

# EXHIBIT A

ESTTA Tracking number: **ESTTA873898**

Filing date: **01/29/2018**

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	Wal-Mart Stores, Inc.
Granted to Date of previous extension	01/28/2018
Address	702 SW 8th Street Bentonville, AR 72716-0215 UNITED STATES

Attorney information	Elizabeth H. Cohen Arent Fox LLP 1717 K Street, NW Washington, DC 20006 UNITED STATES Email: tmdocket@arentfox.com, ustm@walmartlegal.com, dock-etuswmt@mcdonaldhopkins.com, diana.bae@arentfox.com, teresa.myers@arentfox.com
----------------------	---

**Applicant Information**

Application No	87451784	Publication date	08/01/2017
Opposition Filing Date	01/29/2018	Opposition Period Ends	01/28/2018
Applicant	XchangeLabs LLC Suite 102 1010 E. Arapaho Road Richardson, TX 75081 UNITED STATES		


**Goods/Services Affected by Opposition**

Class 009. First Use: 2013/09/01 First Use In Commerce: 2013/09/01 All goods and services in the class are opposed, namely: Medical software for enabling patient health information exchange among healthcare providers
---


**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or brings them into contempt, or disrepute	Trademark Act Section 2(a)
Deceptiveness	Trademark Act Section 2(a)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1502748	Application Date	01/16/1987
Registration Date	09/06/1988	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1986/05/02 First Use In Commerce: 1986/09/15 HAIR SHAMPOO AND MOUTHWASH</p> <p>Class 005. First use: First Use: 1986/05/02 First Use In Commerce: 1986/09/15 ANTACIDS, ANALGESICS, ANTIHISTAMINES, COUGH MEDICATIONS, DE- CONGESTANTS, AND VITAMINS AND MINERAL SUPPLEMENTS</p>		

U.S. Registration No.	1893879	Application Date	10/12/1993
Registration Date	05/16/1995	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1986/05/02 First Use In Commerce: 1986/09/15 all purpose alcohol swabs for personal and cosmetic purposes; antiperspirants; baby care preparations, namely baby oil, baby powder, baby shampoo, pre- moistened cosmetic wipes, and baby lotions; all purpose cotton swabs for per- sonal use and for cosmetic purposes; deodorants; hair care preparations, namely shampoos and conditioners; nail polish remover; oral hygiene prepara- tions, namely dentifrices, mouthwashes, toothpaste, denture cleaning prepara- tions, and anti-plaque preparations; sanitary napkins; and skin care preparations, namely skin care lotions, body lotions, bath oil [ , and cocoa butter ]</p> <p>Class 005. First use: First Use: 1986/05/02 First Use In Commerce: 1986/09/15 analgesics; antibiotic, antifungal and antiseptic creams and ointments; antiseptic mouth rinse; allergy medications; anti-diarrhea medications; antihistam- ines; antacids; children's aspirin; cleansing pads impregnated with witch hazel, glycerine, and alcohol; cold and flu medications; cough syrups, cough suppress- ants, dandruff shampoo, appetite suppressant preparations; dietary food supple- ments; decongestants; dental rinses, enema preparations; expectorants; eye drops; hemorrhoidal preparations; hydrocortisone and tolnaftate creams and ointments; laxatives; motion sickness medication; nasal sprays; nose drops; meal replacement in powder and liquid form; pain relievers; petroleum jelly; sa- line solutions and sprays; shampoos and sprays to repel lice; sleep inducing preparations; stress medications; suppositories; and vaginal fungicide; alcohol and cotton swabs for medical purposes</p>		

U.S. Registration No.	2088843	Application Date	03/12/1996
Registration Date	08/19/1997	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use: First Use: 1991/04/00 First Use In Commerce: 1991/06/00 [ all purpose alcohol swabs for personal and cosmetic purposes; antiperspirants] baby care preparations, namely, baby oil, baby powder, baby shampoo, pre-moistened cosmetic wipes and baby lotions; all purpose cotton swabs for personal use and for cosmetic purposes; [ deodorants;] hair care preparations, namely, shampoos and conditioners; nail polish remover; oral hygiene preparations, namely, dentifrices, mouthwashes, [ toothpaste, ] denture cleaning preparations and anti-plaque preparations; sanitary napkins; and skin care preparations, namely, skin care lotions, body lotions, bath oil [ and cocoa butter ]</p> <p>Class 005. First use: First Use: 1988/08/00 First Use In Commerce: 1988/09/00 analgesics; antibiotic, antifungal and antiseptic creams and ointments; antiseptic mouth rinse; allergy medications; anti-diarrhea medications; antihistamines; antacids; [ children's aspirin; ] cleansing pads impregnated with witch hazel, [ glycerine and alcohol;] cold and flu medications; cough syrups, cough suppressants; dandruff shampoo; [ appetite suppressant preparations; ] dietary food supplements; decongestants; dental rinses; enema preparations; expectorants; eye drops; hemorrhoidal preparations; hydrocortisone and tolinaftate creams and ointments; laxatives; motion sickness medication; nasal sprays; [ nose drops;] meal replacement in [ powder and ] liquid form; pain relievers; petroleum jelly; saline solutions and sprays; shampoos and sprays to repel lice; sleep inducing preparations; [ stress medications;] suppositories; vaginal fungicide; [ and alcohol and cotton swabs for medical purposes ]</p>		

