

ESTTA Tracking number: **ESTTA955943**

Filing date: **02/22/2019**

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	Dynamite Wholesale, LLC
Granted to Date of previous extension	03/20/2019
Address	P.O. Box 717 Seymour, MO 65746 UNITED STATES

Attorney information	Glenn K. Robbins II Spencer Fane LLP 1 North Brentwood Boulevard, Suite 1000 St. Louis, MO 63105 UNITED STATES sfaction@spencerfane.com, grobbins@spencerfane.com 314-863-7733
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Applicant Information

Application No	88049710	Publication date	11/20/2018
Opposition Filing Date	02/22/2019	Opposition Period Ends	03/20/2019
Applicant	Phantom I.P., LLC Legal Department 2445 Belmont Avenue Youngstown, OH 445052405 UNITED STATES		

Goods/Services Affected by Opposition

Class 013. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Fireworks
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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	AIR ASSAULT		

Goods/Services	fireworks
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Attachments	2019-02-22 Notice of Opposition.pdf(23698 bytes)
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Signature	/Glenn K. Robbins II/
Name	Glenn K. Robbins II
Date	02/22/2019

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

DYNAMITE WHOLESALE, LLC)	
)	Opposition No.
Opposer,)	
)	Mark AIR ASSAULT
)	
vs.)	
)	
PHANTOM I.P., LLC)	Serial No. 88/049,710
)	
Applicant.)	

NOTICE OF OPPOSITION

Dynamite Wholesale, LLC (“Opposer”), a limited liability company of Missouri having a place of business at P.O. Box 717, Seymour, Missouri 65746, believes that it would be damaged by the registration of the mark AIR ASSAULT (“Applicant’s Mark”), shown in U.S. Trademark Application Serial No. 88/049,710 to Phantom I.P., LLC (“Applicant”) and hereby opposes same.

Opposer alleges upon personal knowledge for its own acts and upon information and belief with respect to all other matters, as follows:

1. Application Serial No. 88/049,710 (hereinafter the "Opposed Application") seeks registration of the mark AIR ASSAULT for goods described as “Fireworks” (Class 13).
2. The Opposed Application was filed on July 24, 2018 by Applicant based on an intent to use in commerce.
3. Opposer adopted and used the designation AIR ASSAULT for fireworks goods long prior to the July 24, 2018 filing date of the Opposed Application, and is still using to this date the designation AIR ASSAULT for fireworks goods.
4. By virtue of the prior and continuous advertising and sales of Opposer’s goods under the designation AIR ASSAULT, and the maintenance of high quality standards thereto,

purchasers of such goods have come to recognize the designation AIR ASSAULT as an indication of origin, as a consequence of which Opposer has established goodwill in the AIR ASSAULT designation.

5. Upon information and belief, the fireworks goods sold by Opposer, and the goods described in the Opposed Application are identical.

6. Therefore, purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that Applicant's described goods under the mark AIR ASSAULT emanate from and/or are in some way sponsored, or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

7. The grant of a certificate of registration to Applicant for the mark AIR ASSAULT will seriously damage and injure Opposer because such registration would give Applicant a prima facie right to the use of the mark, despite the likelihood of confusion, mistake or deception as to the source of goods sold by Applicant as described in the paragraphs above.

WHEREFORE, Opposer believes that the present opposition should be sustained and the registration of Applicant's mark refused.

Date: February 22, 2019

Respectfully submitted,

SPENCER FANE LLP

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*Attorneys for Opposer
Dynamite Wholesale, LLC*