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Attorneys for Plaintiff Access Global Sciences, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

ACCESS GLOBAL SCIENCES, LLC, a
Utah Limited Liability Company,

Plaintiff,

vs.

NUTRIANA LLC, a Wyoming Limited
Liability Company; ONE FAMILY LLC, a
Michigan Limited Liability Company; and
JONATHAN JESPER, an individual,

Defendants.

Case No: 2:23-cv-634

COMPLAINT FOR TRADEMARK
INFRINGEMENT, FALSE
ADVERTISING, UNFAIR
COMPETITION, BREACH OF
CONTRACT, BREACH OF THE
IMPLIED COVENANT OF GOOD
FAITH AND FAIR DEALING, AND
PATENT INFRINGEMENT

Judge Dale A. Kimball

DEMAND FOR JURY TRIAL

Plaintiff Access Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the following against Defendants Nutriana LLC (“Nutriana”), One Family LLC (“OFL”), and Jonathan Jesper (“Jesper” and collectively, the “Defendants”).

NATURE OF THE CLAIMS

1. This is an action for patent infringement under 35 U.S.C. §§ 1, *et seq.*, trademark infringement, federal false advertising and unfair competition under Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c), breach of contract, violation of the covenant of good faith and fair dealing, and false advertising and unfair competition under Utah State statutory and common laws.

2. Plaintiff is the owner of U.S. Pat. Nos. 11,241,403 (the “’403 Patent”) and 11,020,362 (the “’362 Patent”) (collectively, the “Asserted Patents”). *See* Exhibits A and B. The Asserted Patents include claims for unique formulations of the health supplement Beta-Hydroxybutyrate (“BHB”).

3. Plaintiff is also the owner of the registered trademark, goBHB® (Reg. No. 5261845). The goBHB® trademark is applied to products sold by the Plaintiff and its licensees that contain Plaintiff’s goBHB®-branded BHB ingredients.

4. Defendants sell a product called Nutriana Keto BHB Advanced Formula (“Nutriana Keto BHB”) on their own website and on Amazon.com:



<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

(Exhibit C)



<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>
(Exhibit D)


5. On their website and on Amazon.com, Defendants’ advertising and product information state that Nutriana Keto BHB contains (1) “Magnesium Beta-Hydroxybutyrate (as goBHB®),” (2) “Calcium Beta-Hydroxybutyrate (as goBHB®),” and (3) “Sodium Beta-Hydroxybutyrate (as goBHB®).” This formulation infringes at least Claim 1 of the ’403 Patent and Claim 1 of the ’362 Patent:

Supplement Facts		
Serving Size: 2 Capsules Servings Per Container: 30		
	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

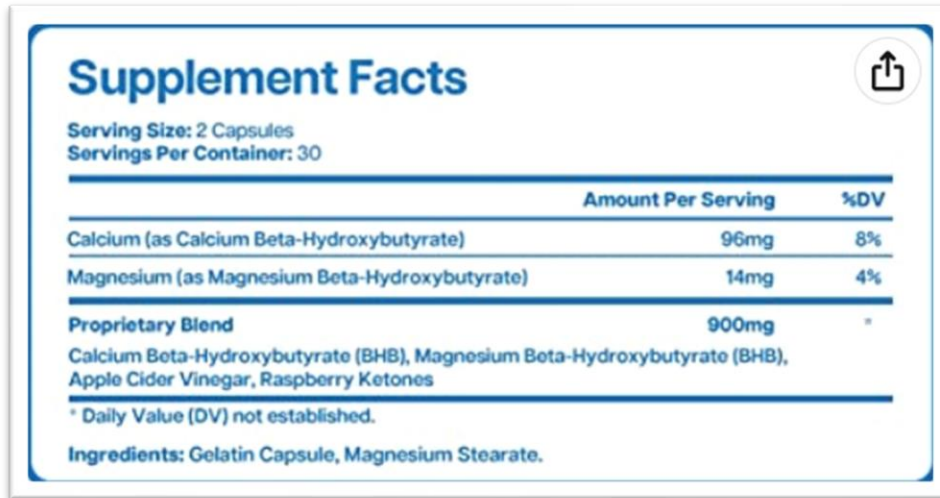
Question: What are all the listed ingredients of the pill?

Answer: Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.

 Nutriana Seller · April 9, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

6. On Amazon.com, Defendants separately advertise that Nutriana Keto BHB contains only (1) “Calcium Beta-Hydroxybutyrate (BHB)” and (2) “Magnesium Beta-Hydroxybutyrate (BHB),” but not Sodium Beta-Hydroxybutyrate. This formulation infringes at least Claim 1 of the ’403 Patent:




	Amount Per Serving	%DV
Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%
Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%
Proprietary Blend	900mg	*
Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones		
* Daily Value (DV) not established.		
Ingredients: Gelatin Capsule, Magnesium Stearate.		

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

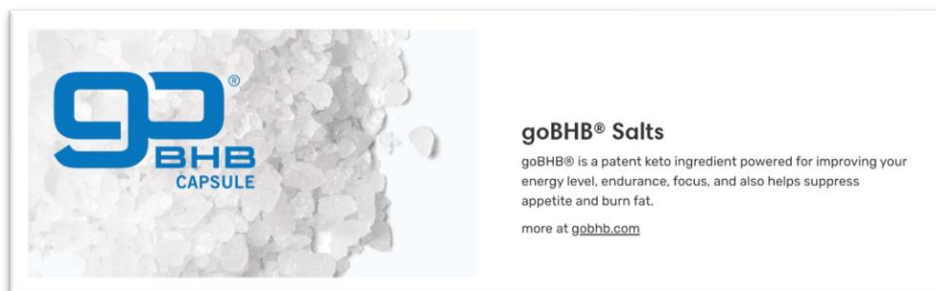
7. In addition to infringing the Asserted Patents by making, using, selling, offering for sale, and/or importing Nutriana Keto BHB, Defendants falsely advertise that Nutriana Keto BHB contains the “maximum strength” of a “proprietary blend” of goBHB® and uses the goBHB® trademark in Nutriana advertising, without authorization from Plaintiff:



<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

	 Nutriana	others
Patented goBHB® Salts	✓	✗
Informed Choice Certified	✓	✗
GRAS Certified	✓	✗
Made in the USA	✓	✗
No additives or fillers	✓	✗
3rd party tested	✓	✗

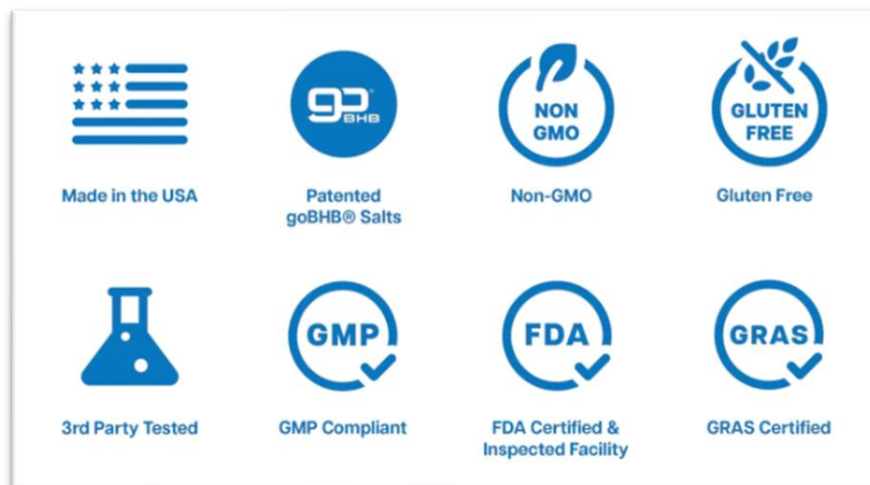
<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>



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Serving Size: 2 Capsules Servings Per Container: 30		
	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®)		
Calcium Beta-Hydroxybutyrate (as goBHB®)		
Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

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Answer: Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.



Nutriana Seller · April 9, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

8. Defendants have also improperly manipulated the Amazon Standard Identification Number (“ASIN”) associated with prior products—*i.e.*, *not the current formulation of Nutriana Keto BHB*—to make it appear that reviews for such other products on Amazon.com were actually associated with Nutriana Keto BHB.

9. Defendants also engaged in an extensive false advertising claim, including false health claims, false reviews, and false associations with third parties.

10. The parties previously sought to resolve their differences. Last year, the parties entered into a Settlement Agreement and Release (the “Agreement”) after Plaintiff learned that Defendants were infringing Plaintiff’s patented BHB formula and using Plaintiff’s goBHB® trademark. *See* Exhibit E. As part of the Agreement, Defendants—*as affiliates of one another*—expressly promised “that after June 30, 2022, [Defendants] will forever stop the sale of all goBHB-branded products.” *Id.* ¶ 2.3. Defendants, however, continue to sell goBHB®-branded products as of the date of this Complaint in violation of the Agreement.

11. Also as part of this Agreement, Defendants expressly promised to “not sell any BHB-related product that infringes any patent owned by AGS or its Affiliates using the ASIN identified in Exhibit A [to the Agreement]”—the same ASIN that Defendants are now using to sell BHB products that infringe the Asserted Patents. *See id.* ¶ 2.3.

12. When Plaintiff learned that the Defendants were breaching the Agreement, Plaintiff notified the Defendants of their breach on July 11, 2022, on August 2, 2022, and on August 31, 2022. Thereafter, the Defendants continued to breach the Agreement.

13. In addition to breaching the Agreement, the Defendants attempted to conceal their breach by claiming that their acts of infringement were committed by an affiliated entity.

14. The Agreement was signed by Defendant Jonathan Jesper on behalf of his company—Defendant One Family LLC, a Nevada corporation—and its Affiliates.

15. Since signing the Agreement, however, Defendant Jonathan Jesper started selling the current version of Nutriana Keto BHB under a separate, affiliated entity in Wyoming—Nutriana LLC.

16. On information and belief, Defendant Jonathan Jesper started selling Nutriana Keto BHB through Defendant Nutriana LLC to facilitate and/or conceal the Defendants' breach of the Agreement that was signed on behalf of Defendant One Family LLC.

17. Nutriana LLC and Jesper are Affiliates of One Family LLC as that term is defined in the Agreement.

18. Plaintiff is a direct competitor of Defendants in the dietary supplements market and specifically for BHB and ketone supplements.