U.S. Registration No.	2825758	Application Date	10/03/2001
Registration Date	03/23/2004	Foreign Priority Date	NONE
Word Mark	EQUATE		

Design Mark	<h1>EQUATE</h1>		
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2001/04/30 First Use In Commerce: 2001/04/30 Toothbrushes		


U.S. Registration No.	3098567	Application Date	01/08/2004
Registration Date	05/30/2006	Foreign Priority Date	NONE


Word Mark	EQUATE		
Design Mark	<h1>EQUATE</h1>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2002/09/30 First Use In Commerce: 2002/09/30 Vitamin and mineral supplements		


U.S. Registration No.	3521916	Application Date	07/26/2007
Registration Date	10/21/2008	Foreign Priority Date	NONE


Word Mark	EQUATE		
Design Mark	<h1>EQUATE</h1>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1998/05/04 First Use In Commerce: 1998/05/04		

	Antibacterial skin soaps; Antibacterial soap; Bath soaps; Bath soaps in liquid or gel form; Cream soaps; Deodorant soap; Hand soaps; Liquid bath soaps; Liquid soap; Liquid soaps for hands, face and body; Perfumed soap; Skin soap; Soaps for body care; Soaps for personal use; Shower and bath gel; Body washes; Facial lotion; Facial cleansers; Pre-moistened cosmetic towelettes; Face and body creams; Non-medicated acne treatment preparations; Astringents for cosmetic purposes; Disposable wipes impregnated with cleansing compounds for use on face and body; Body powder; Talcum powder; Bath powder; Foot powder; Perfumed talcum powder; Non-medicated bath preparations; Body oils; Shaving gels; Shaving preparations; Pre-moistened cosmetic wipes; Tooth whitening preparations; Hair conditioners; Hair styling gel
--	--

U.S. Registration No.	3521910	Application Date	07/25/2007
Registration Date	10/21/2008	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2006/03/31 First Use In Commerce: 2006/03/31 Dental floss Class 025. First use: First Use: 1998/04/30 First Use In Commerce: 1998/04/30 Insoles		

U.S. Registration No.	4444245	Application Date	07/08/2011
Registration Date	12/03/2013	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2013/02/01 First Use In Commerce: 2013/02/01		

	Contact lenses		
U.S. Application No.	87646993	Application Date	10/16/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2013/01/07 First Use In Commerce: 2013/01/07 shaving foam; shaving gel; hair gel; hair pomades		

U.S. Application No.	87646991	Application Date	10/16/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EQUATE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 008. First use: First Use: 2014/06/02 First Use In Commerce: 2014/06/02 razors and razor blades		

U.S. Application No.	87646990	Application Date	10/16/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EQUATE		

Design Mark	<h1>EQUATE</h1>		
Description of Mark	NONE		
Goods/Services	Class 010. First use: First Use: 2012/05/11 First Use In Commerce: 2012/05/11 splints for arms, legs, and fingers; therapeutic hot and cold compression wraps; massage apparatus for massaging necks and backs, arms, legs, and feet		

U.S. Application No.	87646989	Application Date	10/16/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	EQUATE
-----------	--------

Design Mark	<h1>EQUATE</h1>		
-------------	-----------------	--	--

Description of Mark	NONE		
Goods/Services	Class 021. First use: First Use: 2017/04/07 First Use In Commerce: 2017/04/07 disposable latex, vinyl, and nitrile gloves for general use		

U.S. Application No.	87648333	Application Date	10/17/2017
Registration Date	NONE	Foreign Priority Date	NONE

Word Mark	EQUATE
-----------	--------



Design Mark	<h1>EQUATE</h1>
Description of Mark	NONE
Goods/Services	<p>Class 005. First use: First Use: 2017/08/15 First Use In Commerce: 2017/08/15  bunion pads; wart removing preparations; moleskin for use as a medical bandage; corn pads; corn rings for the feet; hydrocortisone and tolnaftate body spray; medicated hair care preparations; epsom salts; whey protein supplements; personal lubricants; pregnancy test kits for home use; ovulation test kits; tampons; gauze; hydrogen peroxide for medical use; burn relief medication; adhesive bandages; adhesive for bandages for skin wounds; nicotine gum for use as an aid to stop smoking; smoking cessation preparations; electrolyte drinks for medical purposes; dietary fiber to aid digestion; dietary fiber for treating constipation</p>

Attachments	<p>73640066#TMSN.png( bytes )  75071580#TMSN.png( bytes )  76320874#TMSN.png( bytes )  76568886#TMSN.png( bytes )  77239554#TMSN.png( bytes )  77238723#TMSN.png( bytes )  85366988#TMSN.png( bytes )  87646993#TMSN.png( bytes )  87646991#TMSN.png( bytes )  87646990#TMSN.png( bytes )  87646989#TMSN.png( bytes )  87648333#TMSN.png( bytes )  Notice of Opposition - XchangeLabs EQUATE.pdf(185117 bytes )</p>
-------------	---

Signature	/diana s. bae/
Name	Diana S. Bae
Date	01/29/2018

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

In re Application No. 87451784 for the mark EQUATE filed on May 6, 2017 and published on August 1, 2017.

