

ESTTA Tracking number: **ESTTA574206**

Filing date: **12/03/2013**

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	General Nutrition Investment Company
Granted to Date of previous extension	12/04/2013
Address	1011 Centre Road, Suite 322 Wilmington, DE 19805 UNITED STATES
Attorney information	William N Federspiel McGuireWoods LLP One James Center 901 East Cary Street Richmond, VA 23219 UNITED STATES wfederspiel@mcguirewoods.com, aware@mcguirewoods.com, trademarks@mcguirewoods.com Phone:804-775-4382

Applicant Information

Application No	85879464	Publication date	08/06/2013
Opposition Filing Date	12/03/2013	Opposition Period Ends	12/04/2013
Applicant	ADVANCE BY DESIGN (ABD) L.L.C. 202 North Ave Suite #103 Grand Junction, CO 81501 COLOMBIA		

Goods/Services Affected by Opposition

Class 005. First Use: 2010/12/01 First Use In Commerce: 2013/03/15 All goods and services in the class are opposed, namely: Dietary and nutritional supplements; Dietary food supplements; Dietary supplements; Dietary supplements for human consumption
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2187956	Application Date	12/10/1997
Registration Date	09/08/1998	Foreign Priority Date	NONE
Word Mark	GNC LIVE WELL		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 1997/10/07 First Use In Commerce: 1997/10/07 DIETARY SUPPLEMENTS IN TABLET, CAPSULE, AND LIQUID FORM

U.S. Registration No.	3438650	Application Date	05/13/1999
Registration Date	06/03/2008	Foreign Priority Date	NONE
Word Mark	GNC LIVE WELL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1997/06/30 First Use In Commerce: 1997/06/30 retail stores featuring health foods, dietary supplements, sports nutrition products, fitness products and apparel, cosmetics, body care, diagnostic exercise and aromatherapy products		

Attachments	Notice of Opposition - LIVE WELL FEEL WELL.pdf(1662030 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/William N Federspiel/
Name	William N Federspiel
Date	12/03/2013

3. Pursuant to Trademark Rule 2.102, Opposer obtained extensions of time for filing a Notice of Opposition against registration of Applicant's Mark to and including December 4, 2013.

Opposer's Famous GNC LIVE WELL Mark

4. Opposer's corporate parent, General Nutrition Centers, Inc. ("GNC") is the largest global specialty retailer of nutritional products, including vitamin, mineral, herbal, and other specialty supplements and sports nutrition, diet, and energy products. Either directly or through affiliates, franchisees, or licensees, GNC opens, owns, and/or operates retail nutrition, health, and/or fitness stores. Through these retail stores, store-in-store locations in pharmacies and its website at www.gnc.com, GNC sells, among other things, vitamin and mineral supplements, sports nutrition products including sports nutrition drinks, herbs, health foods, cosmetics, and miscellaneous health care products, diet products, sports accessories, fitness products, and specialty workout apparel. GNC's retail stores are staffed by employees dedicated exclusively to serving customers for these products and services. GNC currently has more than 8,100 retail locations worldwide, including more than 6,100 in the United States alone.

5. Over the past forty years, Opposer has established a portfolio of famous marks that are used by Opposer's affiliates, franchisees, and licensees in the conduct of the GNC business. Among the core marks in this portfolio are the marks GNC LIVE WELL (the "GNC LIVE WELL Mark") and LIVE WELL (the "LIVE WELL Mark") (jointly, the "GNC Marks"). GNC has expended considerable time, money and effort in the development, preparation, advertising, promotion, and sale of goods and services under the GNC Marks throughout the United States and abroad.

6. Today the GNC LIVE WELL Mark is among the most well-known brands in the health and wellness products industry. The GNC LIVE WELL Mark has been in use for more than fifteen years and is now well-known and instantly recognizable to the general consuming public in the United States and around the world. As such, it constitutes an integral part of GNC's business and brand identity and is one of the most visible ways in which consumers encounter GNC's branding in the marketplace.

7. GNC has long featured both of the GNC Marks in GNC ad campaigns and has long used the LIVE WELL Mark as the basis for other marks, taglines and themes in its advertising. One such campaign, for example, featured taglines composed of the LIVE WELL Mark paired together with other phrases featuring the word "live," such as LIVE LEAN LIVE WELL, LIVE AMPED LIVE WELL, LIVE BALANCED LIVE WELL, and LIVE HEALTHY LIVE WELL, among many others. These ads and others emphasizing the LIVE WELL Mark in the course of promoting GNC and the GNC LIVE WELL Mark strengthen the connection consumers make between "live well" and GNC that is represented in the GNC Marks.

8. GNC also provides consumers with a wealth of information regarding health, nutrition and fitness training through a number of outlets, such as Facebook, Twitter, YouTube, Instagram and Pinterest. These social media sites feature the GNC Marks in connection with these services and are an important aspect of GNC's marketing and connection with consumers.

9. As an extension of its online social media presence, GNC also operates the Live Well Blog at www.gnclivewell.com/blog/. Through the Live Well Blog, GNC provides consumers with information on how to Train Well, Eat Well and Live Well. Various contributors associated with GNC provide daily insights and information into each of these

topics, together with tips about GNC products designed to help consumers achieve various training, nutritional and health related goals.

