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

Proceeding	79142068
Applicant	The Size Sintered Ceramics, S.L.
Applied for Mark	NEOLITH
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Submission	Appeal Brief
Attachments	noelith living top appeal.pdf(987280 bytes)
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Signature	/Arturo Perez-Guerrero/
Date	05/26/2015

In the United States Patent and Trademark Office
Before the Trademark Trial and Appeal Board

In re Application of
The Size Sintered Ceramics S.L.
Serial No. 79142068
Filed: September 30, 2013
For: NEOLITH LIVIN' TOP

Law Office 103
Trademark Attorney:
Jun, Won Kyung Wendy

BRIEF FOR APPELLANT

Introduction:

Applicant hereby appeals from the Examiner's refusal to register the above-identified mark dated February 27, 2015, and respectfully requests the Trademark Trial and Appeal Board to reverse the Examiner's decision.

Applicant's Trademark

Applicant hereby amends the list of the goods sought to be covered by the present application. Applicant seeks registration on the Principal Register of its mark NEOLITH LIVIN' TOP for:

Non-metallic building materials for construction purposes, namely, wall boards, cladding, large format flooring materials and cladding façade panels, decking, boards and plates of porcelain prepared with natural and ecological raw materials for coating façades, buildings, roofs, walls and floors; prefabricated boards of ceramic and porcelain for coating and building construction; nonmetal paving blocks of ceramic, and porcelain; nonmetal plates of ceramic and porcelain for building construction; paving blocks not of metal; exterior and outdoor blinds not of metal or textile; coatings for stairs not of metal, namely, fireproof cement coatings; facing tiles not of metal for use in building; panels, slabs, plates, not of metal, for coating walls, floors and roofs; glass panels for building

construction, namely, for windows and doors; non-metal moldings and decorative trim for use in building construction; non-metallic transportable buildings in class 19

and

Worktops, worktops of ceramic and porcelain, kitchen furniture, bathroom, office and outdoor furniture, mirrors being looking glasses, furniture frames, picture frames in class 20

Prior Registration Cited By the Examiner

NEOLITHIC DESIGN, registration no. 4188814, dated August 14, 2012, for “retail and wholesale store services featuring new and reclaimed stone and architectural elements, doorway and fireplace surrounds, fountains, basins, claddings and tile”, in class 35

The Rejection

The Examiner refused registration of Appellant’s mark contending that the mark as applied to the goods so resembles Reg. No. 4188814, as to be likely to cause confusion, or to cause mistake, or to deceive because both marks have the same overall impression and because Appellant’s goods are related to the services covered by the cited registration.

Argument

Applicant requests this Board to reverse the Examiner’s section 2(d) refusal entered in connection with the application in question.

Applicant respectfully submits that its mark NEOLITH LIVIN' TOP can coexist with the cited registration of the mark NEOLITHIC DESIGN without creating a likelihood of confusion scenario. The basis for this position are: a) that the marks viewed in their entirety, without separating its components, are entirely distinguishable from each other; b) that the meaning of the two marks are entirely different; and c) that the goods and services covered by the applicant and by the registrant, respectively, are different in nature, purpose, use and market and are unrelated and non-competing.

As pertains to the aspect of whether the marks are similar or not, the examining attorney supports the refusal based on the fact that the terms NEOLITH and NEOLITHIC are the dominant terms of both marks and that they derive from the same root word. The term NEOLITHIC refers to a cultural period that was characterized by the use of stone tools. The word NEOLITH refers to stone implements. Applicant respectfully submits that the marks in question may have the same root but they are different terms. One refers to a historic period while the other refers to stone implements. And this is recognized in the refusal. Furthermore, focusing the analysis on these two terms is an incorrect approach when determining existence of likelihood of confusion. Regardless of the entered disclaimers, both marks must be compared in their entirety. The consumer sees each mark as a whole. The consumer does not know if a term has been disclaimed or not. The consumers sees the entire composites and distinguishes them by their entire literal elements; NEOLITH LIVIN'TOP on one hand and NEOLITHIC DESIGN on the other. It is that overall impression that governs when determining similarity between two marks.

While it is not denied that NEOLITH and NEOLITHIC share certain degree of similarity, this is not of much relevance. The comparison that matters is between NEOLITH LIVIN'TOP on one hand and NEOLITHIC DESIGN on the other, and clearly, these composites are entirely distinguishable from each other and create entirely different commercial impressions. Again comparing, NEOLITH with NEOLITHIC is not the correct approach. The comparison that has to be carried out is between NEOLITH LIVIN'TOP on one hand and NEOLITHIC DESIGN on the other, and clearly, these composites are entirely distinguishable from each other and create entirely different commercial impressions.