WAL-MART STORES, INC. :  
Opposer :  
v. : Opp. No. \_\_\_\_\_  
XCHANGELABS LLC :  
Applicant :

**NOTICE OF OPPOSITION**

Opposer, Wal-Mart Stores, Inc., a Delaware corporation with an address of 702 SW 8th Street, Bentonville, Arkansas 72716, believes that it will be damaged by the registration of the above identified mark and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946, 15 U.S.C. §1063.

As grounds for the opposition, Opposer alleges that:

1. Opposer is the owner of all right, title and interest in and to a family of marks consisting of EQUATE (collectively, "Opposer's Mark") for a wide variety of goods.
2. Opposer, a multinational retail corporation, is the world's largest retailer with more than 4,700 stores in the United States.
3. Since at least as early as 1986, Opposer has been using Opposer's Mark and, through many years of use, Opposer's Mark has become well known and famous as a distinctive indicator of the origin of Opposer's goods and an extraordinarily valuable symbol of Opposer's goodwill.
4. The United States Patent and Trademark Office has recognized the validity of Opposer's Mark by issuing the following registrations:

- Registration No. 1502748, **EQUATE**, issued September 6, 1988, in classes 3 and 5;
- Registration No. 1893879, EQUATE, issued May 16, 1995, in classes 3 and 5;
- Registration No. 2088843, *equate*, issued August 19, 1997, in classes 3 and 5;
- Registration No. 2825758, EQUATE, issued March 23, 2004, in class 21;
- Registration No. 3098567, EQUATE, issued May 30, 2006, in class 5;
- Registration No. 3521916, EQUATE, issued October 21, 2008, in class 3;
- Registration No. 3521910, EQUATE, issued October 21, 2008, in classes 21 and 25; and
- Registration No. 4444245, EQUATE, issued December 3, 2013, in class 9.

The registrations are valid and subsisting, and Registration Nos. 3521916, 3521910, 3098567, 2825758, 2088843, 1893879, and 1502748 are incontestable. These registrations provide *prima facie* and conclusive evidence of Opposer's ownership of Opposer's Mark and of its exclusive right to use the mark in commerce.

5. Opposer also owns the pending applications listed below.

- Application No. 87646993, EQUATE, filed October 16, 2017
- Application No. 87646991, EQUATE, filed October 16, 2017
- Application No. 87646990, EQUATE, filed October 16, 2017
- Application No. 87646989, EQUATE, filed October 16, 2017
- Application No. 87648333, EQUATE, filed October 17, 2017

6. Since the mark was first used, Opposer has sold many millions of products under the EQUATE mark throughout its more than 4,700 stores in the United States. In the past two years alone, Opposer has sold many hundreds of millions of EQUATE branded items, yielding billions

of dollars in sales in the same time period. Opposer's Mark has also been the subject of extensive in-store and online advertising.

7. Due to the extensive advertising and sales of products bearing Opposer's Mark, and its longstanding and widespread use, consumers have come to recognize and associate Opposer's Mark with Opposer, and Opposer has acquired substantial goodwill in Opposer's Mark.

8. Notwithstanding Opposer's prior established rights, Applicant recently applied for registration of the identical mark EQUATE for "medical software for enabling patient health information exchange among healthcare providers" in Class 9 ("Applicant's Mark").

9. There is no issue as to priority. Applicant's first use date claimed in the application, September 1, 2013, is subsequent to the Opposer's first use date of Opposer's Mark, as well as subsequent to the issuance date of all but one of Opposer's registrations for Opposer's Mark.

10. Upon information and belief, Applicant made no use of its alleged mark in connection with the sale or offering for sale of any products or services prior to the date of first use alleged in its application.

11. Upon information and belief, Applicant adopted Applicant's Mark with full knowledge of Opposer's Mark and with a deliberate intent to imitate and cause confusion with Opposer's Mark.

#### **LIKELIHOOD OF CONFUSION - §2(d)**

12. Opposer hereby incorporates by reference the allegations contained in Paragraphs 1 through 11 above.

13. Applicant's Mark is identical to Opposer's Mark.

14. Use and registration of Applicant's Mark is likely to cause confusion, mistake and deception as to the source or origin of Applicant's goods and services and will injure and damage Opposer and the goodwill and reputation symbolized by Opposer's Mark.

15. Applicant's applied-for goods are so closely related to the goods of Opposer that the public is likely to be confused and deceived, and to assume erroneously that Applicant's goods are those of Opposer, or that Applicant has been licensed to use its alleged mark by Opposer, or that Applicant is in some way connected with, sponsored by, or affiliated with Opposer.

16. Likelihood of confusion is enhanced by the fact that the parties' marks are identical.

17. Likelihood of confusion is enhanced by the fact that the parties' goods overlap or are highly related.

18. Likelihood of confusion is enhanced by the fact that consumers are likely to believe that Applicant is using its alleged mark pursuant to a license from Opposer or in association with Opposer.

