

ESTTA Tracking number: **ESTTA685965**

Filing date: **07/27/2015**

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	Halo Innovations, Inc.
Granted to Date of previous extension	08/01/2015
Address	111 Cheshire Lane Suite 700 Minnetonka, MN 55305-2325 UNITED STATES

Attorney information	Sarah Voeller Hamre Schumann Mueller & Larson, P.C. P.O. Box 2902 Minneapolis, MN 55402-1683 UNITED STATES trademark@hsml.com, svoeller@hsml.com, tmccanna@hsml.com
----------------------	--

**Applicant Information**

Application No	86453736	Publication date	06/02/2015
Opposition Filing Date	07/27/2015	Opposition Period Ends	08/01/2015
Applicant	ET-A-LL, LLC 8850 Evanview Drive Los Angeles, CA 90069 UNITED STATES		

**Goods/Services Affected by Opposition**

<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, women's jackets, women's tops, women's t-shirts, women's pants, shorts and skirts, women's dresses, women's jumpsuits and rompers, women's lingerie panties, bras, bralettes, corsets, women's sleepwear, women's cover ups, women's swimsuits, women's sweat suits and one pieces, hooded sweatshirts, pants, and shorts; girl's jackets, girl's tops, girl's t-shirts, girl's pants, shorts and skirts, girl's dresses, girl's jumpsuits and rompers, girl's sleepwear, girl's beach cover ups, girl's swimsuits, girl's sweat suits and one pieces, hooded sweatshirts, pants and shorts; adult novelty gag clothing item, namely, socks; athletic tops and bottoms for runners and yoga; babies' pants; belts for clothing; clothing, namely, bottoms; children's bottoms; clothing for babies, toddlers and children, namely, pajamas, jackets, shirts, pants, jumpers; infant and toddler one piece clothing; jackets, tops</p>
--

**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3589765	Application Date	10/01/2007
Registration Date	03/17/2009	Foreign Priority Date	NONE
Word Mark	HALO		
Design Mark			
Description of Mark	The mark consists of the word "HALO" with a curved line appearing above the word.		
Goods/Services	<p>Class 011. First use: First Use: 2004/05/02 First Use In Commerce: 2004/05/02 Personal air filtration equipment, namely, [ air purifiers for individual users, ] replacements parts thereof, air filters for domestic use</p> <p>Class 020. First use: First Use: 2004/05/02 First Use In Commerce: 2004/05/02 [ Mattresses; mattress inner springs and perforated sleep surfaces, namely, mattress toppers, for mattresses; mattress assemblies comprising mattress base, mattress inner spring, perforated sleep surface, pad and bumper; ventilated sleep systems comprising mattress, mattress base, inner spring, perforated sleep surface, mattress pad and mattress fan, and replacement parts therefor ]</p> <p>Class 024. First use: First Use: 2004/05/02 First Use In Commerce: 2004/05/02 Bed linens, mattress pads, mattress covers</p> <p>Class 025. First use: First Use: 2004/01/29 First Use In Commerce: 2004/01/29 Infant sleepwear not relating to baseball or softball or a baseball or softball team</p>		

U.S. Registration No.	3582012	Application Date	05/27/2003
Registration Date	03/03/2009	Foreign Priority Date	NONE
Word Mark	HALO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00		