As far as the goods and services, the cited registration covers "retail and wholesale store services featuring new and reclaimed stone and architectural elements, doorway and fireplace surrounds, fountains, basins, claddings and tile". The registrant states the following on its website:

"Neolithic Design is a cache of contemporarily cut and reclaimed stone carved works of ancient civilizations that flourished along the Mediterranean. With these rare pieces we are able to architecturally accent your life with a touch of the past or making it modern and classic. Our unique look provides a definitive and sophisticated appeal that can be appreciated in any setting. We firmly believe our pieces will be met with admiring eyes, whether the piece is a stone fireplace that structurally echoes fierce monuments such as the Greek Parthenon, or a colossal stone entryway that demands the attention of anyone who passes through it. Neolithic Design offers the possibility to literally follow in the footsteps of those who have lived before us in your very own home.

Neolithic Design is comprised of a variety of works ranging from grand fountains to delicate and decorative floor tiles. All of our pieces can be mixed and matched to adhere to the desired interior or exterior design. The constant change of contemporary decor for housing can be a never-ending process, but with our products a constant timeless style

will always be a standard kept. The nature of our product allows for the blending of decorative trends to ultimately meet your needs. We take great pride in each and every one of our pieces and we believe you will feel the same once they are in your home."

Registrant sells pieces made of ancient looking stone, be it stone mantles, stone fountains, stone entryways, stone fountains, stone sinks or stone tiles. These pieces have an ancient look. In other words, registrant decorative pieces are made with ancient stone in order from them to have an ancient, "Neolithic" look. Simply stated, registrant sells pieces with a Neolithic design. This is the reason, applicant must insist that the registrant's mark is very weak, even descriptive. As such, the scope of protection afforded to its mark is and must be very limited and it cannot be presumed to have attained secondary meaning because five years of uninterrupted use have not yet passed.

Applicant's products are not finished pieces. Applicant's trademark distinguishes a raw material, an alloy compact surface sold in boards or plates, manufactured with a special technology that may be used on floors, counter tops, walls. It is resistant to every climate and extreme weather conditions, is frost resistant and has a low thermal expansion index. It is light weight, hence reducing structural loads. Applicant's product is not a finished product or decorative piece. The applied for mark distinguishes a raw material, not a finished product as is the case with the goods that are the object of the NEOLITHIC DESIGN retail and wholesale store services.

Furthermore, applicant's good is not a natural product extracted from stones or from the soil. It is the end result of a very sophisticated proprietary manufacturing process, result of extensive research by applicant in the forefront of compact surfaces. Natural raw materials, carefully selected are transformed by a sintering process (more than 1200°) resulting in a product of very high physical-mechanical, customizable features for multiple applications; kitchen countertops, tiles, flooring, walls, etc.

Clearly, applicant's goods have no relation whatsoever with the registrant's retail and wholesale store services featuring various ancient rock pieces. The characteristics, uses and purpose of the concerned goods and services are entirely different. Furthermore, these are not goods purchased by impulse. These are goods whose purchase is very sporadic and requires high expenditures, factor which does away even further with the possibility that likelihood of confusion scenario will arise.

Conclusion

The marks NEOLITHIC DESIGN and NEOLITH LIVIN'TOP can coexist in the market without leading consumers into believing that the goods and services they identify come from the same source. Their commercial impression is entirely different. The cited registration is a textbook case of a descriptive mark and it cannot be presumed to have attained secondary meaning because five years of uninterrupted use have not yet passed. The marks cover unrelated and entirely distinguishable services and simply will not

coincide in the market. Furthermore, these are costly goods and services that are not purchased frequently or by impulse. These are purchases typically carried after a long process of research and shopping around on the part of the consumer, fact which reduces even more, any possibility of likelihood of confusion.

For the reasons set forth hereinabove, Appellant submits that there is no likelihood of confusion, mistake or deception between Appellant's mark and the prior cited registration. Accordingly, Appellant's mark is entitled to registration.

This Board is therefore, respectfully requested to reverse the Examiner's decision refusing registration of Appellant's mark.

