

ESTTA Tracking number: **ESTTA1130249**

Filing date: **04/28/2021**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91268264  |
| Party                  | Defendant<br>Brite Bites LLC  |
| Correspondence Address | JEFFREY P. THENNISCH<br>7111 DIXIE HIGHWAY #210<br>CLARKSTON, MI 48346<br>UNITED STATES<br>Primary Email: jeff@musicrightslaw.com<br>8106105640 |
| Submission             | Motion to Dismiss - Rule 12(b)  |
| Filer's Name           | Jeffrey Thennisch   |
| Filer's email          | jeff@musicrightslaw.com   |
| Signature              | /Jeffrey P. Thennisch/  |
| Date                   | 04/28/2021  |
| Attachments            | 04.28.2021 BRITE BITES Motion To Dismiss.pdf(217354 bytes )<br>Exhibit A BRITE BITES MOTION.pdf(99005 bytes )                                   |

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

|                    |   |                         |
|--------------------|---|-------------------------|
| BRIGHT FOODS, LLC, | ) | Mark: BRITE BITES       |
|                    | ) |                         |
| OPPOSER            | ) | OPPOSITION NO. 91268264 |
|                    | ) |                         |
| v.                 | ) | Serial No. 88/045,507   |
|                    | ) |                         |
| BRITE BITES, LLC,  | ) |                         |
|                    | ) |                         |
| APPLICANT          | ) |                         |
| <hr/>              |   |                         |

**APPLICANT’S COMBINED MOTION AND BRIEF TO DISMISS THE NOTICE  
OF OPPOSITION UNDER TBMP 503 AND FOR SUSPENSION OF THE  
PROCEEDING UNDER 27 CFR §2.127(d)**

In accordance with the Board’s Order dated March 19, 2021, Fed.R.Civ.P. 12(b)(6), TBMP 503, and 37 C.F.R. §2.127, Brite Bites, LLC (hereinafter the “Applicant”), through its undersigned counsel, hereby files its first responsive pleading in response to the Notice of Opposition (the “Opposition”) filed by Bright Foods, LLC (hereinafter the “Opposer”) in the form of a motion to dismiss the Opposition for failure to state a claim upon which relief can be granted and for lack of standing. This filing embodies a brief within the meaning of 37 C.F.R. §2.127(a) and does not rely upon any matters outside of the pleading(s) for purposes of TBMP 503.

As set forth herein, Applicant seeks dismissal of Opposer’s claims under Section 2(d) of the Act for the reason that the Opposer’s asserted marks defined in D/E 1, ¶5 “referred to as the “BRIGHT Registrations” and/or the “BRIGHT Marks” and/or “Opposer’s Marks” were assigned, issued, and now asserted in this inter partes

proceeding to Bright Foods, LLC as a limited liability company existing under the laws of the State of California when, in fact, no such limited liability company (i.e. Bright Foods, LLC) actually exists as a domestic and lawful limited liability company in the State of California.

**I. Failure To State A Claim Upon Which Relief Can Be Granted**

For purposes of this TBMP 503 motion only, and without conceding or waiving any later position, affirmative defense, and/or counterclaim(s) that Applicant may later assert in this proceeding based upon its further investigation and/or future discovery conducted by the Applicant, it is submitted that the present Opposer, as pled and set forth in the Opposition fails to state a claim upon which relief can be granted. Specifically, Opposer asserts rights in U.S. Reg. No. 5,822,173 for the BRIGHT (stylized design mark) issued on July 30, 2019 (hereinafter “the ‘173 registration) and U.S. Reg. No. 5,874,568 for the BRIGHT (word mark) issued on October 1, 2019 (hereinafter “the ‘568 registration). It is noteworthy that the ‘568 registration was originally filed as BRIGHT BAR and then somehow amended to issue as BRIGHT without a formal discussion of material alteration.

On May 29, 2017, both of Opposer’s asserted ‘173 and ‘568 registrations (while they were each pending applications) were purportedly assigned from Opposer’s predecessor-in-interest, Bright Bar Co., a California corporation, to the putative Opposer, identified as Bright Foods, LLC, a California limited liability company. See Exhibit A hereto consisting of the May 29, 2017 Assignment recorded at Reel/Frame 006083/0806 before the Assignment Branch. Note that the respective Statement(s) Of Use and

resulting issuance of the asserted '173 and '568 registrations also exist in the name of Bright Foods, LLC, a California limited liability company.

However, no such domestically formed limited liability company actually exists in the State of California. More simply stated, the named Opposer, the putative May 29, 2017 assignee, and the registrant of each of the '173 and '568 registrations asserted against the Applicant is not an existing or valid legal entity and thus is not capable of receiving relief under Section 2(d). Although Applicant recognizes that Opposer may attempt to file and record some form of Confirmatory Assignment to correct this defect, it is equally undeniable that: (i) this defect exists; (ii) it is wholly within the control of the putative Opposer; and (iii) regardless of the outcome of this proceeding, the proper parties must always be ascertained and properly pled to ensure a valid result that is not subject to attack under Fed.R.Civ.P. 60(b).