19. Applicant has never sought any license or other approval from Opposer to use the mark EQUATE.

20. Likelihood of confusion may be presumed in light of the fact that Applicant, on information and belief, adopted an imitation of Opposer's Mark with prior knowledge of Opposer's Mark and with an intent to cause confusion and to capitalize on the popularity of Opposer's Mark for healthcare and pharmacy products.

21. Applicant is not affiliated or connected with or endorsed or sponsored by Opposer, nor has Opposer approved any of the goods offered or sold by Applicant under its alleged mark, nor has Opposer granted Applicant permission to use said mark.

22. By reason of the foregoing, Opposer will be damaged by the registration of Applicant's Mark and registration should be refused.

**DECEPTION/FALSE SUGGESTION OF CONNECTION - §2(a)**

23. Opposer hereby incorporates by reference the allegations contained in Paragraphs 1 through 22 above.

24. Applicant's Mark is identical to Opposer's Mark and is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that Applicant's Mark misdescribes the nature or origin of the applied-for goods, purchasers are likely to believe that the misdescription actually describes the nature or origin of the goods, and this is likely to materially alter purchasers' decisions to acquire Applicant's services.

25. Opposer is widely known within the parties' fields of operation.

26. Applicant's Mark is identical to Opposer's Mark and falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's Mark points uniquely to Opposer and purchasers will assume that goods sold under Applicant's alleged mark are connected with Opposer.

27. When Applicant's Mark is used on goods of the type described in its application, Applicant's Mark will cause purchasers to mistakenly assume that Opposer is endorsing, attempting to promote, or encouraging the sale of Applicant's goods by permitting Opposer's Mark to be used on such goods.

28. Applicant is not connected with Opposer and Opposer is not connected with any goods sold by Applicant under Applicant's Mark.

29. Opposer's fame and reputation is such that, when Applicant's Mark is used with the Applicant's goods, a connection with Opposer would be presumed.

30. Applicant's Mark is deceptive in that it falsely suggests a connection with or approval by Opposer.

**DILUTION – § 43(c)**

31. Opposer hereby incorporates by reference the allegations contained in Paragraphs 1 through 30 above.

32. For many years, Opposer's Mark has been widely used, advertised and disseminated in the United States and, as a result, this mark has become well-known and famous as a distinctive symbol of Opposer's goodwill.

33. Opposer's Mark became well-known and famous well before Applicant applied for or first used the mark EQUATE.

34. Use and registration of Applicant's Mark on the goods listed in its application will cause dilution by blurring and by tarnishing the distinctiveness of and goodwill symbolized by Opposer's Mark.

35. Use and registration of Applicant's Mark will lessen the capacity of Opposer's Mark to identify and distinguish Opposer's goods.

36. On information and belief, Applicant intends to use the mark EQUATE in commerce with the willful intent to trade on Opposer's reputation or to cause dilution and tarnishment of Opposer's famous mark, within the meaning of Section 43(c) of the Trademark Act.

37. Likelihood of dilution, tarnishment and deception is enhanced by the fact that Applicant's Mark is identical to Opposer's Mark.

38. Use and registration of Applicant's Mark will deprive Opposer of the ability to protect its reputation and goodwill.

WHEREFORE, based on the foregoing, Opposer respectfully prays that this opposition be sustained and that registration be denied.

WAL-MART STORES, INC.

By: Elizabeth H. Cohen  
Elizabeth H. Cohen  
Diana Bae  
Arent Fox LLP  
1675 Broadway  
New York, NY 10019  
(212) 457-5418  
[Elizabeth.Cohen@arentfox.com](mailto:Elizabeth.Cohen@arentfox.com)  
[Diana.Bae@arentfox.com](mailto:Diana.Bae@arentfox.com)

Attorneys for Opposer



## ESTTA Filing Receipt

This ESTTA Filing Receipt confirms receipt of your filing associated with the above-identified ESTTA Tracking Number.

Your filing may be viewed on TTABVUE at <http://ttabvue.uspto.gov/ttabvue/> . If you don't see your filing on TTABVUE a week after you file, or if you received an error message or experienced a technical issue while submitting your filing on ESTTA, please send an email to [estta@uspto.gov](mailto:estta@uspto.gov) and provide the ESTTA Tracking Number and the Serial, Registration or Proceeding Number identified above, and a brief description of the error message or technical issue you encountered.

For non-technical status or information inquiries, please contact the TTAB Assistance Center at [ttabinfo@uspto.gov](mailto:ttabinfo@uspto.gov) or 571-272-8500 Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (ET).

