

ESTTA Tracking number: **ESTTA675889**

Filing date: **06/03/2015**

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	06/03/2015
Address	1011 Centre Road, Suite 322 Wilmington, DE 19805 UNITED STATES
Attorney information	John W. McIlvaine The Webb Law Firm 420 Ft. Duquesne Blvd., Suite 1200 Pittsburgh, PA 15222 UNITED STATES JMcllvaine@webblaw.com, cdickson@webblaw.com, abrooks@webblaw.com, npassaretti@webblaw.com, trademarks@webblaw.com Phone:(412) 471-8815

Applicant Information

Application No	79148217	Publication date	02/03/2015
Opposition Filing Date	06/03/2015	Opposition Period Ends	06/03/2015
International Registration No.	1206427	International Registration Date	12/13/2013
Applicant	RANCE' & C. S.R.L. Via Lombardini Elia, 10 ITALY		


Goods/Services Affected by Opposition


<p>Class 003. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Perfumery and toilet articles for care, beauty and hygiene of body, face, hair, and cosmetics, namely, toilet soaps, bath salts, bath foam, after-bath lotions and creams for body, hair care lotions, hair care creams, eyebrow cosmetics, lipgloss and lip creams; cosmetic preparations for bath, namely, cosmetic soaps and cosmetic bath salts</p>
<p>Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Wholesale and retail store services for the benefit of the others also by mail and by communication media including the Internet, relating to perfumery and toilet articles for care, beauty and hygiene of body, face, hair, and cosmetics, namely, toilet soaps, bath salts, bath foam, after-bath lotions and creams for body, hair care lotions, hair care creams, eyebrow cosmetics, lip gloss and lip creams, cosmetic preparations for bath, namely, cosmetic soaps and cosmetic bath salts; franchising, namely, consultation and assistance in business management, organization and promotion; advertising relating to perfumery, toilet articles and cosmetics; promoting the retail goods of others through communication media</p>

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.	3429065	Application Date	06/07/2006
Registration Date	05/20/2008	Foreign Priority Date	NONE
Word Mark	GNC		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 005. First use: First Use: 1964/01/01 First Use In Commerce: 2002/07/00 Powdered nutritional supplement drink mix containing one or more of the following ingredients, soy, oat oil, creatine, soy oil, dextrose, protein, non-fat milk, milk protein, or whey protein concentrate</p> <p>Class 029. First use: First Use: 1964/01/01 First Use In Commerce: 2002/07/00 Drinks based in yoghurt, non-fat milk, and milk drinks containing fruits, soy, oat oil, creatine, soy oil, dextrose, protein, milk protein, whey protein concentrate, non-fat milk concentrate featuring fruit, vegetable, chocolate, vanilla flavorings, chocolate flavorings, vanilla, fruit and vegetable flavorings; protein based, nutrient dense snack bars, consisting of soy, oat oil, creatine, soy oil, dextrose, non-fat milk, yogurt, milk,protein, whey protein, featuring, chocolate, vanilla, fruit, vegetable flavoredsoy, oat oil, creatine, soy oil, dextrose, whey protein, and non-fat milk</p> <p>Class 032. First use: First Use: 1964/01/01 First Use In Commerce: 2002/07/00 Drinks and smoothies, namely, fruit drinks, vegetable drinks, smoothies, and bottled water; fruit drinks, energy drinks, sport drinks, smoothies, and bottled water, featuring chocolate, vanilla, fruit, vegetable flavor; fruit drinks, energy drinks, sport drinks, smoothies, and bottled water all containing secondary components, namely, soy, oat oil, soy oil,creatine, dextrose, whey protein, non-fat milk, yogurt, milk, milk protein; smoothie concentrates containing secondary components, namely, soy, oat oil, creatine, soy oil, dextrose, whey protein, non-fat milk, milk protein, whey protein concentrate, featuring chocolate, vanilla,fruit, vegetable flavored soy, oat oil,creation, soy oil, dextrose, milk, yogurt, whey protein, and non-fat milk concentrate</p> <p>Class 035. First use: First Use: 1964/01/01 First Use In Commerce: 2002/07/00 Retail store services featuring health foods, dietary supplements, nutritional supplements, herbs, vitamins, sports nutrition products, fitness products and apparel, cosmetics, body care, diagnostic exercise or aromatherapy products</p>		

U.S. Application No.	86645551	Application Date	05/29/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	GNC		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2005/01/03 First Use In Commerce: 2005/01/03 Aloe vera gels and creams for cosmetic purposes, skin creams, cocoa butter for cosmetic purposes, body and hand lotions, skin and body oils		

Attachments	76661223#TMSN.png(bytes) 86645551#TMSN.png(bytes) Notice of Opposition.pdf(28023 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 First Class Mail on this date.

Signature	/John W. McIlvaine/
Name	John W. McIlvaine
Date	06/03/2015

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

GENERAL NUTRITION INVESTMENT
COMPANY,

Opposer

v.

RANCE & C. S.R.L.,

Applicant.

Opposition No. _____

Application Serial No. 79/148,217

Mark: RNC (design)

Published: February 3, 2015

NOTICE OF OPPOSITION

General Nutrition Investment Company (“Opposer”), by and through its undersigned counsel, hereby alleges that it will be damaged by registration of RNC (design) in International Classes 3 and 35 as shown in Application Serial No. 79/148,217 (“the Application”), and hereby opposes the Application under the provisions of 15 U.S.C. § 1063 and common law trademark rights.

