

ESTTA Tracking number: **ESTTA510018**

Filing date: **12/10/2012**

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 requests to cancel indicated registration.

Petitioner Information

Name	Sephora		
Entity	societe anonyme	Citizenship	France
Address	65 Avenue Edouard Vaillant Boulogne Billancourt, 92100 FRANCE		

Attorney information	Maren C. Perry King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036 UNITED STATES nytrademarks@kslaw.com, mperry@kslaw.com, kmccarthy@kslaw.com Phone:(212) 556-2128		
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Registration Subject to Cancellation

Registration No	3350702	Registration date	12/11/2007
Registrant	HerStyler 531 N. Stephanie St. Suite 544 Henderson, NV 89014 UNITED STATES		

Goods/Services Subject to Cancellation

Class 003. First Use: 2005/05/01 First Use In Commerce: 2005/05/01 All goods and services in the class are cancelled, namely: Hair Care Products, namely, conditioners, shampoo, hair cream, hair spray, and hair serum
Class 009. First Use: 2005/05/01 First Use In Commerce: 2005/05/01 All goods and services in the class are cancelled, namely: Electric hair curlers Electric irons for styling hair Electric hand-held hair styling irons

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Related Proceedings	Opposition No. 91203208
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	3738088	Application Date	03/10/2009
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Registration Date	01/12/2010	Foreign Priority Date	NONE
Word Mark	NATURALLY SEPHORA INGREDIENTS OPTIONS RESULTS		
Design Mark			
Description of Mark	The mark consists of the stylized wording "NATURALLY SEPHORA INGREDIENTS OPTIONS RESULTS" in green on a white border around the design of a green and white flame over a solid green circle design, all surrounded by a green outer circle.		
Goods/Services	<p>Class 003. First use: First Use: 2009/02/15 First Use In Commerce: 2009/03/18 Cosmetics; hair shampoo; hair conditioners; hair styling preparations; hair care preparations; skin soap and cleansers; bath and shower gels; eye, facial and skin moisturizers, lotions and creams; essential oils for personal use; sunscreen; facial masks; body and facial scrubs; lip balm; body oils; bath salts; make-up remover; body deodorants</p> <p>Class 035. First use: First Use: 2009/02/15 First Use In Commerce: 2009/02/15 Retail store services in the field of cosmetics, beauty, skin and hair care products; providing consumer information in the field of cosmetics, beauty, skin and hair care products</p>		

U.S. Registration No.	2431968	Application Date	11/21/1997
Registration Date	02/27/2001	Foreign Priority Date	NONE
Word Mark	SEPHORA		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1997/01/13 First Use In Commerce: 1998/07/16 [Perfumes; perfumery products, namely, colognes; toilet waters; essential oils for personal use, namely, bath oils, body oils, and massage oils; soaps, and cosmetics, namely, bath gels, bath powders, non-medicated bath salts, beauty masks, body creams, body powders, cosmetic pencils, cotton for cosmetic purposes, hand creams, night creams, skin cleansing creams, skin creams,</p>		

	<p>vanishing creams, eye creams, skin lotions, facial lotions, body lotions, skin moisturizers, night creams, shower gels, skin clarifiers, skin soaps, suntanning preparations, toilet soaps; make-up products, namely, eye makeup, eye makeup remover, eye pencils, eye shadow, eyebrow pencils, eyeliner, face powder, lipstick, make-up mascara, nail polish, nail polish remover, rouge; hair lotions; hair shampoos]</p> <p>Class 035. First use: First Use: 1997/01/13 First Use In Commerce: 1998/07/16 [organizing and conducting trade show exhibitions in the field of perfumery and beauty care products;] retail store services in the field of perfumery, cosmetic products, beauty products, make-up products, hair lotions, preparations and shampoos</p> <p>Class 038. First use: First Use: 1996/12/21 First Use In Commerce: 1999/10/15 [transmission of data for others via a global computer network]</p> <p>Class 042. First use: First Use: 1997/01/13 First Use In Commerce: 1998/07/16 [consulting services in the field of perfumery and beauty products; beauty salons, hairdressing salons, tanning salons]</p>
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U.S. Registration No.	2745684	Application Date	05/19/2000
Registration Date	08/05/2003	Foreign Priority Date	11/26/1999
Word Mark	S		
Design Mark			
Description of Mark	The mark consists of a "S" logo.		
Goods/Services	<p>Class 003. First use:</p> <p>[Perfumes; toilet waters; eau de cologne; essences for perfumes; smelling potpourris; incense; lotions for cosmetic purpose;] skin creams; [skin lotions; fluid creams; tissues impregnated with cosmetic lotions;] hand lotions; beauty masks; [hand creams; skin whitening creams; creams for the hair care; hair conditioners; hair lotions; depilatories; depilatory wax; shaving soaps; shaving creams; after shave lotions;] sun creams and lotions; [preparations to facilitate tanning;] instant tanning preparations; [toothpaste; cosmetic soaps;] toilet soaps; [shampoos;] shower gel; bath gel; [bath oils; bath beads; talcum powder for toilet; toilet milks; baby oils; baby powders;] make-up removers; [lipsticks; eyelash mascara; hair mascara; nail varnish; varnish removers;] blushes; make-up powders; eye shadows; eye pencils; eyebrow pencils; [cheek pencils; hair bleaches; beard dyes; hair dyes; hair creams or gels; hair sprays; brilliantine; false nails;] false eyelashes; [essential oils personal use; non-medicated skin care preparations; non-medicated bath salts; nail care preparations; cosmetic preparations for slimming purposes, namely, creams and lotions for cellulite reduction; lip care preparations; bath foam;] make-up; [adhesives and decorative motives for cosmetic use, namely, adhesives for attaching artificial eyelashes and fingernails, nail glitter]</p>		