	infant sleepwear not relating to baseball or softball or a baseball or softballteam		
U.S. Application No.	85830309	Application Date	01/23/2013
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	HALO		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 2012/03/07 First Use In Commerce: 2012/11/09 Infant diaper covers</p> <p>Class 010. First use: First Use: 2004/10/00 First Use In Commerce: 2004/10/00 Medical wearing apparel, namely, infanthospital garments; infant hip positioning garment to protect against hip dysplasia for medical use</p> <p>Class 016. First use: First Use: 2000/08/00 First Use In Commerce: 2000/08/00 Brochures and printed informational booklets and training materials regarding safe sleep for infants and SIDS (Sudden Infant Death Syndrome) prevention</p> <p>Class 024. First use: First Use: 1999/10/00 First Use In Commerce: 1999/10/00 Crib sets primarily comprised of infantswaddling blankets, fitted crib sheets,crib skirts and sold with infant wearable blankets; diaper changing pads not ofpaper</p> <p>Class 025. First use: First Use: 2000/07/00 First Use In Commerce: 2000/07/00 Infant clothing, namely, infantwear, layettes, swaddling clothes, all of which are not related to baseball or softball or a baseball or softball team; children's clothing, namely, tops, pajamas, bodysuits, shirt and pant sets, coveralls, hats, namely infant caps sold as part of an infant sleepwear set, all of the above not related to baseball or softball ora baseball or softball team</p> <p>Class 035. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 Online retail store services featuring infantwear, children's clothing, crib sets, diaper covers, changing pads, and crib mattress filter</p> <p>Class 041. First use: First Use: 1999/11/00 First Use In Commerce: 1999/11/00 Providing online informational newsletters and training materials regarding safe sleep for infants and SIDS (Sudden Infant Death Syndrome) prevention</p>		
Attachments	77292956#TMSN.png( bytes ) 76517247#TMSN.png( bytes ) 85830309#TMSN.png( bytes ) NOTICE OF OPPOSITION.pdf(79237 bytes )		

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sarah G. Voeller/
Name	Sarah Voeller
Date	07/27/2015

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

Halo Innovations, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. _____
	)	
	)	Mark: HOT AS HALO
ET-A-LL, LLC	)	
	)	
Applicant	)	Serial No.: 86453736

---

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Halo Innovations, Inc., Minnesota corporation having a principal place of business at 111 Cheshire Lane, Suite 700, Minnetonka, MN 55305, (hereinafter "Opposer"), believes it would be damaged and injured by registration of the mark HOT AS HALO for "Clothing, namely, women's jackets, women's tops, women's t-shirts, women's pants, shorts and skirts, women's dresses, women's jumpsuits and rompers, women's lingerie panties, bras, bralettes, corsets, women's sleepwear, women's cover ups, women's swimsuits, women's sweat suits and one pieces, hooded sweatshirts, pants, and shorts; girl's jackets, girl's tops, girl's t-shirts, girl's pants, shorts and skirts, girl's dresses, girl's jumpsuits and rompers, girl's sleepwear, girl's beach cover ups, girl's swimsuits, girl's sweat suits and one pieces, hooded sweatshirts, pants and shorts; adult novelty gag clothing item, namely, socks; athletic tops and bottoms for runners and yoga; babies' pants; belts for clothing; clothing, namely, bottoms; children's bottoms; clothing for babies, toddlers and children, namely, pajamas, jackets, shirts, pants, jumpers; infant and toddler one piece clothing; jackets, tops" in International Class 25, as shown in Application Serial No.

86453736 and filed by ET-A-LL, LLC, a limited liability company organized in California, having a principal place of business at 8850 Evanview Drive, Los Angeles California 90069 (hereinafter "Applicant").

Opposer alleges, solely for the purpose of this proceeding, as grounds for Opposition, the following:

1. Opposer is now and has been for many years a leader in the manufacture and sale of clothing and sleepwear for infants and toddlers. Opposer owns and uses in commerce the distinctive mark HALO in connection with these goods.

2. Opposer has consistently used its HALO mark in commerce in the United States since at least as early as 2000 in connection with sleepwear for infants and toddlers.

3 Opposer has invested considerable money, time and effort into the development of the HALO mark. The HALO mark has become an asset of incalculable value for Opposer as an immediately recognizable and well-known indicator of source of the company's high quality goods, or at least a single source for the goods.

4. Opposer is the owner of U.S. Trademark Registration No. 3589765 filed October 1, 2007 for the mark HALO and Design for use along with *inter alia* "Infant sleepwear" in International Class 25. Said registration is valid, subsisting and in full force an effect.

5. Opposer is also the owner of U.S. Trademark Registration No. 3582012 filed May 27, 2003 for the mark HALO for use along with "infant sleepwear not relating to baseball or softball or a baseball or softball team." Said registration is valid, subsisting and in full force and effect.