19. Plaintiff and Defendants market and sell their products online at Amazon.com and other online retailers.

20. Plaintiff has suffered harm from Defendants' infringement of the Asserted Patents in the form of lost profits.

21. Plaintiff has suffered harm from Defendants' unauthorized use of the goBHB®

trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

22. Plaintiff has suffered harm from Defendants falsely advertising that Nutriana Keto BHB contains Plaintiff's patented BHB formula in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

23. Plaintiff has suffered harm from Defendants falsely ascribing Amazon reviews of prior products to Nutriana Keto BHB in the form of lost profits and diverted sales and market share.

24. Plaintiff has suffered harm from Defendants' other false advertising as described herein because these misrepresentations give Defendants an unfair competitive advantage and weaken the public perception and goodwill of Plaintiff's goBHB® mark and its legitimate ketone products, resulting in lost profits and diverted sales and market share. These misrepresentations also cause harm to the public by influencing consumers to purchase products that they believe have uses, benefits, sponsorship, associations, and qualities that they do not have.

25. Plaintiff has suffered harm as a result of Defendants' breach of the express terms of the Agreement in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

26. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendants' profits, as well as costs and reasonable attorney fees.

THE PARTIES

27. Plaintiff Axxess Global Sciences, LLC is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

28. Defendant Jonathan Jesper is a Nevada resident with a place of residence at 1454 Verde Triandos Drive, Henderson, NV 89012. On information and belief, Defendant Jonathan Jesper is an officer and owner of Defendant One Family LLC and Defendant Nutriana LLC.

29. Defendant One Family LLC is a Nevada corporation with a mailing address and registered agent at 98 E Windmill Lane, Las Vegas, NV 89123. Defendant Jonathan Jesper is identified as the CEO, president, secretary, treasurer, and director of Defendant One Family LLC, with a listed address at 1454 Verde Triandos Drive, Henderson, NV 89012.

30. Defendant Nutriana LLC is a Wyoming limited liability company with a principal office, mailing address, and registered agent at 30 N Gould Street, Suite R, Sheridan, WY 82801 and an additional business address at 312 W 2nd Street, #2506, Casper, WY 82601. Defendant Jonathan Jesper is identified as the sole organizer of Defendant Nutriana LLC with a listed address at 1454 Verde Triandos Drive, Henderson, NV 89012.

31. On information and belief, Defendants One Family LLC and Nutriana LLC are, for purposes of the misconduct alleged herein, alter-egos of Defendant Jonathan Jesper. Also on information and belief, Defendant Jonathan Jesper uses the other Defendants in a fraudulent attempt to shield himself from liability for knowingly and willfully falsely advertising Nutriana Keto BHB, for infringing Plaintiff's patents and trademarks, for breaching the Agreement, and for engaging in the other misconduct alleged herein. For the foregoing reasons, the Defendants are effectively a single entity for purposes of the misconduct alleged herein.

JURISDICTION

32. This matter arises under the laws of the United States, including under the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c), and under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Thus, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331. In addition, the Court has supplemental jurisdiction over Plaintiff's state claims for breach of contract, violation of the covenant of good faith and fair dealing, and state false advertising and unfair competition claims pursuant to 28 U.S.C. § 1367.

33. The Court has personal jurisdiction over each of the Defendants, and venue is proper in this District, at least because Defendants agreed in the Agreement that “[e]xclusive jurisdiction and venue for the resolution of any dispute regarding or relating in any way to this Agreement shall be in the United States District Court for the District of Utah.” Exhibit E ¶ 3.12.

BACKGROUND

34. Plaintiff is a leader and innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis. Plaintiff has patent rights in many unique formulations of BHB, including those claimed in the Asserted Patents.

35. Defendants advertise and sell Nutriana Keto BHB with a BHB formulation that infringes Plaintiff's exclusive rights in the Asserted Patents.

36. Plaintiff sells products under the trademark goBHB®. The goBHB® mark is widely known in the supplement, nutrition, and fitness industries. Plaintiff sells products under the goBHB® mark and licenses the mark to authorized dietary supplement distributors.

37. Defendants falsely advertise that Nutriana Keto BHB contains goBHB®-branded ingredients and use the goBHB® mark in its advertising without authorization from Plaintiff.

38. Legitimate ketone supplements are powerful nutritional tools. Consumers use legitimate ketone supplements to achieve nutritional ketosis which reduces appetite and helps achieve weight loss. Professional athletes also use legitimate ketone supplements to enhance their physical performance. As described in one prominent academic journal:

For therapeutic effects, exogenous ketones are ingested in the form of β HB salts or ketone esters to produce acute (~0.5 to 6 h) nutritional ketosis, but a surge in interest in [ketone bodies] as a performance aid for athletes arose when ketone ester supplementation was confirmed in professional cycling. Moreover, a recent report provides the first evidence for acute nutritional ketosis achieved by ketone ester ingestion to alter the metabolic response to exercise and enhance exercise performance.

Evans, M., et al. (2017), *Metabolism of ketone bodies during exercise and training: physiological basis for exogenous supplementation*. J PHYSIOL, 595: 2857-2871. (Exhibit F.)

39. Not all ketones, however, achieve these favorable results. Raspberry ketones in particular are widely known to have no health benefits and can even be harmful:

[T]here is currently no evidence that raspberry ketone supplements can cause weight loss in humans. These are just a few examples in order to emphasize how the huge amount of misleading information [is] distributed and propagated on the Internet. False information about different chemical substances can be very dangerous. Besides assimilation of incorrect information, one can get to much more serious issues, such as treating a disease using ineffective treatments, or even worse, very toxic substances.

Serban, B., et al. (2018), *Chemical Compounds in the Online Environment: Quo Vadis?*, J SCI. AND ARTS, 3:44, 739-752. (Exhibit G.)

40. Nevertheless, some companies, like Defendants, still promote raspberry ketones as having health benefits, especially for weight loss:

Perhaps the greatest threat these deceptive promotions pose is to the consumers' health and property Hence, people may consume falsely endorsed healthcare products and procedures with the same intentions. Nevertheless, these items will likely be of no benefit or even cause harm. For example, thousands of women around the world who are trying to lose weight are claimed to have been misled by an internet celebrity diet scam . . . to promote the 'Raspberry Ketone Diet.' However, there is currently no evidence that raspberry ketone supplements can cause weight loss in humans.

Mookadam, F., et al. (2019), *Impact of unauthorized celebrity endorsements on cardiovascular healthcare*, FUTURE CARDIOLOGY, 15:6, 387-390. (Exhibit H.)

41. Displayed prominently in Defendants' advertising materials is a false claim that Nutriana Keto BHB contains "Raspberry Ketones for Weight Loss."

42. Defendants have also improperly manipulated the Amazon ASIN associated with precursors of Nutriana Keto BHB to make it appear that reviews for the precursor products on Amazon.com are actually attributable to Nutriana Keto BHB.

43. Every product sold on Amazon is assigned a unique ASIN. Amazon allows its vendors and third-party sellers to create "variation" relationships between products associated with the same ASIN that are substantially similar. Such products may differ only in narrow, specific ways—such as color, size, quantity, or flavor—that do not substantially alter the item itself. An example would be the same shirt that comes in multiple colors and different sizes. According to Amazon, substantially different products cannot share a variation relationship.

44. The product detail page of products that are assigned the same ASIN in a variation relationship displays the total number of ratings and reviews and the average star rating for all of the products with that ASIN. All the products with the same ASIN also share any "#1 Best Seller" or "Amazon's Choice" badges.

45. Before October 2022, Defendants sold a product called “Nutriana KETO BHB Advanced Formula” under ASIN B07H38W4GK. The formulation of this product included Magnesium BHB, Calcium BHB, Sodium BHB, and had 20,291 ratings as of July 2022.

46. After Plaintiff discovered that Defendants were infringing Plaintiff’s patent and trademark rights and the parties entered into the Agreement, Defendants started selling a new product under ASIN B07H38W4GK around October 2022. The new product had the same name (Nutriana Keto BHB Advanced Formula), but had different labeling and a different formulation, including different main ingredients and amounts. Specifically, the new product omitted Sodium BHB and added Apple Cider Vinegar and Raspberry Ketones. The new product also contained different amounts of Calcium BHB. As of March 30, 2023, the ASIN shared by the products had 20,723 ratings, of which only 432—at most—were for the new product.

47. Defendants also engage in other forms of false advertising and unfair competition as described herein.

FIRST CLAIM FOR RELIEF
Trademark Infringement
15 U.S.C. §§ 1114(a), 1125(a)
(against Nutriana, OFL, and Jesper)

48. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.


49. Plaintiff owns rights in the federally registered goBHB® trademark (U.S. Trademark Reg. No. 5261845). *See* Exhibit I.

50. Plaintiff is the owner of the goBHB® trademark by assignment.

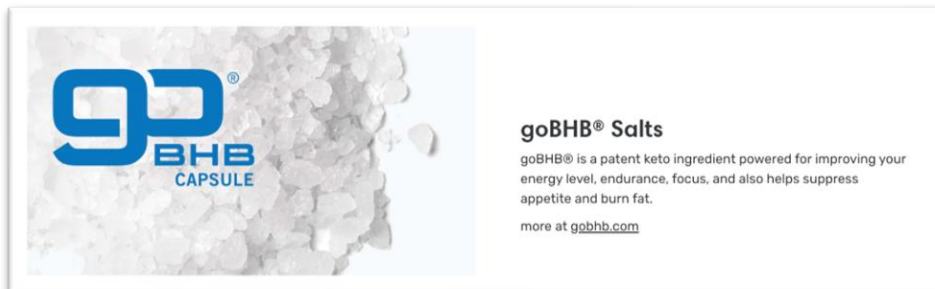
51. Defendants use the goBHB® trademark on their products and advertising without authorization from Plaintiff, as shown below:



<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

	 nutriana	others
Patented goBHB [®] Salts	✓	✗
Informed Choice Certified	✓	✗
GRAS Certified	✓	✗
Made in the USA	✓	✗
No additives or fillers	✓	✗
3rd party tested	✓	✗

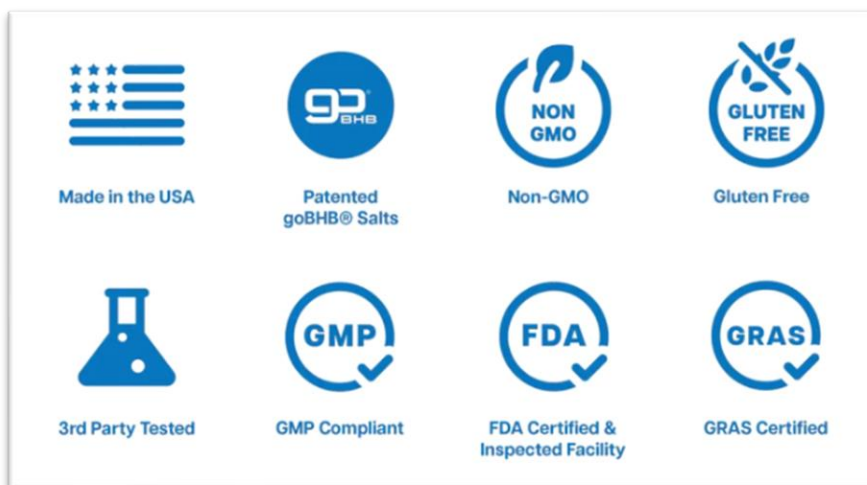
<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>



<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

Supplement Facts		
Serving Size: 2 Capsules Servings Per Container: 30		
	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>



<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>



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<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

Q: What are all the listed ingredients of the pill?