	<p>Class 026. First use: [Wigs; hairpieces; tufts; false beards; false hair; false mustaches; hair ornaments; hair paddings; barrettes for hair; hair nets; hair bands; hair pins; hair curling pins; false tresses of hair; false chignons; hair ribbons; ponytail holders; scrunchies; artificial flowers for hair; hair pearls; head bands for the hair; ornamental novelty buttons; clothing accessories, namely, feathers for ornamentation; non-electrical hair curlers; clothing accessories, namely, brooches not made of precious metal and not imitation jewelry]</p>		
U.S. Registration No.	2790081	Application Date	05/19/2000
Registration Date	12/09/2003	Foreign Priority Date	11/26/1999
Word Mark	S		
Design Mark			
Description of Mark	The mark consists of a "S" logo.		
Goods/Services	<p>Class 003. First use: [Perfumes; toilet waters; eau de cologne; essences for perfumes; smelling potpourris; incense; lotions for cosmetic purpose; skin creams; skin lotions; fluid creams; tissues impregnated with cosmetic lotions; hand lotions; beauty masks; hand creams; skin whitening creams; creams for the hair care; hair conditioners; hair lotions; depilatories; depilatory wax; shaving soaps; shaving creams; after shave lotions; sun creams and lotions; preparations to facilitate tanning; instant tanning preparations; toothpaste; cosmetic soaps; toilet soaps; shampoos; shower gel; bath gel; bath oils; bath beads; talcum powder for toilet; toilet milks; baby oils; baby powders; make-up removers; lipsticks; eyelash mascara; hair mascara; nail varnish; varnish removers; blushes; make-up powders; eye shadows; eye pencils; eyebrow pencils; cheek pencils; hair bleaches; beard dyes; hair dyes; hair creams or gels; hair sprays; brilliantine; false nails; false eyelashes; essential oils for personal use; non-medicated skin care preparations; non-medicated bath salts; nail care preparations; cosmetics preparations for slimming purposes, namely, creams and lotions for cellulite reduction; lip care preparations; bath foam; make-up; adhesives and decorative motives for cosmetic use, namely, adhesives for attaching artificial eyelashes and fingernails, nail glitter] * adhesives and decorative motives for cosmetic use, namely, adhesives for attaching artificial eyelashes; bath gel; bath oils; beauty masks; blushes; eye shadows; eye pencils; eyebrow pencils; eyelash mascara; false eyelashes; hand creams; hand lotions; instant tanning preparations; make-up; make-up powders; make-up removers; nail care preparations; nail glitter; nail varnish; perfumes; shaving creams; shower gel; skin creams; skin lotions; sun creams and lotions; toilet soaps; toothpaste; varnish removers *</p> <p>Class 026. First use: [Wigs; hairpieces; tufts; false beards;] false hair; [false mustaches; hair</p>		

	<p>ornaments; hair paddings; barrettes for hair; hair nets; hair bands; hair pins; hair curling pins;] false tresses of hair; [false chignons; hair ribbons;] ponytail holders; [scrunchies; artificial flowers for hair; hair pearls;] head bands for the hair; [ornamental novelty buttons; clothing accessories, namely, feathers for ornamentation; non-electric hair curlers; clothing accessories, namely, brooches not made of precious metal and not imitation jewelry]</p> <p>Class 042. First use: [Beauty salons;] services of consultation and advice in the fields of perfumery, cosmetics and beauty</p>
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Attachments	<p>77687114#TMSN.jpeg (1 page)(bytes) 75394578#TMSN.gif (1 page)(bytes) 76052505#TMSN.gif (1 page)(bytes) 76052522#TMSN.gif (1 page)(bytes) HERSTYLERpetitiontocancel.pdf (7 pages)(32477 bytes)</p>
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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	/mcp/
Name	Maren C. Perry
Date	12/10/2012