6. Opposer is the owner of U.S. Trademark Application Serial Number 85-830309 for the mark HALO for use along with *inter alia* "INFANT CLOTHING, NAMELY, INFANTWEAR, LAYETTES, SWADDLING CLOTHES, ALL OF WHICH ARE NOT RELATED TO BASEBALL OR SOFTBALL OR A BASEBALL OR SOFTBALL TEAM;

CHILDREN'S CLOTHING, NAMELY, TOPS, PAJAMAS, BODYSUITS, SHIRT AND PANT SETS, COVERALLS, HATS, NAMELY INFANT CAPS SOLD AS PART OF AN INFANT SLEEPWEAR SET, ALL OF THE ABOVE NOT RELATED TO BASEBALL OR SOFTBALL OR A BASEBALL OR SOFTBALL TEAM” in Class 25 and “ONLINE RETAIL STORE SERVICES FEATURING INFANTWEAR, CHILDREN'S CLOTHING, CRIB SETS, DIAPER COVERS, CHANGING PADS, AND CRIB MATTRESS FILTER” in Class 41.

7. Copies of the federal registration certificates for Registration Nos. 3589765 and 3582012 are attached as Exhibit 1. Opposer’s federal registration certificates are prima facie evidence of the validity of these marks as well as Opposer’s ownership and exclusive right to use these marks in connection with the identified goods. 15 U.S.C. § 1057(b).

8. Opposer’s Registration Nos. 3589765 and 3582012 are incontestable pursuant to 15 U.S.C. § 1065.

9. Opposer’s Registrations listed in paragraphs 4 and 5 and application listed in paragraph 6 are based on use and, along with Opposer’s common law use, are hereinafter referred to as the HALO Trademarks.

10. Opposer’s HALO Trademarks are inherently distinctive.

11. After Opposer’s first use of the HALO Trademarks, and after the United States Trademark Office issued federal registrations for the HALO Trademarks, Applicant filed an application to register the mark HOT AS HALO in the United States on an intent-to-use basis for “Clothing, namely, women's jackets, women's tops, women's t-shirts, women's pants, shorts and skirts, women's dresses, women's jumpsuits and rompers, women's lingerie panties, bras, bralettes, corsets, women's sleepwear, women's cover ups, women's swimsuits, women's sweat suits and one pieces, hooded sweatshirts, pants, and shorts; girl's jackets, girl's tops, girl's t-shirts, girl's pants, shorts and skirts, girl's dresses, girl's jumpsuits and rompers, girl's sleepwear, girl's beach cover ups, girl's swimsuits, girl's sweat suits and one pieces, hooded sweatshirts, pants and

shorts; adult novelty gag clothing item, namely, socks; athletic tops and bottoms for runners and yoga; babies' pants; belts for clothing; clothing, namely, bottoms; children's bottoms; clothing for babies, toddlers and children, namely, pajamas, jackets, shirts, pants, jumpers; infant and toddler one piece clothing; jackets, tops" in International Class 025 (the "Opposed mark").

12. Opposer's rights in the HALO Trademarks predate Applicant's rights in the Opposed Mark.

13. Upon information and belief, Applicant had constructive knowledge of Opposer's rights in the HALO Trademark at the time it filed the Application. Upon information and belief, Applicant had actual knowledge of Opposer's use of HALO Trademark at the time it filed the Application.

14. Upon information and belief, Applicant has not used the Opposed Mark anywhere in the United States, or in commerce, prior to the Applicant's filing date.

15. Upon information and belief, Applicant is not currently using the Opposed Mark anywhere in the United States, or in commerce.

16. Upon information and belief, the goods for which Applicant seeks a registration of its Opposed Mark are confusingly similar to goods upon which the Opposer has used its Halo Trademarks, and upon information and belief, said goods of Applicant will be offered to the same class of consumers as those that receive Opposer's goods, and are closely related to or directly competitive with those offered by Opposer.

17. The Opposed Mark is confusingly similar in sight, sound and commercial impression to the HALO Trademark. The registration of the Opposed Mark in association with the identified goods is likely to cause confusion as to the source or origin of Applicant's goods, and is likely to mislead consumers, all to Opposer's damage.

18. If Applicant is granted registration of the Opposed Mark, it would thereby obtain at least a prima facie exclusive right to the use of its alleged mark. Such registration would be a source of further damage and injury to Opposer.

