

ESTTA Tracking number: **ESTTA28544**

Filing date: **03/17/2005**

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	NATURAL ORGANICS INC
Granted to Date of previous extension	03/20/2005
Address	548 Broadhollow Road Melville, NY 11747-3708 UNITED STATES

Attorney information	Tila M. Duhaime FITZPATRICK, CELLA, HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112-3800 UNITED STATES tduhaime@fchs.com Phone:(212) 218-2100
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Applicant Information

Application No	76548852	Publication date	09/21/2004
Opposition Filing Date	03/17/2005	Opposition Period Ends	03/20/2005
Applicant	KETO, L.L.C. 3535 ROUTE 66 NEPTUNE, NJ 07753		

UNITED STATES

Goods/Services Affected by Opposition

Class 032. First Use: 20000530 First Use In Commerce: 20000530 All goods and services in the class are opposed, namely: Meal replacement drink mix

Related Proceedings	Cancellation No. 92/042,332 and Opposition Nos. 91/160,711, 91/162,189, 91/160,773, 91/160,965, 91/160,683, 91/163,185, 91/163,182, 91/163,138, 91/163,391, 91/163,407, 91/163,385, 91/163,396, 91/163,398, 91/163,383, 91/163,764, 91/163,761, 91/163,768, 91/163,780, 91/163,782, 91/163,771, 91/164,183, 91/164,184, 91/164,237, 91/164,239, and 91/164,244
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Attachments	NOO KETO SOY SHAKE.pdf (3 pages)
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Signature	/tilamduhaime/
Name	Tila M. Duhaime
Date	03/17/2005

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

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NATURAL ORGANICS INC.,	:	
	:	Serial No.: 76/548,852
Opposer,	:	
	:	Opposition No.:
v.	:	
	:	
KETO, L.L.C.,	:	
	:	
Applicant.	:	
-----X	:	

Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Natural Organics Inc. (“Opposer”), a corporation organized and existing under the laws of the State of New York, having an office and place of business at 548 Broadhollow Road, Melville, New York 11747-3708, believes it will be damaged by the registration of the mark KETO SOY SHAKE shown in United States Trademark Application Serial No. 76/548,852, filed by Keto, L.L.C. (hereinafter “Applicant”), and hereby opposes the same.

The application as published in the Official Gazette may be summarized as follows:

Trademark Application Serial No.: 76/548,852
Filed: September 17, 2003
Applicant: Keto, L.L.C.
Mark: KETO SOY SHAKE
For: MEAL REPLACEMENT DRINK MIX
International Class: 32
Published: September 21, 2004
Official Gazette at TM 813

(hereinafter referred to as “the ‘852 Application”).

As grounds for opposition, Opposer alleges:

1. On September 17, 2003, Applicant filed the ‘852 Application seeking registration for the mark KETO SOY SHAKE for use in connection with a meal replacement drink mix in International Class 32.
2. On information and belief, the term “KETO” is a generic term, or at the very least is highly descriptive when used in connection with food or beverage products that, for example, aid the body in maintaining a state of ketosis, or which are meant to be consumed as part of a ketogenic diet.
3. As such, the term “KETO” is not entitled to registration.
4. On information and belief, the term “SOY SHAKE” also is at least descriptive if not generic when used in connection with shake drinks, including a mix used to make such shakes, and, as such, also is not entitled to registration.

5. On information and belief, neither "KETO" nor "SOY SHAKE" has acquired secondary meaning prior to the filing date of the instant application for registration of the subject mark.

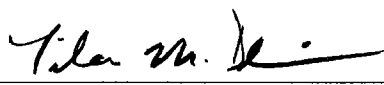
6. As neither "KETO" nor "SOY SHAKE" is entitled to registration, Applicant's proposed mark "KETO SOY SHAKE" using both such descriptive and/or generic terms is not entitled to registration.

WHEREFORE, Opposer respectfully requests that the instant Opposition be sustained, and registration for the '852 Application be refused.

Please charge the fee required under 37 C.F.R. § 2.6(a)(17) to Deposit Account No. 06-1205. Please also charge any underpayments or credit any overpayments to Deposit Account No. 06-1205.

Respectfully submitted,

Dated: March 17, 2005
New York, New York

By: 
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