

07-14-05 11:04am From-

T-088 P.001 F-317

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**NOTICE OF OPPOSITION**

KETO, L.L.C., a New Jersey corporation, with a business address at 56 Park Road, Tinton Falls, New Jersey 07724 ("Opposer"), hereby opposes registration of the trademark KETOTRIM that is the subject of Application Serial No. 76/546,461 and published for opposition in the Official Gazette on May 25, 2004, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since at least April 1998, and since long before any date of first use upon which Applicant Natural Organics, Inc. ("Applicant") can rely, has adopted and continuously used the trademark KETO as a trademark for low carbohydrate food products in the United States.

2. Opposer is the owner of all right, title and interest in the following registered United States trademarks and pending United States trademark applications (collectively the "Trademarks"):

Trademark	Reg. No/Ser. No.	Registration Date	International Class	Description of Goods
KETO CRISP	2,662,280	Dec. 17, 2002	30	Breakfast cereal
KETO BAR	2,687,640	Feb. 11, 2003 (Supplemental Register)	5	High protein bar used as a nutritional supplement
KETO SHAKE	2,413,260	Dec. 12, 2002 (Supplemental Register)	5	High protein, low carbohydrate powered shake

Trademark	Reg. No/Ser. No.	Registration Date	International Class	Description of Goods
				mix
KETO CARBCOUNTERS	Ser. No. 76/385433	N/A	29	Protein based nutrient-dense snack bars
KETO SPORT	Ser. No. 76/525687	N/A	5	High protein, low carbohydrate snack bars and powdered shakes
KETO CARB KILLER	Ser. No. 76/505797	N/A	5	Powdered nutrient drink mix
KETO MINI	Ser. No. 76/512002	N/A	5	High protein, low carbohydrate snack bar
KETO	Ser. No. 75/808818	N/A	5	Nutritional Foods and Supplements
KETO (and Design)	Ser. No. 76/088773	N/A	5	A house mark for a full line of low carbohydrate, high protein food supplements
KETO SOY SHAKE	Ser. No. 76/548852	N/A	32	Meal replacement drink mix
KETO MILK	Ser. No. 76/548679	N/A	29	Powdered milk substitute
KETO SHERBET MIX	Ser. No. 76/548680	N/A	30	Dry powdered mix for making low carbohydrate sherbet
KETO PIZZA DOUGH MIX	Ser. No. 76/548676	N/A	30	Low-carbohydrate, high protein pizza dough mix

Trademark	Reg. No/Ser. No.	Registration Date	International Class	Description of Goods
KETO MIX	Ser. No. 76/548677	N/A	30	Low carbohydrate, high protein pancake and muffin mix
KETO HOT COCOA	Ser. No. 76/548678	N/A	30	Hot cocoa mix
KETO SHAKE	Ser. No. 76/548407	N/A	32	Low carbohydrate powdered nutrient shake mix
KETO CRUMBS	Ser. No. 76/548409	N/A	30	Low carbohydrate coating mix for frying foods
KETO KIDZ	Ser. No. 76/548408	N/A	30	Frozen confections
KETO BREAD	Ser. No. 76/548411	N/A	30	Low carbohydrate, high protein bread mix
KETO KETATO	Ser. No. 76/548412	N/A	29	Powdered potato mix, namely, a low carbohydrate, high protein potato mix
KETO NUTS	Ser. No. 76/548413	N/A	30	Chocolaty covered pecans, almonds and macadamia nuts
KETO HOT CEREAL	Ser. No. 76/548415	N/A	30	Low carbohydrate, high protein instant cereal
KETO ICE	Ser. No.	N/A	30	Dry powdered mix for making

Trademark	Reg. No./Ser. No.	Registration Date	International Class	Description of Goods
CREAM	76/548410			low carbohydrate ice cream
KETO PUDDING	Ser. No. 76/548414	N/A	30	Instant pudding mix
KETO	Ser. No. 76/546907	N/A	29	Low-carbohydrate food product having the taste and appearance of French fries
KETO KOOLER	Ser. No. 76/547117	N/A	5	Low carbohydrate powdered drink mix
KETO BREAD MIX	Ser. No. 76/546909	N/A	30	Low carbohydrate bread mix
KETO COOKIES	Ser. No. 76/546908	N/A	30	Low carbohydrate cookie bake mix
KETO CHIPS	Ser. No. 76/547118	N/A	29	Low carbohydrate tortilla chips containing soy
KETO QUICK BREAD	Ser. No. 76/546905	N/A	30	Low carbohydrate bread mix
KETO CARB KOOLER	Ser. No. 76/547115	N/A	5	Low carbohydrate powdered fruit flavored drink mix
KETO SWEET	Ser. No. 76/547114	N/A	30	Sugar-free sweetener
KETO BUTTA	Ser. No. 76/547113	N/A	29	Low carbohydrate buttered flavor oil
KETO CRAVE	Ser. No. 76/528079	N/A	32	Sugar free fruit flavored drinks and powdered

