

ESTTA Tracking number: **ESTTA625723**

Filing date: **09/08/2014**

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 party opposes registration of the indicated application.

**Opposer Information**

Name	Nutiva, Inc.
Granted to Date of previous extension	10/01/2014
Address	213 W CUTTING BLVD Richmond, CA 94804 UNITED STATES
Party who filed Extension of time to oppose	Nutiva
Relationship to party who filed Extension of time to oppose	Opposer has included in this filing the "Inc." designation that was inadvertently excluded from the Extension of Time to Oppose.

Attorney information	Ryan M. Kaiser Amin Talati, LLC 55 West Monroe Street, Suite 3400 Chicago, IL 60603 UNITED STATES trademark@amintalati.com, ryan@amintalati.com, saira@amintalati.com, ashley@amintalati.com Phone:312-327-3328
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**Applicant Information**

Application No	86228359	Publication date	06/03/2014
Opposition Filing Date	09/08/2014	Opposition Period Ends	10/01/2014
Applicant	Navitas, LLC 15 Pamaron Way, Suite A Novato, CA 94949 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 029. First Use: 2014/02/27 First Use In Commerce: 2014/02/27 All goods and services in the class are opposed, namely: Organic processed nuts and edible seeds
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**Grounds for Opposition**

The mark is merely descriptive	Trademark Act section 2(e)(1)
Genericness	Trademark Act section 23

Attachments	Notice of Opposition [SUPERFOOD+].pdf(307030 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	/Ryan M. Kaiser/
Name	Ryan M. Kaiser
Date	09/08/2014

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

NUTIVA, INC.,

Opposer,

v.

NAVITAS, LLC,

Applicant.

Opposition No.: \_\_\_\_\_

NOTICE OF OPPOSITION

SUPERFOOD+

Appl. Serial No.: 86/228,359

Filing Date: March 21, 2014

Publication Date: June 3, 2014

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**NOTICE OF OPPOSITION**

Nutiva, Inc., (“Opposer”) believes that it will be damaged by registration of the mark SUPERFOOD+ (“Applicant’s Mark”) for use in connection with “organic processed nuts and edible seeds” (“Applicant’s Goods”) as described in Application Serial No. 86/228,359 (the “Application”). Accordingly, Opposer hereby opposes the Application. The grounds for this opposition are as follows:

**Parties**

1. Opposer is a California corporation with an address at 213 West Cutting Boulevard, Richmond, CA 94804.
2. On information and belief, Applicant is a Limited Liability Company located at 15 Pamaron Way, Suite A, Novato, CA 94949, and is the owner of the Application.

**Opposer’s Standing**

3. For over 15 years, Opposer has manufactured and sold dozens of coconut-, chia-, red palm- and hemp-based food products similar to Applicant’s products.
4. Opposer and Applicant are competitors.

5. Many of Opposer's products are based on known superfoods, which are defined as "nutrient-rich foods considered to be especially beneficial for health and well-being."

6. Since at least as early as 2006, and continuing today, Opposer has used the term "superfood" in connection with the promotion and sale of its products, and intends to continue doing so.

### **Opposed Application**

7. On March 21, 2014, Applicant filed an application which was assigned Serial No. 86/228,359 to register the SUPERFOOD+ mark for use on "organic processed nuts and edible seeds." The Application is based on Applicant's use in commerce, which began on February 27, 2014.

8. Upon information and belief, February 27, 2014 is the earliest date that Applicant can claim priority in the U.S. for the use of its SUPERFOOD+ mark on any of Applicant's Goods.

### **COUNT I – SUPERFOOD+ IS GENERIC**

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

10. The word "superfood" has become known and used by the general public as a noun to define "nutrient-rich foods considered to be especially beneficial for health and well-being."

11. Common superfoods include chia seeds, goji berries, acai berries, cashews and coconuts (among many others), all of which Applicant sells using the SUPERFOOD+ mark. Thus, the general public will perceive "organic processed nuts and edible seeds," such as those sold by Applicant, as "superfoods."

12. The term “+” or “plus” is commonly used as a noun defined as “a positive factor or quality.”

13. Because “superfood” is a commonly used term for the goods offered in association with Applicant’s SUPERFOOD+ mark, that mark is incapable of source identification with respect to those goods, and is therefore generic and free for all to use. Accordingly, the Application should be denied registration pursuant to Section 23 of the Trademark Act.

**COUNT II – SUPERFOOD+ IS DESCRIPTIVE**

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

15. The word “superfood” describes nutrient-rich foods considered to be especially beneficial for health and well-being, such as various organic processed nuts and edible seeds.

16. The term “+” or “plus” is commonly used as a noun defined as “a positive factor or quality.”

17. The SUPERFOOD+ mark as used in connection with “organic processed nuts and edible seeds” designates a good for which the associated mark is merely descriptive. Accordingly, the Application should be refused in accordance with 15 USC § 1052(e).

18. The SUPERFOOD+ mark has not obtained secondary meaning or acquired distinctiveness during the short period of time in which Applicant has used it.

WHEREFORE, Opposer requests that its opposition be sustained and that Application Serial No. 86/228,359 be denied registration.

September 8, 2014

Respectfully submitted,  
AMIN TALATI, LLC

/s/ Ryan M. Kaiser

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Attorney for Nutiva, Inc.

**Certificate of Service**

I hereby certify that on this 8th day of September, 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:

Matt Karen S. Frank.  
Coblentz, Patch, Duffy & Bass LLP  
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and

Navitas, LLC  
15 Pamaron Way, Suite A  
Novato, CA 94949

/s/ Ryan M. Kaiser  
Ryan M. Kaiser