Respectfully submitted,



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Attorney for Applicant

Date: May 26, 2015

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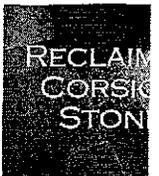
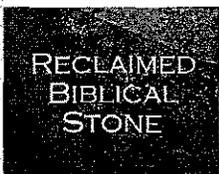
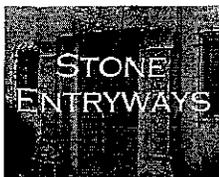
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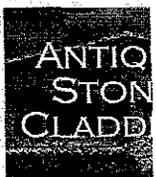
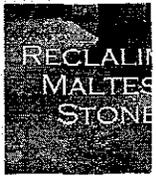
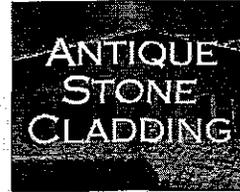
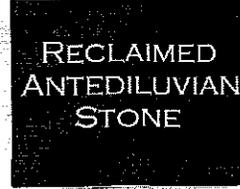
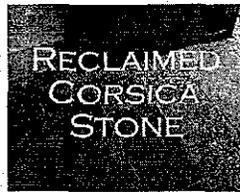
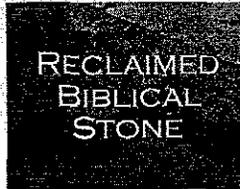
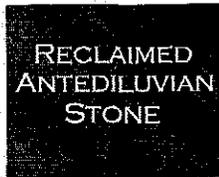
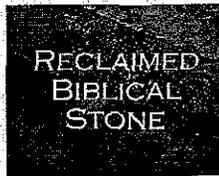
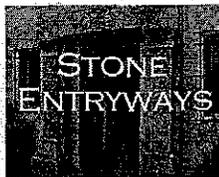
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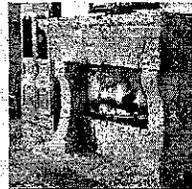
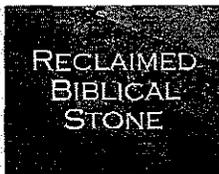
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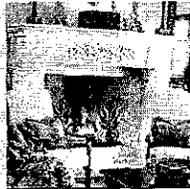
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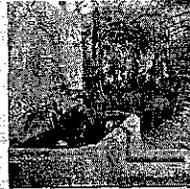
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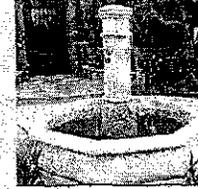
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Stone Mantels (114)



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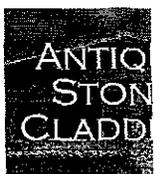
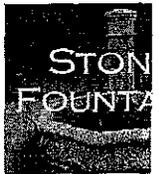
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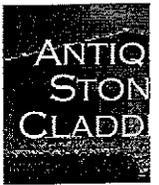
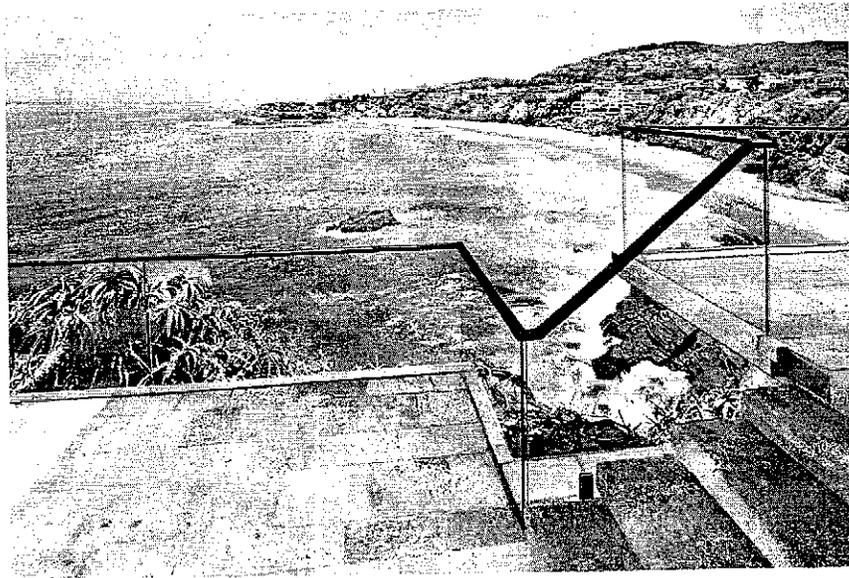


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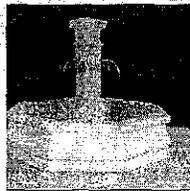
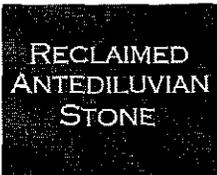
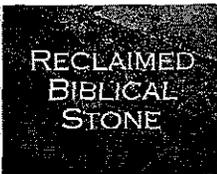




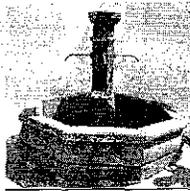
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Stone Fountains

