

ESTTA Tracking number: **ESTTA563608**

Filing date: **10/07/2013**

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	GLOBAL NUTRITION GROUP, INC.
Granted to Date of previous extension	10/06/2013
Address	880 WIGWAM PKWY. #130 HENDERSON, NV 89014 UNITED STATES

Attorney information	Catherine J. Holland Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES efiling@knobbe.com Phone:949-760-0404
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**Applicant Information**

Application No	85360544	Publication date	04/09/2013
Opposition Filing Date	10/07/2013	Opposition Period Ends	10/06/2013
Applicant	Vitacost.com, Inc. Suite 500 5400 Broken Sound Blvd. N.W. Boca Raton, FL 33487 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 005. First Use: 2011/07/07 First Use In Commerce: 2011/07/07 All goods and services in the class are opposed, namely: Dietary and nutritional supplements
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	VITASPORT		
Goods/Services	Dietary food supplements, dietary supplements, nutritional supplements, sports nutritional supplements, vitamins, and weight loss supplements		

Attachments	2013-10-07 Notice of Opposition-NSHOP.043M.pdf(18413 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	/Catherine J. Holland/
Name	Catherine J. Holland
Date	10/07/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Global Nutrition Group, Inc.,

Opposer,

v.

Vitacost.com, Inc.,

Applicant.

Serial No.: 85/360,544

Mark: MEN’S VITA ACTIVE  
SPORT

**NOTICE OF OPPOSITION**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir or Madam:

Global Nutrition Group, Inc. (“Opposer”), located and doing business at 880 Wigwam Parkway #130, Henderson, Nevada 89014, believes that it will be damaged by registration of the mark shown in U.S. Trademark Application Serial No. 85/360,544 (“Applicant’s Application”) filed June 30, 2011 by Vitacost.com, Inc. (hereinafter referred to as “Applicant”), and hereby opposes the same.

A description of Applicant’s Application is as follows:

Mark:	MEN'S VITA ACTIVE SPORT (“Applicant’s Mark”)
Serial No.:	85/360,544
Filing Date:	June 30, 2011
Publication Date:	April 9, 2013
Goods:	Dietary and nutritional supplements in International Class 5

As grounds for opposition, it is alleged:

1. Opposer is a leading manufacturer of vitamins, sports nutrition, weight loss, and related nutritional supplements.

2. Since at least as early as 2002, Opposer has used the mark VITASPORT in connection with dietary food supplements, dietary supplements, nutritional supplements, sports nutritional supplements, vitamins, and weight loss supplements. Thus, Opposer has used the VITASPORT mark for a substantial period of time prior to the filing date of Applicant's Application.

3. Opposer's use of VITASPORT has been valid and continuous, and has not been abandoned. By reason of Opposer's widespread and continuous use of the VITASPORT mark, Opposer has extensive common law rights in the VITASPORT mark.

4. Opposer has invested a considerable amount of time and money in developing goodwill in its valuable VITASPORT mark. As a result of this use, the public has come to associate Opposer with the VITASPORT mark and it has become famous.

5. In view of the substantial similarity of the respective marks, and the related nature of the goods of the respective parties, Applicant's Mark so resembles the VITASPORT mark, as to be likely to cause confusion or to cause mistake or to deceive.

6. In view of Opposer's common law rights in the VITASPORT mark, Applicant is not entitled to register Applicant's Mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

7. Applicant's use and registration of the mark in U.S. Trademark Application Serial No. 85/360,544 causes, and will continue to cause, dilution of the distinctive quality of the VITASPORT mark within the meaning of Section 43(c) of the Trademark Act, 15 U.S.C. 1125(c), and will lessen the ability of the VITASPORT mark to distinguish the goods of Opposer.

8. By reason of the foregoing, Opposer will be gravely damaged by registration of the mark shown in Applicant's Application because registration of this mark would be in violation of Opposer's trademark rights.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 85/360,544 be rejected and stricken, that no registration be issued thereon to Applicant, and this opposition be sustained in favor of Opposer.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: October 7, 2013

By:   
Catherine J. Holland  
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Irvine, CA 92614  
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efiling@knobbe.com  
Attorneys for Opposer,  
Global Nutrition Group, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing **NOTICE OF OPPOSITION** upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on October 7, 2013, addressed as follows:

Michael E. Tschupp  
ESPINOSA | TRUEBA PL  
1428 Brickell Avenue, Suite 100  
Miami, FL 33131



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Amber Molle  
Trademark Paralegal

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