

ESTTA Tracking number: **ESTTA951832**

Filing date: **02/04/2019**

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 | Sephora USA, Inc. |
| Granted to Date of previous extension | 02/03/2019 |
| Address | First Market Tower, 525 Market Street San Francisco, CA 94105 UNITED STATES |

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| Attorney information | Maren C. Perry King & Spalding LLP 1185 Avenue of the Americas New York, NY 10036 UNITED STATES mperry@kslaw.com, nytrademarks@kslaw.com, kmccarthy@kslaw.com (212) 556-2128 |
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Applicant Information

| | | | |
|------------------------|---|------------------------|------------|
| Application No | 87849191 | Publication date | 08/07/2018 |
| Opposition Filing Date | 02/04/2019 | Opposition Period Ends | 02/03/2019 |
| Applicant | Walmart Apollo, LLC 702 SW 8th Street, MS 0215 Bentonville, AR 72716 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Make-up kits comprised of non-medicated cosmetics |
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Grounds for Opposition

| | |
|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act Section 2(d) |
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Mark Cited by Opposer as Basis for Opposition

| | | | |
|------------------------------------|-------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | GLOW FOR IT | | |

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|----------------|----------------------------|
| Goods/Services | Make-up and cosmetics kits |
|----------------|----------------------------|

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|-------------|--|
| Attachments | Sephora USA Glow For It Opposition.pdf(26020 bytes) |
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|-----------|----------------------|
| Signature | /Kathleen McCarthy/ |
| Name | Kathleen E. McCarthy |
| Date | 02/04/2019 |

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

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|----------------------|---|------------------------------|
| SEPHORA USA, INC., |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. _____ |
| |) | |
| WALMART APOLLO, LLC, |) | |
| |) | |
| Applicant. |) | In the matter of Application |
| |) | Serial No. 87/849,191 |
| |) | For the mark: GLOW FOR IT |
| |) | Published: August 07, 2018 |

NOTICE OF OPPOSITION

SEPHORA USA, INC. (“Opposer”) is a corporation organized under the laws of Delaware, whose business address is 525 Market Street, San Francisco, California, 94105. Opposer believes it will be damaged by registration of the mark GLOW FOR IT (“Applicant’s Alleged Mark”) for:

“Make-up kits comprised of non-medicated cosmetics”

in Class 3 (“Applicant’s Alleged Goods”), which mark is the subject of Application Serial No. 87/849,191, filed on March 26, 2018 (“Application”) by Walmart Apollo, LLC (“Applicant”) and published for opposition in the Official Gazette on August 7, 2018. By and through its undersigned attorneys, Opposer hereby opposes the same.

The grounds for this Opposition are as follows:

1. Opposer, including predecessors-in-interest and related companies, is now and has for many years been engaged in, *inter alia*, providing

retail store services and selling skin care, cosmetics, perfume, beauty supplies and accessories.

2. Opposer has for many years offered for sale in kit form selected cosmetics, skin care, hair care and beauty products in SEPHORA FAVORITES kits, adopting and using various marks for the kits.

3. Beginning at least as early as 2016, Opposer adopted and used the mark GLOW FOR IT in connection with such kits. Opposer sold GLOW FOR IT kits in 2016, in 2017, and is currently selling GLOW FOR IT kits in its stores and on its website.

4. Opposer's GLOW FOR IT mark is inherently distinctive.

5. Opposer has promoted its GLOW FOR IT mark in its advertising and promotional materials and Opposer's GLOW FOR IT mark has been the subject of publicity including numerous third-party reviews posted on the internet and on social media.

6. By virtue of Opposer's distribution, sale, promotion, and advertising of products under its GLOW FOR IT mark, said mark has become identified with high quality products originating with Opposer.

7. By the Application, Applicant seeks to register the mark GLOW FOR IT in connection with the following goods in International Class 3:

"Make-up kits comprised of non-medicated cosmetics."

The Application is based on an intent to use Applicant's Alleged Mark under Section 1(b) of the Lanham Trademark Act, 15 U.S.C. §1051(b), and does not claim any date of first use. Applicant is unable to establish, with respect to

Opposer's use of Opposer's GLOW FOR IT mark, priority of use or priority of rights in the United States in connection with Applicant's Alleged Mark.

8. By virtue of its prior use, Opposer has rights in the mark GLOW FOR IT prior and superior to any rights of Applicant in the mark covered by the Application.

9. Applicant's Alleged Goods are identical to Opposer's GLOW FOR IT products.

10. Opposer's GLOW FOR IT products and Applicant's Alleged Goods are capable of sale and promotion, and, upon information and belief, are likely to be sold and promoted to the same class of purchasers.

11. Opposer's GLOW FOR IT products and Applicant's Alleged Goods are capable of sale and promotion in the same channels of trade.

12. Opposer's GLOW FOR IT mark and Applicant's Alleged Mark are identical and thus confusingly similar.

13. Upon information and belief, Applicant's Alleged Mark, in connection with Applicant's Alleged Goods, so resembles Opposer's GLOW FOR IT mark as to be likely to cause confusion, or to cause mistake, or to deceive with respect to the source or origin of Applicant's Alleged Goods, with respect to Opposer's sponsorship thereof or connection or affiliation therewith, and/or in other ways under Section 2(d).

14. Opposer would be damaged by registration of Applicant's Alleged Mark because such registration would constitute prima facie evidence of Applicant's exclusive right to use Applicant's Alleged Mark for and in connection

with Applicant's Alleged Goods, which would be inconsistent with and detrimental to Opposer's prior, established, and superior rights in Opposer's GLOW FOR IT mark.

15. By reason of the foregoing facts, Opposer believes it will be irreparably damaged by the registration of Applicant's Alleged Mark.

PRAYER FOR RELIEF

WHEREFORE, Opposer respectfully prays that the Application of Walmart Apollo, LLC identified by Serial No. 87/849,191 for the alleged mark GLOW FOR IT be refused registration in Class 3, and that no registration be issued to Applicant, and that this opposition be sustained in favor of the Opposer.

Date: February 4, 2019

Respectfully submitted,

/Kathleen E. McCarthy/
Kathleen E. McCarthy
Maren C. Perry

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Sephora USA, Inc.