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

In the Matter of Registration No. 3,350,702

Date of Issue: December 11, 2007

SEPHORA,)	
)	
Petitioner,)	Cancellation No.
)	
v.)	
)	
HERSTYLER,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Sephora, a societe anonyme organized under the laws of France, whose business address is 65 Avenue Edouard Vaillant, Boulogne, Billancourt, France 92100 (formerly located at 79-83 Rue Baudin, Levallois Perret, France 92300) believes that it is and will be damaged by Registration No. 3,350,702 for the trademark H HERSTYLER & Design issued on December 11, 2007 for “hair care products, namely, conditioners, shampoo, hair cream, hair spray, and hair serum” in Class 3 and “electric hair curlers, electric irons for styling hair, electric hand-held styling irons” in Class 9 to HerStyler, a Nevada corporation having a business address at 531 N. Stephanie Street, Suite 544, Henderson, Nevada 89014, and, by and through its undersigned attorneys, hereby petitions that said registration be cancelled pursuant to Section 2(d) of the Trademark Act 15 U.S.C. § 1052(d) and Section 43(c).

The grounds for cancellation are as follows:

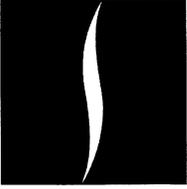
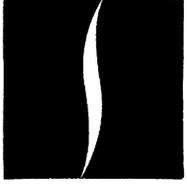
1. Petitioner, including its predecessors-in-interest and its related and affiliated companies (hereinafter collectively referred to as “Petitioner”), is now and has for many years been engaged in, inter alia, the perfume, skin care, cosmetics, hair care and beauty supplies and accessories business and in the operation of retail stores and an internet e-commerce website, all using the mark SEPHORA, together with a Flame logo in the following shape:



2. Said mark has been used in different colors and against different backgrounds and, regardless of color or background, will be referred to herein as the “Flame Logo.”

3. Petitioner is the owner of all right, title, and interest in and to the Flame Logo mark in the U.S. and elsewhere, including a number of U.S. trademark registrations as shown in the chart below.

 SN:77-687114 RN:3,738,088	Registered January 12, 2010 First Use: February 15, 2009 In Commerce: March 18, 2009 Filed: March 10, 2009	(Int'l Class: 3) Cosmetics; hair shampoo; hair conditioners; hair styling preparations; hair care preparations; skin soap and cleansers; bath and shower gels; eye, facial and skin moisturizers, lotions and creams; essential oils for personal use; sunscreen; facial masks; body and facial scrubs; lip balm; body oils; bath salts; make-up remover; body deodorants (Int'l Class: 35) Retail store services in the field of cosmetics, beauty, skin and hair care products; providing consumer information in the field of cosmetics, beauty, skin and hair care products
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 S E P H O R A SN:75-394578 RN:2,431,968	Registered 8 & 9 March 7, 2011 Registered 8 & 15 September 26, 2007 First Use: December 21, 1996 In Commerce: October 15, 1999 Filed: November 21, 1997 Registered: February 27, 2001	(Int'l Class: 35) Retail store services in the field of perfumery, cosmetic products, beauty products, make-up products, hair lotions, preparations and shampoos
 SN:76-052505 RN:2,745,684	Registered 8 & 15 December 11, 2009 Filed: May 19, 2000 Registered: August 5, 2003	(Int'l Class: 3) Skin creams; hand lotions; beauty masks; sun creams and lotions; instant tanning preparations; toilet soaps; shower gel; bath gel; make-up removers; blushes; make-up powders; eye shadows; eye pencils; eyebrow pencils; false eyelashes; make-up
 SN:76-052522 RN:2,790,081	Registered 8 & 15 June 23, 2010 Filed: May 19, 2000 Registered: December 9, 2003	(Int'l Class: 3) Adhesives and decorative motives for cosmetic use, namely, adhesives for attaching artificial eyelashes; bath gel; bath oils; beauty masks; blushes; eye shadows; eye pencils; eyebrow pencils; eyelash mascara; false eyelashes; hand creams; hand lotions; instant tanning preparations; make-up; make-up powders; make-up removers; nail care preparations; nail glitter; nail varnish; perfumes; shaving creams; shower gel; skin creams; skin lotions; sun creams and lotions; toilet soaps; toothpaste; varnish removers (Int'l Class: 26) False hair; false tresses of hair; ponytail holders; head bands for the hair (Int'l Class: 42) Services of consultation and advice in the fields of perfumery, cosmetics and beauty

4. Said registrations are valid and enforceable. In addition, Registration Nos. 2,431,968, 2,790,081 and 2,745,684 are incontestable under Section 15 of the Lanham Act.