As grounds for opposing the Application, Opposer avers as follows:

1. Opposer, General Nutrition Investment Company, is a corporation legally organized under the laws of the State of Arizona, with a principal place of business at 1011 Centre Road, Suite 322, Wilmington, Delaware 19805.
2. 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, energy products and body care products.
3. Either directly or through affiliates, franchisees, or licensees, GNC opens, owns, and/or operates retail nutrition, health, and/or fitness stores.

4. 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; cosmetics, body care products, aroma therapy products, gels, creams, lotions and oils.

5. GNC's retail stores are staffed by employees dedicated exclusively to serving customers for these products and services.

6. GNC currently has more than 8,100 retail locations worldwide, including more than 6,100 in the United States alone.

7. Over the past forty years, Opposer has established a portfolio of famous marks that are used by Opposer's affiliates, franchisees, and licensees including GNC in the conduct of the GNC business. These marks are part of a house brand for GNC which are protected under common law rights and extend to numerous International Classes encompassing the GNC house brand of goods and services ("GNC Marks").

8. GNC has expended considerable time, money and effort in the development, preparation, advertisement, promotion, and sale of goods and services under the GNC Marks throughout the United States and abroad.

9. To protect the use made of the portfolio of marks in the GNC business and the GNC house brand, Opposer has successfully registered many of the GNC Marks in countries around the world, including the United States.

10. Today the GNC[®] Mark is among the most well-known brands in the health and wellness products industry. The GNC[®] Mark has been in use for more than fifty years and is now

well-known and instantly recognizable to the general consuming public in the United States and around the world.

11. 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.

12. Opposer is the owner of U.S. Trademark Registration No. 3,429,065 for the mark GNC[®] in International Class 35 for “retail store services featuring health foods, dietary supplements, nutritional supplements, herbs, vitamins, sports nutrition products, fitness products and apparel, cosmetics, body care, diagnostic exercise or aromatherapy products”. The GNC[®] mark has been in use since 1964 and has been used in commerce since 2002.

13. Opposer is also the owner of the GNC mark in International Class 3 for “aloe vera gels and creams for cosmetic purposes, skin creams, cocoa butter for cosmetic purposes, body and hand lotions, skin and body oils”, and has filed United States Application No. 86/645,551 to further documents its rights in the GNC mark.

14. By virtue of the long, exclusive and continuous use of the GNC[®] mark for retail sales of cosmetics, such products have become well and favorably known to the general consuming public and the trade under the GNC[®] mark.

15. The GNC Marks are valuable symbols of Opposer's goodwill and the continued strength of the GNC Marks is important to the continued success of Opposer's business.

16. Upon information and belief, Rance & C. S.R.L. (“Applicant”) is an Italian limited liability company with an address of Via Lombardini Elia, 10 I-20143 Milano (MI), Italy.

17. Opposer filed a First 90 Day Request for Extension of Time to Oppose for Good Cause on March 5, 2015 against Applicant's RNC design mark International Class 3 and 35 as shown in Application Serial No. 79/148,217.

18. Applicant filed a 66(a) based Application requesting protection under the Madrid Protocol on December 12, 2013 with a priority date of October 24, 2013, seeking registration of RNC (design) as a trademark and service mark for “perfumery and toilet articles for care, beauty and hygiene of body, face, hair, and cosmetics, namely, toilet soaps, bath salts, bath foam, after-bath lotions and creams for body, hair care lotions, hair care creams, eyebrow cosmetics, lip gloss and lip creams; cosmetic preparations for bath, namely, cosmetic soaps and cosmetic bath salts” in International Class 3, and “wholesale and retail store services for the benefit of the others also by mail and by communication media including the Internet, relating to perfumery and toilet articles for care, beauty and hygiene of body, face, hair, and cosmetics, namely, toilet soaps, bath salts, bath foam, after-bath lotions and creams for body, hair care lotions, hair care creams, eyebrow cosmetics, lip gloss and lip creams, cosmetic preparations for bath, namely, cosmetic soaps and cosmetic bath salts; franchising, namely, consultation and assistance in business management, organization and promotion; advertising relating to perfumery, toilet articles and cosmetics; promoting the retail goods of others through communication media” in International Class 35.

19. The Application for RNC (design) was published for opposition on February 3, 2015.

20. If Applicant is permitted to register RNC (design) for goods and services in International Classes 3 and 35, the goodwill associated with Opposer’s registration and the GNC house brand protected under common law rights will be adversely affected.

21. In view of the above, Applicant’s mark is likely to cause confusion, mistake, or deceive purchasers as to source suggesting Applicant is associated with or approved, endorsed, affiliated, authorized, or sponsored by Opposer.

22. Accordingly, Opposer will be damaged if Applicant is permitted to register RNC (design) in International Classes 3 and 35.

WHEREFORE, Opposer respectfully prays that the registration sought by Applicant be refused and that this opposition be sustained.

Respectfully submitted,

Dated: June 3, 2015

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ATTORNEYS FOR OPPOSER
General Nutrition Investment Company

CERTIFICATE OF SERVICE

I certify that a true and correct copy of **NOTICE OF OPPOSITION** was served this 3rd day of June, 2015, upon the following via electronic mail and first class mail:

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