

ESTTA Tracking number: **ESTTA425752**

Filing date: **08/17/2011**

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	Neways, Inc.
Granted to Date of previous extension	08/17/2011
Address	2089 Neways Drive Springville, UT 84663 UNITED STATES

Attorney information	John C. Stringham Workman Nydegger 60 East South Temple 1000 Eagle Gate Tower Salt Lake City, UT 84111 UNITED STATES jstringham@wnlaw.com Phone:801-533-9800
----------------------	---

### Applicant Information

Application No	85174256	Publication date	04/19/2011
Opposition Filing Date	08/17/2011	Opposition Period Ends	08/17/2011
Applicant	Topspin-IDS Acquisition, LLC Suite 1079 5707 Dot Com Court Oviedo, FL 32765 UNITED STATES		

### Goods/Services Affected by Opposition

Class 005. First Use: 2006/02/28 First Use In Commerce: 2006/03/31 All goods and services in the class are opposed, namely: nutritionally fortified beverages containing whey protein
--

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2422473	Application Date	09/11/1997
Registration Date	01/23/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1992/08/31 First Use In Commerce: 1992/08/31 nail care preparations, namely, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions, and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; eye makeups; skin makeup; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; and anti-perspirants

U.S. Registration No.	2454358	Application Date	09/11/1997
Registration Date	05/29/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1992/08/31 First Use In Commerce: 1992/08/31 nail care preparations, namely, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, namely, lipsticks, eye makeups and skin makeups; skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; and anti-perspirants		

U.S. Registration No.	2471380	Application Date	03/31/2000
Registration Date	07/24/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS		

Design Mark	<b>NEWAYS</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1992/09/00 First Use In Commerce: 1992/09/00 Housemark for a complete line of nutritional and herbal supplements		

U.S. Registration No.	2431703	Application Date	03/31/2000
Registration Date	02/27/2001	Foreign Priority Date	NONE

Word Mark	NEWAYS		
Design Mark	<b>NEWAYS</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1992/09/00 First Use In Commerce: 1992/09/00 Housemark for a complete line of aromatherapy essential oils and deodorant		

U.S. Registration No.	2414219	Application Date	03/06/2000
Registration Date	12/19/2000	Foreign Priority Date	NONE

Word Mark	NEWAYS SASSY		
Design Mark	<b>NEWAYS SASSY</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1993/00/00 First Use In Commerce: 2000/02/00 Hair Care Preparation, namely, hair spray		

U.S. Registration No.	2389764	Application Date	09/16/1999
Registration Date	09/26/2000	Foreign Priority Date	NONE

Word Mark	NEWAYS AUTHENTIC HAWAIIAN NONI		
-----------	--------------------------------	--	--

Design Mark	<b>NEWAYS AUTHENTIC HAWAIIAN NONI</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1999/08/13 First Use In Commerce: 1999/08/13 nutritional supplement		

U.S. Registration No.	2435115	Application Date	02/18/2000
Registration Date	03/13/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS SKIN ENHANCER		
Design Mark	<b>NEWAYS SKIN ENHANCER</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1999/12/00 First Use In Commerce: 1999/12/00 Skin Care Preparation; namely face and body lotion		

U.S. Registration No.	2731042	Application Date	03/04/2000
Registration Date	07/01/2003	Foreign Priority Date	NONE
Word Mark	NEWAYS CASCADING REVENOL		
Design Mark	<b>NEWAYS CASCADING REVENOL</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/02/00 First Use In Commerce: 2000/02/00 Herbal and Nutritional Supplement		

U.S. Registration No.	2517049	Application Date	11/07/2000
Registration Date	12/11/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS EXTRA GENTLE		

Design Mark	<b>NEWAYS EXTRA GENTLE</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2000/06/22 First Use In Commerce: 2000/06/22 Facial Cleansing Lotion		

U.S. Registration No.	2492629	Application Date	11/16/2000
Registration Date	09/25/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS INGENIOUS		
Design Mark	<b>NEWAYS INGENIOUS</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2000/11/14 First Use In Commerce: 2000/11/14 Herbal and Nutritional Supplement		