A: Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.

By Scott Johnson in the United States on April 9, 2020

[See other answers](#)

Q: What are ingredients ?

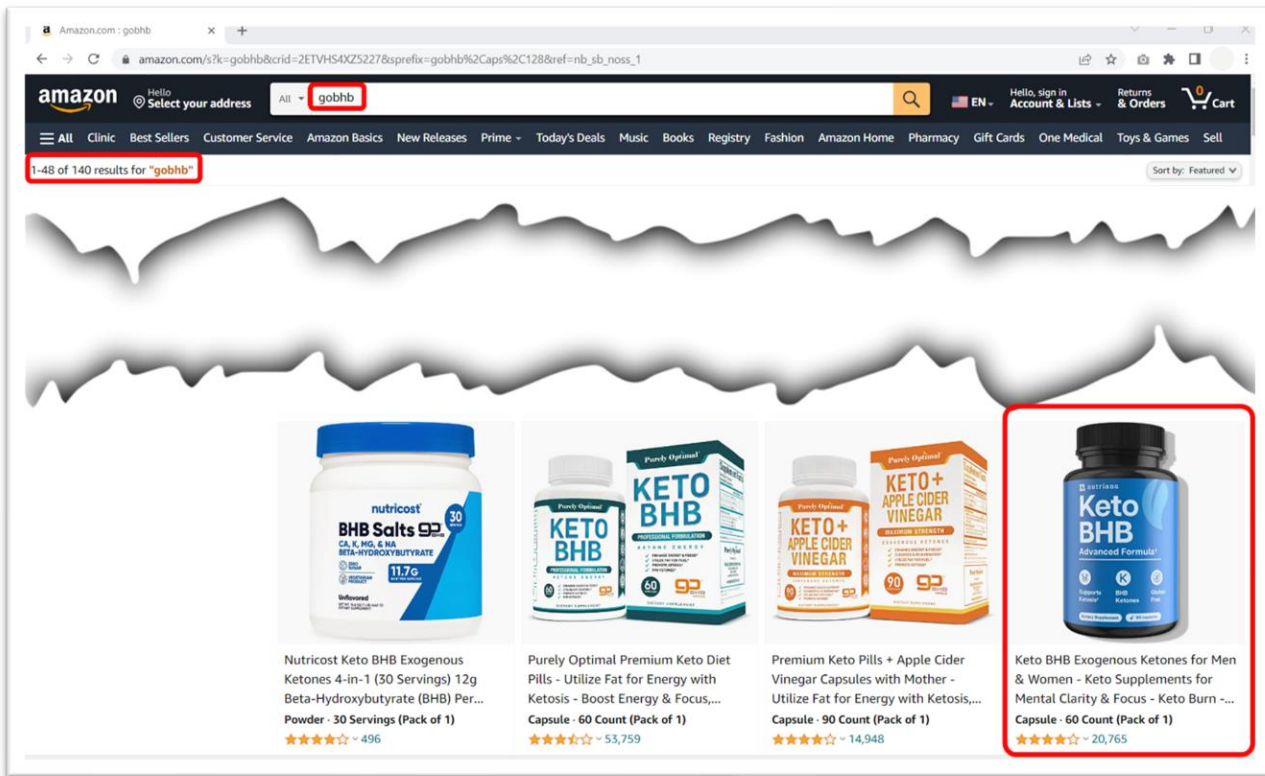
A: Hi there, Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide. Hope this helps!

By Amazon Customer in the United States on March 12, 2021

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

52. On information and belief, Defendants also infringe the goBHB® mark by using it as a “backend keyword” to improperly draw customers to their Amazon listing. Backend keywords are terms that a seller can submit to Amazon to index their listing; when a customer searches for that term on Amazon, the results will include the seller’s listing. Backend keywords are contrasted with frontend keywords, which are terms found in the actual product title or listing. Amazon seller policy expressly forbids using a competitor’s brand name as a backend keyword. *See* <https://sellercentral.amazon.com/help/hub/reference/G23501?locale=en-US> (“Prohibited words include . . . other brand names”).

53. Currently, when a customer searches for “goBHB” on Amazon, most of the products that appear are licensed and authorized by Plaintiff. But, mixed in with the licensed products, and on the coveted first page of results, is Nutriana Keto BHB:



<https://www.amazon.com/s?k=gobhb>

54. This is confusing to consumers who (1) search for “goBHB” expecting to find goBHB®-branded products, (2) see dozens of Keto BHB supplements—most of which are licensed products containing goBHB® ingredients—but (3) are also presented with Nutriana Keto BHB mixed in with the rest of the results. This confusion is further compounded when customers arrive at the listing and find additional information from Defendants, falsely confirming the use of goBHB® ingredients in Nutriana Keto BHB:

Question: What are all the listed ingredients of the pill?

Answer: Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.



Nutriana Seller · April 9, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Our Keto BHB is meant to be taken orally in capsule form, while BHB powders you may find may be meant to be taken in the form of a liquid drink. Nutriana's Keto BHB proprietary blend is a **patented** goBHB formula which has gone through rigorous scientific tests. Our recommended serving size is 2 capsules daily which is 800mg but you can take 2 capsules up to three times a day for more effective results which would be 2,400mg. We do not recommend any more than 2,400mg daily. [see less](#)
By Scott Johnson in the United States on June 10, 2020
[See full answer](#)

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

55. Defendants' unauthorized use of the goBHB® mark is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that Nutriana Keto BHB contains Plaintiff's branded ingredients, at least because Defendants use the goBHB® mark in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees.

56. Actual consumers have already been deceived by Defendants' infringement:

★★★★★ **Quality, Clean, Patented Keto pills**

By Ahsan in the United States on January 9, 2020

This is a quality product which has the patented **goBHB** supplement which is key to identify when buying a keto weight loss product - this ingredient helps target fat burning vs proteins. The pills are high quality, they don't have any taste and are easy to swallow, also there is no after taste or indigestion from them nor do they cause any nausea when taking on an empty stomach. It's a good product. [see less](#)

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

57. Defendants' trademark infringement is willful at least because Defendants expressly agreed *not* to use the goBHB® mark as part of the Agreement between the parties.

58. Plaintiff has suffered harm from Defendants' unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

SECOND CLAIM FOR RELIEF

False Advertising and Unfair Competition – False Sponsorship, Approval, or Association

15 U.S.C. § 1125(a)

(against Nutriana, OFL, and Jesper)

59. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

60. Plaintiff owns rights in the federally registered goBHB® trademark (U.S. Trademark Reg. No. 5261845). *See* Exhibit I.


61. Plaintiff is the owner of the goBHB® trademark by assignment.

62. Defendants use the goBHB® trademark on their products and advertising without authorization from Plaintiff, as shown below:




<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

Why Nutriana?

		others
Patented goBHB® Salts	✓	✗
Informed Choice Certified	✓	✗
GRAS Certified	✓	✗
Made in the USA	✓	✗
No additives or fillers	✓	✗
3rd party tested	✓	✗

<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>



goBHB® Salts

goBHB® is a patent keto ingredient powered for improving your energy level, endurance, focus, and also helps suppress appetite and burn fat.

more at gobhb.com

<https://www.shopnutriana.com/collections/all-products/products/keto-bhb>

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

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By [Scott Johnson](#) in the United States on April 9, 2020

[See other answers](#)

Q: What are ingredients ?

A: Hi there, Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide. Hope this helps!

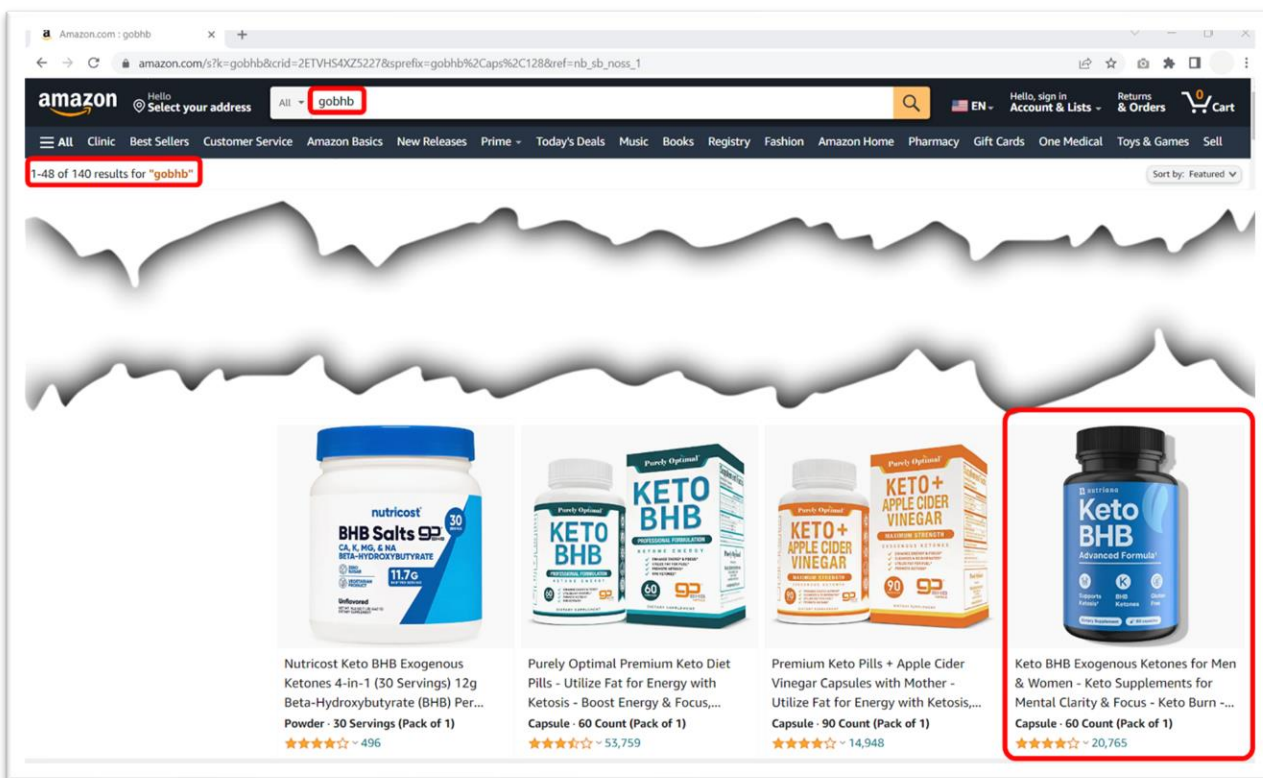
By [Amazon Customer](#) in the United States on March 12, 2021

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

63. On information and belief, Defendants also use the goBHB® mark without authorization by using it as a “backend keyword” to improperly draw customers to their Amazon listing. Backend keywords are terms that a seller can submit to Amazon to index their listing; when a customer searches for that term on Amazon, the results will include the seller’s listing.

