

ESTTA Tracking number: **ESTTA1049620**

Filing date: **04/16/2020**

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	Federici Brands LLC
Granted to Date of previous extension	05/06/2020
Address	195 DANBURY ROAD DAVENPORT BUILDING WILTON, CT 06897 UNITED STATES
Attorney information	JOHN P. MARGIOTTA FROSS ZELNICK LEHRMAN & ZISSU, P.C. 151 W. 42ND STREET, 17TH FLOOR NEW YORK, NY 10036 UNITED STATES jmargiotta@fzlz.com, dnuzzaci@fzlz.com, ttabfiling@fzlz.com 212-813-5900

Applicant Information

Application No	87340917	Publication date	01/07/2020
Opposition Filing Date	04/16/2020	Opposition Period Ends	05/06/2020
Applicant	Fit & Glow Healthcare Private Limited No.10, 1st Floor, Oil Mill Road Arvind Nagar, Kammanahalli, Bangalore Chennai Karnataka, 560033 INX		

Goods/Services Affected by Opposition


Class 003. First Use: 2016/09/00 First Use In Commerce: 2016/09/00 All goods and services in the class are opposed, namely: Hair growth inhibitor, namely, cosmetichair regrowth inhibiting preparations

Grounds for Opposition

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

U.S. Registration No.	4404188	Application Date	05/01/2012
Registration Date	09/17/2013	Foreign Priority	02/28/2012

		Date	
Word Mark	COLOR WOW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2012/10/22 First Use In Commerce: 2013/03/22 Hair care preparations		

U.S. Registration No.	5384504	Application Date	06/05/2017
Registration Date	01/23/2018	Foreign Priority Date	12/06/2016
Word Mark	COLOR WOW DREAM COAT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2017/06/30 First Use In Commerce: 2017/06/30 Hair care preparations for human use		

U.S. Registration No.	5378556	Application Date	06/06/2017
Registration Date	01/16/2018	Foreign Priority Date	NONE
Word Mark	COLOR WOW STYLE ON STEROIDS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2017/05/26 First Use In Commerce: 2017/05/26 Hair care preparations for human use		

U.S. Registration No.	5201150	Application Date	02/23/2016
Registration Date	05/09/2017	Foreign Priority Date	02/03/2016
Word Mark	INSTAWOW		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2016/12/16 First Use In Commerce: 2017/02/10 Facial masks; non-medicated skin care preparations		

Attachments	85613551#TMSN.png(bytes) 87475861#TMSN.png(bytes) 87477187#TMSN.png(bytes) 86916665#TMSN.png(bytes) Notice of Opposition WOW HAIR VANISH.PDF(16963 bytes)
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Signature	/John P. Margiotta/
Name	John P. Margiotta
Date	04/16/2020

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

FEDERICI BRANDS LLC,

Opposer,
- against -

FIT & GLOW HEALTHCARE PRIVATE
LIMITED,

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Opposer Federici Brands LLC (“Opposer”) believes that it will be damaged by the issuance of a registration for the trademark WOW HAIR VANISH as applied for by Applicant Fit & Glow Healthcare Private Limited (“Applicant”) in U.S. Trademark Application Serial No. 87/340,917 and therefore opposes the same. As grounds for this opposition, Opposer states as follows:

FACTS

A. Opposer and Opposer’s WOW Marks

1. Opposer is a Delaware limited liability company with a principal place of business at 195 Danbury Road, Davenport Building, Wilton, Connecticut 06897.
2. Opposer is a leading company in the beauty and hair care industry and is known for its highly effective and innovative products, which have been the subject of significant unsolicited press in numerous national publications and won over fifty major beauty awards.
3. Since at least as early as 2012, Opposer has used the mark COLOR WOW and various WOW-formative marks (collectively, the “WOW Marks”) in connection with a wide

variety of goods in the beauty and hair care industry, including shampoos, conditioners, leave-in hair supplements, styling products, facial masks, and skin care preparations.

4. Each year, Opposer spends a significant budget on advertising to promote the goods offered under its WOW Marks. Through years of extensive promotion and use, widespread recognition through national publications and beauty industry awards, and the commercial success of Opposer’s offerings under the WOW Marks, the WOW Marks have acquired strong trademark rights and represent enormous goodwill to Opposer.

5. Long before any date upon which Applicant can rely, Opposer’s WOW Marks became uniquely identified with Opposer and have come to identify the products of Opposer exclusively.