U.S. Registration No.	2515087	Application Date	01/26/2001
Registration Date	12/04/2001	Foreign Priority Date	NONE
Word Mark	NEWAYS CLEANSING TEA		
Design Mark	<b>NEWAYS CLEANSING TEA</b>		
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 2001/01/19 First Use In Commerce: 2001/01/19 Herbal, nutritional and dietary supplement		

U.S. Registration No.	2656486	Application Date	02/19/2002
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	NEWAYS SKIN BRIGHTENER		

Design Mark	<b>NEWAYS SKIN BRIGHTENER</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/01/25 First Use In Commerce: 2002/01/25 Skin Lightening Lotion		

U.S. Registration No.	2656490	Application Date	02/05/2002
Registration Date	12/03/2002	Foreign Priority Date	NONE

Word Mark	NEWAYS CIRCLES & LINES		
Design Mark	<b>NEWAYS CIRCLES &amp; LINES</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2002/01/25 First Use In Commerce: 2002/01/25 Facial Lotion		

U.S. Registration No.	2779438	Application Date	01/21/2003
Registration Date	11/04/2003	Foreign Priority Date	NONE

Word Mark	NEWAYS LAVENDER-CHAMOMILE		
Design Mark	<b>NEWAYS LAVENDER-CHAMOMILE</b>		
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/01/17 First Use In Commerce: 2003/01/17 Essential oils for personal use		

U.S. Registration No.	2799001	Application Date	09/20/2002
Registration Date	12/23/2003	Foreign Priority Date	NONE
Word Mark	NEWAYS		

Design Mark	
-------------	---

Description of Mark	NONE
---------------------	------

Goods/Services	<p>Class 003. First use: First Use: 2003/01/17 First Use In Commerce: 2003/01/17 Nail care preparations, namely, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, skin disinfectants, namely skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions, and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; eye makeups; skin makeup; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; personal deodorants; and essential oils for personal use</p> <p>Class 005. First use: First Use: 2003/01/17 First Use In Commerce: 2003/01/17 Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement</p>
----------------	--

U.S. Registration No.	2943333	Application Date	01/21/2003
-----------------------	---------	------------------	------------

Registration Date	04/26/2005	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark	NEWAYS GENERATIONS
-----------	--------------------

Design Mark	<b>NEWAYS GENERATIONS</b>
-------------	---------------------------

Description of Mark	NONE
---------------------	------

Goods/Services	<p>Class 003. First use: First Use: 2003/01/17 First Use In Commerce: 2003/01/17 Personal care products, namely, baby bubble bath, baby hair detangler, baby bath and shower gel, baby shampoos, baby powder, baby wipes, and baby lotions, namely, skin and body lotions</p>
----------------	---

U.S. Registration No.	3006252	Application Date	09/23/2003
-----------------------	---------	------------------	------------

Registration Date	10/11/2005	Foreign Priority Date	NONE
-------------------	------------	-----------------------	------

Word Mark	NEWAYS GREEN QI
-----------	-----------------

Design Mark	<b>NEWAYS GREEN QI</b>
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2004/01/13 First Use In Commerce: 2004/01/13 Dietary Supplement

U.S. Registration No.	3850494	Application Date	02/06/2008
Registration Date	09/21/2010	Foreign Priority Date	NONE

Word Mark	NEWAYS HEALTHY HOMES
Design Mark	<b>NEWAYS HEALTHY HOMES</b>

Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 2008/03/28 First Use In Commerce: 2008/03/28 Nail care preparations, namely, nail polish, cuticle creams, nail creams and lotions; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; cosmetics, namely, eye makeups, skin makeup; skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions, and hair sprays; cosmetic preparations for bath, namely, soaps, gels and bubble bath personal deodorants; essential oils for personal use; sun tanning preparations, sun blocking preparations; shaving gels and soaps; dental preparations, namely, toothpaste and mouthwash; laundry detergents</p> <p>Class 005. First use: First Use: 2008/03/28 First Use In Commerce: 2008/03/28 Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement; disinfectant solutions for general household use</p> <p>Class 016. First use: First Use: 2008/03/28 First Use In Commerce: 2008/03/28 Magazines on the subject of health and fitness in the residential environment</p>