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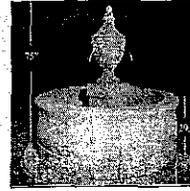
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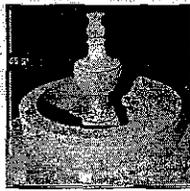
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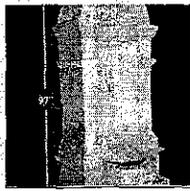
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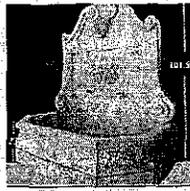
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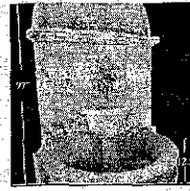
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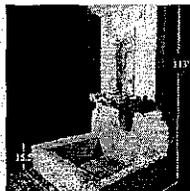
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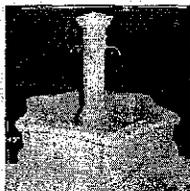
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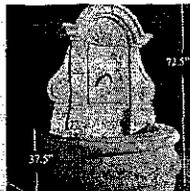
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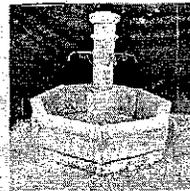
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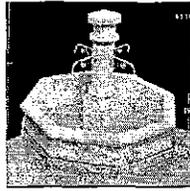
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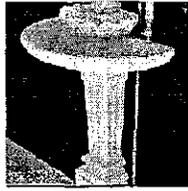
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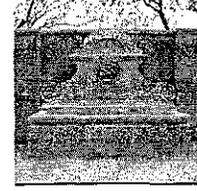
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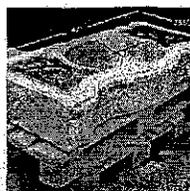
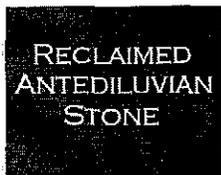
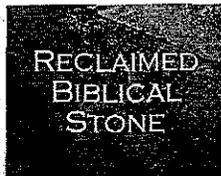
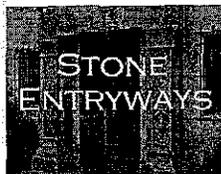
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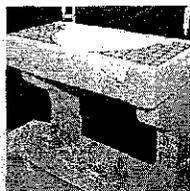
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Stone Sinks

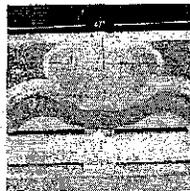
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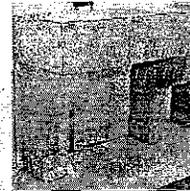
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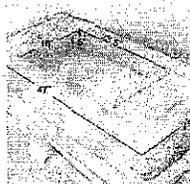
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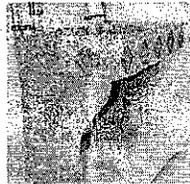
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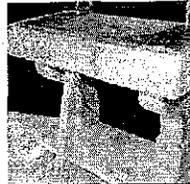
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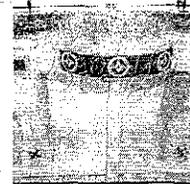
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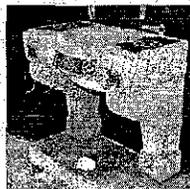
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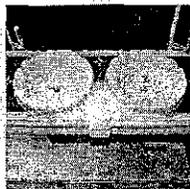
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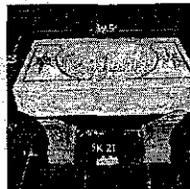
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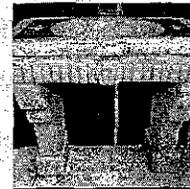
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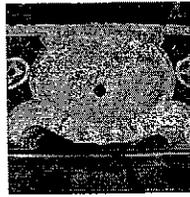
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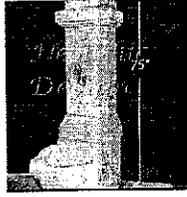
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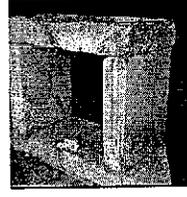
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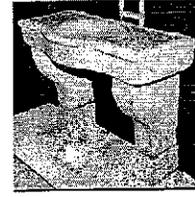
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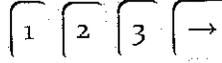
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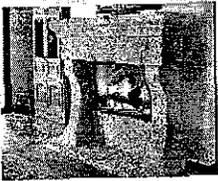
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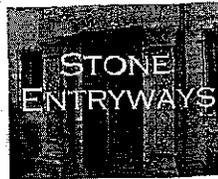
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Stone Entryways

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STONE
FOUNTAINS



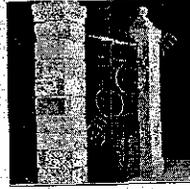
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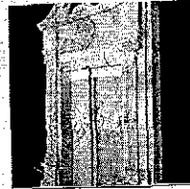
ANTIQUE
SLABS