10. To protect the use made of the GNC LIVE WELL Mark in the GNC business, Opposer has successfully registered that mark in countries around the world, including the United States. In fact, the GNC LIVE WELL Mark is the subject of more than 120 registrations in more than 60 countries around the world.

11. In the United States, Opposer exclusively owns incontestable United States Trademark Registration No. 2,187,956 for the mark GNC LIVE WELL for “dietary supplements in tablet, capsule and liquid form” in International Class 5. That mark has been continuously used in commerce throughout the United States since at least as early as October 1997.

12. Opposer also exclusively owns United States Trademark Registration No. 3,438,650 for the GNC LIVE WELL Mark in International Class 35 for “retail stores featuring health foods, dietary supplements, sports nutrition products, fitness products and apparel, cosmetics, body care, diagnostic exercise and aromatherapy products” in International Class 35. That mark has been continuously used in commerce throughout the United States since at least as early as June 1997.

13. By virtue of the long, exclusive and continuous use of the distinctive GNC Marks for nutritional products, including vitamin, mineral, herbal and other specialty supplements and sports nutrition, diet and energy products including sports nutrition drinks, retail store services specializing in such goods, and health, nutrition and fitness training information, such goods and services have become well and favorably known to the general consuming public and the trade under such marks. The GNC Marks represent valuable symbols of Opposer’s goodwill. Moreover, as a result of GNC’s substantial investment in developing consumer goodwill in the

GNC LIVE WELL Mark, the GNC LIVE WELL Mark is famous within the meaning of 15 U.S.C. § 1125(c).

Applicant and Its Mark

14. Applicant applied to register Applicant's Mark in connection with "Dietary and nutritional supplements; Dietary food supplements; Dietary supplements; Dietary supplements for human consumption." Accordingly, applicant purports to use Applicant's Mark in connection with goods that are virtually identical to goods for which Opposer has used the GNC Marks for more than fifteen years.

15. There is no issue as to priority, as Opposer's affiliates, franchisees, and licensees have used the GNC Marks consistently in interstate commerce in connection with their goods and services since long before Applicant applied to register Applicant's Mark. Moreover, the GNC LIVE WELL Mark became famous long before Applicant applied to register Applicant's Mark.

FIRST GROUND FOR OPPOSITION
Likelihood of Confusion

16. Paragraphs 1 through 15 are incorporated and made a part of this Ground for Opposition.

17. The GNC Marks and Applicant's Mark are substantially similar. Applicant's Mark adopts the LIVE WELL Mark (a central component of the GNC LIVE WELL Mark, which consumers associate with GNC), and pairs it with the phrase FEEL WELL, using a similar structure as GNC uses in the LIVE WELL-based family of marks and slogans described in paragraph 7. By adopting the core Live Well component of the GNC LIVE WELL Mark and using a similar structure to GNC's advertising using the LIVE WELL Mark, Applicant's Mark conveys the same overall meaning as the GNC LIVE WELL Mark. Applicant's Mark also

conveys the same overall meaning as the family of LIVE WELL-based marks and slogans described in paragraph 7 that GNC uses to promote and market its goods and services.

18. The goods for which Applicant seeks to register Applicant's Mark are virtually identical to goods and services provided by Opposer, through its affiliates, franchisees, and licensees under the GNC Marks.

19. Because of the similarity between Applicant's Mark and Opposer's GNC Marks, and between the parties' goods and services, consumers and the general public are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's goods and/or services and misled into believing that Applicant's goods and/or services offered under Applicant's Mark are provided by, or are in some other way directly or indirectly associated with Opposer and its affiliates, franchisees, and licensees to the damage of Opposer and its reputation.

20. Opposer has no control over the nature or quality of Applicant's services. In the event of false association, any defects, objections or faults found with Applicant's services could inflict serious injury upon Opposer and its reputation.

SECOND GROUND FOR OPPOSITION

Dilution

21. Paragraphs 1 through 20 are incorporated and made a part of this Ground for Opposition.

22. The GNC LIVE WELL Mark is a distinctive and famous trademark within the meaning of 15 U.S.C. § 1125(c), and became famous before Applicant applied to register Applicant's Mark. The GNC LIVE WELL Mark is advertised and used extensively throughout the United States, and is instantly recognizable by the consuming public. Further, GNC actively polices the use of the GNC LIVE WELL Mark by third parties.

23. Registration of Applicant's Mark is likely to cause dilution of the GNC LIVE WELL Mark by blurring and tarnishment.

24. Registration of Applicant's Mark is likely to dilute by blurring the GNC LIVE WELL Mark by impairing the distinctiveness of the GNC LIVE WELL Mark.

25. Registration of Applicant's Mark is likely to tarnish the GNC LIVE WELL Mark by associating it goods and/or services that do not meet the standards of quality associated with the GNC LIVE WELL Mark.

WHEREFORE, Opposer prays that Application Serial No. 85/879,464 be rejected, that no registration be issued thereon to Applicant, and that this Opposition be sustained.

Dated: December 3, 2013

Respectfully submitted,

GENERAL NUTRITION INVESTMENT
COMPANY

By Counsel



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Electronically Filed via ESTTA: December 3, 2013

CERTIFICATE OF SERVICE

I certify that on December 3, 2013, a copy of this Notice of Opposition was sent by FedEx to Applicant, Advance By Design (ABD) L.L.C., 202 North Avenue, Suite 103, Grand Junction, Colorado 81501-7540.


William N. Federspiel