## **II. Opposer Lacks Standing To Bring The Notice Of Opposition**

It is well-settled that the inquiry into a litigant's standing to bring suit involves an examination of both Constitutional and prudential restrictions. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). It has been stated that the standing requirements exist in tandem with "the immutable requirements of Article III," *ACORN v. Fowler*, 178 F.3d 350, 262 (5<sup>th</sup>.Cir. 1999), as an integral part of "judicial self-government," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The goal of this self-governance is to determine whether the plaintiff "is the proper party to invoke resolution of the dispute and the exercise of the court's remedial powers." *Bender v. Williamsport Area School District*,

475 U.S. 534, 546 n.8 (1986). Indeed, the United States Supreme Court has consistently held that standing is “the threshold question in every federal case.” *Warth* at 498.

Here, the May 29, 2017 Assignment document at Exhibit A and the continued prosecution and registration of both of the asserted ‘173 and ‘568 registrations are clearly in the name of a legal entity that does not formally exist – albeit in a technical sense – but in this instance a technical sense also has legal effect. Accordingly, the current Opposer, as named and pled, simply lacks standing to bring this proceeding. As such, dismissal of the Notice of Opposition is warranted for lack of standing.

WHEREFORE, Applicant, BRITE BITES, respectfully moves the Board to dismiss the the Notice Of Opposition under TBMP 503 with prejudice.

In view of the fact that this is a dispositive motion, Applicant further requests that the proceeding be suspended within the meaning of 37 CFR 2.127(d).

Respectfully submitted,

Attorneys for Applicant

Dated: April 28, 2021

By: Jeffrey P. Thennisch  
Jeffrey P. Thennisch

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

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| OPPOSER            | ) | OPPOSITION NO. 91268264 |
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| v.                 | ) | Serial No. 88/045,507   |
|                    | ) |                         |
| BRITE BITES, LLC,  | ) |                         |
|                    | ) |                         |
| APPLICANT          | ) |                         |
| _____              | ) |                         |

**Certificate Of Mailing Under TBMP 110**

I hereby certify that a true and correct copy of APPLICANT’S COMBINED MOTION AND BRIEF TO DISMISS THE NOTICE OF OPPOSITION UNDER TBMP 503 AND FOR SUSPENSION OF THE PROCEEDING UNDER 27 CFR §2.127(d) was filed electronically with the TTAB via [www.uspto.gov](http://www.uspto.gov) on April 28, 2021.

Respectfully submitted,

Attorney for Applicant

Dated: April 28, 2021

By:           /Jeffrey P. Thennisch            
Jeffrey P. Thennisch

Jeffrey P. Thennisch  
7111 Dixie Highway #210  
Clarkston, MI 48346  
(810) 610-5640  
[jeff@musicrightslaw.com](mailto:jeff@musicrightslaw.com)

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|                    | ) |                         |
| BRITE BITES, LLC,  | ) |                         |
|                    | ) |                         |
| APPLICANT          | ) |                         |
|                    | ) |                         |

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**Certificate Of Service Under TBMP 113**

I hereby certify that a true and correct copy of APPLICANT’S COMBINED MOTION AND BRIEF TO DISMISS THE NOTICE OF OPPOSITION UNDER TBMP 503 AND FOR SUSPENSION OF THE PROCEEDING UNDER 27 CFR §2.127(d) is being deposited with the United States Postal Service as first class mail in an envelope addressed to Opposer’s counsel of record in this proceeding before the U.S. Patent & Trademark Office:

Elizabeth Oliner, Esq.  
Greenfare Law  
345 Grove Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94102

on April 28, 2021.

Respectfully submitted,

Attorney for Applicant

Dated: April 28, 2021

By:           /Jeffrey P. Thennisch            
Jeffrey P. Thennisch

Jeffrey P. Thennisch  
7111 Dixie Highway #210  
Clarkston, MI 48346  
(810) 610-5640  
[jeff@musicrightslaw.com](mailto:jeff@musicrightslaw.com)