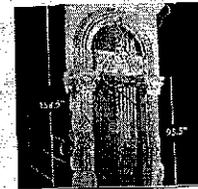
Stone
Entryway
ENT 29



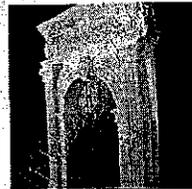
Stone
Entryway
ENT 32



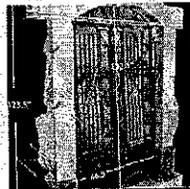
Stone
Entryway
ENT 37



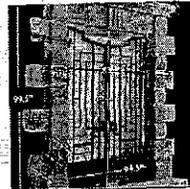
Stone
Entryway
ENT 21



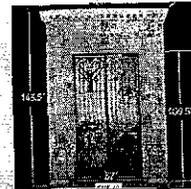
Stone
Entryways
ENT 22



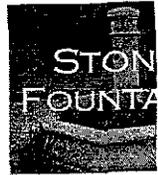
Stone
Entryways
ENT 24



Stone
Entryways
ENT 25



Antique
Entryway
ENT 47



- [English](#)
- [Français](#)
- [中國的](#)
- [Italiano](#)
- [Polski](#)
- [Deutsch](#)
- [Português](#)
- [English](#)
- [Español](#)

- [Company](#)
- [Neolith](#)
- [Granith](#)
- [Distributors](#)
- [Videos](#)
- [Downloads](#)
- [News](#)
- [Contact](#)

[TECHNICAL SPECS](#) [APPLICATIONS](#) [COLLECTIONS](#) [WARRANTY](#)



Technical Specs



Lightweight
Only 7kg/m² (1.43 lb/sqft) in the 3mm (1/8") slab



Resistant to scratches
To abrasion, wear and tear



Resistant to high temperatures



Waterproof
Absorption level of almost zero



Hygienic
Totally suitable for contact with food



Easy to clean
Resistant to any kind of chemical cleaning agent



100% Natural
It does not give off any substances that are harmful to the environment



100% Recyclable



Flex Resistant
High flexural strength



Freeze
And thaw resistant



UV Resistance
Neolith colors do not vary with the exposure of UV rays



Resistant to high traffic

[TECHNICAL SPECS](#) [FORMATS](#) [THICKNESS](#) [FINISHES](#) [FULL BODY & NOD](#)

NeoLith is a revolutionary compact surface that combines high performance specs, trendy colors, large format and variable thickness that will provide solutions for every possible application (countertops, flooring, bathrooms, paneling, cladding, facades).



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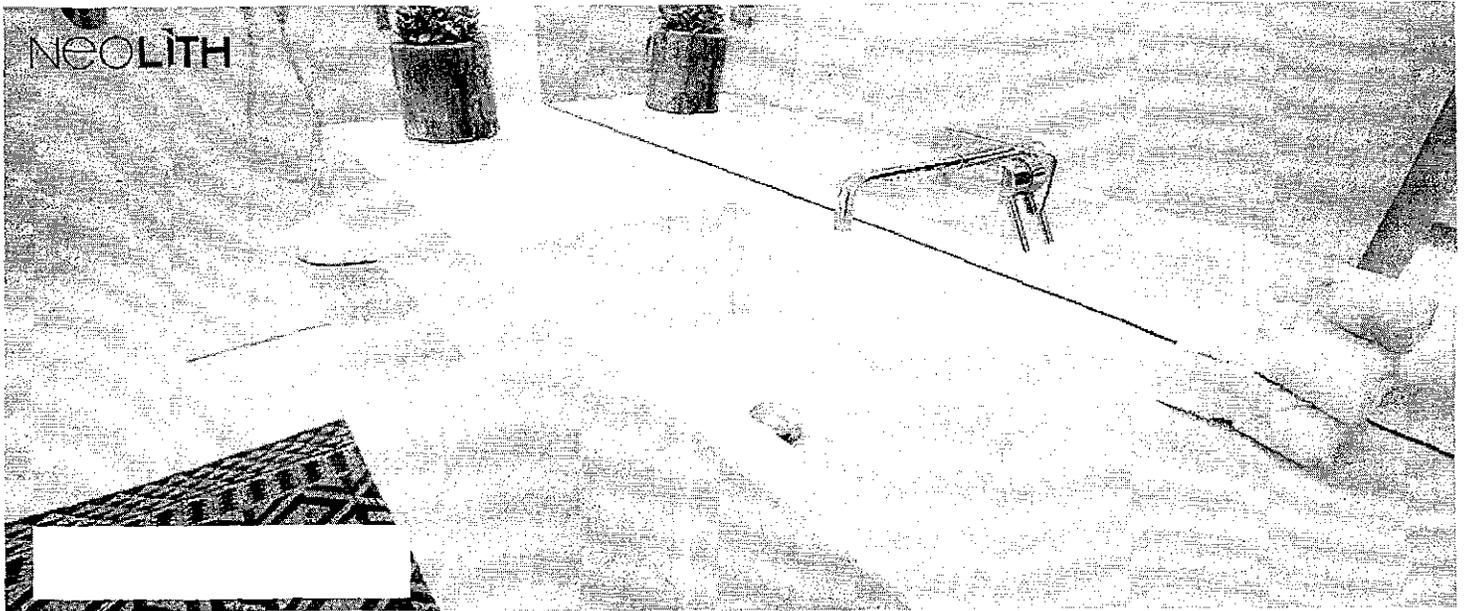


