

ESTTA Tracking number: **ESTTA1042882**

Filing date: **03/17/2020**

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

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|---------|---|-------------|-----------|
| Name | Ralco Nutrition, Inc. | | |
| Entity | Corporation | Citizenship | Minnesota |
| Address | 1600 Hahn Road Marshall, MN 56258 UNITED STATES | | |

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| Correspondence information | Vicki L St.Aubin Sr. Paralegal Ralco Nutrition, Inc. 1600 Hahn Road PO Box 1083 Marshall, MN 56258 UNITED STATES vicki.staubin@ralcoagriculture.com 5073376976 | | |
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Applicant Information

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|------------------------|--|------------------------|------------|
| Application No | 88654559 | Publication date | 02/25/2020 |
| Opposition Filing Date | 03/17/2020 | Opposition Period Ends | 03/26/2020 |
| Applicant | Phytobiotics North America, LLC 3700 Glenwood Ave Ste 240 Raleigh, NC 27612 UNITED STATES | | |

Goods/Services Affected by Opposition

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| Class 005. First Use: 2019/04/01 First Use In Commerce: 2019/04/01 Opposed goods and services in the class: Nutritional supplements |
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Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act Section 2(d) |
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| Attachments | Opposition.pdf(67339 bytes) |
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| Signature | /brian knochenmus/ |
| Name | Brian Knochenmus |
| Date | 03/17/2020 |

Mark being opposed: CHICKEN DELYTE

Owner: Phytobiotics North America, LLC

Opposer: Ralco Nutrition, Inc.

It is Opposer's belief that Phytobiotic's CHICKEN DELYTE trademark poses a substantial risk of likelihood of confusion with Opposer's already well-established (since November 2011) DE-Lyte™ trademark being used under common law rights. Furthermore, Opposer believes this risk of likelihood of confusion could result in damages to Opposer's revenue.

Supporting arguments of the risk of likelihood of confusion:

- 1) Owner's mark and Opposer's mark contain the same word with the same spelling.
- 2) Both marks are being used in connection with the same goods, namely, nutritional supplements.
- 3) There is no dilution of the DE-Lyte mark in the industry.
- 4) Both products fall under the agricultural industry.
- 5) The purchaser of each product would be the same and it is highly likely that the two products could be sold either next to each other or at a minimum in close proximity to each other.
- 6) A conducted Google search resulted in both products being revealed on the first page of the results.