

ESTTA Tracking number: **ESTTA1271694**

Filing date: **03/13/2023**

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	GNC Holdings, LLC
Granted to date of previous extension	03/12/2023
Address	1209 ORANGE STREET WILMINGTON, DE 19801 UNITED STATES
Attorney information	JOHN W. MCILVAINE THE WEBB LAW FIRM 420 FT. DUQUESNE BLVD., SUITE 1200 ONE GATEWAY CENTER PITTSBURGH, PA 15222 UNITED STATES Primary email: trademarks@webblaw.com Secondary email(s): jmcilvaine@webblaw.com, gvadala@webblaw.com, ab-rooks@webblaw.com 412-471-8815
Docket no.	7618-2206931

**Applicant information**

Application no.	90519973	Publication date	09/13/2022
Opposition filing date	03/13/2023	Opposition period ends	03/12/2023
Applicant	All About It, LLC 46699 VAN DYKE AVE. SHELBY TOWNSHIP, MI 48317 UNITED STATES		

**Goods/services affected by opposition**

Class 035. First Use: None First Use In Commerce: None  
Opposed goods and services in the class: dietary supplements; dietary supplements; dietary supplements; dietary supplements


**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.	6982888	Application date	04/08/2021
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Register	Principal		
Registration date	02/21/2023	Foreign priority date	NONE
Word mark	LIT		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Dec 31, 2016 First Use In Commerce: Dec 31, 2016 Dietary and nutritional supplements		

U.S. registration no.	6982889	Application date	04/08/2021
Register	Principal		
Registration date	02/21/2023	Foreign priority date	NONE
Word mark	LIT AF		
Design mark			
Description of mark	NONE		
Goods/services	Class 005. First use: First Use: Jul 1, 2019 First Use In Commerce: Jul 1, 2019 Dietary and nutritional supplements		

Attachments	90631852#TMSN.png( bytes ) Notice of Opposition.pdf(135690 bytes ) Exhibit A.pdf(58330 bytes ) Exhibit B.pdf(63744 bytes )
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Signature	/Anthony W. Brooks/
Name	Anthony W. Brooks
Date	03/13/2023

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

GNC HOLDINGS, LLC,	)	Opposition No. _____
	)	
Opposer,	)	Application Serial No. 90/519,973
	)	
v.	)	Trademark: LIT-BRAND
	)	
ALL ABOUT IT, LLC,	)	Published: September 13, 2022
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

GNC Holdings, LLC (“Opposer” or “GNC”), by and through its undersigned counsel, hereby alleges that it will be damaged by registration of LIT-BRAND in International Class 35 shown in Application Serial No. 90/519,973 (the “Application”), and hereby opposes the Application under the provisions of 15 U.S.C. § 1063.

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

1. Opposer is a limited liability company legally organized under the laws of the State of Delaware, and having a principal place of business at 1209 Orange Street, Wilmington, Delaware 19801.
2. Opposer is the largest global specialty retailer of nutritional products, including vitamin, mineral, herbal, and other specialty supplements and sports nutrition, diet, and energy products.
3. 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](http://www.gnc.com), GNC sells, among other things, vitamin and mineral supplements, sports nutrition products including sports nutrition drinks, herbs, health foods, cosmetics, body care products, aroma therapy products, gels, creams, lotions, and

miscellaneous health care products, diet products, sports accessories, fitness products, and specialty workout apparel.

4. GNC's retail stores are staffed by employees dedicated exclusively to serving customers for these products and services. GNC currently has more than 4,000 retail locations worldwide, including over 2,000 in the United States alone.

5. Opposer is the owner of U.S. Trademark Registration Nos. 6,982,888 for the mark LIT in International Class 05 for "Dietary and nutritional supplements" and 6,982,889 for the mark LIT AF in International Class 05 for "Dietary and nutritional supplements" (the "LIT Marks"). Copies of Opposer's registrations for LIT and LIT AF are attached as Exhibits A and B.

6. Opposer's first use in commerce in the United States of LIT is at least as early as December 31, 2016, and the first use in commerce of LIT AF is at least as early as July 1, 2019.

7. Because of Opposer's extensive use of the LIT Marks with its goods, Opposer has gained substantial goodwill in the field of specialty nutritional products, and such goodwill is an extremely valuable asset of Opposer.

