

ESTTA Tracking number: **ESTTA579683**

Filing date: **01/02/2014**

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 parties oppose registration of the indicated application.

Opposers Information

| | | | |
|---------|---|-------------|----|
| Name | Ultra-Lab Nutrition, Inc., d/b/a Beast Sports | | |
| Entity | Corporation | Citizenship | FL |
| Address | 3100 N.W. 2nd Avenue Suite 213 Boca Raton, FL 33431 UNITED STATES | | |

| | | | |
|---------|---|-------------|----|
| Name | USA Nutraceuticals Group, Inc. | | |
| Entity | Corporation | Citizenship | FL |
| Address | 3100 N.W. 2nd Avenue Suite 213 Boca Raton, FL 33431 UNITED STATES | | |

| | | | |
|----------------------|---|--|--|
| Attorney information | Ryan M. Kaiser AMIN TALATI, LLC 55 W. Monroe St. Suite 3400 Chicago, IL 60603 UNITED STATES ryan@amintalati.com, saira@amintalati.com, ashley@amintalati.com Phone:312-327-3328 | | |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 85788375 | Publication date | 12/10/2013 |
| Opposition Filing Date | 01/02/2014 | Opposition Period Ends | 01/09/2014 |
| Applicant | Kinneman, Matthew 3447 Harrisburg St Pittsburgh, PA 15204 USX | | |

Goods/Services Affected by Opposition

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|---|
| Class 005. First Use: 2012/10/19 First Use In Commerce: 2012/11/12 All goods and services in the class are opposed, namely: Dietary supplements for dogs |
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Grounds for Opposition

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|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
|--------------------------------------|----------------------------|

Marks Cited by Opposer as Basis for Opposition

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|-----------------------|------------|------------------|------------|
| U.S. Registration No. | 2012763 | Application Date | 03/23/1995 |
| Registration Date | 10/29/1996 | Foreign Priority | NONE |

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|---------------------|---|------|--|
| | | Date | |
| Word Mark | THE BEAST | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1996/04/01 First Use In Commerce: 1996/05/01 vitamins and nutritional food supplements | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 4334953 | Application Date | 10/19/2012 |
| Registration Date | 05/14/2013 | Foreign Priority Date | NONE |

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|---------------------|---|--|--|
| Word Mark | BEAST | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1996/04/01 First Use In Commerce: 1996/05/01 Dietary and nutritional supplements | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3978998 | Application Date | 02/01/2010 |
| Registration Date | 06/14/2011 | Foreign Priority Date | NONE |

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|---------------------|---|--|--|
| Word Mark | BEAST MODE | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2010/02/01 First Use In Commerce: 2011/03/01 Dietary and nutritional supplements | | |

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|-------------------|---------|------------------|------------|
| U.S. Registration | 4429865 | Application Date | 10/09/2012 |
|-------------------|---------|------------------|------------|

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|---------------------|--|-----------------------|------|
| No. | | | |
| Registration Date | 11/05/2013 | Foreign Priority Date | NONE |
| Word Mark | TRAIN LIKE A BEAST | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 2013/07/02 First Use In Commerce: 2013/07/02 Dietary and nutritional supplements | | |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4405431 | Application Date | 12/29/2011 |
| Registration Date | 09/24/2013 | Foreign Priority Date | NONE |
| Word Mark | BEAST. SINCE 1995 | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of the wording "BEAST. SINCE 1995" in stylized font. | | |
| Goods/Services | Class 005. First use: First Use: 2010/09/01 First Use In Commerce: 2010/12/02 Dietary and nutritional supplements | | |

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|-----------------------|-------------|-----------------------|------------|
| U.S. Registration No. | 4338809 | Application Date | 10/26/2012 |
| Registration Date | 05/21/2013 | Foreign Priority Date | NONE |
| Word Mark | BEAST STACK | | |

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|---------------------|--|--|--|
| Design Mark | <h1>BEAST STACK</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 1999/00/00 First Use In Commerce: 2009/00/00 Dietary and nutritional supplements | | |