U.S. Registration No.	3709468	Application Date	02/06/2008
Registration Date	11/10/2009	Foreign Priority Date	NONE
Word Mark	NEWAYS HEALTHY HOMES		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 2008/04/30 First Use In Commerce: 2008/04/30  Nail care preparations, namely, nail polish, cuticle creams, nail creams and lotions; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; cosmetics, namely, eye makeups, skin makeup; skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions, and hair sprays; cosmetic preparations for bath, namely, soaps, gels and bubble bath personal deodorants; essential oils for personal use; sun tanning preparations, sun blocking preparations; shaving gels and soaps; dental preparations, namely, toothpaste and mouthwash; laundry detergents</p> <p>Class 005. First use: First Use: 2008/04/30 First Use In Commerce: 2008/04/30  Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement; disinfectant solutions for general household use</p> <p>Class 016. First use: First Use: 2008/04/30 First Use In Commerce: 2008/04/30  Magazines on the subject of health and fitness in the residential environment</p>

U.S. Registration No.	2984458	Application Date	01/21/2003
Registration Date	08/16/2005	Foreign Priority Date	NONE

Word Mark	NEWAYS GENERATIONS
-----------	--------------------

Design Mark	
-------------	---

Description of Mark	NONE
Goods/Services	<p>Class 003. First use: First Use: 2003/01/17 First Use In Commerce: 2003/01/17  Personal care preparations, namely, baby bubble bath, baby hair detangler, baby bath and shower gel, baby shampoos, baby powder, baby wipes, and baby lotions, namely, skin and body lotions</p>

U.S. Registration No.	3703119	Application Date	09/04/2008
-----------------------	---------	------------------	------------

Registration Date	10/27/2009	Foreign Priority Date	NONE
Word Mark	NEWAYS		
Design Mark			
Description of Mark	The mark consists of a stylized leaf appearing above the word "NEWAYS".		
Goods/Services	<p>Class 003. First use: First Use: 2008/11/28 First Use In Commerce: 2008/11/28  NAIL CARE PREPARATIONS, NAMELY, POLISH WHICH PROVIDES A HARDENED COATING TO THE NAIL, CUTICLE CREAMS, NAIL CREAMS AND LOTIONS; LAUNDRY DETERGENTS; SKIN TONERS; HAIR PREPARATIONS, NAMELY, SHAMPOOS, CONDITIONERS, GELS, LOTIONS, AND HAIR SPRAYS; SUN TANNING PREPARATIONS; SHAVING GELS AND SOAPS; COSMETIC SKIN PREPARATIONS, NAMELY, SOAPS, SKIN AND FACIAL LOTIONS AND CREAMS; EYE MAKEUPS; SKIN MAKEUP; DENTAL PREPARATIONS, NAMELY, TOOTHPASTE AND MOUTHWASH; PERSONAL COSMETIC DEODORANTS; COSMETIC PREPARATIONS FOR BATH, NAMELY, SOAPS, GELS AND BUBBLE BATH; SUN BLOCKING PREPARATIONS; PERSONAL DEODORANTS; AND ESSENTIAL OILS FOR PERSONAL USE</p> <p>Class 005. First use: First Use: 2008/11/28 First Use In Commerce: 2008/11/28  NUTRITIONAL, DIETARY, AND HERBAL SUPPLEMENTS; DIETARY DRINK MIX FOR USE AS A MEAL REPLACEMENT; ALL PURPOSE DISINFECTANTS FOR GENERAL HOUSEHOLD USE; DISINFECTANTS FOR HYGIENE PURPOSES</p>		