Backend keywords are contrasted with frontend keywords, which are terms found in the actual product title or listing. Amazon seller policy expressly forbids using a competitor’s brand name as a backend keyword. See <https://sellercentral.amazon.com/help/hub/reference/G23501> (“Prohibited words include . . . other brand names”).


64. Currently, when a customer searches for “goBHB” on Amazon, most of the products that appear are licensed and authorized by Plaintiff. But, mixed in with the licensed products, and on the coveted first page of results, is Nutriana Keto BHB:



<https://www.amazon.com/s?k=gobhb>

65. This is confusing to consumers who (1) search for “goBHB” expecting to find goBHB®-branded products, (2) see dozens of Keto BHB supplements—most of which are licensed products containing goBHB® ingredients—but (3) are also presented with Nutriana Keto

BHB mixed in with the rest of the results. This confusion is further compounded when customers arrive at the listing and find additional information from Defendants, falsely confirming the use of goBHB® ingredients in Nutriana Keto BHB:

Question:	What are all the listed ingredients of the pill?
Answer:	Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.
	 Nutriana Seller · April 9, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

66. To the extent that Defendants do not infringe Plaintiff's Asserted Patents as set forth below, Defendants falsely advertise that their Keto BHB products contain Plaintiff's patented formulas.

67. Defendants' unauthorized use of the goBHB® mark and, to the extent Defendants do not infringe the Asserted Patents, advertising its products containing Plaintiff's patented formulas is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that Nutriana Keto BHB contains Plaintiff's branded and patented ingredients, at least because Defendants use the goBHB® mark and advertising its formula as "patented" in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees.

68. Actual consumers have already been deceived by Defendants' unfair competition:

★★★★★ **Quality, Clean, Patented Keto pills**

By **Ahsan** in the United States on January 9, 2020

This is a quality product which has the patented **goBHB** supplement which is key to identify when buying a keto weight loss product - this ingredient helps target fat burning vs proteins. The pills are high quality, they don't have any taste and are easy to swallow, also there is no after taste or indigestion from them nor do they cause any nausea when taking on an empty stomach. It's a good product. [see less](#)

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

69. Defendants' unfair competition is willful at least because Defendants expressly agreed *not* to use the goBHB® mark as part of the existing Agreement between the parties.

70. Plaintiff has suffered harm from Defendants' unauthorized use of the goBHB® trademark and advertising its products as containing Plaintiff's patented formulas in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

THIRD CLAIM FOR RELIEF

False Advertising – Amazon Review Hijacking

15 U.S.C. § 1125(a)

(against Nutriana, OFL, and Jesper)

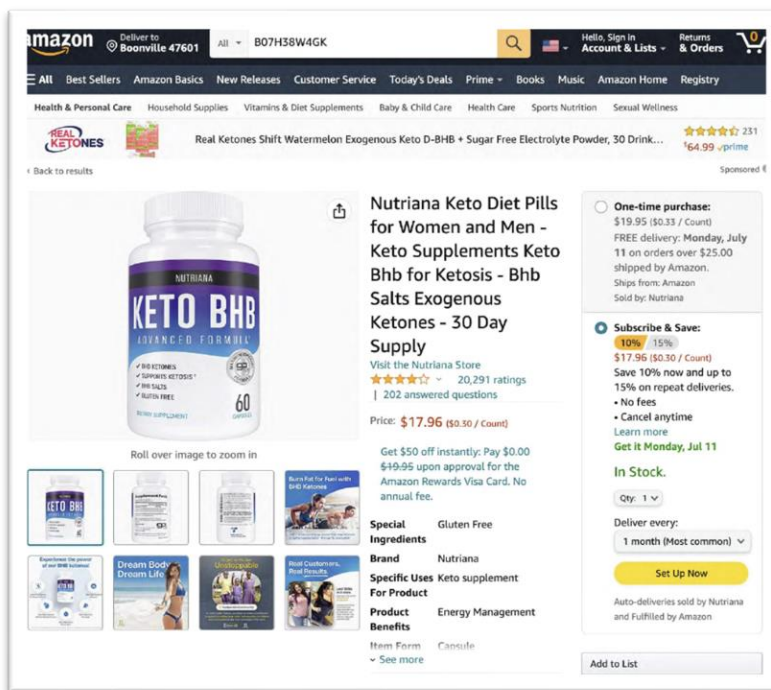
71. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

72. Defendants have improperly manipulated the Amazon ASIN system for product listings to wrongfully attribute product reviews and product ratings for prior products to a different version of their Nutriana Keto BHB product.

73. Defendants previously sold products at Amazon ASIN B07H38W4GK that included a first set of ingredients; in 2022, after the Defendants attempted to resolve their patent dispute with Plaintiff, the Defendants began selling a new product with different ingredients and a different label using the same ASIN. The original and new products are compared below:

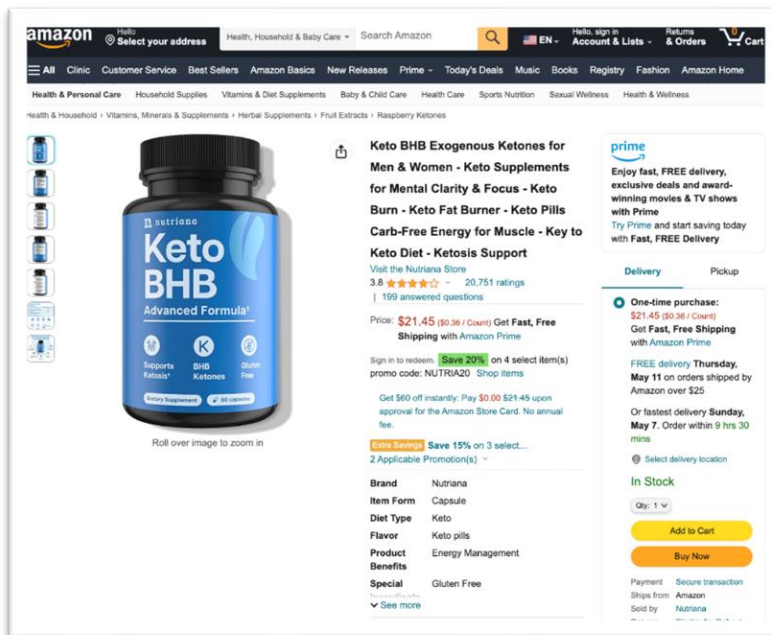
<p align="center">Original Product (ASIN B07H38W4GK)</p>	<p align="center">New Product (ASIN B07H38W4GK)</p>																																																								
 <p>The original product is a white plastic bottle with a purple and white label. The label features the Nutriana logo at the top, followed by 'KETO BHB' in large white letters on a purple background, and 'ADVANCED FORMULA' below it. A circular seal on the right side of the label says 'MAXIMUM STRENGTH FORMULA' with '99%' inside. Below the seal, it lists benefits: '✓ BHB KETONES', '✓ SUPPORTS KETOSIS †', '✓ BHB SALTS', and '✓ GLUTEN FREE'. At the bottom, it says 'DIETARY SUPPLEMENT' and '60 CAPSULES'.</p>	 <p>The new product is a black plastic bottle with a blue and white label. The label features the Nutriana logo at the top, followed by 'Keto BHB' in large white letters on a blue background, and 'Advanced Formula†' below it. Three circular icons are present: 'Supports Ketosis†', 'BHB Ketones', and 'Gluten Free'. At the bottom, it says 'Dietary Supplement' and '60 capsules'.</p>																																																								
<div data-bbox="240 1024 776 1291"> <p>Supplement Facts</p> <p>Serving Size: 2 Capsules Servings Per Container: 30</p> <table border="1"> <thead> <tr> <th></th> <th>Amount Per Serving</th> <th>%DV</th> </tr> </thead> <tbody> <tr> <td>Proprietary Blend</td> <td align="center">800 mg</td> <td align="center">*</td> </tr> <tr> <td colspan="3"> Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®) </td> </tr> </tbody> </table> <p>*Daily Value not established.</p> <p>Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).</p> </div> <div data-bbox="289 1333 722 1564"> <table border="0"> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Made in the USA</td> <td>Patented goBHB® Salts</td> <td>Non-GMO</td> <td>Gluten Free</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>3rd Party Tested</td> <td>GMP Compliant</td> <td>FDA Certified & Inspected Facility</td> <td>GRAS Certified</td> </tr> </table> </div>		Amount Per Serving	%DV	Proprietary Blend	800 mg	*	Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®)							Made in the USA	Patented goBHB® Salts	Non-GMO	Gluten Free					3rd Party Tested	GMP Compliant	FDA Certified & Inspected Facility	GRAS Certified	<div data-bbox="847 1024 1383 1312"> <p>Supplement Facts</p> <p>Serving Size: 2 Capsules Servings Per Container: 30</p> <table border="1"> <thead> <tr> <th></th> <th>Amount Per Serving</th> <th>%DV</th> </tr> </thead> <tbody> <tr> <td>Calcium (as Calcium Beta-Hydroxybutyrate)</td> <td align="center">96mg</td> <td align="center">8%</td> </tr> <tr> <td>Magnesium (as Magnesium Beta-Hydroxybutyrate)</td> <td align="center">14mg</td> <td align="center">4%</td> </tr> <tr> <td>Proprietary Blend</td> <td align="center">900mg</td> <td align="center">*</td> </tr> <tr> <td colspan="3"> Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones </td> </tr> </tbody> </table> <p>* Daily Value (DV) not established.</p> <p>Ingredients: Gelatin Capsule, Magnesium Stearate.</p> </div> <div data-bbox="906 1333 1339 1585"> <table border="0"> <tr> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Made in the USA</td> <td>Non-GMO</td> <td>Gluten Free</td> <td>3rd Party Tested</td> </tr> <tr> <td></td> <td></td> <td colspan="2">As seen on: DAILY NEWS FOX</td> </tr> <tr> <td>GMP Compliant</td> <td>FDA Certified & Inspected Facility</td> <td colspan="2"></td> </tr> </table> </div>		Amount Per Serving	%DV	Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%	Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%	Proprietary Blend	900mg	*	Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones							Made in the USA	Non-GMO	Gluten Free	3rd Party Tested			As seen on: DAILY NEWS FOX		GMP Compliant	FDA Certified & Inspected Facility		
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74. At the time the Defendants introduced the New Product shown above, Amazon ASIN B07H38W4GK had at least 20,291 product reviews. An archived version of Amazon ASIN B07H38W4GK from July 2022 is depicted below:



<https://www.amazon.com/dp/B07H38W4GK> (July 2022)

75. The current version of Amazon ASIN B07H38W4GK is depicted below:



<https://www.amazon.com/dp/B07H38W4GK> (May 2023)

76. Customer reviews and questions also evidence that Defendants are listing a New Product under the same ASIN as a prior product:

Q: have a lot of you had problems with getting different bottles with different ingredients and direction
A: I didn't try the different bottles with different ingredients. But I have a good experience without any problems to get the second bottle of keto bhb.
By [Angeline Sidjabat](#) in the United States on March 30, 2020

Q: Why are there so many different bottles if it is the same product. They also say different things?
A: I'm not sure. I noticed the same thing. Some even have different ingredients. I was told by a nutritionist which one to buy. I based my decision on that.
By [Seamus](#) in the United States on June 16, 2020

☆☆☆☆☆ **Product has changed.**
By [Willowmeana](#) in the United States on December 5, 2019
I lost 15 lbs. in four weeks and felt the pills were effective as stated but since I started taking the new version I have lost zero lbs. very disappointed it does not make sense something has changed maybe that is why they were on \$17.95? [see less](#)

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

77. The Defendants' introduction of the New Product above constituted a new product, with new and different product ingredients, different ingredient amounts, and different ingredient ratios, when compared to the Original Product. The New Product also contained new product packaging and ingredients that the Defendants sourced from a new supplier.

78. To avoid a negative customer experience, Amazon's terms of use require the creation of a new product listing and ASIN for each new product.

79. Amazon internal algorithms are weighted heavily toward products with numerous reviews and product ratings. This can lead dishonest and unscrupulous sellers to engage in "review hijacking" of Amazon product listings, where a seller utilizes an old product listing (with numerous reviews and product listings) to sell a new product. In cases of review hijacking, a seller will usually update an Amazon ASIN product detail page to match the new product. The reviews for the old product, however, remain with the ASIN. Customers are misled by such actions because

they believe the numerous positive reviews are associated with the product they are purchasing when, in fact, the reviews are associated with the prior product.

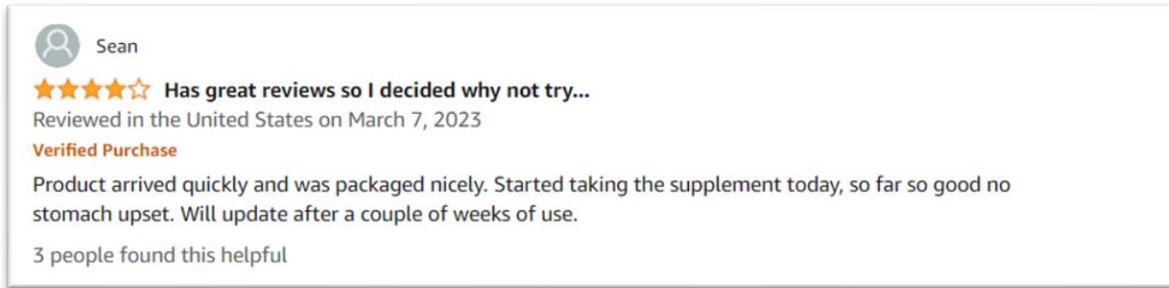
80. The Defendants did not create a new ASIN for their New Product because they wanted consumers to believe that the product ratings and reviews at ASIN B07H38W4GK were associated with their New Product.

81. This practice has been described by the FTC as an “unfair or deceptive act or practice” and “the making of false advertisements, in or affecting commerce” *See In Matter of The Bountiful Company*, 222-3019, Complaint, available at https://www.ftc.gov/system/files/ftc_gov/pdf/222-3019-The-Bountiful-Company-final-consent-without-signatures.pdf, at 7.

82. The Defendants engaged in review hijacking of ASIN B07H38W4GK when they substituted their New Product—with different ingredients, packing, and product formulations—and retained more than 20,291 positive product reviews.

83. The Defendants took this action to improperly leverage tens of thousands of product reviews for a different product to gain an unfair advantage over the Plaintiff and the Defendants’ other competitors, including achieving a much higher placement on search result listings due to the artificially inflated number of consumer reviews. Ranking higher on Amazon’s search results provides a competitive advantage.

84. Actual consumers have already been misled by Defendants falsely advertising strategy of hijacking Amazon reviews:



<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

85. Defendants’ manipulation of the ASIN system of product reviews and product ratings constitutes false and deceptive advertising because the Defendants’ New Product is substantially different from its Original Product.

FOURTH CLAIM FOR RELIEF
False Advertising – Fraudulent Reviews
15 U.S.C. § 1125(a)
(against Nutriana, OFL, and Jesper)

86. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

87. On information and belief, separate from hijacking customer reviews from a previous Amazon listing, Defendants also obtain other fraudulent Amazon reviews for Nutriana Keto BHB.

88. Amazon.com has a strict policy against fake reviews: “Any attempt to manipulate reviews, including by directly or indirectly contributing false, misleading or inauthentic content, is strictly prohibited.” See <https://www.amazon.com/gp/help/customer/display.html?nodeId=G8CXDFT9GLRRSV3G> (last accessed: May 8, 2023).

89. The FTC has noted that where Amazon reviews “were not truthful reviews by actual purchasers of the product, but instead were fabricated by one or more third parties who were paid

to generate reviews,” this “constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce.” *FTC v. Cure Encapsulations, Inc.*, No. 19-CV-982 (E.D.N.Y. 2019), Complaint, available at https://www.ftc.gov/system/files/documents/cases/quality_encapsulations_complaint_2-26-19.pdf, at 10.

90. The artificial intelligence program “Fakespot”—which analyzes whether reviews on Amazon.com and other online retailers are fake—gives the Amazon listing for Nutriana Keto BHB the lowest-possible “F” rating:



<https://www.fakespot.com/product/keto-diet-plus-pills-from-shark-tank-weight-loss-supplement-best-keto-diet-pills-burns-fat-fast-boost-energy-and-metabolism-60-capsules>

91. Fakespot identifies several aspects of the Amazon listing for Nutriana Keto BHB that support the rating, and notes that “[o]ur engine has profiled the reviewer patterns and has determined that there is **high deception** involved”:

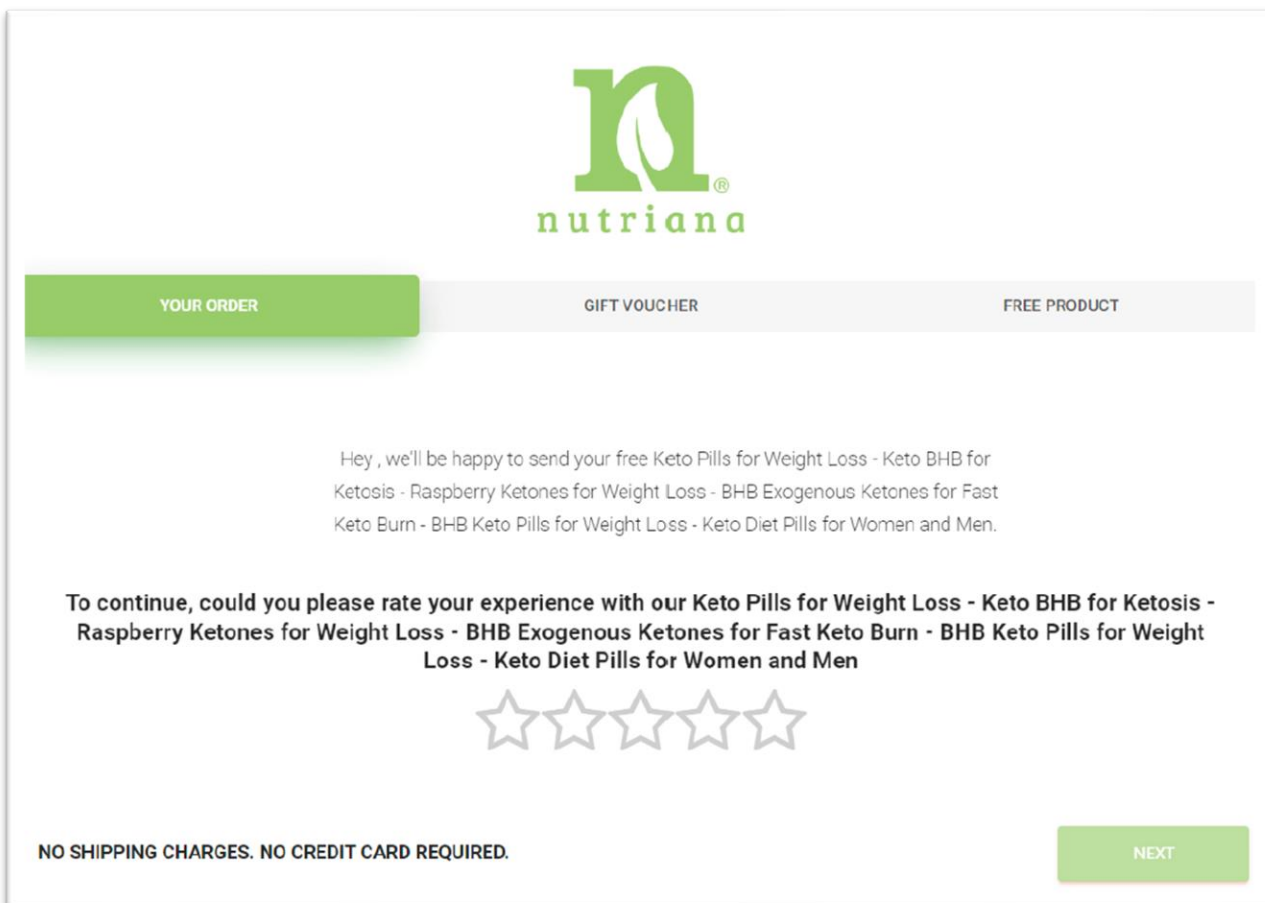
The screenshot displays a grid of six insights about a product's reviews. Each insight is accompanied by a small icon: a speech bubble for general descriptions, a warning triangle for AI detection of irrelevant reviews, a warning triangle for altered or removed reviews, a warning triangle for reviewer profiling, a warning triangle for previous analysis grades, and a speech bubble for total review counts.

