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140807.  
**Renewal** 1ST RENEWAL 20140807  
**Live/Dead Indicator** LIVE

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# MIRAGE

<b>Word Mark</b>	MIRAGE
<b>Goods and Services</b>	IC 020. US 002 013 022 025 032 050. G & S: Work surfaces; table tops made of ceramic and porcelain; work tops, namely kitchen work tops; wall shelves made of ceramic and porcelain
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	79214685
<b>Filing Date</b>	April 7, 2017
<b>Current Basis</b>	66A
<b>Original Filing Basis</b>	66A
<b>Published for Opposition</b>	April 17, 2018
<b>Registration Number</b>	5505454
<b>International Registration Number</b>	1361143
<b>Registration Date</b>	July 3, 2018
<b>Owner</b>	(REGISTRANT) <b>MIRAGE GRANITO CERAMICO S.P.A.</b> JOINT STOCK COMPANY ITALY Via Giardini Nord, 225 I-41026 Pavullo nel Frignano (MO) ITALY
<b>Attorney of Record</b>	Wesley W. Whitmyer, Jr.
<b>Priority Date</b>	March 31, 2017
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	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:

CHRISTOPHER D. OLSZYK, JR.  
FOX ROTHSCHILD LLP  
997 LENOX DRIVE, BLDG. 3  
LAWRENCEVILLE, NEW JERSEY 08648-2311

March 18, 2019  
Date

/s/ Joan M. Burnett  
Joan M. Burnett