6. In addition to its strong common law trademark rights in the WOW Marks, Opposer also owns numerous U.S. trademark registrations for the WOW Marks for beauty and haircare goods, including but not limited to the following:

Mark	Reg’n No.	Reg’n Date	Goods and/or Services
COLOR WOW	4,404,188*	09/17/2013	IC 3: Hair care preparations
COLOR WOW DREAM COAT	5,384,504	01/23/2018	IC 3: Hair care preparations for human use
COLOR WOW STYLE ON STEROIDS	5,378,556	01/16/2018	IC 3: Hair care preparations for human use
INSTAWOW	5,201,150	05/09/2017	IC 3: Facial masks; non-medicated skin care preparations

7. The above registrations are valid, subsisting, and in full effect and serve as *prima facie* evidence of the validity of the WOW Marks, of Opposer’s ownership of the marks, and of Opposer’s exclusive right to use the marks in connection with the goods identified therein, pursuant to Section 33(a) of the Lanham Act, 15 U.S.C. § 1115(a). Opposer’s trademark registrations also place others, including Applicant, on constructive notice of those rights. *See*

15 U.S.C. § 1072. Furthermore, the registration marked with an asterisk (*) has become incontestable pursuant to Section 15 of the Lanham Act, 15 U.S.C. § 1065, and thus constitutes *conclusive* evidence of the validity of that mark, of Opposer's ownership of the mark, and of Opposer's exclusive right to use the mark in connection with the goods identified therein, as provided by Section 33(b) of the Lanham Act, 15 U.S.C. § 1115(b).

B. Applicant and its Application

8. Upon information and belief, and according to the records of the U.S. Patent and Trademark Office (the "USPTO"), Applicant is an India private limited company with a place of business at No. 10, First Floor, Oil Mill Road, Arvind Nagar, Kammanahalli, Bangalore, Chennai Karnataka, India 560033.

9. Upon information and belief, and according to the records of the USPTO, on or about February 17, 2017, Applicant filed with the USPTO Trademark Application Serial No. 87/340,917 (the "Application") to register the mark WOW HAIR VANISH ("Applicant's Mark") in International Class 3 for "Hair growth inhibitor, namely, cosmetic hair regrowth inhibiting preparations" with a first use in commerce date of September 2016 under Section 1(a) of the Lanham Act, 15 U.S.C. § 1051(a).

8. Applicant is not connected to Opposer in any way, and has not been authorized by Opposer to register or use Applicant's Mark.

FIRST GROUND FOR RELIEF
PRIORITY AND LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. § 1052(d)

9. Opposer repeats the allegations contained in Paragraphs 1 through 8 above as if fully set forth herein.

10. Upon information and belief, Opposer's rights in the WOW Marks in the United States pre-exist any date on which Applicant can rely for its claim of rights in Applicant's Mark.

Accordingly, Opposer's rights in the WOW Marks are prior and superior to any rights Applicant may claim in Applicant's Mark.

11. Applicant's Mark is highly similar to the WOW Marks in terms of sight, sound, and commercial impression, including because Applicant's Mark incorporates a substantial portion of the WOW Marks by using the W-O-W letter string as the first term of the mark. Moreover, by combining the term WOW with the terms HAIR VANISH, Applicant's Mark creates the impression that the goods proposed to be offered under Applicant's Mark are a range of hair removal products offered under the WOW brand created by Opposer.

12. The hair growth inhibitor goods identified in the Application are highly related to the goods offered by and registered to Opposer under the WOW Marks (namely, hair care preparations).

10. Based on the strength of Opposer's registered WOW Marks, the goodwill associated with the WOW Marks, the similarity of the parties' marks, and many other factors, the registration of Applicant's Mark as applied for in the Application is likely to cause confusion because consumers are likely to be deceived into falsely believing that the goods proposed to be offered by Applicant under Applicant's Mark originate from or are otherwise associated with or endorsed by Opposer, or that there is some relationship between Applicant and Opposer or the goods of Applicant and Opposer, all to Opposer's injury and harm.

11. Thus, registration of Applicant's Mark as applied for in the Application is likely to cause confusion, to cause mistake, or to deceive the public into the false belief that the goods offered by Applicant under Applicant's Mark come from or are otherwise sponsored by or connected with Opposer, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

12. As a result of the foregoing, registration of Applicant's Mark would be inconsistent with Opposer's prior exclusive rights in the WOW Marks, and would threaten destruction of Opposer's investment and goodwill in its longstanding and valuable WOW Marks. Opposer therefore is likely to be harmed by registration of Applicant's Mark.

WHEREFORE, it is respectfully requested that this opposition be sustained and that the registration sought by Applicant in U.S. Trademark Application Serial No. 87/340,917 be denied.

Dated: New York, New York
April 16, 2020

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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