----

Tracking No.: ESTTA972338

Filing date: 05/08/2019

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name: Walmart Apollo, LLC

Entity:

Citizenship: DelawareAddress: 702 SW 8TH STREET, MS 0215 BENTONVILLE, AR 72716 UNITED STATES

### Attorney information:

ELIZABETH H. COHEN

ARENT FOX LLP

1301 AVENUE OF THE AMERICAS

NEW YORK, NY 10019

UNITED STATES

[tmdocket@arentfox.com](mailto:tmdocket@arentfox.com), [Elizabeth.Cohen@arentfox.com](mailto:Elizabeth.Cohen@arentfox.com), [Danielle.Bulger@arentfox.com](mailto:Danielle.Bulger@arentfox.com),  
[Chiara.Giuliana@arentfox.com](mailto:Chiara.Giuliana@arentfox.com), [teresa.myers@arentfox.com](mailto:teresa.myers@arentfox.com)

(212) 457-5418

### Registration Subject to Cancellation

Registration No: 5235684

Registration Date: 07/04/2017

Registrant:

Radiation Reviews, LLC

P.O. BOX 9127

ST. LOUIS, MO 63117

UNITED STATES

Goods/Services Subject for Cancellation

Class 042. First Use: 20160531 First Use In Commerce: 20160531

All goods and services in the class are subject to cancellation, namely: software as a service (SAAS) services featuring software for use by medical clinicians to document and schedule quality assurance activities concerning patient records and data

Grounds for Cancellation:

Priority and likelihood of confusion  
Trademark Act Sections 14(1) and 2(d)

Dilution by blurring  
Trademark Act Sections 14(1) and 43(c)

Dilution by tarnishment  
Trademark Act Sections 14(1) and 43(c)

DECEPTION/FALSE SUGGESTION OF CONNECTION § 2(a)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.: 1502748

Application Date: 01/16/1987

Registration Date: 09/06/1988

Word Mark: EQUATE

Goods/Services:

Class 003 First Use: 19860502 First Use In Commerce: 19860915

HAIR SHAMPOO AND MOUTHWASH

Class 005 First Use: 19860502 First Use In Commerce: 19860915

ANTACIDS, ANALGESICS, ANTIHISTAMINES, COUGH MEDICATIONS, DECONGESTANTS, AND VITAMINS AND MINERAL SUPPLEMENTS

U.S. Registration No.: 1893879

Application Date: 10/12/1993

Registration Date: 05/16/1995

Word Mark: EQUATE

Goods/Services:

Class 003 First Use: 19860502 First Use In Commerce: 19860915

all purpose alcohol swabs for personal and cosmetic purposes; antiperspirants; baby care preparations, namely baby oil, baby powder, baby shampoo, pre-moistened cosmetic wipes, and baby lotions; all purpose cotton swabs for personal use and for cosmetic purposes; deodorants; hair care preparations, namely shampoos and conditioners; nail polish remover; oral hygiene preparations, namely dentifrices, mouthwashes, toothpaste, denture cleaning preparations, and anti-plaque preparations; sanitary napkins; and skin care preparations, namely skin care lotions, body lotions, bath oil [ , and cocoa butter ]

Class 005 First Use: 19860502 First Use In Commerce: 19860915

analgesics; antibiotic, antifungal and antiseptic creams and ointments; antiseptic mouth rinse; allergy medications; anti-diarrhea medications; antihistamines; antacids; children's aspirin; cleansing pads impregnated with witch hazel, glycerine, and alcohol; cold and flu medications; cough syrups, cough suppressants, dandruff shampoo, appetite suppressant preparations; dietary food supplements; decongestants; dental rinses, enema preparations; expectorants; eye drops; hemorrhoidal preparations; hydrocortisone and tolnaftate creams and ointments; laxatives; motion sickness medication; nasal sprays; nose drops; meal replacement in powder and liquid form; pain relievers; petroleum jelly; saline solutions and sprays; shampoos and sprays to repel lice; sleep inducing preparations; stress medications; suppositories; and vaginal fungicide; alcohol and cotton swabs for medical purposes

U.S. Registration No.: 2088843

Application Date: 03/12/1996

Registration Date: 08/19/1997

Word Mark: EQUATE

Goods/Services:

Class 003 First Use: 19910400 First Use In Commerce: 19910600

[ all purpose alcohol swabs for personal and cosmetic purposes; antiperspirants] baby care preparations, namely, baby oil, baby powder, baby shampoo, pre-moistened cosmetic wipes and baby lotions; all purpose cotton swabs for personal use and for cosmetic purposes; [ deodorants; ] hair care preparations, namely, shampoos and conditioners; nail polish remover; oral hygiene preparations, namely, dentifrices, mouthwashes, [ toothpaste, ] denture cleaning preparations and anti-plaque preparations; sanitary napkins; and skin care preparations, namely, skin care lotions, body lotions, bath oil [ and cocoa butter ]

Class 005 First Use: 19880800 First Use In Commerce: 19880900

analgesics; antibiotic, antifungal and antiseptic creams and ointments; antiseptic mouth rinse; allergy medications; anti-diarrhea medications; antihistamines; antacids; [ children's aspirin; ] cleansing pads impregnated with witch hazel, [ glycerine and alcohol; ] cold and flu medications; cough syrups, cough suppressants; dandruff shampoo; [ appetite suppressant preparations; ] dietary food supplements; decongestants; dental rinses; enema preparations; expectorants; eye drops; hemorrhoidal preparations; hydrocortisone and tolnaftate creams and ointments; laxatives; motion sickness medication; nasal sprays; [ nose drops; ] meal replacement in [ powder and ] liquid form; pain relievers; petroleum jelly; saline solutions and sprays; shampoos and sprays to repel lice; sleep inducing preparations; [ stress medications; ] suppositories; vaginal fungicide; [ and alcohol and cotton swabs for medical purposes ]