- How are reviewers describing this item?** great, easy, good, first and last.
- Our AI detects a **high amount of irrelevant reviews** for this listing. A number of the reviews included in this product may belong to other variations, editions or versions that may not be representative of the current product being sold.
- Our engine has detected that **Amazon has altered, modified or removed reviews from this listing**. We approximate total reviews altered up to **238**.
- Previous analysis of this listing was an **D grade**.
- Our engine has profiled the reviewer patterns and has determined that there is **high deception** involved.
- Our engine has analyzed and discovered that **28.3%** of the reviews are reliable.
- This product had a total of **20,751** reviews as of our last analysis date on **May 5 2023**.

<https://www.fakespot.com/product/keto-diet-plus-pills-from-shark-tank-weight-loss-supplement-best-keto-diet-pills-burns-fat-fast-boost-energy-and-metabolism-60-capsules>

92. One specific form of fake reviews that violate Amazon’s policies and constitute false advertising are those given in exchange for a free product. See <https://www.amazon.com/gp/help/customer/display.html?nodeId=GDSRWWGGRA2JXSNZ> (“Amazon Fake Review Policy”) (prohibits “a review in exchange for . . . a free or discounted product”).

93. Nutriana uses the following form to solicit Amazon reviews from existing customers in exchange for a free product:



<https://nutriana.myclientscare.com/>

94. Many customer reviews and questions for Nutriana Keto BHB also evidence that Defendants offer customers free products in exchange for reviews:

★★★★★ **Free bottle if place review**
By [Brian](#) in the United States on June 9, 2020
Just doing this to get the **free** sample, only tried in once so far

★★★★★ **It's especially nice that they offer the next bottle free!**
By [P.R.](#) in the United States on June 5, 2019
This product really seems to be working. I'm on the keto diet and this falls right in line with burning the fat needed to lose weight. The top of the bottle has a sticker to get the next bottle **free** by texting a number. You receive a link that goes to Facebook Messenger, where you are asked to leave a review on Amazon. Once they verify the review, they send you the **free** bottle. [see less](#)

★★★★☆ **Not sure**
By [Kyle C.](#) in the United States on April 9, 2023
Forced a review to get buy one get one. Will update with results.

★★★★★ **FREE bottle yes please.**
By [D. Smith](#) in the United States on April 7, 2019
It was shipped fast, and there is a chance at a **free** bottle. Great product.

Q: How can I get the next bottle free? Texting the number as directed is taking me nowhere...
A: I texted the number and then they replied through messenger through facebook. I got my second bottle for **free**. All I paid was like \$1.30 for shipping. That bottle came with a code for a **free** bottle, so I think I can keep getting **free** bottles
By [stayce83](#) in the United States on May 31, 2020

Q: what to do? the code for free bottle doesn't work when i go to checkout
A: Hi, you should be able to enter the code in the Promo Code box under "Payment Method." If, for some reason, the code still does not work, then please message Nutriana Customer Support personally and we will be happy to help you! Hope this helps! [see less](#)
By [Scott Johnson](#) in the United States on August 21, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

95. In a 2020 interview, Defendant Jesper described this and additional schemes that he uses to obtain false Amazon reviews, including for his “nutritional weight loss supplement that was really trending—Keto.” *See \$500K/Month Selling Supplements on Amazon with Jonathan Jesper* (accessible at: https://youtu.be/u8o_729jfHM) (“Jesper Interview”) at [15:01](#).

- First, Defendant Jesper described doing “giveaways,” where he gives the products to “customers” for free, and the “customers,” in turn, leave positive reviews. *See id.* at [15:06](#), [15:46](#). Amazon expressly forbids this practice. *See Amazon Fake Review Policy* (expressly forbids inducing customers to “post a review in exchange for . . . a free or discounted product”).

- Next, Defendant Jesper described “mimicking things as natural as possible” by using a “Search, Find, Buy” strategy to deceive the Amazon algorithm (which automatically deletes fake reviews) by making it appear that false reviews are genuine. *See* Jesper Interview at [19:23](#). One Amazon consumer research platform describes this scheme:

If we want our products to show up on Page 1 for a keyword, we must convince the [Amazon] algorithm that we are the best match. Amazon is reducing the effectiveness of the hacks and cheats to do this. Therefore, we must create an organic and natural system.

. . . . [G]enerally speaking, a Search Find Buy [“SFB”] service is needed because we can’t just find people off the street to perform these functions. However, there are people that love free products and money! And these groups help us create an SFB experience.

The best SFB services have curated audiences and groups that are not generally attached to Amazon sellers in any way, so Amazon has little to no way of knowing that they are not organic.

. . . . The “buyer” will be paid via PayPal. You, the seller, will pay that refund cost plus the service fee from the SFB business. And the rest is history!

You’ve just convinced Amazon that this product, when searching specific keywords, is the most relevant.

What is Search Find Buy? (2021) <https://www.pickfu.com/blog/search-find-buy/>. Like product “giveaways,” this practice is also prohibited by Amazon. *See* Amazon Fake Review Policy (Amazon prohibits any reviews in “exchange for cash”).

- Regarding the “Amazon Vine Reviewer’s Program”—a legitimate alternative to paying for fake Amazon reviews—Jesper says, “These reviewers are serious, and I don’t like serious reviewers, because they might give you four-and-a-half or four stars.” Jesper Interview at [19:10](#).
- Defendant Jesper further describes creating “backup accounts” that he uses when his account gets disabled for violating Amazon policies. *Id.* at [1:05:00](#). He states, “if you want it to be a backup for your personal account . . . you’re gonna pretend it’s a wholesale account. And you don’t want Amazon to know it’s connected.” *Id.* And continues that, in the event the main product listing is taken down by Amazon, “if you have a backup account that Amazon doesn’t know is connected, it’ll keep selling the product. While you’re down you don’t miss any sales.” *Id.* He also admits that “in the supplements space, our supplements, like, last about a year, so about every seven months or so” Defendants switch between their main and backup seller accounts. *Id.* at [1:06:32](#). He even recommends a third-party seller to

buy backup accounts. *Id.* at [1:08:18](#). This practice is forbidden by Amazon: “You may only maintain one Seller Central account for each region in which you sell unless you have a legitimate business need to open a second account and all of your accounts are in good standing.” See *Selling Policies and Seller Code of Conduct*, https://m.media-amazon.com/images/G/65/rainier/help/Selling_Policies_and_Seller_Code_of_Conduct_SG_new_version_clean_PDF.pdf.

96. Defendants’ practice of obtaining false reviews for the Nutriana Keto BHB product and further manipulating the Amazon systems for reviews and seller accounts constitutes false and deceptive advertising and unfair competition because the reviews are not genuine reviews of real customers and the accounts for those reviews are fraudulently maintained. These false reviews give Defendants an unfair advantage over competitors including, without limitation, because Defendants’ products appear higher Amazon.com’s search results due to the false reviews.

FIFTH CLAIM FOR RELIEF

**False Advertising – False Claims of an Affiliation with Shark Tank
15 U.S.C. § 1125(a)
(against Nutriana, OFL, and Jesper)**

97. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

98. On information and belief, the Defendants have used Amazon ASIN B07H38W4GK to falsely claim an affiliation with the popular television program “Shark Tank.”

99. On information and belief, the Defendants previously headlined their product listing to falsely imply a connection with the television program Shark Tank:

**Keto Diet Pills from Shark Tank - Weight Loss Supplement -
Best Keto Diet Pills - Burns Fat Fast - Boost Energy and
Metabolism - 60 capsules.**

See <https://www.fakespot.com/product/keto-diet-plus-pills-from-shark-tank-weight-loss-supplement-best-keto-diet-pills-burns-fat-fast-boost-energy-and-metabolism-60-capsules>

100. On information and belief, the current URL the Defendants use for Amazon ASIN B07H38W4GK still includes a reference to Shark Tank:

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

101. Many customer reviews and questions also evidence that Defendants advertised Amazon ASIN B07H38W4GK as being associated with Shark Tank:

Q: Why are these advertised on your website from the Sharktank?
A: false advertising trying to add product from shark tank to comment.I'm contacting a lawyer
By peter cappella in the United States on April 28, 2019
[See other answers](#)

Q: Is this the original Keto Max as shown on shark tank?
A: I really think so. I'm still looking for a good result. Hope I look good after taking them. [see less](#)
By Michelle Johnson in the United States on February 7, 2019

☆☆☆☆☆ **Scam!**
By Janna in the United States on August 11, 2019
Complete scam. There is no episode of shark tank with a Keto product. The one is for brain function. I can't believe Amazon would allow this to sell on here when it is a scam. [see less](#)

☆☆☆☆☆ **False advertising**
By Amazon Customer in the United States on July 30, 2020
False advertising: not from shark tank
False advertising: did not receive the promised bogo
False advertising: doesn't work

☆☆☆☆☆ **Waste of money**
By Helene in the United States on May 22, 2021
Don't waste your money on this or any other item that claims to burn fat. Also not really a Shark Tank endorsed product. It's a scam [see less](#)

☆☆☆☆☆ **Was never ENDORSED by Shark Tank look at Mark Cuban page!!!**
By lola in the United States on March 2, 2019
I gave me high blood pressure!!