Attachments	75354869#TMSN.gif ( 1 page )( bytes ) 76015222#TMSN.gif ( 1 page )( bytes ) 76015073#TMSN.gif ( 1 page )( bytes ) 75936457#TMSN.gif ( 1 page )( bytes ) 75801329#TMSN.gif ( 1 page )( bytes ) 75923256#TMSN.gif ( 1 page )( bytes ) 75936092#TMSN.gif ( 1 page )( bytes ) 76160795#TMSN.gif ( 1 page )( bytes ) 76166689#TMSN.gif ( 1 page )( bytes ) 76200284#TMSN.gif ( 1 page )( bytes ) 76372029#TMSN.gif ( 1 page )( bytes ) 76372559#TMSN.gif ( 1 page )( bytes ) 76483630#TMSN.gif ( 1 page )( bytes ) 76453386#TMSN.gif ( 1 page )( bytes ) 76483631#TMSN.gif ( 1 page )( bytes ) 76551079#TMSN.gif ( 1 page )( bytes ) 77390277#TMSN.jpeg ( 1 page )( bytes ) 77390271#TMSN.jpeg ( 1 page )( bytes ) 76483624#TMSN.gif ( 1 page )( bytes )
-------------	---

	77562245#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition 14564.127.pdf ( 11 pages )(68002 bytes ) 14564.127 Notice of Opposition pleading signed pages.pdf ( 2 pages )(84900 bytes )
--	---

### **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	/John C. Stringham, 40831/
Name	John C. Stringham
Date	08/17/2011



2. Applicant filed an application for registration under Trademark Act Section 1(a), on November 11, 2010, alleging first use on February 28, 2006 and first use in interstate commerce on March 31, 2006.

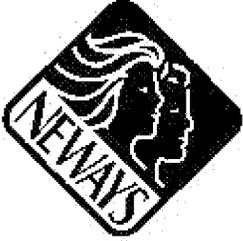
3. Since at least 1992 and long prior to the effective filing date of the subject application, Opposer has been engaged in providing and offering a wide variety of goods in association with registered, pending, and common law marks of Opposer. Particularly, Opposer is the owner of numerous trademarks and common law marks used in connection with a broad array of goods, including but not limited to goods in the following International Classes: International Class 3: nail care preparations, namely, polish which provides a hardened coating to the nail, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, skin disinfectants, namely skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions, and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; eye makeups; skin makeup; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; personal deodorants; and essential oils for personal use; skin care preparation; laundry detergents; personal care preparations, namely, baby bubble bath, baby hair detangler, baby bath and shower gel, baby shampoos, baby powder, baby wipes, and baby lotions, namely, skin and body lotions; skin lightening lotion; International Class 5: housemark for a complete line of nutritional and herbal supplements; housemark for a complete line of aromatherapy essential oils and deodorant; nutritional,

dietary and herbal supplements; dietary drink mix for use as a meal replacement; all purpose disinfectants for general household use; disinfectants for hygiene purposes.

All of the listed goods are covered under Opposer’s NEWAYS marks. Opposer is well known to the consuming public. The goods offered by Opposer in association with such registered, pending and common law marks are such that the consuming public will likely be confused as to the source of the goods offered by the Applicant.

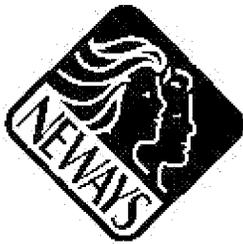
4. Opposer is the owner of the following relevant trademark registrations which have been duly and legally issued by the United States Patent and Trademark Office:

**REGISTRATIONS**

<b>Registration</b>	<b>Mark</b>	<b>Goods and Services</b>
2422473		<p>U.S. Class: 001, 004, 006, 050, 051, 052 (International Class 03)            nail care preparations, namely, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, namely, lipsticks, eye makeups and skin makeups; skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; and anti-perspirants</p> <p><b>Basis:</b> 1(a)            First Use Date: 1992-08-31            First Use in Commerce Date: 1992-08-31</p>

