

FORM TM-O**THE TRADE MARKS ACT, 1999**

**Notice of Opposition / Application for Rectification of the Register by cancelling or varying registration of a trade mark / Counter statement / Request to refuse or invalidate a trade mark under Section 25(a),(b) of Geographical Indication of Goods (Regulation and Protection)
under the Trade Marks Act**

Temp Number : 10886719

REQUEST	NOTICE OF OPPOSITION
FEE	2700
APPLICANT OR REGISTERED PROPRIETOR/OPPONENT/THIRD PARTY MAKING THE APPLICATNION/REQUEST	
Opponent Name	WALLACE PHARMACEUTICALS PRIVATE LIMITED
Trading As	
Address	WALLACE TOWERS, 5th floor, 139-140/B/1, Western Express Highway, Vile Parle (E), Mumbai, Maharashtra-400057
Service Address	VISHESH AND ASSOCIATES 301/302,A-WING,3RD FLOOR,SHAHEEN CHAMBERS,DAWOOD BAUG,OPP PEARL HERITAGE,ANDHERI (WEST),MUMBAI 400058
Mobile No	9892405895
Email address	visheshassociates@gmail.com
AGENT OF THE APPLICANT OR REGISTERED PROPRIETOR/OPPONMENT/THIRD PARTY AS THE CASE MAY BE(if any)	
Agent Name	VISHESH ASSOCIATES
Address	301/302, A-WING, 3RD FLOOR, SHAHEEN CHAMBERS, DAWOOD BAUG, OPP. PEARL HERITAGE,ANDHERI (WEST), MUMBAI ꠤ 400 058.
Mobile No	9892405895
Nature of the Agent	Constituted Attorney
Registration No	10756
REQUEST OPPOSITION/APPLICATION IN THE MATTER OF	
DETAILS OF APPLICATION NUMBER	6247707
CLASS	5
REQUEST	NOTICE OF OPPOSITION
GROUND OF OPPOSITION	Grounds of opposition are attached separately
Date	26-06-2024 06:01 PM

Digitally Signed By
Mahesh Atmaram Mahadgut

for VISHESH AND ASSOCIATES

FORM TM – O

ATTORNEY CODE : 10756

THE TRADE MARKS ACT, 1999
(Notice of Opposition to Application for
Registration of a trade mark. Sec.21 (1) Rule 42 (1))

IN THE MATTER OF Application
No. 6247707 dt. 05/01/2024 -
BRITELON in Class 05 in the
name of H & B Wellness having
address at SCO 54, 1St Floor,
Sector – 11, Panchkula - 134109.

AND

IN THE MATTER OF Opposition
thereto by WALLACE
PHARMACEUTICALS PRIVATE
LIMITED.

**BRITE CREAM / BRITE LITE
V/s. BRITELON**

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- I. We, WALLACE PHARMACEUTICALS PRIVATE LIMITED, a Company registered under the Companies Act 1956, having our principal place of business at Wallace Towers, 5th floor, 139-140/B/1, Western Express Highway, Vile Parle (E), Mumbai, Maharashtra-400057 ("the Opponents" herein), hereby give notice of our intention to oppose the registration of the mark BRITELON in the name of H & B Wellness having address at SCO 54, 1St Floor, Sector – 11, Panchkula - 134109 (hereinafter called "the Applicants") under No. 6247707 dated 05/01/2024 in class 5 in respect of "PHARMACEUTICALS DRUGS AND MEDICINAL PREPARATIONS" advertised in the Trade Marks Journal No. 2146 dated 04/03/2024 at page No. 3441.
- II THE GROUNDS OF OPPOSITION ARE AS FOLLOWS:

- (1) That the Opponents are the well-established manufacturers and dealers carrying on business in pharmaceutical and medicinal preparations for the last several decades. In order to distinguish the Opponents goods from those of others, the Opponents have been adopting several distinctive trade marks most of which have been registered under the Trade Marks Act, 1999, (hereinafter referred to as "the Act") and some of them are in the process of registration. By virtue of high standards of quality, wide publicity and extensive sale, the Opponents Trade Marks are well-known throughout the country and the Opponents have acquired excellent reputation and goodwill over the said Trade Marks.
- (2) That sometime in the year 2007 the Opponents had coined, conceived and adopted the mark BRITE CREAM for use in respect of its pharmaceutical and medicinal preparations. And a further brand extension of the mark BRITE CREAM, the Opponents adopted the mark BRITE LITE in the year 2014. The Opponents have been continuously and uninterruptedly using the aforesaid marks in respect of the aforesaid goods. The Opponents have spent considerable amount of money for promoting the sale of the products bearing the said Trade Marks. By virtue of extensive, uninterrupted use of the marks BRITE CREAM / BRITE LITE throughout the length and breadth of India the goods bearing the said mark have become a household name and are regarded as quality product from the reputed house of Opponents. The Opponents are also the Proprietor in India of the label marks consisting of the words BRITE CREAM / BRITE LITE pending under Nos. 5722931 / 5722932 dated 15/12/2022 in class 5 under the provisions of the Trade Marks Act / Rules in respect of "Pharmaceutical preparation for treatment of skin Melasma and Post inflammatory hyperpigmentation". Thus, the Opponents are the original and prior adopters, proprietors and users of the trade marks BRITE CREAM / BRITE LITE as aforesaid.
- (3) That the Applicants' mark of which registration is sought consisting of the word BRITELON is not a coined word but has been completely copied from that of the Opponents said trade marks BRITE CREAM / BRITE LITE. The Applicants have bodily lifted whole of the Opponents marks BRITE CREAM / BRITE LITE and adopted the impugned mark by merely adding the letters "LON" to the Opponents mark BRITE CREAM and substituting the letters "ITE" with the letters

“ON” in the Opponents mark BRITE LITE while retaining the structural, visual and phonetic similarity. Such minor changes as aforesaid do not make any difference between BRITE CREAM / BRITE LITE and BRITELON particularly when the marks are pronounced rapidly. Thus, the impugned mark BRITELON is identical with and/or deceptively similar to the Trade Marks BRITE CREAM / BRITE LITE of the Opponents, inasmuch as the mark is aurally, visually, structurally and conceptually similar to each other and one cannot be distinguished from the other. The goods for which the Applicants are seeking registration are of the same description for which the Opponents Trade Marks are adopted for and also used and hence confusion and deception is likely to arise in the course of trade in view of close and deceptive similarity between the rival's marks.

- (4) The Opponents are prior in point of time to originally conceive and honestly adopt the marks BRITE CREAM / BRITE LITE in respect of medicinal and/or pharmaceutical preparations. Impugned application is obviously subsequent to Opponents adoption. The mark under the impugned application is identical with and/or deceptively similar to Opponents marks. Alleged adoption of the mark under the impugned application is admittedly subsequent to adoption of the marks BRITE CREAM / BRITE LITE by Opponents. The use of the impugned mark would lead to unfair advantage and would be detrimental to the distinctive character of the Opponents Trade Marks. The registration and / or use of the impugned mark is likely to cause confusion amongst the public. The impugned mark could also be taken as line extension of the Opponents Trade Marks. In the circumstances, the impugned application is contrary to the provision of Section 11 (1) (a) and (b) of the Act.
- (5) That the Opponents submit that the Applicants have adopted a trade mark which is identical with and/or deceptively similar to their trade marks BRITE CREAM / BRITE LITE with the intention of trading upon the goodwill and reputation acquired by the Opponents and thereby passing off or enabling the Applicants' potential dealers and distributors to pass off the Applicants' goods as and for the goods of the Opponents or goods associated with the Opponents or goods manufactured by parties associated with the Opponents. The use of the impugned mark will cause embarrassment, loss, inconvenience and hardship to the Opponents. The use by and/or registration of the

impugned mark will be prejudicial to the public interest and contrary to the universally accepted principle of ethics and morality. Under these circumstances, the impugned mark is not entitled to protection in Court of Law and its registration in favour of the Applicants will be contrary to the provisions of Section 11(3) (a) of the Act.

