

ESTTA Tracking number: **ESTTA1303163**

Filing date: **08/11/2023**

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

**Petition for Cancellation**

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

**Petitioner information**

Name	MPREZAS INC		
Entity	Corporation	Citizenship	California
Address	470 W. LARCH RD. SUITE 10 TRACY, CA 95304 UNITED STATES		
Attorney information	DARREN JAMES QUINN LAW OFFICES OF DARREN J. QUINN 12702 VIA CORTINA SUITE 105 DEL MAR, CA 92014 UNITED STATES Primary email: dq@dqlaw.com Secondary email(s): staff@dqlaw.com 8585099401		
Docket no.			

**Registration subject to cancellation**

Registration no.	5541254	Registration date	08/14/2018
Register	Principal		
Registrant	Armstrong Laboratorios de MÃ©xico S.A. deC.V. COLONIA CANDELARIA COYOACAN MEXICO D.F. MEXICO		

**Goods/services subject to cancellation**

Class 005. First Use: Jul 31, 1979 First Use In Commerce: Jul 31, 1979  
All goods and services in the class are subject to cancellation, namely: Lice treatment preparation and products

**Grounds for cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Sections 14(1) and 1(a), (c), and (d)

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Related proceedings	91235782
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## Mark cited by petitioner as basis for cancellation

U.S. registration no.	4241962	Application date	04/06/2012
Register	Principal		
Registration date	11/13/2012	Foreign priority date	NONE
Word mark	HAIRKLYN		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Jan 26, 2012 First Use In Commerce: Jan 26, 2012 Lice treatment preparations; Medicated shampoo		

Attachments	Petition to Cancel.final.pdf(104833 bytes )
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Signature	/Darren J. Quinn/
Name	Darren J. Quinn
Date	08/11/2023

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

Mprezas, Inc., a California  
corporation  
  
                                Petitioner,  
  
                                v.  
  
Armstrong Laboratorios de  
México S.A. de C.V.,  
  
                                Registrant.

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Cancellation No.

**PETITION TO CANCEL**

Registration No.           5541254  
Mark:                       HERKLIN

Registration No.           5541255  
Mark:



1           Petitioner Mprezas, Inc, a California corporation (“Petitioner”) believes that  
2 it will be or is being damaged by the above referenced registrations for HERKLIN  
3 (Reg. Nos. 5541254 and 5541255) owned by Armstrong Laboratorios de México  
4 S.A. de C.V., (“Registrant Armstrong”) and hereby petitions to cancel the same.

5           As grounds for this petition to cancel, it is alleged that:

6           1.     On November 13, 2014, Registrant Armstrong filed Section 1(b)  
7 intent to use trademark applications for HERKLIN in Class 5 for “Lice treatment  
8 preparation and products” as follows:

- 9                   a.     Serial No. 86453855 for the standard character mark
- 10                   HERKLIN.
- 11                   b.     Serial No. 86453968 for the composite mark below



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16           2.     On August 14, 2018, Registrant Armstrong obtained certificates of  
17 registration for HERKLIN in Class 5 for “Lice treatment preparation and  
18 products” as follows:

- 19                   a.     Registration No. 5541254 for the standard character mark
- 20                   HERKLIN (Serial No. 86453855).
- 21                   b.     Registration No. 5541255 for the composite mark (Serial No.
- 22                   86453968) below



1           3.     Prior to Registrant Armstrong’s November 14, 2014 intent to use  
2 trademark applications for HERKLIN in Class 5, Petitioner (or an assignor) had  
3 trademark rights to HAIRKLYN in Class 5.

4           a.     On November 13, 2012, OPMX, LLC obtained a trademark  
5 registration for the standard character mark HAIRKLYN (Reg. No.  
6 4241962) in Class 5 for “Lice treatment preparations; Medicated  
7 shampoo.”

8           b.     On March 9, 2015, OPMX, LLC assigned the HAIRKLYN  
9 (Reg. No. 4241962) registration and goodwill to ALXIGNA, INC.

10          c.     On January 15, 2019, ALXIGNA, INC. assigned the  
11 HAIRKLYN (Reg. No. 4241962) registration and goodwill to  
12 Petitioner.

13          d.     Petitioner has continued to use the HAIRKLYN (Reg. No.  
14 4241962) mark as shown on its 10 year declaration of use.

15          4.     On July 26, 2017, Petitioner’s assignee (ALXIGNA, INC.) filed  
16 Opposition Proceeding No. 91235782 (“TTAB 1 Proceeding”) to oppose  
17 registration of Registrant’s trademark application for HERKLIN (Ser. No.  
18 87233512) in Class 10 for “Lice treatment combs.” Petitioner was later joined as  
19 an opposer.

20          5.     In the TTAB 1 Proceeding, Registrant Armstrong (as Applicant”)  
21 admitted to likelihood of confusion between its HERKLIN mark and Petitioner’s  
22 HAIRKLYN mark in its Answer/Counterclaim (and amendments thereto). [10  
23 TTABVUE, 19 TTABVUE, 34 TTABVUE and 38 TTABVUE].