2454358	NEWAYS	<p>U.S. Class: 001, 004, 006, 050, 051, 052 (International Class 03)          nail care preparations, namely, polish which provides a hardened coating to the nail, cuticle creams, nail creams and lotions; laundry detergents; cosmetics, namely, lipsticks, eye makeups and skin makeups; skin disinfectants, namely, skin toners; hair preparations, namely, shampoos, conditioners, gels, lotions and hair sprays; sun tanning preparations; shaving gels and soaps; cosmetic skin preparations, namely, soaps, skin and facial lotions and creams; dental preparations, namely, toothpaste and mouthwash; personal cosmetic deodorants; cosmetic preparations for bath, namely, soaps, gels and bubble bath; disinfectant solutions for general household use; sun blocking preparations; and anti-perspirants</p> <p><b>Basis:</b> 1(a)          First Use Date: 1992-08-31          First Use in Commerce Date: 1992-08-31</p>
2471380	NEWAYS	<p>U.S. Class: 006, 018, 044, 046, 051, 052 (International Class 05)          Housemark for a complete line of nutritional and herbal supplements</p> <p><b>Basis:</b> 1(a)          First Use Date: 1992-09-00          First Use in Commerce Date: 1992-09-00</p>
2431703	NEWAYS	<p>U.S. Class: 001, 004, 006, 050, 051, 052 (International Class 03)          Housemark for a complete line aromatherapy essential oils and deodorant</p> <p><b>Basis:</b> 1(a)  <b>First Use Date:</b> 1992-09-00  <b>First Use in Commerce Date:</b> 1992-09-00</p>
2414219	NEWAYS SASSY	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 003)  <b>Class Status:</b> Active          Hair care preparation, namely, hair spray</p> <p><b>Basis:</b> 1(a)  <b>First Use Date:</b> 1993-00-00  <b>First Use in Commerce Date:</b> 1993-00-00</p>
2389764	NEWAYS AUTHENTIC HAWAIIAN NONI	<p>U.S. Class: 006, 018, 044, 046, 051, 052 (International Class: 005)          Nutritional supplement</p> <p><b>Basis:</b> 1(a)  <b>First Use Date:</b> 1999-08-13  <b>First Use in Commerce Date:</b> 1999-08-13</p>

2435115	NEWAYS SKIN ENHANCER	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 003) <b>Class Status:</b> Active Skin care preparation; namely, face and body lotion <b>Basis:</b> 1(a) <b>First Use Date:</b> 1999-12-00 <b>First Use in Commerce Date:</b> 1999-12-00</p>
2731042	NEWAYS CASCADING REVENOL	<p><b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class: 005) Herbal and nutritional supplement <b>Basis:</b> 1(a) <b>First Use Date:</b> 2000-02-00 <b>First Use in Commerce Date:</b> 2000-02-00</p>
2517049	NEWAYS EXTRA GENTLE	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 003) <b>Class Status:</b> Active Facial cleansing lotion <b>Basis:</b> 1(a) <b>First Use Date:</b> 2000-06-22 <b>First Use in Commerce Date:</b> 2000-06-22</p>
2492629	NEWAYS INGENIOUS	<p><b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class: 005) Herbal and nutritional supplement <b>Basis:</b> 1(a) <b>First Use Date:</b> 2001-01-14 <b>First Use in Commerce Date:</b> 2001-01-14</p>
2515087	NEWAYS CLEANSING TEA	<p><b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class: 005) Herbal, nutritional and dietary supplement <b>Basis:</b> 1(a) <b>First Use Date:</b> 2001-01-19 <b>First Use in Commerce Date:</b> 2001-01-19</p>
2656486	NEWAYS SKIN BRIGHTENER	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 003) <b>Class Status:</b> Active Skin lightening lotion <b>Basis:</b> 1(a) <b>First Use Date:</b> 2002-01-25 <b>First Use in Commerce Date:</b> 2002-01-25</p>
2656490	NEWAYS CIRCLES & LINES	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 003) <b>Class Status:</b> Active Facial Lotion <b>Basis:</b> 1(a) <b>First Use Date:</b> 2002-01-25 <b>First Use in Commerce Date:</b> 2002-01-25</p>