- (6) The mark under the impugned application is devoid of any distinctive character and not capable of distinguishing the goods in respect of which the applicants are seeking registration thereof. The impugned application does not qualify for registration as a trade mark in respect of the applicants' goods having regard to the provisions of Sec. 9(1)(a) of the Act.
- (7) We are the first and original adopters of the trademarks BRITE CREAM / BRITE LITE in respect of medicinal and pharmaceutical preparations. The impugned mark BRITELON under the application is identical with and/or deceptively similar to our trademarks BRITE CREAM / BRITE LITE and the applicant is seeking registration of the said mark in respect of the same goods for which our trademarks are adopted. It will be impossible to distinguish the impugned mark from our aforesaid trade marks in a doctor's prescription and also when orders are placed over the telephone by hospitals. The use of the impugned mark by the applicant will undoubtedly cause confusion and deception in the minds of customers and is likely to deceive potential customers and dealers in the course of trade. Therefore, the impugned mark under the application is prohibited from being registered within the meaning of Section 9(2)(a) of the Act.
- (8) That the Applicants are not the original and honest adopter of the mark under the impugned application. The mark under the impugned application is a blatant imitation of Opponents distinctive and prior trademarks BRITE CREAM / BRITE LITE. The Applicants certainly ought to be aware of the Opponents mark when they adopted the impugned mark. The adoption of impugned mark is done knowingly, deliberately, dishonestly and in bad faith. The Applicant is therefore, not and they cannot claim to be the proprietors of the mark under the impugned application within the meaning of Section 18(1) of the Act.
- (9) The mark of the Applicants was only proposed to be used on the date of the application and no harm will be caused to the Applicants, if the mark is refused registration. If the mark of the Applicants is

allowed to be registered, then irreparable harm, loss and injury will be caused to the Opponents, as there will be deception and confusion in the minds of the consumers, medical practitioners and traders. There has been no special circumstance in the present case which requires any consideration by the Ld. Registrar. Under the circumstances the applicant is not entitled to any relief as envisaged under Section 12 of the Act.

(10) In the premises aforesaid, the Opponents submit that the provisions of Section 9, 11, 12 and 18 of the Act clearly constitute a bar against registration of the mark applied for.

(11) It is further submitted that the above grounds are sufficient for disallowing the impugned application. Nevertheless, the Opponents urge, this is a fit case for the exercise of the judicial discretion vested in the Hon'ble Tribunal under Section 18(4) of the Act against the registration of the mark applied for, in order to maintain purity of the Register of Trade mark so that deceptively similar mark as that of the impugned mark are not allowed to be registered. It is also of paramount interest as stated by the Hon'ble Supreme Court in Cadila Health Care Ltd., Vs. Cadila Pharma Ltd. – AIR 2001 page 1952 strict measures are required to be taken to prevent any confusion arising from similarity of marks among medicines. If there is any possibility of confusion in the case of medicines public policy requires that the use of the confusingly similar name be enjoined. In the same judgment the Supreme Court has held that drugs are poisons, not sweets. Confusion between medical products may be life threatening and not merely inconvenient. Hence, even in the larger public interest this is a fit case for refusal of the impugned application.

(12) The Opponents submit that balance of convenience is against the Applicants and is in favour of the Opponents in so far as the Applicants' application is prima facie dishonest, malafide and untenable in law.

III. The Opponents, therefore, pray as under: -

(a) That the Application No. 6247707 for registration of the mark BRITELON in class 05 be ordered to be rejected;

- (b) That the Opposition be allowed in favour of the Opponents;
- (c) That the discretion vested in the Hon'ble Tribunal be exercised in favour of the Opponents; and
- (d) Exemplary costs of these proceedings be awarded to the Opponents.

IV. The Opponents crave leave to amend, vary, alter, delete, add to all or any of the foregoing grounds in respect of this Notice of Opposition.

V. All communications in relation to these proceedings may be sent to the following address in India :

C/o. VISHESH & ASSOCIATES,
ADVOCATES, TRADE MARK &
PATENT, COPYRIGHT ATTORNEYS,
301/302, A- WING, 3RD FLOOR,
SHAHEEN CHAMBERS,
DAWOOD BAUG LANE, OPP. PEARL
HERITAGE,
ANDHERI (WEST), MUMBAI – 400 058.
E-mail: visheshassociates@gmail.com

Dated this 14th day of June, 2024.