U.S. Registration No.: 2825758

Application Date: 10/03/2001

Registration Date: 03/23/2004

Word Mark: EQUATE

Goods/Services:

Class 021 First Use: 20010430 First Use In Commerce: 20010430

Toothbrushes

U.S. Registration No.: 3098567

Application Date: 01/08/2004

Registration Date: 05/30/2006

Word Mark: EQUATE

Goods/Services:

Class 005 First Use: 20020930 First Use In Commerce: 20020930

Vitamin and mineral supplements

U.S. Registration No.: 3521916

Application Date: 07/26/2007

Registration Date: 10/21/2008

Word Mark: EQUATE

Goods/Services:

Class 003 First Use: 19980504 First Use In Commerce: 19980504

Antibacterial skin soaps; Antibacterial soap; Bath soaps; Bath soaps in liquid or gel form; Cream soaps; Deodorant soap; Hand soaps; Liquid bath soaps; Liquid soap; Liquid soaps for hands, face and body; Perfumed soap; Skin soap; Soaps for body care; Soaps for personal use; Shower and bath gel; Body washes; Facial lotion; Facial cleansers; Pre-moistened cosmetic towelettes; Face and body creams; Non-medicated acne treatment preparations; Astringents for cosmetic purposes; Disposable wipes impregnated with cleansing compounds for use on face and body; Body powder; Talcum powder; Bath powder; Foot powder; Perfumed talcum powder; Non-medicated bath preparations; Body oils; Shaving gels; Shaving preparations; Pre-moistened cosmetic wipes; Tooth whitening preparations; Hair conditioners; Hair styling gel

U.S. Registration No.: 3521910

Application Date: 07/25/2007

Registration Date: 10/21/2008

Word Mark: EQUATE

Goods/Services:

Class 021 First Use: 20060331 First Use In Commerce: 20060331

Dental floss

Class 025 First Use: 19980430 First Use In Commerce: 19980430

Insoles

U.S. Registration No.: 4444245

Application Date: 07/08/2011

Registration Date: 12/03/2013

Word Mark: EQUATE

Goods/Services:

Class 009 First Use: 20130201 First Use In Commerce: 20130201

Contact lenses

U.S. Registration No.: 5469564

Application Date: 10/16/2017

Registration Date: 05/15/2018

Word Mark: EQUATE

Goods/Services:

Class 003 First Use: 20130107 First Use In Commerce: 20130107

shaving foam; shaving gel; hair gel; hair pomades

U.S. Registration No.: 5469563

Application Date: 10/16/2017

Registration Date: 05/15/2018

Word Mark: EQUATE

Goods/Services:

Class 008 First Use: 20140602 First Use In Commerce: 20140602

razors and razor blades

U.S. Registration No.: 5469562

Application Date: 10/16/2017

Registration Date: 05/15/2018

Word Mark: EQUATE

Goods/Services:

Class 010 First Use: 20120511 First Use In Commerce: 20120511  
splints for arms, legs, and fingers; therapeutic hot and cold compression wraps; massage apparatus for  
massaging necks and backs, arms, legs, and feet

U.S. Registration No.: 5469561

Application Date: 10/16/2017

Registration Date: 05/15/2018

Word Mark: EQUATE

Goods/Services:

Class 021 First Use: 20170407 First Use In Commerce: 20170407

disposable latex, vinyl, and nitrile gloves for general use

U.S. Registration No.: 5469617

Application Date: 10/17/2017

Registration Date: 05/15/2018

Word Mark: EQUATE

Goods/Services:

Class 005 First Use: 20170815 First Use In Commerce: 20170815

bunion pads; wart removing preparations; moleskin for use as a medical bandage; corn pads; corn rings  
for the feet; hydrocortisone and tolnaftate body spray; medicated hair care preparations; epsom salts;  
whey protein supplements; personal lubricants; pregnancy test kits for home use; ovulation test kits;  
tampons; gauze; hydrogen peroxide for medical use; burn relief medication; adhesive bandages;  
adhesive for bandages for skin wounds; nicotine gum for use as an aid to stop smoking; smoking  
cessation preparations; electrolyte drinks for medical purposes; dietary fiber to aid digestion; dietary  
fiber for treating constipation

U.S. Registration No.: 5717759

Application Date: 05/14/2018

Registration Date: 04/02/2019

Word Mark: EQUATE

Goods/Services:

Class 010 First Use: 20181012 First Use In Commerce: 20181012

Blood glucose monitors; Blood pressure monitors; Blood pressure measuring apparatus

Attachments:

73640066#TMSN.png

75071580#TMSN.png

76320874#TMSN.png

76568886#TMSN.png

77239554#TMSN.png

77238723#TMSN.png

85366988#TMSN.png

87646993#TMSN.png

87646991#TMSN.png

87646990#TMSN.png

87646989#TMSN.png

87648333#TMSN.png

87919411#TMSN.png

Petition to Cancel - EQUATE - Radiation Reviews - Reg. No. 5235684.pdf

Elizabeth H. Cohen

/Elizabeth H. Cohen/  
05/08/2019

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

In re Registration No. 5,235,684 for EQUATE filed on October 20, 2016 and registered on July 4, 2017.