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- [Italiano](#)
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- [Deutsch](#)
- [Português](#)
- [English](#)
- [Español](#)

-
-
- [Company](#)
-
- [Neolith](#)
-
- [Granith](#)
-
- [Distributors](#)
-
- [Videos](#)
-
- [Downloads](#)
-
- [News](#)
-
- [Contact](#)
-

[TECHNICAL SPECS](#) [APPLICATIONS](#) [COLLECTIONS](#) [WARRANTY](#)



[FACADES](#) [FLOORING](#) [WALL CLADDING](#) [KITCHENS](#) [BATHROOMS](#) [SINKS](#)

NEOLITH is a high performance material ideal for applications such as bathrooms. On Top of the properties already mentioned, we also recall NEOLITH's chemical inertness. The fact of being completely unreactive, makes NEOLITH suitable for contact with any domestic or industrial cleaning agent such as bleach or ammonia.

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HOME

ABOUT

About NEOLITH

Sustainability

Technology

TECHNICAL

COLOURS

SUPPORT

MEDIA

DOWNLOADS

GET A QUOTE

CONTACT

A REVOLUTIONARY MATERIAL

The NEOLITH sintered compact surface slab is a trendsetting material that is redefining the future of interior design. With an extensive range of colours and finishes, NEOLITH is a designer product that has created exciting possibilities for interior decorating applications and exterior cladding projects.

Innovative and endless design options

Comprehensive range of colour options and combinations

Attractive matte finish

Countertop and panel cladding material available in the same colour for perfect continuity and a holistic look

Resistant to very high temperatures

Stain resistant

Hardwearing and durable

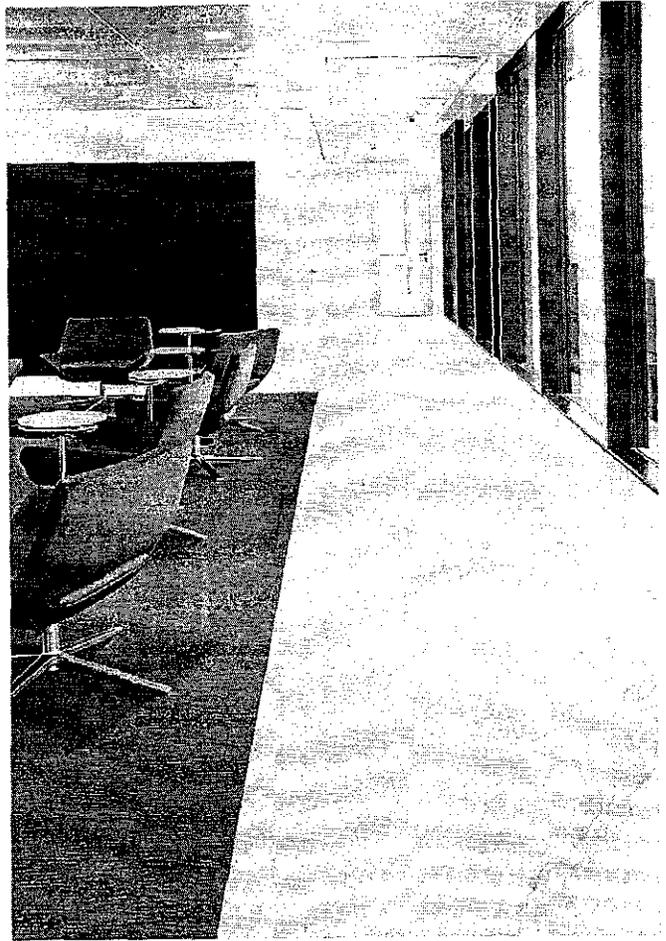
Easy to clean and maintain

Minimal seam joins due to large slab format

NEOLITH

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HOME

ABOUT

About NEOLITH

Sustainability

Technology

TECHNICAL

COLOURS

SUPPORT

MEDIA

DOWNLOADS

GET A QUOTE

CONTACT



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COMMITMENT TO THE ENVIRONMENT

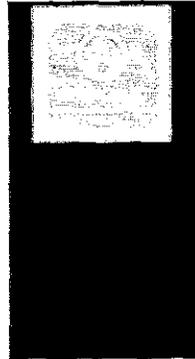
NEOLITH is 100% eco-friendly, using natural materials and technologies that respect the environment. Our compact sintered surfaces are sustainably and responsibly manufactured, complying with every European Environmental safety standard.