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

102. Some customer reviews and questions reveal that Defendants even shipped the product with a false Shark Tank sticker:



Why does it have a completely different barcode #s if you peel off the shark tank sticker the barcodes are different? Fishy?

asked on February 11, 2019

Add a video answer
Shoppers find videos more helpful than text alone.

<https://www.amazon.com/ask/questions/TxCOK6E1T15L01/>

103. On information and belief, Nutriana Keto BHB was never associated with Shark Tank. See <https://allsharktankproducts.com/show-all/> (listing all Shark Tank products).

104. On information and belief, Defendants were attempting to profit from the trend of marketplace bad actors falsely associating keto products with Shark Tank—a false advertising scandal recognized by the FTC. See FTC Consumer Alert, *Did your favorite Shark Tank celebrity really endorse THAT? Probably not* (2023) (accessible at: <https://consumer.ftc.gov/consumer-alerts/2023/02/did-your-favorite-shark-tank-celebrity-really-endorse-probably-not>) (“Before you spend money on that ‘Shark-approved’ . . . keto diet pill, are you sure it’s really been through the *Tank*? Really sure? Scammers are using fake *Shark Tank* celebrity testimonials and endorsements—complete with doctored photos and videos—to generate buzz and profits.”).

105. Actual consumers have already been misled by Defendants’ false advertisements associating Nutriana Keto BHB with Shark Tank:

☆☆☆☆☆ **Not for everyone**
By Stephen R. in the United States on July 5, 2020
Tried for the second time with absolutely no results. Only reason I tried twice was due to shark tank endorsement. Averaging 15 carbs 7 percent protein and 1500 to 1800 calories per day along with cardio and weight training 5 times a week I seen no difference.I would not purchase again. [see less](#)

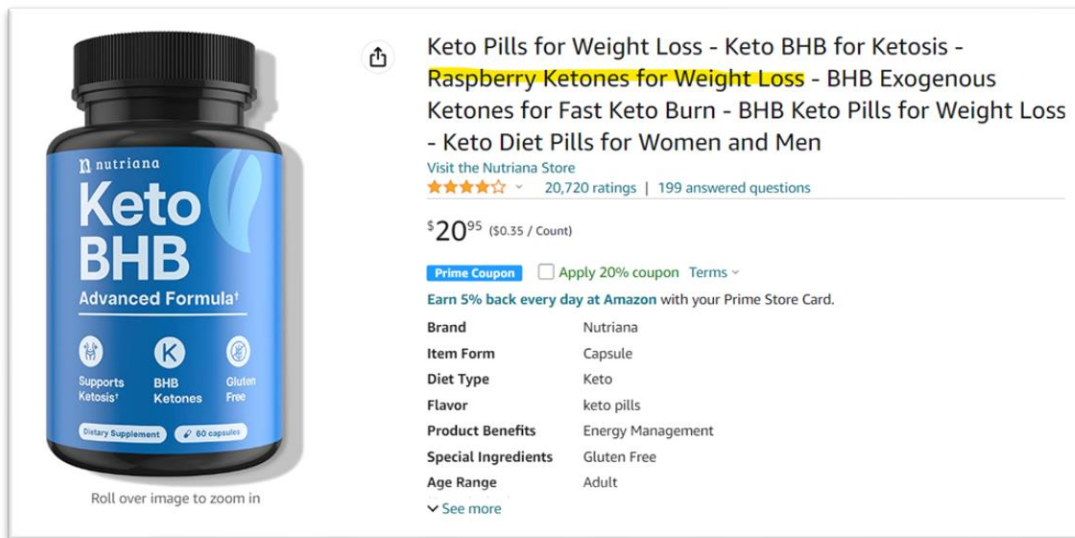
<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>

SIXTH CLAIM FOR RELIEF

**False Advertising – False Advertising of Raspberry Ketones for Weight Loss
15 U.S.C. § 1125(a)
(against Nutriana, OFL, and Jesper)**

106. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

107. Defendants also falsely advertised that Nutriana Keto BHB contains “Raspberry Ketones for Weight Loss.” Until recently, Defendants headlined the product listing as follows:



<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK>
(April 2023)

108. Defendant currently includes the following advertisements in its Amazon listing:



<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

109. At least given the widespread industry knowledge that raspberry ketones do not contribute to weight loss, Defendants made this claim knowing that it is false and with the intent to deceive consumers to purchase Nutriana Keto BHB. These advertisements were made across the United States to consumers via Amazon.com and other online websites.

110. This misrepresentation is detrimental and dangerous to consumers who purchase Nutriana Keto BHB relying on it for health benefits that it does not have.

111. These misrepresentations also cause harm to Plaintiff by lowering the public perception of the legitimate ketone products sold by Plaintiff, weakening the goodwill associated Plaintiff and its legitimate ketone supplements, and diverting sales and market share away from Plaintiff's legitimate ketone products, all resulting in lost profits.

112. These false advertisements have the potential to deceive a substantial portion of the Defendants' audience because they are prominently displayed in Defendants' advertising and

because the evidence on record indicates that consumers are susceptible to this specific false advertising claim.

SEVENTH CLAIM FOR RELIEF

Breach of Contract

(against Nutriana, OFL, and Jesper)

113. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

114. The Agreement entered into by the parties is valid and enforceable and was made for good and valuable consideration.

115. Defendants have duties of performance under the Agreement to, among other requirements, “forever stop the sale of all goBHB-branded products” and to “not sell any BHB-related product that infringes any patent owned by AGS or its Affiliates using the ASIN identified in Exhibit A [to the Agreement]” by June 30, 2022. *See* Exhibit E ¶ 2.3.

116. Defendants have breached the express and implied terms of the Agreement and failed to meet their duties of performance.

117. Despite the terms of the Agreement, Defendants did not “forever stop the sale of all goBHB-branded products” by June 30, 2022, and continue to sell goBHB®-branded products to this day. *See id.*

118. Defendants also did not stop “sell[ing] any BHB-related product that infringes any patent owned by AGS or its Affiliates using the ASIN identified in Exhibit A [to the Agreement]” by June 30, 2022, and continue to sell BHB products that infringe the Asserted Patents using the ASIN to this day. *See id.*

119. Plaintiff has suffered harm as a result of Defendants' breach of the Agreement, including in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

EIGHTH CLAIM FOR RELIEF
Breach of the Implied Covenant of
Good Faith and Fair Dealing
(against Nutriana, OFL, and Jesper)

120. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

121. In conjunction with breaching the Agreement as described herein, Defendants have also breached the implied covenant of good faith and fair dealing.

122. Defendants' conduct has obstructed, undermined, and worked in opposition to Plaintiff's ability to effectively market, sell, and profit from its own legitimate ketone supplements.

123. Defendants' breach of the implied covenant of good faith and fair dealing was done knowingly and with the intent to harm Plaintiff by gaining an unfair advantage over Plaintiff, at least because Defendants violated the express terms of the Agreement, soon or immediately after signing the Agreement.

124. Plaintiff has suffered harm as a result of Defendants' breach of the covenant of good faith and fair dealing, including in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

NINTH CLAIM FOR RELIEF
Infringement of the '403 Patent
35 U.S.C. §§ 1, *et seq.*
(against Nutriana, OFL, and Jesper)

125. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

126. Plaintiff owns all rights in the '403 Patent.

127. The '403 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

128. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

129. Without license or authorization, Defendants make, use, offer for sale, and/or sell Nutriana Keto BHB containing compounds that infringe the '403 Patent.

130. On February 8, 2022, the '403 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '403 Patent is attached as Exhibit A.

131. Exemplary claim 1 of the '403 Patent is reproduced below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate;
magnesium beta-hydroxybutyrate; and
amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

132. As advertised on the Nutriana website and Amazon ASIN B07H38W4GK, Nutriana Keto BHB infringes at least claim 1 of the '403 Patent in the manner described below.

133. To the extent the preamble of claim 1 is limiting, Nutriana Keto BHB meets the preamble of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

About this item

- EXPERIENCE THE POWER OF BHB KETONES - Our ketone supplements for ketosis help utilize fat for fuel & are made for maximum performance. These keto boost pills are formulated with beta-hydroxybutyrate, a natural energy produced during ketosis. Unlike carbs & glucose, BHB is a clean & stable form of energy.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

controlled diet. For optimal results, we recommend taking our keto supplements 20-30 minutes before a meal with an 8 oz glass of water or as directed by your healthcare professional.

<https://www.shopnutriana.com/products/keto-bhb>

134. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%
Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%
Proprietary Blend	900mg	*
Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones		

* Daily Value (DV) not established.

Ingredients: Gelatin Capsule, Magnesium Stearate.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®)		
Calcium Beta-Hydroxybutyrate (as goBHB®)		
Sodium Beta-Hydroxybutyrate (as goBHB®)		

*Daily Value not established.

Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).

<https://www.shopnutriana.com/products/keto-bhb>

135. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%
Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%
Proprietary Blend	900mg	*
Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones		

* Daily Value (DV) not established.

Ingredients: Gelatin Capsule, Magnesium Stearate.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®) Calcium Beta-Hydroxybutyrate (as goBHB®) Sodium Beta-Hydroxybutyrate (as goBHB®)		

*Daily Value not established.

Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).

<https://www.shopnutriana.com/products/keto-bhb>

136. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate;

magnesium beta-hydroxybutyrate; and

amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Q: I can't swallow pills. Since it's a capsule, can I remove the lids of the capsule, **pour the powder** onto a spoon and drink it with juice?

A: Hi, yes you can **treat the pills as a powder** and pour it into a drink and take it that way. As long as you are taking the recommended dose of 2 capsules, 20 to 30 minutes before a meal, you should be fine. Hope this helps!

By Scott Johnson in the United States on March 1, 2021

Q: Just bought these but noticed it contained rice flour. How will this work with the keto diet having the rice flour in it.

A: Hi there, these pills contain a very very minimal amount of rice flour. It is simply used as an excipient to **help the powder** flow, so the pills are still keto. Hope this helps!

By Nutriana Customer Support in the United States on February 23, 2021

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>



<https://www.shopnutriana.com/products/keto-bhb>

137. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;
 calcium beta-hydroxybutyrate;
 magnesium beta-hydroxybutyrate; and
 amino acid salts of beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate salts comprise at least 20% by total weight of calcium beta-hydroxybutyrate and/or magnesium beta-hydroxybutyrate,

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Supplement Facts

Serving Size: 2 Capsules
 Servings Per Container: 30

	Amount Per Serving	%DV
Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%
Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%
Proprietary Blend	900mg	*
Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones		

* Daily Value (DV) not established.