WALMART APOLLO, LLC	:	
	:	
Petitioner	:	
	:	
v.	:	Canc. No. _____
	:	
RADIATION REVIEWS, LLC	:	
	:	
Registrant	:	

**PETITION TO CANCEL**

Petitioner Walmart Apollo, LLC ("Petitioner"), a Delaware corporation, having an address of 702 S.W. 8th Street, MS 0215, Bentonville, Arkansas 72716, believes it will be damaged by the continued existence of Registration No. 5,235,684 for the mark EQUATE and hereby petitions to cancel this registration pursuant to Section 14 of the Trademark Act of 1946, 15 U.S.C. §1064.

As grounds for cancellation, Petitioner alleges that:

1. Petitioner has established rights, title, and interest in and to a family of marks consisting of EQUATE (collectively, "Petitioner's Mark") for a wide variety of offerings in multiple Classes.
2. Petitioner, a multi-national retail corporation, is the world's largest retailer with more than 4,700 stores in the United States.
3. Petitioner's Mark has been in use since at least as early as 1986. Through decades of use on a wide variety of products, Petitioner's Mark has become well known and famous as a

distinctive indicator of the origin of Petitioner's goods, and an extraordinarily valuable symbol of Petitioner's goodwill.

4. The United States Patent and Trademark Office has recognized the validity of Petitioner's Mark by issuing the following registrations:

- Registration No. 1502748, **EQUATE**, issued September 6, 1988, in Classes 3 and 5;
- Registration No. 1893879, EQUATE, issued May 16, 1995, in Classes 3 and 5;
- Registration No. 2088843, *equate*, issued August 19, 1997, in Classes 3 and 5;
- Registration No. 2825758, EQUATE, issued March 23, 2004, in Class 21;
- Registration No. 3098567, EQUATE, issued May 30, 2006, in Class 5;
- Registration No. 3521916, EQUATE, issued October 21, 2008, in Class 3;
- Registration No. 3521910, EQUATE, issued October 21, 2008, in Classes 21 and 25;
- Registration No. 4444245, EQUATE, issued December 3, 2013, in Class 9;
- Registration No. 5469564, EQUATE, issued May 15, 2018, in Class 3;
- Registration No. 5469563, EQUATE, issued May 15, 2018, in Class 8;
- Registration No. 5469562, EQUATE, issued May 15, 2018, in Class 10;
- Registration No. 5469561, EQUATE, issued May 15, 2018, in Class 21;
- Registration No. 5469617, EQUATE, issued May 15, 2018, in Class 5; and
- Registration No. 5717759, EQUATE, issued April 2, 2019, in Class 10.

The registrations are valid and subsisting, and Registration Nos. 3521916, 3521910, 3098567, 2825758, 2088843, 1893879, and 1502748 are incontestable. These registrations provide *prima facie* and conclusive evidence of Petitioner's ownership of Petitioner's Mark and of its exclusive right to use its EQUATE mark in commerce.

5. Petitioner also owns the pending applications listed below.



- Application Serial No. 88040501, EQUATE HEART CHART, filed July 17, 2018, published February 19, 2019.
- Application Serial No. 88040498, EQUATE & Design, filed July 17, 2018.
- Application Serial No. 88040496, EQUATE & Design, filed July 17, 2018.

6. Since the mark was first used, Petitioner has sold many millions of products under the EQUATE mark throughout its more than 4,700 stores in the United States. In the past two years alone, Petitioner has sold many hundreds of millions of EQUATE branded items, yielding billions of dollars in sales in the same time period. Petitioner's Mark has also been the subject of extensive in-store and online advertising.

7. Due to the extensive advertising and sales of products bearing Petitioner's Mark, and its longstanding and widespread use, consumers have come to recognize and associate Petitioner's Mark with Petitioner, and Petitioner has acquired substantial goodwill in Petitioner's Mark.

8. Notwithstanding Petitioner's prior established rights, Registrant applied for and has now obtained a registration for the identical mark EQUATE for "software as a service (SAAS) services featuring software for use by medical clinicians to document and schedule quality assurance activities concerning patient records and data" in Class 42 ("Registrant's Mark").

9. Upon information and belief, Registrant's adoption and use of Registrant's Mark is calculated to create the false impression that Registrant is associated with, endorsed, licensed, or approved by Petitioner.

10. There is no issue as to priority. Petitioner's first use date of Petitioner's Mark, September 15, 1986, precedes the Registrant's first use date of Registrant's Mark, May 31, 2016 by 30 years.

11. Upon information and belief, Registrant made no use of its alleged mark in connection with the sale or offering for sale of any products or services prior to the date of first use alleged in its application.

12. Registration of Petitioner's Mark was refused under Section 2(d) of the Trademark Act based on an alleged likelihood of confusion with Registrant's Mark, pursuant to Office Actions that issued on November 8, 2018.

13. Registrant's Mark is impeding the applications for Petitioner's Mark.

14. Upon information and belief, Registrant adopted Registrant's Mark with full knowledge of Petitioner's Mark, and with a deliberate intent to imitate Petitioner's Mark and cause confusion among purchasers.

