

ESTTA Tracking number: **ESTTA1239095**

Filing date: **09/30/2022**

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

Proceeding no.	92079964
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Attachments	2022-09-30 Cambria Opp to Respondents MTD MSJ.pdf(734905 bytes ) Ex. 1 - Excerpt of Lakeside Opp to Mot to Amend.pdf(99431 bytes )

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

Cambria Company LLC,

Petitioner,

v.

Lakeside Surfaces, LLC,

Respondent.

Cancellation No. 92079964

Mark: THE FINEST COUNTERTOP  
MAKERS IN THE WORLD

Registration No. 4957640

Registration Date: May 10, 2016

**PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT**

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Petitioner Cambria Company LLC (“Cambria” or “Petitioner”) hereby opposes Lakeside Surfaces, LLC’s (“Respondent’s” or “Lakeside’s”) Motion to Dismiss, or Alternatively, Motion for Summary Judgment (“Motion”).

## I. INTRODUCTION

Respondent’s Motion should be denied because it is based on the misapplication of claim preclusion and because Respondent conceded in the prior action that Cambria could still petition for cancellation. As alleged in Cambria’s Petition for Cancellation, Respondent fraudulently filed a trademark application asserting ownership of *Cambria’s* trademark “FINEST COUNTERTOP MAKERS IN THE WORLD” while knowing that the mark is owned and had been used by Cambria long before Respondent’s false claim of ownership. Respondent now seeks to keep its ill-gotten Registration No. 4,957,640 (the “Registration”) by seeking dismissal of this cancellation proceeding based on claim preclusion *despite previously acknowledging Cambria’s ability to seek cancellation of the Registration in the USPTO*. Respondent omitted this fact from its Motion. But even putting aside this concession, Respondent cannot show that there has been a final judgment on the merits in a prior lawsuit on a claim based on the same set of transactional facts as the three grounds for cancellation asserted here. In fact, the very Joint Stipulation on which Respondent relies shows that the parties agree that judgment has *not* been entered in the prior court action yet. And, as Respondent notes, the complaint in the prior lawsuit “did not specifically seek cancellation of Lakeside’s [Registration].” 7 TTABVUE 7. Still, Respondent glosses over the lack of fraud and non-ownership cancellation claims in the prior lawsuit and the significant differences between an infringement claim before a court and a cancellation claim before the Board.

As Respondent itself notes, the doctrine of res judicata or claim preclusion serves to “preclude certain attempts at second litigation chances, but only in defined circumstances,

reflecting the need to avoid depriving litigants of their first chances.” *Levi Strauss & Co. v. Abercrombie & Fitch Trading Co.*, 719 F.3d 1367, 1371, 107 USPQ2d 1167, 1171 (Fed. Cir. 2013) (quoted at 7 TTABVUE 9). This is not one of those limited circumstances. Cambria is seeking to cancel the Registration based on fraud, lack of ownership, and priority and likelihood of confusion for the first time. The Board should deny Respondent’s motion and permit this cancellation to proceed on the merits.

## II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Cambria is a well-known U.S. manufacturer of natural quartz surface products used for a variety of uses in homes and businesses including for countertops, floor tiles, vanities, fireplace surrounds, wet bars, and showers. Cambria is an industry leader in the design and manufacture of natural quartz surface products earning its reputation as a leader in the industry through years of innovation and a steadfast commitment to high quality in the design and manufacture of its products.

Respondent is a fabricator of quartz and other countertop surface products that was formerly an authorized distributor of Cambria’s quartz surface products in Michigan. In 2020, Cambria filed an action against Lakeside in the U.S. District Court for the Western District of Michigan, No. 1:20-cv-00508 (the “2020 Action”), alleging four counts: (1) patent infringement, (2) federal trademark infringement, (3) federal unfair competition and false designation of origin, and (4) state unfair competition. Counts 2–4 in the 2020 Action were based on Lakeside’s unauthorized adoption and use of *Cambria’s* common law tagline “FINEST COUNTERTOP MAKERS IN THE WORLD,” which Cambria has used for nearly a decade to promote and sell its quartz surface products and related fabrication services for those products.

At the time, Cambria suspected that Lakeside obtained the Registration through fraud, but did not plead fraud in the 2020 Action given the serious nature of this claim and the need to plead

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