

ESTTA Tracking number: **ESTTA465433**

Filing date: **04/04/2012**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	ON Optimum Nutrition Limited
Granted to Date of previous extension	04/04/2012
Address	Glanbia House Kilkenny City, IRELAND

Domestic Representative	Ashly Iacullo Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP 311 S. Wacker Drive Suite 5000 Chicago, IL 60606 UNITED STATES ai@pattishall.com, jsj@pattishall.com Phone:(312)554-8000
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Applicant Information

Application No	85346745	Publication date	12/06/2011
Opposition Filing Date	04/04/2012	Opposition Period Ends	04/04/2012
Applicant	Barkatullah, Zia 8 5704 Cypress Ave Gary, IN 46403 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Food supplements; Vitamins

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	OPTIMUM NUTRITION		
Goods/Services	Dietary and nutritional supplements		

Attachments	NoticeofOppositionOPTIMALNUTRITIONCARE.PDF (4 pages)(29058 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ashly Iacullo/
Name	Ashly Iacullo
Date	04/04/2012

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter of Application Serial No. 85/346,745: OPTIMAL NUTRITION CARE

Published in the *Official Gazette* on December 6, 2011

ON OPTIMUM NUTRITION LIMITED,)	
)	
Opposer,)	Opposition No.
)	
v.)	
)	
ZIA BARKATULLAH, an individual,)	
)	
)	
Applicant.)	

NOTICE OF OPPOSITION

ON Optimum Nutrition Limited ("Opposer"), a limited Irish company having offices in Kilkenny City, Ireland, believes it will be damaged by registration of the mark shown at Application Ser. No. 85/346,745 (the "Application"), and files this notice of opposition pursuant to 37 C.F.R. § 2.104. The grounds for opposition are stated below.

1. Opposer and its predecessors have for many years been engaged in the manufacture, distribution, advertising, and sale of dietary and nutritional supplements.

2. Since long before the filing date of the Application, Opposer and its predecessors continuously have used the trademark OPTIMUM NUTRITION in commerce throughout the United States in connection with the manufacture, advertising, promotion, and sale of dietary and nutritional supplements.

3. Opposer's leading dietary and nutritional supplements sold under the OPTIMUM NUTRITION mark are offered in various forms such as nutritional bars, protein powders, powdered and liquid drink mixes and tablets, and vitamins.

4. Opposer and its predecessors have sold many millions of dollars worth of dietary and nutritional supplements under the OPTIMUM NUTRITION mark in the United States.

5. Opposer and its predecessors have spent substantial sums of money on extensive advertising and promotion of dietary and nutritional supplements sold under the OPTIMUM NUTRITION mark in the United States.

6. By virtue of Opposer's and its predecessors' extensive advertising, promotion, and sales of dietary and nutritional supplements under the OPTIMUM NUTRITION mark, Opposer and its predecessors have built up, and Opposer now owns, a most valuable goodwill in this mark.

7. On June 15, 2011, Applicant filed an intent-to-use application to register the trademark OPTIMAL NUTRITION CARE disclaiming "NUTRITION CARE" for "food supplements; vitamins" in Class 5, Application Serial No. 85/346,745.

8. Applicant's proposed use of and application to register the OPTIMAL NUTRITION CARE mark is likely to result in confusion, mistake, or deception with Opposer, its OPTIMUM NUTRITION mark, or in the belief that Applicant or its identified goods sold under the OPTIMAL NUTRITION CARE mark are in some way connected with, licensed, or approved by Opposer, or that Applicant is a business partner of or otherwise affiliated with Opposer.

9. Upon information and belief, Applicant does not have any basis for claiming rights in the OPTIMAL NUTRITION CARE mark prior to June 15, 2011, the date of the Application opposed herein.

10. Applicant's proposed use and application to register the OPTIMAL NUTRITION CARE mark are without Opposer's consent.

11. Accordingly, Applicant's registration of the OPTIMAL NUTRITION CARE mark would be damaging to Opposer.

WHEREFORE, Opposer prays that its opposition be sustained and registration of Application Serial No. 85/346,745 be refused.

Opposer submits the requisite filing fee of \$300. Please debit any deficiency or credit any overpayment to Account No. 16-0650. Please address all correspondence to Jonathan S. Jennings, Pattishall, McAuliffe, Newbury, Hilliard & Geraldson LLP, 311 South Wacker Drive, Suite 5000, Chicago, Illinois 60606.

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON LLP

Dated: April 4, 2012

By: /s/ Ashly Iacullo
Jonathan S. Jennings
Ashly A. Iacullo
311 South Wacker Drive
Suite 5000
Chicago, Illinois 60606
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Attorneys for Opposer
ON Optimum Nutrition Limited

CERTIFICATE OF ELECTRONIC TRANSMISSION

I, Ashly Iacullo, hereby certify that this **NOTICE OF OPPOSITION** is being electronically transmitted to the United States Patent and Trademark Office on this 4th day of April, 2012.

/s/ Ashly Iacullo

CERTIFICATE OF SERVICE

I, Ashly Iacullo, hereby certify that a copy of the foregoing **NOTICE OF OPPOSITION** was served upon Zia Barkatullah, 5704 Cypress Avenue, Apartment 8, Gary, Indiana 46403-1975, via first class mail, postage pre-paid, on this 4th day of April, 2012.

/s/ Ashly Iacullo