

ESTTA Tracking number: **ESTTA417028**

Filing date: **06/29/2011**

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

Proceeding	91195424
Party	Defendant AMERICAN NATURAVIT, INC.
Correspondence Address	MICHAEL TSCHUPP ESPINOSA TRUEBA PL 3001 SW 3RD AVE MIAMI, FL 33129 UNITED STATES mtschupp@etlaw.com
Submission	Motion to Amend Application
Filer's Name	Michael E. Tschupp
Filer's e-mail	mtschupp@etlaw.com
Signature	/Michael Tschupp/
Date	06/29/2011
Attachments	Renewed Motion to Amend re Settlement - American Naturavit.pdf ( 4 pages ) (180732 bytes ) Amended Drawing Sheet.pdf ( 1 page )(288702 bytes ) DECLARATION SIGNED.PDF ( 2 pages )(1398673 bytes )

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

In the Matter of:

Application Serial No.: 77/869,057  
Filed: November 10, 2009  
Trademark: SUNSHINE NATURALS and Design

Nature's Sunshine Products, Inc.,

Opposition No. 91195424

Opposer,

vs.

American Naturavit, Inc.

Applicant.

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**RENEWED CONSENT MOTION TO UNSUSPEND AND  
FOR SETTLEMENT WITH AMENDMENT OF SUBJECT APPLICATION**

Applicant, American Naturavit, Inc. ("Applicant"), by and through undersigned counsel, and pursuant to TBMP §§ 510.03(b), 514 and 605.03(b), and 37 § CFR 2.133, hereby renews its motion to the Board for resumption of the above-captioned proceeding, and for settlement of same with the amendment of the subject application, and states as follows:

1. On January 27, 2011 the above-captioned proceeding was suspended for settlement negotiations at the request of the parties, and remains in suspension.
2. The parties have reached a settlement of the above-captioned proceeding.
3. The parties' settlement provides, in pertinent part, that Applicant will amend the drawing of the subject application to the drawing<sup>1</sup> shown below:

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<sup>1</sup> Pursuant to the Interlocutory Attorney's Order dated June 21, 2011, Applicant also encloses a separate drawing page herewith containing the amended drawing.



4. Opposer has agreed to withdraw the above-captioned proceeding upon the Board's acceptance of the proposed amendment.

5. The proposed amendment does not materially alter the character of the subject mark.

6. On May 20, 2011, Applicant filed a motion with consent of Opposer seeking amendment of the drawing, removal of the case from suspension, and, upon acceptance of the amendment, dismissal of the above-captioned proceeding

7. On June 21, 2011, the Interlocutory Attorney issued an Order determining that the proposed amendment does not materially alter the mark as prohibited by Trademark Rule 2.72(a)(2), but denying the motion without prejudice on the grounds that the specimens in the file of the involved application do not match the new drawing as required by Trademark Rule 2.72(a)(1).

8. Accordingly, in addition to amending its drawing in the instant application, Applicant would further amend the basis of the instant application from use in commerce under section 1(a) of the Lanham Act to intent-to-use under Section 1(b). In support, Applicant submits herewith a declaration pursuant to TMEP 806.03(c).

9. Opposer consents to the amendment of the drawing and basis, as well as the other relief sought herein.

10. With the additional amendment to the basis of the instant application, Applicant submits that its motion is now in proper condition for approval.

WHEREFORE, Applicant respectfully requests that the Board unsuspended the above-captioned proceeding, amend the subject application as indicated above, and, if it accepts the amendment, then dismiss the instant proceeding.

Respectfully submitted,

ESPINOSA | TRUEBA PL  
Attorneys for Applicant  
3001 SW 3rd Avenue  
Miami, Florida 33129  
Telephone: (305) 854-9000  
Facsimile: (305) 285-5555

Dated: June 29, 2011

By: /s/ Michael Tschupp  
Jorge Espinosa  
Michael Tschupp (Reg. No. 55,895)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing is being served by delivering a true and correct copy of same via First Class Mail delivery to attorney for Opposer, Michael E. Mangelson, Esq. at Stoel Rives LLP, One Utah Center, 201 South Main Street, Suite 1100, Salt Lake City, Utah 84111 on this 29th day of June, 2011.

/s/ Michael Tschupp  
Michael Tschupp

Amended Drawing



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**DECLARATION OF ENRIQUE GARCIA CARDENES IN  
SUPPORT OF CONSENT MOTION TO UNSUSPEND AND FOR  
SETTLEMENT WITH AMENDMENT OF SUBJECT APPLICATION**

1. My name is Enrique Garcia Cardenes. I am president of American Naturavit, Inc. ("Applicant")
2. Applicant seeks to amend the drawing of the trademark application in the above-referenced proceeding to the drawing shown below:

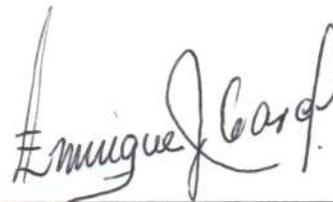


3. Applicant also wishes to amend the filing basis of its application from use in commerce under Section 1(a) of the Lanham Act to intent-to-use under Section 1(b) of the Lanham Act.

4. Applicant has had a bona fide intention to use or use through Applicant's related company or licensee the amended mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application, and/or the applicant has had a bona fide intention to exercise legitimate control over the use of the amended mark in commerce by its members.

5. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Executed on June 28/2011.



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Enrique Garcia Cardenas  
President