The technology and process used to manufacture NEOLITH ensures optimum efficiency in terms of energy consumption and use of raw materials. The production and lifecycle of NEOLITH surfaces have the minimum possible impact on the environment and the end product is fully recyclable.



GREENGUARD CERTIFICATION (formerly GREENGUARD Indoor Air Quality Certification).

Certifies that NEOLITH meets strict chemical emissions limits, contributing to a healthier interior.



GREENGUARD GOLD CERTIFICATION (formerly GREENGUARD Children & Schools Certification): Certifies that NEOLITH is safe indoors for sensitive individuals (such as children and the elderly) and ensures that the product is acceptable for use in environments such as schools and healthcare facilities.



LEED Points Earned: LEED

(Leadership in Energy and Environmental Design) is a program that provides third-party verification of green buildings. NEOLITH satisfies

safety prerequisites and earns points to help consumers achieve the desired level of certification for their home or commercial project.



Member
of the U.S.
Green
Building

Council (USGBC): The USGBC, the council that oversees LEED, allows advocates for green-building policies and practices to come together.



CE
(European

Commission)
CERTIFICATION: Certifies that NEOLITH meets European safety, health and environmental protection requirements.



HOME

ABOUT

- About Neolith
 - Sustainability
 - Technology
-

TECHNICAL

COLOURS

SUPPORT

MEDIA

DOWNLOADS

TECHNOLOGY

QUALITY, ETHICAL PRODUCTION

NEOLITH manufactures a product that surpasses every required standard (ISO) in every category with the use of technologically advanced systems and a sensitive corporate "conscience". With a porosity of less than 0.08 percent, NEOLITH is impervious to absorption, making it a hygienic product resistant to bacteria that can cause disease and trigger allergies.

The precision, state-of-the-art technology used by NEOLITH ensures optimum efficiency in terms of raw material and energy consumption and the superior quality and finish of the end product. A large, automated factory, purpose-built to house the most high-tech, industrial equipment and production processes for NEOLITH, allows a production capacity, level of efficiency, and quality that exceed the market standards.

NEOLITH slabs are created in a completely automated, high-tech factory that runs permanently. Automation allows NEOLITH to maintain its high standards in product quality and consistency, while ensuring energy and output efficiency. Every effort is made to avoid raw material and energy wastages, as the ultra-modern factory was designed with 'green' outputs and components in mind. The high-tech factory also ensures that product quality and production are managed effectively, so order volumes are consistent supply to match the growing international demand. The

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NEOLITH research and design department is constantly pursuing innovative ways to introduce cutting-edge designs and design solutions to the end-user. Modern technology allows for modern solutions to every construction and design requirement.



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HOME

ABOUT

TECHNICAL

Features & Product Advantages

Formats & Thicknesses

Applications

Ventilated Facades

COLOURS

SUPPORT

MEDIA

DOWNLOADS

GET A QUOTE

CONTACT



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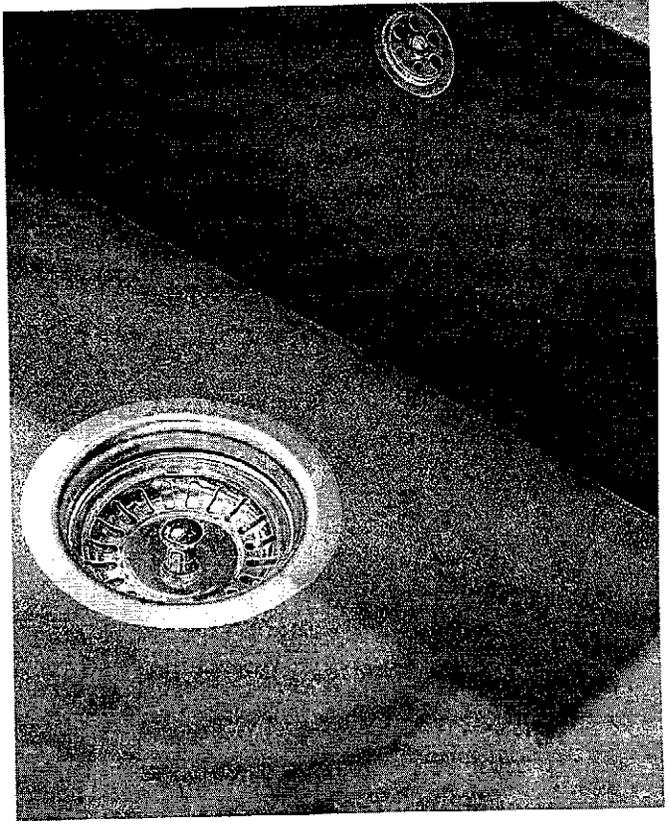
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FEATURES & PRODUCT ADVANTAGES