5. Petitioner uses its Flame Logo mark in connection with a wide variety of goods and services. Petitioner operates a large number of retail stores throughout the U.S. and throughout the world selling perfume, cosmetics, hair, skin and beauty products and offering makeup, hair care, skincare and fragrance consultations. In addition, Petitioner operates an active internet e-commerce website at www.sephora.com through which consumers can purchase said goods. The [sephora.com](http://www.sephora.com) website also includes a number of other features that attract interest and customers such as a blog and a beauty magazine.
6. Petitioner's Flame Logo mark is inherently distinctive.
7. Petitioner has promoted its Flame Logo mark extensively in its advertising and promotional materials.
8. By virtue of Petitioner's distribution, sale, promotion, and advertising of products and services under its Flame Logo mark, said mark has become identified with high quality products and services originating with Petitioner.
9. By virtue of Petitioner's distribution, sale, promotion, and advertising of products and services under its Flame Logo mark, Petitioner's Flame Logo mark has become famous.
10. As a result of the long, widespread, and extensive use by Petitioner of the Flame Logo mark, the Flame Logo mark has tremendous goodwill and is of great value to Petitioner.
11. As a result of Petitioner's extensive use of the Flame Logo mark, the Flame Logo mark has become well-known to consumers generally, enjoys widespread recognition, and is a famous and strong mark entitled to the broadest scope of protection.

12. The Registrant owns Registration No. 3,350,702 for a mark that includes a similar Flame Logo as shown below as a mark for hair care products and electric hair curlers and electric irons for styling hair.



13. By virtue of its prior use and registrations, Petitioner has rights in the Flame Logo mark prior and superior to any rights of the Registrant in the Flame Logo portion of the mark covered by the Registration.

14. Upon information and belief, Registrant's goods are similar to the Petitioner's goods and services offered by Petitioner in connection with its Flame Logo mark.

15. Petitioner's Flame Logo goods and services and Registrant's goods are capable of being offered to the same class of purchasers.

16. Petitioner's Flame Logo products and the Registrant's products are capable of sale in the same channels of trade.

17. Upon information and belief, Registrant's Mark, in connection with Registrant's goods, so resembles the Flame Logo mark as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of the Registrant's goods, with respect to Petitioner's sponsorship thereof or connection or affiliation therewith, and/or in other ways.

18. Petitioner is and will be damaged by the Registrant's registration because such registration would constitute prima facie evidence of Registrant's exclusive right to use Registrant's Mark for and in connection with Registrant's goods, which would be inconsistent with and detrimental to Petitioner's prior, established and superior rights in the Flame Logo mark.

19. Petitioner's Flame Logo mark is a famous mark within the meaning of Section 43(c) of the Lanham Trademark Act, and Registrant's Mark for Registrant's goods is likely to cause dilution of the distinctive quality of Petitioner's Flame Logo mark under Section 43(c).

20. By reason of the foregoing facts, Petitioner believes it is and will be irreparably damaged by Registration No. 3,350,702.

PRAYER FOR RELIEF

WHEREFORE, Petitioner is and will be damaged by Registration No. 3,350,702 and prays that said registration will be cancelled.

Respectfully submitted,

KING & SPALDING LLP

/Maren C. Perry/

Maren C. Perry

1185 Avenue of the Americas

New York, NY 10036

Phone: (212) 556-2345

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kmccarthy@kslaw.com

Attorneys for Petitioner SEPHORA

CERTIFICATE OF SERVICE

This is to certify, in accordance with the Trademark Rules of Practice, that I have this day served the foregoing document on the Registrant, by causing a true and correct copy thereof to be deposited in the United States Mail, postage prepaid, addressed to the correspondent of record for the Registrant as indicated in the USPTO TARR database as follows:

HerStyler
531 N. Stephanie Street, Suite 544
Henderson, Nevada 89014-6613

HerStyler
19849 Nordhoff Street
Northridge, CA 91324-3331

This 10th day of December, 2012.

/Maren C. Perry/