Trademark	Reg. No/Ser. No.	Registration Date	International Class	Description of Goods
				drink mix for making beverages
KETO COCOA CRISP	Ser. No. 76/527810	N/A	30	Breakfast cereal
KETO BETTER THAN RICE	Ser. No. 76/541577	N/A	30	Rice substitute
KETO GOOD MORNING	Ser. No. 76/535269	N/A	30	Breakfast bars
KETO QUICK	Ser. No. 76/532247	N/A	30	High protein, low carbohydrate yeast-free bread mixes
KETO ELF	Ser. No. 76/533763 Ser. No. 76/976596	N/A	29, 30, 32	Protein based, nutrient-dense, low carbohydrate snack bars; high protein, low carbohydrate cookie and pancake mixes, powdered shakes and liquid shakes; high-protein, low carbohydrate fruit flavored drink mixes
KETO KIDS	Ser. No. 76/533371	N/A	29, 30, 32	Protein based, nutrient-dense, low carbohydrate snack bars; high protein, low carbohydrate cookie and pancake mixes, powdered shakes and liquid shakes; high-protein, low

Trademark	Reg. No/Ser. No.	Registration Date	International Class	Description of Goods
				carbohydrate fruit flavored drink mixes
KETO (Stylized letters)	Ser. No. 76/564830	N/A	30, 32	Pancake and muffin mixes; low carbohydrate drink mixes

3. Through significant investment, research and development, advertising, marketing and sales, Opposer's KETO trademark and the low carb food products sold in association with the KETO trademark gained rapidly in popularity in the eyes of the consuming public.

4. By the year 2004, Opposer's low carb food products branded under the KETO trademark penetrated more than 15,000 retail stores nationwide, and Opposer has become one of the largest manufacturers and/or suppliers of low carb foods and snacks in the United States and in other countries. Opposer's low carb food products branded under the KETO trademark include, but are not limited to, low carb chips, shakes, cereals, snacks, pastas, potato substitute, pizza dough mix, muffin and pancake mixes, milk, cookies, hot cocoa mix, fruit spread sauces, milk mix, syrup, bread mixes pudding, sherbet mix and others.

5. Opposer's low carb food products sold in association with the KETO trademark have been featured in *Time Magazine*, *Fortune Magazine*, *The New York Post*, *Food Technology Magazine*, and *Nutrition Business Journal*, among other publications.

6. Since long prior to any date of first use upon which Applicant can rely and at least prior to April 2000, Opposer advertised, promoted, marketed, distributed and/or sold in interstate commerce, a wide variety of low carb food products in association with the trademark KETO to customers throughout the United States.

7. Opposer used and are using the trademarks KETO, KETO BAR, KETO SHAKE, KETO COOKIES, KETO HOT COCOA, KETO MILK and many others to identify its low carb food products, and to distinguish these products from those offered, made and sold by others.

8. Since Opposer first began using the Trademarks, including without limitation KETO, Opposer has maintained strict quality control over its low carb food products sold thereunder in order to ensure the high quality of same.

9. Throughout the years, Opposer sold millions of units of low carb food products bearing its KETO trademarks and, as a result, has promulgated millions of impressions of its KETO trademarks among the consuming public throughout the United States.

10. As a result of Opposer's continuous use of the KETO trademarks in interstate commerce and the significant advertising and sales of low carb food products marketed and sold in association with the KETO trademark, Opposer's KETO trademark has acquired secondary meaning among the relevant consuming public at least as early as April, 2000.

11. As a result of the foregoing, Opposer's KETO trademark has become associated with the distinctive quality of low carb food products originating from Opposer.

12. The United States Patent and Trademark Office has recognized that Opposer's KETO trademark has gained secondary meaning.

13. Opposer's KETO trademark and the goodwill associated therewith are of inestimable value to Opposer.

14. The U.S. Patent and Trademark Office's public trademark database shows that Applicant has filed an intent to use trademark application to register the mark KETOTRIM, for use in connection with dietary supplements in International Class 5 and soy based food snacks in



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International Class 29. The application was filed on October 7, 2003 and was assigned Serial No. 76/549570.

15. Applicant's KETOTRIM trademark so resembles Opposer's previously used trademark KETO as to be likely to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d).

**WHEREFORE**, Opposer prays that the Opposition be sustained and that registration of the KETOTROPIC mark to Applicant be refused.

Respectfully submitted,

Dated: July 14, 2005

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