

ESTTA Tracking number: **ESTTA1047858**

Filing date: **04/08/2020**

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	Walmart Apollo, LLC
Granted to Date of previous extension	04/15/2020
Address	702 SW 8TH STREET, MS 0215 BENTONVILLE, AR 72716 UNITED STATES

Attorney information	JENNIFER K. ZIEGLER BROOKS KUSHMAN P.C. 1000 TOWN CENTER, 22ND FLOOR SOUTHFIELD, MI 48075 UNITED STATES jziegler@brookskushman.com, ccarswell@brookskushman.com, rcantor@brookskushman.com, marapakis@brookskushman.com 2483584400
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Applicant Information

Application No	88553920	Publication date	12/17/2019
Opposition Filing Date	04/08/2020	Opposition Period Ends	04/15/2020
Applicant	Shenzhen zhikeyang technology co., LTD No.611,6th floor,building 1,164 pingxin north rd,hehua community,pinghu st,longgang district,shenzhen, 518116 CHINA		

Goods/Services Affected by Opposition


Class 011. First Use: 2019/05/03 First Use In Commerce: 2019/05/03 All goods and services in the class are opposed, namely: Air purifying apparatus and machines; Aquarium lights; Bicycle lights; Candle lamps; Chandeliers; Electric lights for Christmas trees; Electric night lights; Fairy lights for festive decoration; Flashlights; Germicidal lamps for purifying air; Hanging lamps; Lamp whose light can be turned in all directions; Lanterns for lighting; LED light machines; Light bulbs; Lights for vehicles; Safety lamps for underground use; String lights for festive decoration; Ultraviolet ray lamps, not for medical purposes; Pocket search lights
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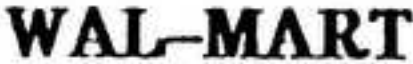
Grounds for Opposition


Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons,	Trademark Act Section 2(a)

living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1322750	Application Date	06/25/1984
Registration Date	02/26/1985	Foreign Priority Date	NONE
Word Mark	WAL-MART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1962/07/01 First Use In Commerce: 1962/07/01 Retail Department Store Services		

U.S. Registration No.	1783039	Application Date	09/23/1991
Registration Date	07/20/1993	Foreign Priority Date	NONE
Word Mark	WAL-MART		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1962/07/01 First Use In Commerce: 1962/07/01 retail department store services		

U.S. Registration No.	2891003	Application Date	09/08/2003
Registration Date	10/05/2004	Foreign Priority Date	NONE
Word Mark	WAL MART		
Design Mark			
Description of	The service mark consists of the word WAL-MART and design. The design ele-		

Mark	ment is that of a five-pointed star which replaces the hyphen between "WAL" and "MART". There are no integral colors.
Goods/Services	Class 035. First use: First Use: 1992/03/00 First Use In Commerce: 1992/03/00 retail department store services

U.S. Registration No.	3612345	Application Date	10/03/2008
Registration Date	04/28/2009	Foreign Priority Date	NONE

Word Mark	WALMART
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Design Mark	
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Description of Mark	The mark consists of the word "WALMART" next to a design of six rays symmetrically centered around a circle to resemble a spark.
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Goods/Services	Class 035. First use: First Use: 2008/08/19 First Use In Commerce: 2008/08/19 On-line retail store services featuring a wide variety of consumer goods; Retail automobile parts and accessories stores; Retail bakery shops; Retail delicatessen services; Retail grocery stores; Retail pharmacy services; Retail store services featuring a wide variety of consumer goods of others; Retail optical stores; retail automotive supplies and parts stores
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U.S. Registration No.	4474440	Application Date	06/03/2013
Registration Date	01/28/2014	Foreign Priority Date	NONE