8. Purchasers of such goods have come to associate the LIT Marks with Opposer.

9. The continued strength of the LIT Marks is important to the continued success of Opposer's business.

10. Upon information and belief, All About It, LLC ("Applicant") is a limited liability company with an address of 46699 Van Dyke Ave., Shelby Township, Michigan 48317.

11. Applicant filed an intent to use Application on February 9, 2021, seeking registration of LIT-BRAND as a trademark for "On-line retail store services featuring electronic cigarettes, oral vaporizers for smokers, novelty items, dietary supplements and nitrous oxide for industrial use; On-line wholesale store services featuring electronic cigarettes, oral vaporizers for

smokers, novelty items, dietary supplements and nitrous oxide for industrial use; Retail store services featuring electronic cigarettes, oral vaporizers for smokers, novelty items, dietary supplements and nitrous oxide for industrial use; Wholesale store services featuring electronic cigarettes, oral vaporizers for smokers, novelty items, dietary supplements and nitrous oxide for industrial use” in International Class 35.

12. The Application for LIT-BRAND was published for opposition on September 13, 2022.

13. Applicant’s mark is confusingly similar in sound and appearance to Opposer’s marks.

14. Applicant’s goods and services are identical or related to Opposer’s goods and services and are likely to be provided, offered for sale and/or sold in the same channels of trade as Opposer’s goods and services.

15. For example, Applicant’s services include “On-line retail store services featuring . . . dietary supplements . . .”; “On-line wholesale store services featuring . . . dietary supplements . . .”; “Retail store services featuring . . . dietary supplements . . .”; and “Wholesale store services featuring . . . dietary supplements . . .” Applicant’s use of LIT-BRAND on or in connection with its goods and services in International Class 35 is likely to cause confusion or to cause mistake, or will deceive the public into believing that said goods and services emanate from Opposer and/or are licensed by Opposer and/or are approved by Opposer.

16. If Applicant is permitted to register LIT-BRAND for goods in International Class 35, the goodwill associated with Opposer’s registrations will be adversely affected.

17. Accordingly, Opposer will be damaged if Applicant is permitted to register LIT-BRAND in International Class 35.

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

Respectfully submitted,

**THE WEBB LAW FIRM**

Dated: March 13, 2023

s/ Anthony W. Brooks  
John W. McIlvaine (Reg. No. 34,219)  
Anthony W. Brooks (Reg. No. 66,476)

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*Attorneys for Opposer, GNC Holdings, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of March, 2023, I electronically filed the foregoing **NOTICE OF OPPOSITION** with the TTAB using the ESTTA system. A true and correct of same was also served, via email, upon the following:

Arnold S. Weintraub  
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(Applicant)

**THE WEBB LAW FIRM**

*s/ Anthony W. Brooks*  
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*Anthony W. Brooks*

# **EXHIBIT A**



# United States of America

United States Patent and Trademark Office

# LIT

**Reg. No. 6,982,888**

**Registered Feb. 21, 2023**

**Int. Cl.: 5**

**Trademark**

**Principal Register**

GNC Holdings, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
Suite 501  
75 Hopper Place  
Pittsburgh, PENNSYLVANIA 15222

CLASS 5: Dietary and nutritional supplements

FIRST USE 12-31-2016; IN COMMERCE 12-31-2016

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 90-631,816, FILED 04-08-2021



*Katherine Kelly Vidal*

Director of the United States  
Patent and Trademark Office



# **EXHIBIT B**

# United States of America

United States Patent and Trademark Office

# LIT AF

**Reg. No. 6,982,889**

**Registered Feb. 21, 2023**

**Int. Cl.: 5**

**Trademark**

**Principal Register**

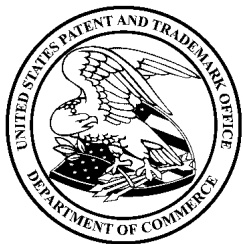
GNC Holdings, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
Suite 501  
75 Hopper Place  
Pittsburgh, PENNSYLVANIA 15222

CLASS 5: Dietary and nutritional supplements

FIRST USE 7-1-2019; IN COMMERCE 7-1-2019

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 90-631,852, FILED 04-08-2021



*Katherine Kelly Vidal*

Director of the United States  
Patent and Trademark Office