19. For the reasons set forth in the foregoing paragraphs, Applicant is not entitled to register the Opposed Mark, and the application should be denied in accordance with Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

WHEREFORE, Opposer asks that its opposition to Serial No. 86453736 be sustained and that the registration of the Opposed Mark set forth therein be refused. Opposer requests that final judgment be entered in favor of Opposer. Please direct all correspondence to the attention of Sarah G. Voeller:

Hamre, Schumann, Mueller & Larson P.C.  
P.O. Box 2902-0902  
Minneapolis, MN 55402  
612.455.3800

Opposer hereby appoints Curtis B. Hamre, Reg. No. 29,165; Sandra Epp Ryan 39,667; Michael D. Schumann 30,422; and Sarah G. Voeller Reg. No. 57,000, as attorneys with the full power to represent the Opposer in connection with this opposition.

Please charge Deposit Account No. 50-3478 in the amount of \$300 for the required Notice of Opposition fee. Please charge any excess fees or credit any overpayment to the deposit account of Opposer's counsel: Deposit Account No. 50-3478.

Respectfully submitted,

Halo Innovations, Inc.

By its attorneys,

Date: July 27th, 2015



*Curtis B. Hamre*  
Sarah G. Voeller  
Hamre, Schumann, Mueller & Larson P.C.  
P.O. Box 2902  
Minneapolis, MN 55402  
612.455.3800

**CERTIFICATE OF SERVICE**

I hereby certify that this NOTICE OF OPPOSITION is being deposited with the United States Postal Service, first class mail, in an envelope addressed to Applicant:

Dan Cislo  
CISLO & THOMAS, LLP  
12100 WILSHIRE BLVD., SUITE 1700  
LOS ANGELES, CALIFORNIA 90025  
UNITED STATES

on this 27<sup>th</sup> day of July, 2015.

  
\_\_\_\_\_  
Tammy McCanna

## Exhibit 1

United States of America  
United States Patent and Trademark Office



**Reg. No. 3,589,765**

HALO INNOVATIONS, INC. (MINNESOTA CORPORATION)  
111 CHESHIRE LANE, SUITE 700  
MINNETONKA, MN 55305

**Registered Mar. 17, 2009**

**Amended Dec. 23, 2014**

FOR: PERSONAL AIR FILTRATION EQUIPMENT, NAMELY, [ AIR PURIFIERS FOR INDIVIDUAL USERS, ] REPLACEMENTS PARTS THEREOF, AIR FILTERS FOR DOMESTIC USE, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

**Int. Cls.: 11, 24 and 25**

FIRST USE 5-2-2004; IN COMMERCE 5-2-2004.

**TRADEMARK**

FOR: BED LINENS, MATTRESS PADS, MATTRESS COVERS , IN CLASS 24 (U.S. CLS. 42 AND 50).

**PRINCIPAL REGISTER**

FIRST USE 5-2-2004; IN COMMERCE 5-2-2004.

FOR: INFANT SLEEPWEAR NOT RELATING TO BASEBALL OR SOFTBALL OR A BASEBALL OR SOFTBALL TEAM, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-29-2004; IN COMMERCE 1-29-2004.

OWNER OF U.S. REG. NOS. 2,265,181 AND 2,809,073.

THE MARK CONSISTS OF THE WORD "HALO" WITH A CURVED LINE APPEARING ABOVE THE WORD.

SER. NO. 77-292,956, FILED 10-1-2007.



*Michelle K. Lee*

Deputy Director of the United States  
Patent and Trademark Office

**Int. Cl.: 25**

**Prior U.S. Cls.: 22 and 39**

**United States Patent and Trademark Office**

**Reg. No. 3,582,012**

**Registered Mar. 3, 2009**

**TRADEMARK  
PRINCIPAL REGISTER**

**HALO**

HALO INNOVATIONS, INC. (MINNESOTA COR-  
PORATION)  
15098 23RD AVENUE NORTH  
PLYMOUTH, MN 55447

FIRST USE 7-0-2000; IN COMMERCE 7-0-2000.

SER. NO. 76-517,247, FILED 5-27-2003.

FOR: INFANT SLEEPWEAR NOT RELATING TO  
BASEBALL OR SOFTBALL OR A BASEBALL OR  
SOFTBALL TEAM, IN CLASS 25 (U.S. CLS. 22 AND  
39).

GIANCARLO CASTRO, EXAMINING ATTORNEY