Word Mark	WALMART
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 035. First use: First Use: 1962/07/01 First Use In Commerce: 1962/07/01 (at least as early as July 1, 1962) Retail store services featuring a wide variety of consumer goods; Retail automobile parts, supplies and accessories stores; Retail bakery shops; Retail delicatessen store services; Retail grocery stores; Retail pharmacy services; Retail store services featuring a wide variety of consumer goods of others; Retail optical stores; Retail store services featuring electronics, appliances, indoor and outdoor furniture, home décor, toys, sporting goods, outdoor recreation, health, beauty and personal care products, household essentials, apparel, patio, garden, lawn care and landscaping products, home improvement products, grilling products, entertainment recordings, video games,
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	<p>books and publications, musical instruments, office supplies, arts and craft supplies, holiday and celebration supplies, jewelry, pet products; gift registry services; (at least as early as October 31, 2000) online retail store services featuring a wide variety of consumer goods; Online retail automobile parts, supplies and accessories stores; Online retail bakery shops; Online retail delicatessen store services; Online retail grocery stores; Online retail pharmacy services; Online retail store services featuring a wide variety of consumer goods of others; Online retail optical stores; Online retail store services featuring electronics, appliances, indoor and outdoor furniture, patio, garden, lawn care and landscaping products, grilling products, home improvement products, home décor, toys, sporting goods, outdoor recreation, health, beauty and personal care products, household essentials, apparel, entertainment recordings, video games, books and publications, musical instruments, office supplies, arts and craft supplies, holiday and celebration supplies, jewelry, pet products; online gift registry services</p> <p>Class 040. First use: First Use: 1983/10/24 First Use In Commerce: 1983/10/24 (at least as early as October 24, 1983)photographic film development services;(at least as early as October 26, 2004)digital photo printing services</p>
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Attachments	<p>73486747#TMSN.png(bytes) 74206282#TMSN.png(bytes) 76542701#TMSN.png(bytes) 77585270#TMSN.png(bytes) 85949490#TMSN.png(bytes) Notice of Opposition WARM-MART.pdf(88134 bytes)</p>
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Signature	/jennifer ziegler/
Name	JENNIFER K. ZIEGLER
Date	04/08/2020

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

In re Trademark Application

Serial No.: 88553920

Filed: July 31, 2019



Trademark:

Published in the Official Gazette on December 17, 2019

Atty. Docket No.: WALMT0129OC

Walmart Apollo, LLC,)	
)	
Opposer,)	
)	Serial No. 88553920
v.)	
)	Opposition No. _____
Shenzhen Zhikeyang Technology Co., Ltd,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

VIA ELECTRONIC FILING
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Opposer, Walmart Apollo, LLC, a limited liability company organized under the laws of Delaware, having a principal place of business at 702 SW 8th Street, MS 0215, Bentonville, Arkansas 72716 (“Opposer”), believes that it is and will continue to be damaged by registration of


WARM-MÄRT

the mark WARM-MART and Design in the name of Shenzhen Zhikeyang Technology Co., Ltd (“Applicant”) shown in U.S. Trademark Application Serial No. 88553920, and hereby opposes the same.





A request for extension of time to oppose was filed on January 6, 2020 and was granted, extending the time to file to April 15, 2020.

As grounds for opposition, Opposer alleges that:

1. Opposer Walmart Apollo, LLC (“Walmart”) is a multinational retail corporation operating a chain of hypermarkets, discount department stores, and grocery stores. Headquartered in Bentonville, Arkansas, Walmart was founded in 1962 and currently operates over 11,000 stores and clubs in 27 countries. Walmart is the world’s largest company by revenue, the largest private employer in the world, with 2.2 million employees, and the largest U.S. grocery retailer, with 65 percent of Walmart’s \$514 billion sales coming from its U.S. operations.

2. Since at least as early as 1962, Opposer and/or its affiliates and predecessors in interest have owned and used the trademarks WARM-MART, WAL-MART, **WAL★MART**, and **Walmart** , among others (the “WALMART Marks”) in connection with retail store services featuring a wide variety of consumer goods and services in the United States and throughout the world.

3. In the United States, Opposer is the owner of, among others, the following registrations for its WALMART Marks covering retail department store services and online retail store services featuring a wide variety of consumer goods, including holiday and celebration

supplies and home decor: Reg. No. 1322750 for  (reg'd February 26, 1985); Reg. No. 1783039 for  (reg'd July 20, 1993); Reg. No. 2891003 for  (reg'd October 5, 2004); Reg. No. 3612345 for  (reg'd April 28, 2009); and Reg. No. 4474440 for WALMART (reg'd January 28, 2014). These registrations are valid and subsisting, uncanceled, and unrevoked.

4. Opposer has expended considerable time, effort, and expense in advertising and promoting the WALMART Marks and the goods and services associated with them throughout the United States, with the result that the purchasing public has come to know and recognize the goods and services of Opposer by the WALMART Marks. Opposer has exceedingly valuable goodwill established in its WALMART Marks.

