

ESTTA Tracking number: **ESTTA689263**

Filing date: **08/12/2015**

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	Nerium International, LLC
Granted to Date of previous extension	08/12/2015
Address	4006 Belt Line Road, Suite 100 Addison, TX 75001 UNITED STATES

Attorney information	Robert J. Ward GARDERE WYNNE SEWELL LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201 UNITED STATES ip@gardere.com, rward@gardere.com, jjones@gardere.com, lhemphill@gardere.com Phone:214-999-3000
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Applicant Information

Application No	85303510	Publication date	04/14/2015
Opposition Filing Date	08/12/2015	Opposition Period Ends	08/12/2015
Applicant	Nerium Biotechnology, Inc. 11467 Huebner Road, Suite 175 San Antonio, TX 78230 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Medicated skin care preparations, namely, topically-applied, non-prescription creams, lotions, gels, toners, cleaners and peels for treating the skin's appearance and feel, all containing oleander plant extracts
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NERIUM		

Goods/Services	Cosmetic products, namely, non-medicated skin care preparations, namely, facial scrubs, body scrubs, hand scrubs, skin creams, facial creams, cleansing creams, night creams, anti-aging creams, anti-wrinkle creams, hand lotions; skin moisturizers, skin emollients, eye creams; masks, namely, beauty masks, facial masks, skin masks; face and body lotions; body oils; non-medicated lip balms; hard and liquid soaps for hands, face and body; and Multilevel marketing services, namely, providing marketing and income opportunities to others through the sale of personal care products, and through the development of marketing organizations; distributorship services in the fields of personal care products; retail phone order and mail order services, retail catalog order services, and online retail store services, all in the fields of health, beauty and skin care; online ordering service via computer networks and global communication networks featuring general merchandise, namely beauty and skin care products, cosmetics and toiletries; business management and business consultation services provided to multilevel marketing distributors and retail customers of such distributors; and business information services in the nature of providing information on small businesses and small business opportunities via online electronic computer networks
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Word Mark	NERIUMAD
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Goods/Services	Goods and Services: Cosmetic products, namely, non-medicated skin care preparations, namely, facial scrubs, body scrubs, hand scrubs, skin creams, facial creams, cleansing creams, night creams, anti-aging creams, anti-wrinkle creams, hand lotions; skin moisturizers, skin emollients, eye creams; masks, namely, beauty masks, facial masks, skin masks; face and body lotions; body oils; non-medicated lip balms; hard and liquid soaps for hands, face and body; and Multilevel marketing services, namely, providing marketing and income opportunities to others through the sale of personal care products, and through the development of marketing organizations; distributorship services in the fields of personal care products; retail phone order and mail order services, retail catalog order services, and online retail store services, all in the fields of health, beauty and skin care; online ordering service via computer networks and global communication networks featuring general merchandise, namely beauty and skin care products, cosmetics and toiletries; business management and business consultation services provided to multilevel marketing distributors and retail customers of such distributors; and business information services in the nature of providing information on small businesses and small business opportunities via online electronic computer networks
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U.S. Application/ Registration No.	NONE	Application Date	NONE
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Registration Date	NONE
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Word Mark	NERIUM INTERNATIONAL
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Goods/Services	Goods and Services:Cosmetic products, namely, non-medicated skin care preparations, namely, facial scrubs, body scrubs, hand scrubs, skin creams, facial creams, cleansing creams, night creams, anti-aging creams, anti-wrinkle creams, hand lotions; skin moisturizers, skin emollients, eye creams; masks, namely, beauty masks, facial masks, skin masks; face and body lotions; body oils; non-medicated
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	<p>lip balms; hard and liquid soaps for hands, face and body; and Multi-level marketing services, namely, providing marketing and income opportunities to others through the sale of personal care products, and through the development of marketing organizations; distributorship services in the fields of personal care products; retail phone order and mail order services, retail catalog order services, and online retail store services, all in the fields of health, beauty and skin care; online ordering service via computer networks and global communication networks featuring general merchandise, namely beauty and skin care products, cosmetics and toiletries; business management and business consultation services provided to multilevel marketing distributors and retail customers of such distributors; and business information services in the nature of providing information on small businesses and small business opportunities via online electronic computer networks</p>
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Attachments	NERIUM Opposition.pdf(2413122 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	/Lisa R. Hemphill/
Name	Lisa R. Hemphill
Date	08/12/2015

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

In the matter of Application Serial No. 85/303,510
For the mark: NERIUM
Filed: April 25, 2011
Published: April 14, 2015

NERIUM INTERNATIONAL, LLC.	§	
	§	
Opposer,	§	OPPOSITION NO. _____
	§	
vs.	§	
NERIUM BIOTECHNOLOGY, INC.	§	
	§	
Applicant.	§	

Filed Electronically Through ESTTA

Commissioner of Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

Sir:

Nerium International, LLC (“**Opposer**”), a Texas limited liability company located and doing business at 4006 Belt Line Rd., Suite 100, Addison, Texas 75001, believes that it will be damaged by the issuance of a registration for the mark NERIUM shown in intent-to-use Application Serial No. 85/303,510 (“**Applicant’s Mark**”). Opposer hereby opposes registration of the mark NERIUM filed by Nerium Biotechnology, Inc. (hereinafter “**Applicant**”), a Canadian corporation, pursuant to Section 13(a) of the Lanham Trademark Act of 1946 (“**Lanham Act**”), 15 U.S.C. § 1063 (a).