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM431180

|   |  |                        |                         |
|---|--|------------------------|-------------------------|
| <b>SUBMISSION TYPE:</b>   | NEW ASSIGNMENT                                     |                        |                         |
| <b>NATURE OF CONVEYANCE:</b>  | ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL |                        |                         |
| <b>CONVEYING PARTY DATA</b>   |  |                        |                         |
| <b>Name</b>   | <b>Formerly</b>                                    | <b>Execution Date</b>  | <b>Entity Type</b>      |
| Bright Bar Co.  |  | 05/29/2017             | Corporation: CALIFORNIA |
| <b>RECEIVING PARTY DATA</b>   |  |                        |                         |
| <b>Name:</b>  | Bright Foods, LLC                                  |                        |                         |
| <b>Street Address:</b>  | 2245 Bronson Hill Drive                            |                        |                         |
| <b>City:</b>  | Los Angeles  |                        |                         |
| <b>State/Country:</b>   | CALIFORNIA   |                        |                         |
| <b>Postal Code:</b>   | 90068  |                        |                         |
| <b>Entity Type:</b>   | Limited Liability Company: CALIFORNIA              |                        |                         |
| <b>PROPERTY NUMBERS Total: 3</b>  |  |                        |                         |
| <b>Property Type</b>  | <b>Number</b>                                      | <b>Word Mark</b>       |                         |
| <b>Serial Number:</b>   | 87207029   | BRIGHT                 |                         |
| <b>Serial Number:</b>   | 86897514   | BRIGHT BAR             |                         |
| <b>Serial Number:</b>   | 87207036   | BRIGHT FROM THE SOURCE |                         |
| <b>CORRESPONDENCE DATA</b>  |  |                        |                         |
| <b>Fax Number:</b>  | 4155990210   |                        |                         |
| <i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i> |  |                        |                         |
| <b>Phone:</b>   | 415-599-0210                                       |                        |                         |
| <b>Email:</b>   | tadmin@braunhagey.com, shadow@braunhagey.com       |                        |                         |
| <b>Correspondent Name:</b>  | J. Noah Hagey                                      |                        |                         |
| <b>Address Line 1:</b>  | 220 Sansome Street, 2nd Floor                      |                        |                         |
| <b>Address Line 4:</b>  | San Francisco, CALIFORNIA 94104-2711               |                        |                         |
| <b>ATTORNEY DOCKET NUMBER:</b>  | Bright Bar to Bright Food                          |                        |                         |
| <b>NAME OF SUBMITTER:</b>   | J. Noah Hagey                                      |                        |                         |
| <b>SIGNATURE:</b>   | /jnhagey/  |                        |                         |
| <b>DATE SIGNED:</b>   | 06/14/2017   |                        |                         |
| <b>Total Attachments: 2</b>   |  |                        |                         |
| source=Executed Assignment (Bright Bar to Bright Foods)#page1.tif   |  |                        |                         |
| source=Exh to Executed Assignment (Bright Bar to Bright Foods)#page1.tif  |  |                        |                         |

OP \$90.00 87207029



## ASSIGNMENT OF TRADEMARK

This Assignment of Trademark (the "Assignment") dated May 29, 2017 (the "Effective Date"), is made by and between **Bright Bar Co.**, a California corporation with an address of 2245 Bronson Hill Drive, Los Angeles, California 90068 ("Assignor"), and **Bright Foods, LLC**, a Delaware limited liability company with an address of 2245 Bronson Hill Drive, Los Angeles, California 90068 ("Assignee"), collectively referred to herein as the "Parties".

### Recitals

Assignor wishes to assign all of its rights, title, and interest in and to the marks listed in Exhibit A to this Assignments (the "Marks"), together with the goodwill of the business associated therewith, and symbolized by the Marks, to Assignee in accordance with the provisions of this Assignment, and Assignee wishes to accept such assignment.

### Agreement

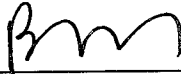
In consideration of the foregoing recitals, the mutual agreements, provisions and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

- (a) Assignor hereby transfers, conveys and assigns the Marks to Assignee. Assignor further transfers, conveys and assigns to Assignee, without any additional consideration, all goodwill associated with the Marks.
- (b) Assignor further hereby agrees that Assignee shall have the right to record this instrument of assignment in the United States Patent and Trademark Office.

In Witness Whereof, the Parties have caused this Assignment to be executed by their duly authorized representatives.

**Assignee:**  
**Bright Bar Co.**

**Assignee:**  
**Bright Foods, LLC**

By   
Name: Brenden Schaefer  
Title: President & CEO, Treasurer and Secretary

By: Bright Bar Co., a California benefit corporation and Managing Member of Bright Foods, LLC

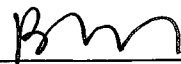
By   
Name: Brenden Schaefer  
Title: President & CEO, Treasurer and Secretary

EXHIBIT A

List of Marks and Registrations Transferred

| Mark                          | Country       | Appl. No. | Reg. No. | Status  |
|-------------------------------|---------------|-----------|----------|---------|
| <i><b>bright.</b></i>         | United States | 87207029  | ---      | Pending |
| <b>BRIGHT BAR</b>             | United States | 86897514  | ---      | Pending |
| <b>BRIGHT FROM THE SOURCE</b> | United States | 87207036  | ---      | Pending |