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Filing date: **08/07/2017**

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	Refit Revolution, LLC		
Entity	limited liability company	Citizenship	Texas
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, drausa@pirkeybarber.com, tmcentral@pirkeybarber.com Phone: 512-322-5200
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Registration Subject to Cancellation

Registration No.	4912790	Registration date	03/08/2016
Registrant	Noots Nutrition, LLC 9482 Hito Ct San Diego, CA 92129 UNITED STATES Email: jimmy@ruckpack.com		


Goods/Services Subject to Cancellation

<p>Class 005. First Use: 2014/05/10 First Use In Commerce: 2015/03/01 All goods and services in the class are subject to cancellation, namely: Dietary beverage supplements for human consumption for promoting muscle and joint recovery after exertion; Nutraceuticals for use as a dietary supplement; Health food supplements; Dietary and nutritional supplements; Vitamin and mineral supplements; Nutritional supplements in the form of liquids and powder; Dietary supplements for focus, endurance, energy, and treating fatigue; Dietary and nutritional supplements for endurance sports; Amino acids for nutritional purposes; Nutritional supplements consisting primarily of electrolytes; Nutritional supplements containing choline</p>
<p>Class 032. First Use: 2014/05/10 First Use In Commerce: 2015/03/01 All goods and services in the class are subject to cancellation, namely: Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Soft drinks, namely, carbonated soft drinks; Sports drinks; Sports drinks containing electrolytes; Sports drinks enhanced with vitamins, minerals, nutrients, amino acids, and nootropics; Sports drinks, namely, performance drinks; Sports drinks, namely, recovery drinks; Isotonic beverages</p>

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

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	<p>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</p> <p>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</p>		

Attachments	85644446#TMSN.png(bytes) Petition for Cancellation.pdf(15823 bytes)
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Signature	/Wendy C. Larson/
Name	Wendy C. Larson
Date	08/07/2017

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

In Re Reg. No. 4,912,790	§	
Mark: REFIT	§	
Registered: March 8, 2016	§	
	§	
Refit Revolution, LLC,	§	
	§	Cancellation No. _____
Petitioner,	§	
	§	
v.	§	
	§	
Noots Nutrition, LLC,	§	
	§	
Registrant.	§	

PETITION FOR CANCELLATION

Refit Revolution, LLC, (“Petitioner”), a limited liability company organized 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 is or will be damaged by Registration No. 4,912,790 for the mark REFIT and Design (the “Registration”) and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064. As grounds for cancellation, Petitioner asserts that:

1. Petitioner owns the name and mark REFIT and related marks (collectively, Petitioner’s “REFIT Marks”), and uses it in connection with numerous goods and services, including: digital media with information and instruction in the fields of exercise, health and wellness; apparel; counseling services in the field of physical fitness; online retail store services featuring apparel and other products; and exercise and fitness facilities.

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

4. In addition to its extensive common law rights in its REFIT Marks, Petitioner is the owner of U.S. 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 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 at least as early as January 2012 and October 2011, respectively, for the covered classes. The registration is valid and subsisting.

5. On information and belief, Noots Nutrition, LLC, (the "Registrant") is a California limited liability company with an address of 9482 Hito Court, San Diego, California 92129. Registrant is the listed owner of Registration No. 4,912,790 for the mark REFIT and Design (the "Registrant's Mark") for the following goods in International Class 5:

"Dietary beverage supplements for human consumption for promoting muscle and joint recovery after exertion; Nutraceuticals for use as a dietary supplement; Health food supplements; Dietary and nutritional supplements; Vitamin and mineral supplements; Nutritional supplements in the form of liquids and powder; Dietary supplements for focus, endurance, energy, and treating fatigue; Dietary and nutritional supplements for endurance sports; Amino acids for nutritional purposes; Nutritional supplements consisting primarily of electrolytes; Nutritional supplements containing choline."

Registrant's Mark also covers the following goods in International Class 32:

“Powders for making soft drinks; Powders used in the preparation of isotonic sports drinks and sports beverages; Concentrates, syrups or powders used in the preparation of sports and energy drinks; Soft drinks, namely, carbonated soft drinks; Sports drinks; Sports drinks containing electrolytes; Sports drinks enhanced with vitamins, minerals, nutrients, amino acids, and nootropics; Sports drinks, namely, performance drinks; Sports drinks, namely, recovery drinks; Isotonic beverages.”

The associated application was filed on June 16, 2015, and registered on March 8, 2016.

6. The Registrant claims a date of first use in commerce on March 1, 2015.
7. There is no issue as to Petitioner’s priority. Petitioner’s first use in commerce of its REFIT Marks and the filing date of its registration precede Registrant’s claimed first use of Registrant’s Mark and the filing date of the Registration.
8. Registrant’s Mark is identical or confusingly similar to Petitioner’s REFIT Marks.
9. Registrant’s goods are related to the goods and services for which Petitioner has used and/or registered Petitioner’s REFIT Marks.
10. Registrant’s Mark so resembles Petitioner’s REFIT Marks in appearance and sound as to be likely, when used in connection with Registrant’s goods, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the goods offered under Registrant’s Mark are sponsored, endorsed, or approved by Petitioner, or are in some way affiliated, connected, or associated with Petitioner or its goods and services. The Registration therefore should be cancelled under 15 U.S.C. §§ 1052(d) and 1064(1).
11. Petitioner has not given Registrant permission or approval to use or register Registrant’s Mark.
12. Registration of Registrant’s Mark on the Principal Register is inconsistent with

Petitioner's rights and is damaging to Petitioner because purchasers are likely to falsely attribute the source or sponsorship of Registrant's goods offered under that mark to Petitioner.

WHEREFORE, Petitioner prays that U.S. Reg. No. 4,912,790 be cancelled.

This Petition for Cancellation is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(16). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/REFI014/WCL, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: August 7, 2017

/Wendy C. Larson/

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ATTORNEYS FOR PETITIONER