WARM-MART

5. Applicant is seeking to register WARM-MART as a trademark for “air purifying apparatus and machines; aquarium lights; bicycle lights; candle lamps; chandeliers; electric lights for Christmas trees; electric night lights; fairy lights for festive decoration; flashlights; germicidal lamps for purifying air; hanging lamps; lamp whose light can be turned in all directions; lanterns for lighting; LED light machines; light bulbs; lights for vehicles; safety lamps for underground use; string lights for festive decoration; ultraviolet ray lamps, not for medical purposes; pocket search lights” in Class 11. This is evidenced by publication of the mark in the *Official Gazette* on December 17, 2019. Applicant filed its application on July 31, 2019 and claims a date of first use of May 3, 2019.

6. There is no issue as to priority. Opposer used, filed, and registered the WALMART Marks in connection with its goods and services long prior to Applicant's July 31, 2019 filing date and its claimed date of first use of May 3, 2019.

7. Upon information and belief, Applicant did not use its WARM-MART mark prior to Opposer's first use of WALMART.

8. Applicant's WARM-MART mark is visually and aurally virtually identical to the WALMART Marks. Specifically, the MART component of Applicant's WARM-MART mark is identical to the MART component in Opposer's WALMART Mark and the WARM component of Applicant's mark is virtually identical to the WAL component of Opposer's WALMART Marks and sounds nearly identical when pronounced.

WARM-MART

9. The star element in Applicant's **WARM-MART** mark mimics the star element in Opposer's Star Design version of its WALMART Marks **WAL★MART**.

10. The purchasing public would recognize Applicant's WARM-MART mark as pointing uniquely and unmistakably to Opposer because Applicant's mark is a close approximation of Opposer's identity or persona.

11. Because the purchasing public has come to recognize and associate the goods and services of Opposer by the WALMART Marks, Applicant's proposed WARM-MART mark is likely to be confused with or suggest a connection to Opposer.

12. Opposer is not connected with the goods sold or intended to be sold by Applicant under its WARM-MART mark.

13. The fame and reputation of Opposer is such that, if Applicant's WARM-MART mark is used with Applicant's designated goods, a connection with Opposer will be presumed.

14. Through extensive use and promotion of the WALMART Marks by Opposer, Opposer's WALMART Marks have become distinctive and famous as defined under Section 43(c)(2) of the Lanham Act, as amended, 15 USC 1125(c)(2), and they were famous prior to the filing date of Applicant's application for the WARM-MART mark.

15. Applicant's WARM-MART mark in Application No. 88553920 so resembles Opposer's WALMART Marks and the goods identified are so closely related to the goods and services of Opposer as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive in violation of Section 2(d) of the Lanham Act, 15 USC §1052(d).

16. Applicant's WARM-MART mark in Application No. 88553920 so resembles Opposer's WALMART Marks and the goods identified are so closely related to the goods and services of Opposer as to be likely, when used in connection with Applicant's goods, to falsely suggest a connection with Opposer in violation of Section 2(a) of the Lanham Act, 15 USC §1052(a).

17. Applicant's WARM-MART mark in Application No. 88553920 is likely to cause, and will cause, dilution of the distinctive value of Opposer's WALMART Marks in violation of Section 43(c) of the Lanham Act, 15 USC §1125(c).

18. If Applicant were granted the registration herein opposed, it would obtain at least a *prima facie* exclusive right to use of the WARM-MART mark in connection with the designated

goods. Such registration would be a source of injury and damage to Opposer's prior and established rights in its WARMART Marks.

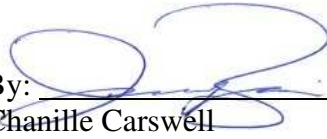
WHEREFORE, Opposer respectfully requests that registration of the WARM-MART

WARM-MART

mark, Application Serial No. 88553920, be refused and that this opposition be sustained.

The fee required under 37 C.F.R. § 2.6(a)(17) is being paid electronically concurrently with the filing of this Notice of Opposition. If the filing fee is found to be insufficient for any reason, please charge such deficiency to the deposit account.

Respectfully submitted,

By: 
Chanille Carswell
Jennifer K. Ziegler

Attorneys/Agents for Opposer

Date: April 8, 2020

BROOKS KUSHMAN P.C.
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