2779438	NEWAYS LAVENDER-CHAMOMILE	<p>U.S. Class: 001, 004, 006, 050, 051, 052 (International Class 03) Essential oils for personal use</p> <p><b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17</p>
2799001		<p><b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005) <b>Class Status:</b> Active</p> <p>NAIL CARE PREPARATIONS, NAMELY, POLISH WHICH PROVIDES A HARDENED COATING TO THE NAIL, CUTICLE CREAMS, NAIL CREAMS AND LOTIONS; LAUNDRY DETERGENTS; SKIN TONERS; HAIR PREPARATIONS, NAMELY, SHAMPOOS, CONDITIONERS, GELS, LOTIONS, AND HAIR SPRAYS; SUN TANNING PREPARATIONS; SHAVING GELS AND SOAPS; COSMETIC SKIN PREPARATIONS, NAMELY, SOAPS, SKIN AND FACIAL LOTIONS AND CREAMS; EYE MAKEUPS; SKIN MAKEUP; DENTAL PREPARATIONS, NAMELY, TOOTHPASTE AND MOUTHWASH; PERSONAL COSMETIC DEODORANTS; COSMETIC PREPARATIONS FOR BATH, NAMELY, SOAPS, GELS AND BUBBLE BATH; SUN BLOCKING PREPARATIONS; PERSONAL DEODORANTS; AND ESSENTIAL OILS FOR PERSONAL USE;</p> <p>NUTRITIONAL, DIETARY, AND HERBAL SUPPLEMENTS; DIETARY DRINK MIX FOR USE AS A MEAL REPLACEMENT; ALL PURPOSE DISINFECTANTS FOR GENERAL HOUSEHOLD USE; DISINFECTANTS FOR HYGIENE PURPOSES</p> <p><b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17</p>
2943333	NEWAYS GENERATIONS	<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 03) <b>Class Status:</b> Active</p> <p>Personal care preparations, namely, baby bubble bath, baby hair detangler, baby bath and shower gel, baby shampoos, baby powder, baby wipes, and baby lotions, namely, skin and body lotions</p> <p><b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17</p>

2984458		<p><b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 03)</p> <p><b>Class Status:</b> Active</p> <p>Personal care preparations, namely, baby bubble bath, baby hair detangler, baby bath and shower gel, baby shampoos, baby powder, baby wipes, and baby lotions, namely, skin and body lotions</p> <p><b>Basis:</b> 1(a)</p> <p><b>First Use Date:</b> 2003-01-17</p> <p><b>First Use in Commerce Date:</b> 2003-01-17</p>
3006252	NEWAYS GREEN QI	<p>U.S. Class: 006, 018, 044, 046, 051, 052 (International Class: 005)</p> <p>Dietary Supplement</p> <p><b>Basis:</b> 1(a)</p> <p><b>First Use Date:</b> 2004-01-13</p> <p><b>First Use in Commerce Date:</b> 2004-01-13</p>
3850494	NEWAYS HEALTHY HOMES	<p><b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005)</p> <p><b>Class Status:</b> Active</p> <p>NAIL CARE PREPARATIONS, NAMELY, POLISH WHICH PROVIDES A HARDENED COATING TO THE NAIL, CUTICLE CREAMS, NAIL CREAMS AND LOTIONS; LAUNDRY DETERGENTS; SKIN TONERS; HAIR PREPARATIONS, NAMELY, SHAMPOOS, CONDITIONERS, GELS, LOTIONS, AND HAIR SPRAYS; SUN TANNING PREPARATIONS; SHAVING GELS AND SOAPS; COSMETIC SKIN PREPARATIONS, NAMELY, SOAPS, SKIN AND FACIAL LOTIONS AND CREAMS; EYE MAKEUPS; SKIN MAKEUP; DENTAL PREPARATIONS, NAMELY, TOOTHPASTE AND MOUTHWASH; PERSONAL COSMETIC DEODORANTS; COSMETIC PREPARATIONS FOR BATH, NAMELY, SOAPS, GELS AND BUBBLE BATH; SUN BLOCKING PREPARATIONS; PERSONAL DEODORANTS; AND ESSENTIAL OILS FOR PERSONAL USE;</p> <p>NUTRITIONAL, DIETARY, AND HERBAL SUPPLEMENTS; DIETARY DRINK MIX FOR USE AS A MEAL REPLACEMENT; DISINFECTANTS FOR GENERAL HOUSEHOLD USE</p> <p><b>Basis:</b> 1(a)</p> <p><b>First Use Date:</b> 2008-03-28</p> <p><b>First Use in Commerce Date:</b> 2008-03-28</p>