#### **LIKELIHOOD OF CONFUSION – §2(d)**

15. Petitioner hereby incorporates by reference the allegations contained in Paragraphs 1 through 14 above.

16. Use and registration of Registrant's Mark is likely to cause confusion, mistake and deception as to the source or origin of Registrant's services, and will injure and damage Petitioner and the goodwill and reputation symbolized by Petitioner's Mark.

17. Registrant's services are related to the offerings sold under Petitioner's Mark and the public is likely to be confused, deceived and to assume erroneously that Registrant's services are those of Petitioner, or that Registrant is in some way connected with, licensed, or sponsored by, or affiliated with Petitioner.

18. Likelihood of confusion is enhanced by the fact that the parties' marks are identical.

19. Likelihood of confusion is enhanced by the fact that the parties' goods and services overlap or are highly related.

20. Likelihood of confusion is enhanced by the fame of Petitioner's Mark, and by the fact that consumers associate said mark with goods sold, approved, or endorsed by Petitioner.

21. Likelihood of confusion is enhanced by the fact that consumers are likely to believe that Registrant is using its alleged mark pursuant to a license from Petitioner or in association with Petitioner.

22. Registrant has never sought any license or other approval from Petitioner to use the mark EQUATE.

23. Likelihood of confusion may be presumed in light of the fact that Registrant, on information and belief, adopted an imitation of Petitioner's Mark with prior knowledge of Petitioner's Mark, and with an intent to cause confusion and to capitalize on the popularity of Petitioner's Mark for health related services.

24. Registrant is not affiliated or connected with or endorsed or sponsored by Petitioner, nor has Petitioner approved any of the services offered by Registrant under its alleged mark, nor has Petitioner granted Registrant permission to use said mark.

25. By reason of the foregoing, Petitioner will be damaged by the continued registration of Registrant's Mark. Therefore Registrant's Mark should be cancelled.

**DECEPTION/FALSE SUGGESTION OF CONNECTION – §2(a)**

26. Petitioner hereby incorporates by reference the allegations contained in Paragraphs 1 through 25 above.

27. Registrant's Mark so closely resembles Petitioner's Mark that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the mark misdescribes the nature or origin of the services, purchasers are likely to believe that the misdescription actually describes the nature or origin of the services, and this is likely to materially alter purchasers' decisions to acquire Registrant's services.

28. Registrant's Mark so closely resembles Petitioner's Mark that it falsely suggests a connection with Petitioner in violation of Section 2(a) of the Trademark Act, because Registrant's Mark points uniquely to Petitioner, and purchasers will assume that services offered under Registrant's alleged mark are connected with Petitioner.

29. When Registrant's Mark is used on services of the type described in its registration, Registrant's alleged mark will cause purchasers to mistakenly assume that Petitioner is endorsing, attempting to promote, or encouraging the sale of Registrant's services by permitting Registrant's alleged mark to be used on such services.

30. Registrant's Mark is the same as Petitioner's Mark, which has been previously used by Petitioner.

31. Registrant's Mark would be recognized as pointing uniquely and unmistakably to Petitioner.

32. Registrant is not connected with Petitioner and Petitioner is not connected with any activities performed by Registrant under Registrant's Mark.

33. Petitioner's fame or reputation is such that, when Registrant's Mark is used with the Registrant's services, a connection with Petitioner would be presumed.

### **DILUTION – § 43(c)**

34. Petitioner hereby incorporates by reference the allegations contained in Paragraphs 1 through 33 above.

35. For many years, Petitioner's Mark has been widely used, advertised, and disseminated in the United States and, as a result, has become well-known and famous as a distinctive symbol of Petitioner's goodwill.

36. Petitioner's Mark became well-known and famous well before Registrant applied for or first-used the mark EQUATE.

37. The continued registration of Registrant's Mark in connection with the services listed in its application will cause dilution by blurring and tarnishment of the distinctiveness of and goodwill symbolized by Petitioner's Mark.

38. Use and the continued registration of Registrant's Mark will lessen the capacity of Petitioner's Mark to identify and distinguish Petitioner's goods and services.

39. On information and belief, Registrant adopted the mark EQUATE with the willful intent to trade on Petitioner's reputation, and/or to cause dilution and tarnishment of Petitioner's famous mark, within the meaning of Section 43(c) of the Trademark Act.

40. Likelihood of dilution, tarnishment, and deception is enhanced by the fact that Registrant's Mark is identical to Petitioner's Mark.

41. Use and registration of Registrant's Mark will deprive Petitioner of the ability to protect its reputation and goodwill.

WHEREFORE, Petitioner prays that this Petition be granted and that the registration be cancelled.

Respectfully submitted,

WALMART APOLLO, LLC

*Elizabeth H. Cohen*

By:

\_\_\_\_\_  
Elizabeth H. Cohen  
Danielle W. Bulger  
Chiara Giuliani  
Arent Fox LLP  
1301 Avenue of Americas, Floor 42  
New York, NY 10019  
(212) 457-5418  
Elizabeth.Cohen@arentfox.com  
Danielle.Bulger@arentfox.com  
Chiara.Giuliana@arentfox.com

*Attorneys for Applicant*