Ingredients: Gelatin Capsule, Magnesium Stearate.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Supplement Facts		
Serving Size: 2 Capsules Servings Per Container: 30		
	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®)		
Calcium Beta-Hydroxybutyrate (as goBHB®)		
Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

<https://www.shopnutriana.com/products/keto-bhb>

138. Defendants have directly infringed claim 1 of the '403 Patent in the United States by making, using, offering for sale, selling, and/or importing Nutriana Keto BHB in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '403 Patent under 35 U.S.C. § 271(a).

139. Defendants have indirectly infringed the '403 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Nutriana Keto BHB in violation of 35 U.S.C. § 271(b). Defendants have actual knowledge of their infringement of the '403 Patent, at least since entering into the Agreement with Plaintiff for infringement of related patents and receiving additional notice of their infringement. As such, Defendants are liable for indirect infringement of the '403 Patent under 35 U.S.C. § 271(b).

140. Defendants are on notice of their direct and indirect infringement of the '403 Patent,

having signed the Agreement expressly promising not to infringe related patents and having received further written notice of their infringement from Plaintiff.

141. Defendants' infringement of the '403 Patent is willful and this case is exceptional, at least because Defendants were aware of the '403 Patent, having signed the Agreement expressly promising not to infringe related patents and having received further written notice of their infringement from Plaintiff.

142. Plaintiff has suffered harm as a result of Defendants' infringement of the '403 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount that is to be proven at trial.

TENTH CLAIM FOR RELIEF
Infringement of the '362 Patent
35 U.S.C. §§ 1, *et seq.*
(against Nutriana, OFL, and Jesper)

143. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

144. Plaintiff owns all rights in the '362 Patent.

145. The '362 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

146. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

147. Without license or authorization, Defendants make, use, offer for sale, and/or sell Nutriana Keto BHB containing compounds that infringe the '362 Patent.

148. On June 1, 2021, the '362 Patent, titled "Beta-hydroxybutyrate mixed salt

compositions and methods of use” was duly and legally issued. A true and correct copy of the ’362 Patent is attached as Exhibit B.

149. Exemplary claim 1 of the ’362 Patent is reproduced below:

1. A composition for increasing blood ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

150. To the extent the preamble of claim 1 is limiting, Nutriana Keto BHB meets the preamble of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

About this item

- EXPERIENCE THE POWER OF BHB KETONES - Our ketone supplements for ketosis help utilize fat for fuel & are made for maximum performance. These **keto boost pills** are formulated with beta-hydroxybutyrate, a natural energy produced during ketosis. Unlike carbs & glucose, BHB is a clean & stable form of energy.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

controlled diet. For optimal results, we recommend taking our **keto supplements** 20-30 minutes before a meal with an 8 oz glass of water or as directed by your healthcare professional.

<https://www.shopnutriana.com/products/keto-bhb>

151. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;


wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to

12 carbons and glycerides or other esters thereof.

Question: What are all the listed ingredients of the pill?

Answer: Keto BHB has calcium beta-hydroxybutyrate (as goBHB), magnesium beta-hydroxybutyrate (as goBHB), and sodium beta-hydroxybutyrate (as goBHB). Keto BHB is also made with gelatin (from cows or pigs), rice flour, magnesium stearate, and silicon dioxide.

 Nutriana Seller · April 9, 2020

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®)		
Calcium Beta-Hydroxybutyrate (as goBHB®)		
Sodium Beta-Hydroxybutyrate (as goBHB®)		

*Daily Value not established.

Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).

<https://www.shopnutriana.com/products/keto-bhb>

152. Nutriana Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

Q: I can't swallow pills. Since it's a capsule, can I remove the lids of the capsule **pour the powder onto a spoon and drink it with juice?**

A: Hi, yes you can **treat the pills as a powder** and pour it into a drink and take it that way. As long as you are taking the recommended dose of 2 capsules, 20 to 30 minutes before a meal, you should be fine. Hope this helps!

By **Scott Johnson** in the United States on March 1, 2021

Q: Just bought these but noticed it contained rice flour. How will this work with the keto diet having the rice flour in it.

A: Hi there, these pills contain a very very minimal amount of rice flour. It is simply used as an excipient to **help the powder** flow, so the pills are still keto. Hope this helps!

By **Nutriona Customer Support** in the United States on February 23, 2021

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>



<https://www.shopnutriona.com/products/keto-bhb>

153. Nutriona Keto BHB further meets the limitations of claim 1 as set forth below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from:

sodium beta-hydroxybutyrate;

potassium beta-hydroxybutyrate;

calcium beta-hydroxybutyrate; and

magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having

6 to 12 carbons and glycerides or other esters thereof.

Supplement Facts

Serving Size: 2 Capsules
Servings Per Container: 30

	Amount Per Serving	%DV
Calcium (as Calcium Beta-Hydroxybutyrate)	96mg	8%
Magnesium (as Magnesium Beta-Hydroxybutyrate)	14mg	4%
Proprietary Blend	900mg	*
Calcium Beta-Hydroxybutyrate (BHB), Magnesium Beta-Hydroxybutyrate (BHB), Apple Cider Vinegar, Raspberry Ketones		

* Daily Value (DV) not established.

Ingredients: Gelatin Capsule, Magnesium Stearate.

<https://www.amazon.com/Best-Keto-Diet-Pills-Shark/dp/B07H38W4GK/>

Supplement Facts		
Serving Size: 2 Capsules Servings Per Container: 30		
	Amount Per Serving	%DV
Proprietary Blend	800 mg	*
Magnesium Beta-Hydroxybutyrate (as goBHB®)		
Calcium Beta-Hydroxybutyrate (as goBHB®)		
Sodium Beta-Hydroxybutyrate (as goBHB®)		
*Daily Value not established.		
Other ingredients: Magnesium Stearate, Microcrystalline Cellulose, Silicon Dioxide, Gelatine (Capsule).		

<https://www.shopnutriana.com/products/keto-bhb>

154. Defendants have directly infringed claim 1 of the '362 Patent in the United States by making, using, offering for sale, selling, and/or importing Nutriana Keto BHB in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '362 Patent under 35 U.S.C. § 271(a).

155. Defendants have indirectly infringed the '362 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Nutriana Keto BHB in violation of 35 U.S.C. § 271(b). Defendants have actual knowledge of their infringement of the '362 Patent, at least since entering into the Agreement with Plaintiff for infringement of the same patent and receiving additional notice of their infringement. As such, Defendants are liable for indirect infringement of the '362 Patent under 35 U.S.C. § 271(b).

156. Defendants are on notice of their direct and indirect infringement of the '362 Patent,

having signed the Agreement expressly promising not to infringe the '362 Patent and having received further written notice of their infringement from Plaintiff.

157. Defendants' infringement of the '362 Patent is willful and this case is exceptional, at least because Defendants were aware of the '362 Patent, having signed the Agreement expressly promising not to infringe the '362 Patent and having received further written notice of their infringement from Plaintiff.

158. Plaintiff has suffered harm as a result of Defendants' infringement of the '362 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an amount that is to be proven at trial.

ELEVENTH CLAIM FOR RELIEF

Utah State False Advertising and Unfair Competition

Utah Code Ann. § 13-11a-1 *et seq.*, § 13-5a-101, and the Utah Common Law

(against Nutriana, OFL, and Jesper)

159. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

160. Defendants' acts of trademark infringement, false advertising, and unfair competition set forth above violate Utah's Truth In Advertising Act, Utah Code Annotated § 13-11a-1 *et seq.*

161. Defendants' acts of trademark infringement, false advertising, patent infringement, and unfair competition set forth above violate Utah's Unfair Competition Act, Utah Code Annotated § 13-5a-101 *et seq.*

162. Defendants' acts of trademark infringement, false advertising, and unfair competition set forth above constitute unfair competition under Utah common law.

163. Defendants' acts of trademark infringement, false advertising, patent infringement and unfair competition set forth above were done intentionally, willfully and with a wanton disregard for Plaintiff's rights and those of the consuming public.

164. Defendants' acts of trademark infringement, false advertising, and unfair competition set forth above have caused a material diminution in the value of Plaintiff's goBHB® trademark, '403 Patent, and '362 Patent. Specifically, Defendants' have engaged in a multi-faceted scheme to harm Plaintiff and diminish the value of its intellectual property by infringing its trademarks and patents, then leveraging those infringements with its manipulation of the Amazon.com customer review system as set forth above to usurp the value of Plaintiff's intellectual property, thereby diminishing the value of that intellectual property to Plaintiff and its authorized licensees. Additionally, by unlawfully associating Plaintiff's trademarks and patented formulas with formulas and compounds known to not produce the advertised benefits, such as raspberry ketones for weight loss, Defendants have and continued to tarnish the reputation and goodwill of Plaintiff's intellectual property, thereby diminishing the value of Plaintiff's intellectual property.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendants:

- A. A judgment that Defendants infringed the Asserted Patents directly and indirectly by inducement;
- B. A judgment that Defendants infringed Plaintiff's rights in the goBHB® mark;

C. A judgment that Defendants falsely advertised Nutriana Keto BHB and unfairly competed with Plaintiff;

D. A judgement that Defendants breached the Agreement and the implied covenant of good faith and fair dealing.

E. A finding that the Defendants' conduct alleged herein was willful and that this case is exceptional;

F. An order and judgment enjoining Defendants and their officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from infringing Plaintiff's patents or trademarks, from advertising false effects of raspberry ketones, from improperly manipulating the Amazon review system, or from otherwise falsely advertising any products;

G. An award of actual damages in an amount to be determined at trial for patent infringement, trademark infringement, false advertising, unfair competition, breach of the covenant of good faith and fair dealing, and breach of contract.

H. Disgorgement of Defendants' profits associated with Defendants' trademark infringement, false advertising, and unfair competition;

I. Plaintiff's costs and attorneys' fees;

J. A judgment for treble damages and other punitive damages;

K. An order and judgment for Defendants to promulgate corrective advertising by the same media and with the same distribution and frequency as the false advertising for Nutriana Keto BHB;

L. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all matters triable to a jury.

DATED September 18, 2023.

Respectfully submitted,

WORKMAN NYDEGGER

By: /s/ Brian N. Platt

CHAD E. NYDEGGER

BRIAN N. PLATT

COLLIN D. HANSEN

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