For and on behalf of Opponents
WALLACE PHARMACEUTICALS PRIVATE LIMITED



(Mahesh A. Mahadgut)
Partner
VISHESH & ASSOCIATES
Constituted Attorneys for the Opponents.
(Regn No.Mah/1261/99)

VERIFICATION

I Dhanaji Nanaware, Assistant Manager - Administration, of WALLACE PHARMACEUTICALS PRIVATE LIMITED, the Opponents abovenamed do hereby verify and state that contents of para II (1) are true to my own knowledge, those of para II (2) are based on records of my Company, those of para II (3) - II (9) are contentions, averments and legal submissions in support of the Notice of Opposition based on information and I believe the same to be true and correct and what is stated in para II (10) - II (12) is Opponents submission to the Hon'ble Registrar and that what is stated in para III are by way of prayer of the Opponent.

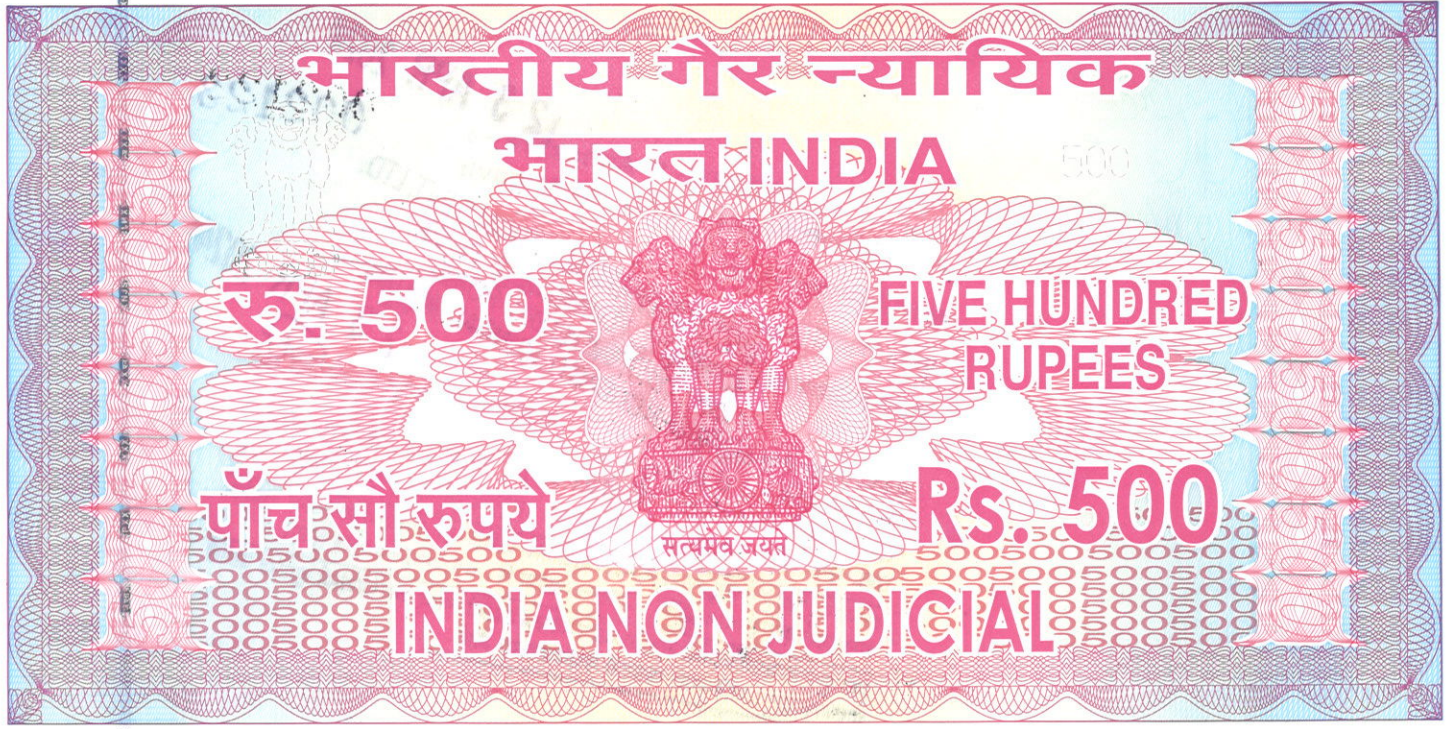
Verified at Mumbai this 14th day of June, 2024.