3709468		<p><b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005)</p> <p><b>Class Status:</b> Active</p> <p>NAIL CARE PREPARATIONS, NAMELY, POLISH WHICH PROVIDES A HARDENED COATING TO THE NAIL, CUTICLE CREAMS, NAIL CREAMS AND LOTIONS; LAUNDRY DETERGENTS; SKIN TONERS; HAIR PREPARATIONS, NAMELY, SHAMPOOS, CONDITIONERS, GELS, LOTIONS, AND HAIR SPRAYS; SUN TANNING PREPARATIONS; SHAVING GELS AND SOAPS; COSMETIC SKIN PREPARATIONS, NAMELY, SOAPS, SKIN AND FACIAL LOTIONS AND CREAMS; EYE MAKEUPS; SKIN MAKEUP; DENTAL PREPARATIONS, NAMELY, TOOTHPASTE AND MOUTHWASH; PERSONAL COSMETIC DEODORANTS; COSMETIC PREPARATIONS FOR BATH, NAMELY, SOAPS, GELS AND BUBBLE BATH; SUN BLOCKING PREPARATIONS; PERSONAL DEODORANTS; AND ESSENTIAL OILS FOR PERSONAL USE;</p> <p>NUTRITIONAL, DIETARY, AND HERBAL SUPPLEMENTS; DIETARY DRINK MIX FOR USE AS A MEAL REPLACEMENT; DISINFECTANTS FOR GENERAL HOUSEHOLD USE</p> <p><b>Basis:</b> 1(a)</p> <p><b>First Use Date:</b> 2008-03-28</p> <p><b>First Use in Commerce Date:</b> 2008-03-28</p>
---------	---	--

3703119		<p><b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005)</p> <p><b>Class Status:</b> Active</p> <p>NAIL CARE PREPARATIONS, NAMELY, POLISH WHICH PROVIDES A HARDENED COATING TO THE NAIL, CUTICLE CREAMS, NAIL CREAMS AND LOTIONS; LAUNDRY DETERGENTS; SKIN TONERS; HAIR PREPARATIONS, NAMELY, SHAMPOOS, CONDITIONERS, GELS, LOTIONS, AND HAIR SPRAYS; SUN TANNING PREPARATIONS; SHAVING GELS AND SOAPS; COSMETIC SKIN PREPARATIONS, NAMELY, SOAPS, SKIN AND FACIAL LOTIONS AND CREAMS; EYE MAKEUPS; SKIN MAKEUP; DENTAL PREPARATIONS, NAMELY, TOOTHPASTE AND MOUTHWASH; PERSONAL COSMETIC DEODORANTS; COSMETIC PREPARATIONS FOR BATH, NAMELY, SOAPS, GELS AND BUBBLE BATH; SUN BLOCKING PREPARATIONS; PERSONAL DEODORANTS; AND ESSENTIAL OILS FOR PERSONAL USE;</p> <p>NUTRITIONAL, DIETARY, AND HERBAL SUPPLEMENTS; DIETARY DRINK MIX FOR USE AS A MEAL REPLACEMENT; ALL PURPOSE DISINFECTANTS FOR GENERAL HOUSEHOLD USE; DISINFECTANTS FOR HYGIENE PURPOSES</p> <p><b>Basis:</b> 1(a)</p> <p><b>First Use Date:</b> 2008-11-28</p> <p><b>First Use in Commerce Date:</b> 2008-11-28</p>
---------	---	--

5. Since the date of issuance of the above registrations, the names and marks have been continuously used in interstate commerce. Since the issuance of these trademark registrations, notice has been given to the public that the marks are registered trademarks by affixing notice provided in 15 U.S.C. § 1111.

