

ESTTA Tracking number: **ESTTA516898**

Filing date: **01/18/2013**

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	Mt. Eden Organics, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	PO Box 478 Santa Cruz, CA 95061 UNITED STATES		

Attorney information	Matthew H. Swyers, Esq. The Trademark Company 344 Maple Avenue West, Suite 151 Vienna, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com		
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### Applicant Information

Application No	85631038	Publication date	12/25/2012
Opposition Filing Date	01/18/2013	Opposition Period Ends	01/24/2013
Applicant	Native Nutrients P.O. Box 44 Gasquet, CA 95543 UNITED STATES		

### Goods/Services Affected by Opposition

Class 001. First Use: 2011/11/08 First Use In Commerce: 2012/02/06  
All goods and services in the class are opposed, namely: Fertilizers for agricultural use; Marine fertilizer; Organic fertilizers; Plant growth nutrients

### 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 No.	85760914	Application Date	10/23/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	NATIVE NUTRIENTS		

Design Mark	NATIVE NUTRIENTS
Description of Mark	NONE
Goods/Services	Class 001. First use: First Use: 2011/03/21 First Use In Commerce: 2011/03/21 Compost; Compost; Growing media for plants; Natural fertilizers; Organic fertilizers; Plant growth nutrients

Attachments	85760914#TMSN.jpeg ( 1 page )( bytes ) NOO.pdf ( 4 pages )(26929 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	/Matthew H. Swyers/
Name	Matthew H. Swyers, Esq.
Date	01/18/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of Serial No. 85/631,038, for the trademark application NATIVE NUTRIENTS,

Mt. Eden Organics, Inc.,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. _____
	:	
Native Nutrients,	:	
	:	
Applicants.	:	

**NOTICE OF OPPOSITION**

COMES NOW Mt. Eden Organics, Inc., a Delaware Corporation with an address of P.O. Box 478 Santa Cruz, CA 95061, (hereinafter, "Opposer"), by counsel, The Trademark Company, states that it believes it will be damaged by the registration of the trademark as more fully set forth in Serial No. 85/631,038 as filed for by Native Nutrients, with an address of P.O. Box 44, Gasquet, CA 95543 (hereinafter "Applicants") and, accordingly, hereby opposes the granting of said registration.

As grounds for this opposition, it is alleged that:

1. For many years, Mt. Eden Organics, Inc. (referred to as "Opposer") has been, and now is engaged in the production, distribution, and sale of compost; growing media for plants; natural fertilizers; organic fertilizers; plant growth nutrients under the trademark, NATIVE NUTRIENTS.
2. Opposer has used the mark NATIVE NUTRIENTS (hereinafter "Opposer's Mark") in connection with the above referenced goods in commerce since as early as March of 2011.
3. As a result of Opposer's longstanding use of Opposer's Mark and the high quality of goods, Opposer has established an excellent quality in identifying and distinguishing Opposer's goods.

4. On or about May 21, 2012, Applicant filed an application to register the trademark NATIVE NUTRIENTS (hereinafter “Applicants’ Mark) used in connection with “fertilizers for agricultural use; marine fertilizer; organic fertilizers; plant growth nutrients” in International Class 001. (hereinafter “Applicant’s goods”). This application was assigned Application No. 85/631,038.

5. Upon information and belief, the Applicants’ application was filed under the basis of use and the application alleges a date of first use of February 6, 2012.

6. There is no issue of priority. Upon information and belief, Applicant acquired no rights in Applicant’s Mark before Opposer acquired rights in Opposer’s Mark.

7. Upon information and belief, Applicant’s goods will be offered to the same of consumers and at least through some of the same channels of trade as Opposer’s goods. As applied to Applicant’s goods, Applicant’s Mark so resembles the Opposer’s Mark that it is likely to cause confusion, or cause to mistake, or to deceive as to the source of the services.

8. Opposer has spent time and money and effort in in promoting his goods under his Mark, which are associated exclusively with Opposer and its goods. The goodwill of the business connected with the use of, and symbolized by, Opposer’s Marks is an asset of incalculable value.

9. Upon information and belief, registration of Applicants’ Mark will diminish and dilute the distinctive quality of Opposer’s Marks. One viewing Applicants’ Mark will associate the mark with Opposer’s goods, resulting in damage to Opposer.

10. Opposer will be damaged by Applicants’ registration of Applicants’ Mark for the services identified in US Serial No. 85/631,038 as a result of the aforementioned confusion, mistake, and deception.

11. By reason of the foregoing, Applicants are not entitled to registration of Applicants’ Mark, Serial No. 85/631,038 in International Class 001.

WHEREFORE, Opposer respectfully requests that the Application, Serial No. 85/631,038 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Respectfully submitted this 18<sup>th</sup> day of January, 2013.

THE TRADEMARK COMPANY, PLLC

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Counsel for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
The Trademark Trial and Appeal Board**

In the Matter of Serial No. 85/631,038, for the trademark application NATIVE NUTRIENTS,

Mt. Eden Organics, Inc.,	:	
	:	
Opposer,	:	
	:	
vs.	:	Opposition No. _____
	:	
Native Nutrients,	:	
	:	
Applicants.	:	

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I caused a copy of the foregoing this 18<sup>th</sup> day of January, 2013, to be served, via first class mail, postage prepaid, upon:

Native Nutrients  
P.O. Box 44  
Gasquet, CALIFORNIA 95543

/Matthew H. Swyers/  
Matthew H. Swyers