For and on behalf of Opponents
WALLACE PHARMACEUTICALS PRIVATE LIMITED



A handwritten signature in cursive script, appearing to read "Dhanaji Nanaware", written over a horizontal line.

(Dhanaji Nanaware)
Assistant Manager - Administration



महाराष्ट्र MAHARASHTRA

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प्रधान मुद्रांक कार्यालय, मुंबई
प.मु.क्र. ८००००९५
12 APR 2024
सक्षम अधिकारी

श्रीमती लोचना सरमळकर

FORM TM-M

ATTORNEY CODE : 10756

THE TRADE MARKS ACT, 1999

Form of authorisation of an Agent
(Section 145 Rule 19)

We, WALLACE PHARMACEUTICALS PVT. LTD., a Company registered under the Companies Act, 1956 and having its principal place of business at WALLACE TOWERS, 5th floor, 139-140/B/1, Western Express Highway, Vile Parle (E), Mumbai, Maharashtra-400057, do hereby appoint, constitute, authorise and nominate (1) ADV. MAHESH A. MAHADGUT (2) ADV. MALAVIKA M. MAHADGUT (3) ADV. TRISHALA MHADGUT, (4) ADV. NEHA MIRANI, (5) ADV. MANOJ GUPTA, (6) ADV. KAIVALYA SHETYE, (7) ADV. MONICA JOSHI, (8) ADV. JIGNA CHAUHAN, (9) ADV. ANJALI BHAMBRI, (10) ADV. DOLLY SHAH being Advocates representing M/S. VISHESH & ASSOCIATES (Regd), PATENT, TRADE MARK &



COPYRIGHT ATTORNEYS, having their address at 301/302, A-Wing, 3rd Floor, Shaheen Chambers, Dawood Baug Lane, Opp. Pearl Heritage, Andheri (West), Mumbai - 400 058, India as our true and lawful Attorneys and Agents to act for us in our name and on our behalf to execute, perform and mark all or any of the acts, deeds matters and things in connection with all the proceedings relating to our Trade Marks under the Trade Marks Act, 1999 (hereinafter called "the Act"), and Trade Marks Rules, 2017 (hereinafter called "the Rules") and any statutory modifications under the Act and Rules, namely, in respect of any application i.e filing of Trade marks, enter opposition proceedings and defending opposition proceedings by signing verification clauses in such proceedings, in any applications for rectifications of our marks by signing verification clauses in such proceedings, filing amendments of the Register, attending to the hearings of our Company, withdrawing our application, filing applications for Registered User and Assignment, renewal of our registrations and obtain certified entry or certificates under the Act or certificate(s) under Section 45(1) of Copyright Act, 1957 or any other document or documents for and on our behalf and all matters incidental to or connected with any of the aforesaid and to act on our behalf and in respect of any matters under the Act before the Registrar of Trade Marks and for doing all other acts and deeds in relation thereto AND GENERALLY TO REPRESENT US IN ALL MATTERS UNDER THE ACT.

We also hereby authorise the said Attorneys to sign such papers and writings on our behalf and to appoint substitute or substitutes as may be necessary or expedient.

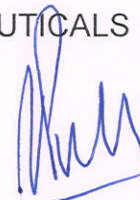
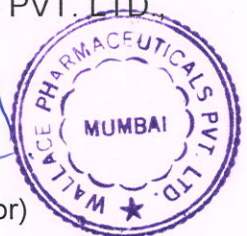
We hereby ratify and confirm all acts, deeds, matters, matters and things done by the said Attorneys for us and on our behalf / on behalf of our Company in respect of the matters or proceedings referred above.

We hereby request that all notices, requisitions or communications relating to all the matters under the Act may be sent to such Attorneys at their above mentioned address which shall be our address for service in connection with our matters under the Act in India.

We hereby revoke the previous authorizations, if any, granted by us in favour of any other person or persons or Attorneys in respect of the matters referred hereinabove.

Dated this 6th day of May, 2024.

For WALLACE PHARMACEUTICALS PVT. LTD.


(Director) 

To
The Registrar of Trade Marks
Office of the Trade Marks Registry at
MUMBAI/KOLKATA/DELHI/CHENNAI/AHMEDABAD