NEOLITH is an admirable competitor when compared to common surface materials such as marble, granite, engineered stone and other cladding materials. The versatile colours, consistency, durability and remarkable size of these sintered compact surface slabs make NEOLITH the preferred product, particularly for large construction and development projects.

NEOLITH can withstand much higher temperatures than most competing surfaces and the larger slab size means increased cost effectiveness and project efficiency. As an environmentally friendly product, NEOLITH ranks amongst the best, surpassing every required standard (ISO) in every one of its characteristics with the use of technologically advanced operating systems. NEOLITH is currently the most versatile cladding product on the market.





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HOME

ABOUT

TECHNICAL

Features & Product Advantages

Formats & Thicknesses

Architectural

Ventilated Facades

COLOURS

SUPPORT

MEDIA

DOWNLOADS

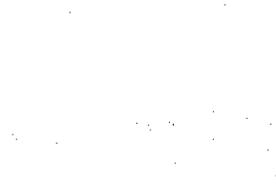
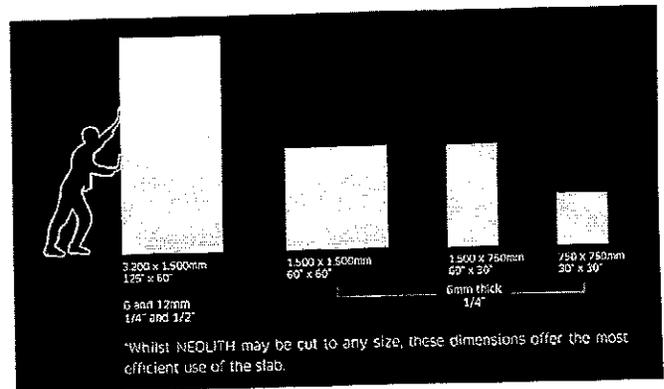
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FORMATS & THICKNESSES

The NEOLITH slab measures 3,000 x 1,500mm. It can be cut down to any size or format, without losing its technical and aesthetic properties.

NEOLITH is available in two thicknesses suitable for both work surfaces (12mm) and any cladding applications (6mm). Our 6 mm slab is currently the largest available slab of its gauge on the market.



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HOME

ABOUT

TECHNICAL

Features & Product
Advantages

Formats & Thicknesses

Applications

Ventilated Facades

COLOURS

SUPPORT

MEDIA

DOWNLOADS

GET A QUOTE

CONTACT



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APPLICATIONS

RESIDENTIAL PROJECTS

With its exceptional durability and aesthetic appeal, NEOLITH is the perfect solution for kitchen and bathroom surfaces. The dual gauge offerings (6mm and 12mm) ensure that NEOLITH can be used absolutely everywhere with complete colour continuity.

NEOLITH is designed for floors, walls, countertops, paving, door cladding and may even be used for fireplace surrounds. The modern, UV-resistant colour palette ensures that you can achieve the look you want, indoors or even outside.

COMMERCIAL PROJECTS AND SHOP FITTINGS

NEOLITH is a low-maintenance product ideal for high-traffic commercial areas. The use and application of the 6mm and 12mm gauges remains the same for commercial installations of NEOLITH. Colour continuity across the gauges means you can easily create a holistic look for any space, interior or exterior. Give display fittings, furnishings, building exteriors and shop or office interiors a professional edge with NEOLITH surfaces.

WALLS AND PAVING

NEOLITH is the best possible choice for interior and exterior wall cladding and paving. Due to its large slab format, it can easily be cut into any panel size to suit any project. The 6mm gauge makes it lightweight and easy to handle. NEOLITH does not require additional reinforcement of the sub-surface to carry the

extra weight of the cladding.

FLOORING

NEOLITH offers a streamlined, uncomplicated surface solution for all interior and exterior flooring applications. NEOLITH 6mm slabs are ideally suited to flooring applications, with the large slab format helping to reduce unattractive join lines.

NEOLITH 6mm slabs are lightweight and easy to handle, simplifying the installation process. The product requires minimal maintenance due to its non-porosity and durability, and no sealing is required. Create a design-conscious aesthetic that supersedes every product on the market with NEOLITH.