24          6.     Paragraph 6 of the Opposition filed in the TTAB 1 Proceeding  
25 alleges:

26               6. Applicant’s [HERKLIN] mark so resembles Opposer’s  
27 [HAIRKLYN] mark registered in the Office, or a mark or trade name  
28 previously used in the United States by Opposer (or any of its

1 assignors) and not abandoned, as to be likely, when used on or in  
2 connection with the goods or services of the Applicant, to cause  
3 confusion, or to cause mistake, or to deceive.

4 [1 TTABVUE 4, ¶6]. Registrant Armstrong (as Applicant) responded to  
5 paragraph 6 of the Opposition as follows:

6 *Armstrong admits that Alxigna's use of the HARKLYN mark for*  
7 *lice treatment products is likely to cause confusion with*  
8 *Armstrong's prior usage of, and senior rights to, the HERKLIN*  
9 *mark, avers that such likelihood of confusion should result in a*  
10 *cancellation of Alxigna's '962 registration, specifically denies that*  
11 *likelihood of confusion should diminish any of Armstrong's*  
12 *registration rights, and denies all other allegations in paragraph 6 of*  
13 *the notice of opposition.*

14 [10 TTABVUE 3 at ¶6; 19 TTABVUE 3 at ¶6; 34 TTABVUE 3 at ¶6; and 38  
15 TTABVUE 3 at ¶6 (emphasis added)].

16 7. Similarly, paragraph 7 of the Opposition in the TTAB 1 Proceeding  
17 alleges additional facts regarding likelihood of confusion as follows:

18 In view of the similarity of the respective marks, similarity of the  
19 channels of trade, related nature of the goods, the ongoing use of the  
20 Opposer's marks relating to lice treatments and lice combs, the mark  
21 shown in the Application so resembles Opposer's HAIRKLYN mark  
22 as to be likely to cause confusion, or to cause mistake, or to deceive  
23 as to source by suggesting that Applicant's goods are associated with  
24 or approved, endorsed, affiliated, authorized or sponsored by  
25 Opposer.

26 [1 TTABVUE 4, ¶6] [Quinn Decl., Ex. 1]. Registrant Armstrong (as Applicant)  
27 responded to paragraph 7 of the Opposition as follows:

28 *Armstrong admits that Alxigna's use of the HAIRKLYN mark for*  
*lice treatment products is likely to cause confusion with*  
*Armstrong's prior usage of, and senior rights to, the HERKLIN*  
*mark, avers that such likelihood of confusion should result in a*  
*cancellation of Alxigna's '962 registration, specifically denies that*  
*likelihood of confusion should diminish any of Armstrong's*  
*registration rights, and denies all other allegations in paragraph 7 of*  
*the notice of opposition.*

[10 TTABVUE 3 at ¶7; 19 TTABVUE 3 at ¶7; 34 TTABVUE 3 at ¶7; and 38  
TTABVUE 3 at ¶7 (emphasis added)].

1           8.     In Spanish, Registrant’s mark HERKLIN is pronounced ERR KLEEN  
2 because the letter “H” in Spanish is silent.

3           9.     Petitioner’s mark HAIRKLYN is generally pronounced HAIR  
4 CLEAN, so it is similar to the Spanish pronunciation of Registrant Armstrong’s  
5 HERKLIN marks.

6           10.    No later than April 6, 2012 (trademark application filing date for  
7 HAIRKLYN), Petitioner (or an assignor) used the mark HAIRKLYN in the United  
8 States.

9           11.    Years later, Registrant Armstrong claimed first use in commerce of  
10 HERKLIN in the United States on September 20, 2017 in a statement of use  
11 declarations. On information and belief, Registrant Armstrong did not use  
12 HERKLIN in the United States on or before September 20, 2017.

13           12.    Registrant Armstrong’s HERKLIN (Reg. Nos. 5541254 and 5541255)  
14 marks so resemble Petitioner’s HAIRKLYN mark previously registered in the  
15 USPTO, or a mark or trade name previously used in the United States by  
16 Petitioner (or any of its assignors) and not abandoned, as to be likely, when used  
17 on or in connection with the goods or services of the Registrant, to cause  
18 confusion, or to cause mistake, or to deceive. *See* Trademark Act § 2(d), 15  
19 U.S.C. § 1052(d).

20           13.    On information and belief, there was no bona fide use of Registrant  
21 Armstrong’s HERKLIN marks in United States within the expiration of the time  
22 for filing a statement of use.

23           WHEREFORE, Petitioner prays that the Registrant’s registrations for  
24 HERKLIN (Reg. Nos. 5541254 and 5541255) be cancelled.

25           Petitioner has hereby appointed Darren Quinn, Law Offices of Darren J.  
26 Quinn, 12702 Via Cortina, Suite 105, Del Mar, CA 92014, member of the bar of  
27 the State of California, as attorney in the matter of the cancellation  
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1 above-identified, to prosecute said opposition, to transact all business in the  
2 United States Patent & Trademark Office and in the United States courts in  
3 connection with this opposition, to sign his name to all papers which may  
4 hereinafter be filed in connection therewith, and to receive all communications  
5 relating to the same.

6 Dated: August 11, 2023

Respectfully submitted by:  
LAW OFFICES OF DARREN J. QUINN  
DARREN J. QUINN

s/s Darren J. Quinn  
\_\_\_\_\_  
Darren J. Quinn

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*Attorneys for Mprezas, Inc.*

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