

ESTTA Tracking number: **ESTTA828131**

Filing date: **06/20/2017**

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	Refit Revolution, LLC
Granted to Date of previous extension	06/21/2017
Address	4300 West Waco Drive, Suite B2 #275 Waco, TX 76701 UNITED STATES

Attorney information	Wendy C. Larson Pirkey Barber PLLC 600 Congress Avenue, Suite 2120 Austin, TX 78701 UNITED STATES Email: wlarson@pirkeybarber.com, estafki@pirkeybarber.com, drausa@pirkeybarber.com, tmcentral@pirkeybarber.com Phone: 512-322-5200
----------------------	---

### Applicant Information

Application No	86954664	Publication date	02/21/2017
Opposition Filing Date	06/20/2017	Opposition Period Ends	06/21/2017
Applicant	R3fit Nutrition 4915 Westin Park Drive Conway, AR 72034 UNITED STATES		

### Goods/Services Affected by Opposition


Class 005. First Use: 2015/11/01 First Use In Commerce: 2015/11/01  
All goods and services in the class are opposed, namely: Nutritional supplements

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
--------------------------------------	----------------------------

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	4279308	Application Date	06/06/2012
Registration Date	01/22/2013	Foreign Priority Date	NONE
Word Mark	REFIT		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2012/01/00 First Use In Commerce: 2012/01/00 Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms Class 041. First use: First Use: 2011/10/00 First Use In Commerce: 2011/10/00 Counseling services in the field of physical fitness; Physical fitness conditioning classes; Physical fitness instruction; Physical fitness training services

Attachments	85644446#TMSN.png( bytes ) Notice of Opposition.pdf(80921 bytes )
-------------	--

Signature	/WCL/
Name	Wendy C. Larson
Date	06/20/2017

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

In Re Serial No. 86/954,664

§

Filed: March 28, 2016

§

Mark:

§



§

Published: February 21, 2017

§

Disclaimer: "Nutrition"

§

§

Refit Revolution, LLC,

§

§

Opposer,

§

§

v.

§

§

R3fit Nutrition, LLC,

§

§

§

Applicant.

§

Opposition No. \_\_\_\_\_

**NOTICE OF OPPOSITION**

Refit Revolution, LLC, ("Opposer"), a limited liability company organized and existing under the laws of the State of Texas, having its principal place of business at 4300 West Waco Drive, Suite B2 #275, Waco, Texas 76701, believes that it will be damaged by registration of the mark identified above, and hereby opposes same under the provisions of 15 U.S.C. § 1063. As grounds for opposition, Opposer asserts that:

1. Opposer has for many years used and promoted the mark REFIT and related marks (collectively, the "REFIT Marks") in connection with numerous goods and services, including: digital media with information and instruction in the fields of exercise, health and wellness; apparel; physical fitness training and instruction; counseling services in the field of physical fitness; online retail store services featuring apparel and other products; and exercise and fitness facilities.

2. Opposer adopted and began using the mark REFIT at least as early as October 2011, and use of the mark has been continuous and extensive since that time.

3. Opposer's REFIT Marks are inherently distinctive, serving to identify and indicate the source of Opposer's goods and services to the consuming public, and to distinguish Opposer's goods and services from those of others.

4. In addition to its extensive common law rights in its REFIT Marks, Opposer owns United States Trademark Registration No. 4,279,308 with an application filing date of June 6, 2012, for "athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms" in International Class 25 with use in commerce as early as January 2012; and "counseling services in the field of physical fitness; physical fitness conditioning classes; physical fitness instruction; physical fitness training services" in International Class 41 with use in commerce as early as October 2011. This registration is valid and subsisting.

5. On information and belief, R3fit Nutrition, LLC (the "Applicant") is an Arkansas limited liability company with an address of 4915 Westin Park Drive, Conway, Arkansas 72034. The Applicant filed U.S. Serial No. 86/954,664 (the "Application") pursuant to 15 U.S.C. § 1051(a) on March 28, 2016 for the mark displayed below (the "Applicant's Mark"). The Application covers "Nutritional supplements" in International Class 5.



6. The Applicant claims a first-use date of November 1, 2015.

7. There is no issue as to Opposer's priority. Opposer's first use in commerce of its REFIT Marks precedes Applicant's claimed first use of Applicant's Mark and the filing date of the Application.

8. The Application covers goods related to the goods and services for which Opposer has used and/or registered its REFIT Marks.

9. Applicant's Mark so resembles Opposer's REFIT Marks in appearance and sound as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to believe that the goods offered under Applicant's Mark are sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer or its goods and services. Registration should therefore be refused under 15 U.S.C. § 1052(d).

10. Opposer has not given Applicant permission or approval to use or register Applicant's Mark.

11. Registration of Applicant's Mark would damage Opposer because purchasers are likely to falsely attribute the source or sponsorship of Applicant's goods offered under that mark to Opposer.

12. Registration of Applicant's Mark would damage Opposer because it would confer upon Applicant statutory presumptions to which it is not entitled in view of Opposer's prior use and/or registration of its REFIT Marks.

WHEREFORE, Opposer prays that U.S. Serial No. 86/954,664 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey

Barber PLLC, Account No. 50-3924/REFI008/WCL, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: June 20, 2017

*/Wendy C. Larson/*

---

Wendy C. Larson  
Elizabeth M. Stafki  
PIRKEY BARBER PLLC  
600 Congress Avenue, Suite 2120  
Austin, TX 78701  
(512) 322-5200

ATTORNEYS FOR OPPOSER