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|----------------------|--|-----------------------|------------|
| U.S. Application No. | 85620714 | Application Date | 05/09/2012 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | TEAM BEAST | | |
| Design Mark | <h1>TEAM BEAST</h1> | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 005. First use: First Use: 0 First Use In Commerce: 0 Dietary and nutritional supplements | | |

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|----------------------|-------------|-----------------------|------------|
| U.S. Application No. | 86143253 | Application Date | 12/13/2013 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | BEAST PACKS | | |

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|---------------------|--|
| Design Mark | <h1>BEAST PACKS</h1> |
| Description of Mark | NONE |
| Goods/Services | Class 005. First use: First Use: 0 First Use In Commerce: 0 Dietary and nutritional supplements |

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|---------------------------------------|--------------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | BEAST SPORTS | | |
| Goods/Services | Dietary and nutritional supplements. | | |

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|---------------------------------------|--------------------------------------|------------------|------|
| U.S. Application/ Registration No. | NONE | Application Date | NONE |
| Registration Date | NONE | | |
| Word Mark | UNLEASH THE BEAST | | |
| Goods/Services | Dietary and nutritional supplements. | | |

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|-------------|--|
| Attachments | 85758767#TMSN.jpeg(bytes) 77925401#TMSN.jpeg(bytes) 85749500#TMSN.jpeg(bytes) 85506038#TMSN.jpeg(bytes) 85765088#TMSN.jpeg(bytes) 85620714#TMSN.jpeg(bytes) 86143253#TMSN.jpeg(bytes) Notice of Opp MEGA BEAST.pdf(311889 bytes) |
|-------------|--|

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 | /Ryan M. Kaiser/ |
| Name | Ryan M. Kaiser |
| Date | 01/02/2014 |

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

USA NUTRACEUTICALS GROUP, INC.

and

ULTRA-LAB NUTRITION, INC., d/b/a
BEAST SPORTS,

Opposers,

v.

MATTHEW KINNEMAN,

Applicant.

Opposition No.: _____

NOTICE OF OPPOSITION

MEGA BEAST

Appl. Serial No.: 85/788,375

Filing Date: Nov. 27, 2012

Publication Date: Dec. 10, 2013

NOTICE OF OPPOSITION

USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports (collectively “Opposers” and “Beast Sports”) believe that they will be damaged by registration of the mark MEGA BEAST (“Applicant’s Mark”) for use in connection with “Dietary supplements for dogs” (IC 005) in Application Serial No. 85/788,375 (the “Application”). Accordingly, Opposers hereby oppose the Application. The grounds for this opposition are as follows:

Parties

1. Opposer USA Nutraceuticals Group, Inc. is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.
2. Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is a Florida corporation with an address at 3100 N.W. 2nd Avenue, Suite 213, Boca Raton, Florida.

3. Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the parent of USA Nutraceuticals Group, Inc. USA Nutraceuticals Group, Inc. and Ultra-Lab Nutrition, Inc., d/b/a Beast Sports will collectively be referred to as “Opposers.”

4. On information and belief, Applicant is an individual located at 3447 Harrisburg St., Pittsburgh, PA 15204, and is the owner of the Application.

Opposed Application

5. On November 27, 2012, Applicant filed an application which was assigned Serial No. 85/788,375 to register the MEGA BEAST mark for “Dietary supplements for dogs” in international class 005. The Application is based on use in commerce which began on Nov. 12, 2012.

Opposers’ Trademark Rights

6. Opposer USA Nutraceuticals Group, Inc. is the owner by assignment of U.S. Trademark Registration No. 2,012,763 for THE BEAST for “Vitamin and nutritional food supplements” (IC 005). Opposer Ultra-Lab Nutrition, Inc., d/b/a Beast Sports is the exclusive licensee of U.S. Trademark Registration No. 2,012,763. Opposers’ THE BEAST trademark registration is now incontestable.

7. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 4,334,953 for BEAST for “Dietary and nutritional supplements” (IC 005).

8. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 3,978,998 for BEAST MODE for “Dietary and nutritional supplements” (IC 005).

8. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 4,429,865 for TRAIN LIKE A BEAST for “Dietary and nutritional supplements” (IC 005).

10. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 4,405,431 for BEAST. SINCE 1995 for “Dietary and nutritional supplements” (IC 005).

11. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Registration No. 4,338,809 for BEAST STACK for “Dietary and nutritional supplements” (IC 005).

12. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Application Serial No. 85/620,714 for TEAM BEAST for “Dietary and nutritional supplements” (IC 005).

14. Opposer USA Nutraceuticals Group, Inc. is the owner of U.S. Trademark Application Serial No. 86/143,253 for BEAST PACKS for “Dietary and nutritional supplements” (IC 005).

15. Opposers own other valuable common law trademark rights to various marks which incorporate the word “BEAST”, all of which pre-date any rights Applicant may have in the mark MEGA BEAST. Opposer Ultra-Lab Nutrition, Inc. has used the mark UNLEASH THE BEAST in connection with the promotion and sale of dietary and nutritional supplements since at least as early as 2001, and also does business as “Beast Sports” and sometimes simply as “Beast.”

16. Opposers' trademarks are collectively referred to as Opposers' "BEAST Marks."

17. Consumers have come to recognize products advertised and sold under Opposers' BEAST Marks by the common "BEAST" portion of their name, as being related and coming from a common source, namely Opposers.

18. Since long prior to Applicant's claimed first use date, as well as the filing date of the Application, Opposers have continually used their BEAST Marks in connection with the advertising, promotion and sale of dietary and nutritional supplement products.

COUNT 1 – PRIORITY AND LIKELIHOOD OF CONFUSION

19. Opposer re-alleges each of the foregoing allegations as though set forth entirely herein.

20. Applicant's use and application to register the mark MEGA BEAST is without Opposers' consent.

21. Applicant has no basis for claiming rights in the MEGA BEAST mark with respect to any goods in International Class 005 prior to Opposers' first use and/or registration of the BEAST Marks (or any of them). Opposers have used one or more of their BEAST Marks in commerce since at least as early as May 1st, 1996.

22. Opposers have not abandoned their BEAST Marks in connection with any of Opposers' goods or services.

23. Opposers' BEAST Marks and Applicant's Mark are highly similar—both make prominent use of the word "BEAST." Because of the similarity of the marks at issue and the fact that the goods and services are highly related, Applicant's Mark is likely under Section 2(d) of the Trademark Act to create confusion, or to cause mistake, or to deceive as to the origin,

sponsorship, or approval of Applicant's goods and services, and suggest an affiliation or connection between Applicant's goods and services and Opposers' goods and services.

24. The registration of Applicant's Mark in International Class 005 would prevent Opposers from exercising exclusive control over the goodwill and reputation associated with Opposers' BEAST Marks, and any defect, fault, or deficiency in Applicant's goods or services could negatively reflect on Opposers' BEAST Marks. Therefore, a grant of registration of Applicant's Mark would damage and injure Opposers.

25. Opposers will be further damaged by the registration of Applicant's Mark because the registration of Applicant's Mark will support statutory rights that may conflict or supersede Opposers' prior statutory and common law rights.

WHEREFORE, Opposers request that their opposition be sustained and that Application Serial No. 85/788,375 be denied registration.

January 2, 2014

Respectfully submitted,

AMIN TALATI, LLC

/s/ Ryan M. Kaiser

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ATTORNEYS FOR
USA NUTRACEUTICALS GROUP, INC.
AND ULTRA-LAB NUTRITION, INC.,
d/b/a BEAST SPORTS

Certificate of Service

I hereby certify that on this 2nd day of January, 2014, the forgoing **Notice** was served, by mailing same by US First Class mail, on the following correspondent as set forth in the records of the U.S. Patent and Trademark Office:

Brian A. Hall
Traverse Legal PLC
810 Cottageview Drive, Unit G-20
Traverse City, MI 49684

/s/ Ryan M. Kaiser _____
Ryan M. Kaiser