6. The marks in U.S. Registration Nos. 2515087, 2414219, 2492629, 2731042, 2517049, 2656486, 2656490, 2799001, 2779438, 2431703, 2943333, 2471380, 2435115, 2389764, 2422473 and 2454358 are deemed incontestable under Trademark Act Section 15, 15 U.S.C. § 1065.

7. Upon information and belief, at least some of Opposer's NEWAYS marks are famous and distinctive and became famous and distinctive well prior to Applicant's filing of its application.

8. Opposer has used its NEWAYS marks to distinguish its goods from all other goods of the same type, and Opposer has acquired substantial goodwill in its NEWAYS marks and names through use thereof.

9. Since Opposer's initial use of its NEWAYS marks, Opposer has made a substantial investment in marketing and promoting its goods under those marks. Opposer has extensively used, advertised, promoted and offered its goods in association with its NEWAYS marks and other marks with the result that Opposer's customers and the general public have come to know and recognize Opposer's NEWAYS marks and other marks and that the public associates these marks with Opposer and/or its goods. Opposer has built up extensive goodwill in connection with its goods under its NEWAYS marks and other marks.

10. Applicant's mark sounds identical to the NEWAYS mark. The Applicant's mark sounds phonetically the same as Opposer's mark. The mark proposed for registration by Applicant, namely NEW WHEY, is applied to goods that are the same as to at least some of Opposer's goods, and the goods of Applicant could be confused by consumers as originating from Opposer and mistaken therefore. Accordingly, there is a potential to confuse, mislead and deceive the consuming public as to the source or origin of Applicant's goods.

11. Applicant's mark is similar in spelling to Opposer's mark. The spelling is similar enough that a consumer may mistakenly purchase goods of the Applicant believing they are goods originating from the Opposer. Accordingly, there is a potential to confuse,

mislead and deceive the consuming public as to the source or origin of Applicant's goods.

12. Registration of Applicant's trademark will result in damage to Opposer's marks and Opposer's business.

13. If Applicant is permitted to register its mark for its goods as specified in the application herein opposed, such use and registration could result in confusion in the trade by reason of the similarity of the sound and appearance between Applicant's mark and one or more of Opposer's marks thereby damaging and injuring Opposer. Any such confusion may result in the loss of business to Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under the Applicant's NEW WHEY mark may reflect upon and injure the reputation which Opposer has established for its goods in association with one or more of Opposer's marks.

14. If Applicant is granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a further source of damage to Opposer.

15. In view of the foregoing, Applicant is not entitled to federal registration of its claimed mark because Applicant does not have a right to exclusive use of said mark in commerce on Applicant's goods and further, Applicant's claimed mark could be unable to be distinguished from the goods offered by Opposer.

WHEREFORE, Opposer prays that the registration sought by Applicant be refused and that this Opposition be sustained.

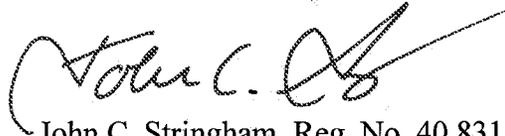
The fee required under 37 C.F.R. §2.6(17) are enclosed.

All correspondence and telephonic communications should be directed to:

John C. Stringham  
WORKMAN NYDEGGER  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
(801) 533-9800  
[jstringham@wnlaw.com](mailto:jstringham@wnlaw.com)

DATED this 17<sup>th</sup> day of August 2011.

Respectfully submitted,



John C. Stringham, Reg. No. 40,831  
**WORKMAN NYDEGGER**  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800  
Facsimile: (801) 328-1707  
[jstringham@wnlaw.com](mailto:jstringham@wnlaw.com)

ATTORNEY FOR OPPOSER  
NEWAYS, INC.

3450059\_1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing NOTICE OF OPPOSITION was served on Applicant by mailing a true copy thereof to its counsel, by First Class Mail, postage prepaid, on this the 17<sup>th</sup> day of August 2011, in envelopes addressed as follows:

Robert L. Wolter  
BEUSSE WOLTER SANKS MORA & MAIRE, P.A.  
390 N Orange Ave. Suite 2500  
Orlando, Florida 32801-1683

  
Rachelle Turner