Opposer hereby reserves the right to supplement or amend this opposition and to file pleadings or documents in further support of this opposition.

AS GROUNDS FOR OPPOSITION, Opposer alleges, among others, the following, on information and belief:

1.

Applicant, on April 25, 2011, filed in-use Trademark Application Serial No. 85/303,510 to attempt to register the mark NERIUM for goods that were amended during prosecution to: medicated skin care preparations, namely, topically-applied, non-prescription creams, lotions, gels, toners, cleansers and peels for treating the skin's appearance and feel, all containing oleander plant extracts in Class 3, which was subsequently amended during prosecution to Class 5. Further, Applicant also amended the filing basis of its application, after almost four years of prosecution, to an intent-to-use application.

2.

Opposer, since at least as early as April 2011, has been and is now using the mark NERIUM, and other derivative marks containing the term NERIUM, such as the marks: NERIUMAD, and NERIUM INTERNATIONAL, in interstate commerce in the United States in connection with skincare products and multilevel marketing services. Said use has been valid and continuous since April 2011 and before, and has not been abandoned. Attached hereto as EXHIBIT A are representative samples of use of the marks in connection with skincare products and multilevel marketing services.

3.

As a result of its widespread, continuous, and exclusive use of the NERIUM marks to identify Opposer as the source of skincare products and multilevel marketing services, Opposer owns valid and subsisting common law rights to the NERIUM, and other NERIUM- derived marks.

4.

Opposer, since October 25, 2010, has operated under the designation "Nerium International, LLC" in the field of skincare products, as evidenced by the attached Certificate of Formation for Nerium International, LLC, dated October 25, 2010 and filed with the Texas Secretary of State, attached hereto as EXHIBIT B. Said company has been valid and has continuously operated since said date and the public has come to associate Opposer with the designation "NERIUM" and "NERIUM INTERNATIONAL."

5.

The mark NERIUM, as used by Opposer, is symbolic of extensive goodwill and consumer recognition developed by Opposer through investment of substantial time and millions of dollars in advertising and marketing. In fact, over the last 30 months, Opposer has expended in excess of \$45 Million on marketing and advertising involving the sale of skincare products sold under the NERIUM-derived marks, such as NERIUMAD. The attached product packaging for the mark NERIUMAD, attached hereto as EXHIBIT C, was developed by Opposer.

6.

Opposer's significant expenditure of time, money, and resources in connection with the marketing, advertising, and promotion of its skincare products and multilevel marketing business has resulted in the development of extensive and broad goodwill and consumer recognition of the NERIUM mark and other NERIUM-derived marks. For example, around 50,000 people have attended approximately 4 major national sales conferences for Opposer's direct sales representatives over the past 4 years.

7.

As a result of its distinctiveness and widespread use and promotion throughout the United States in connection with Opposer's high quality goods and services, Opposer's NERIUM mark is a famous trademark under both state dilution law and within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. 1125(c). The issuance of a registration of Applicant's mark will cause dilution of Opposer's mark.

8.

In addition, Opposer has expended substantial funds, time, and resources to develop, test, refine, and otherwise enhance Opposer's superior quality skincare products. Opposer has carefully ensured the consistent presentation of its NERIUM-derived marks so that consumers associate the NERIUM marks with its unique skincare products and as emanating from a single source, which is Opposer.

9.

Opposer has also expended substantial funds, time, and other resources to develop its successful and well-known multilevel marketing opportunity for consumers to distribute Opposer's unique skincare products. As such, the public strongly associates the NERIUM mark with Opposer's skincare products. Applicant, as a partial owner of Opposer, is well acquainted with Opposer's business activities. Therefore, Applicant's attempts to register Opposer's trademark appear to be in bad faith and likely constitute unfair competition under both state and federal law.

10.

Applicant is not, and was not, the rightful owner of the NERIUM mark at the time of filing its application for registration. Opposer has been the sole source of the skincare products associated with the mark, and Applicant was hired and separately compensated to provide manufacturing and product packaging of Opposer's products at the direction of Opposer. Accordingly, Applicant could not have had a bona fide intent to use the mark in commerce.

11.

The goods covered by Applicant's Application Serial No. 85/303,510 are similar to, and related to, the goods Opposer sells under its NERIUM branded products.

12.

In view of the similarity of the respective marks, and the related nature of the goods, Opposer alleges that Applicant's mark so resembles Opposer's NERIUM marks, as to be likely to cause confusion or mistake or to deceive.

13.

In view of the similarity of Applicant's mark with Opposer's use of the designations NERIUM and NERIUM INTERNATIONAL, and the use of the trade name NERIUM INTERNATIONAL, and in view of the related nature of the uses thereof, it is alleged that Applicant's mark would likely mislead the public as to the source of Opposer's skincare products.

14.

Applicant's alleged mark is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used trademarks as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. Section 1052 (d).

15.

In addition, in view of the foregoing allegations, Opposer is likely to be damaged by registration of the NERIUM mark by Applicant, in that the prima facie effect of such registration will tend to impair Opposer's right to use and register said NERIUM marks. Applicant's application has been cited against several of Opposer's applications filed after Applicant's application was filed.

16.

Further, registration of the mark to Applicant will cause dilution of Opposer's mark in the marketplace.

WHEREFORE, Opposer prays that application Serial No. 85/303,510 be rejected, that no registration be issued thereon to Applicant, and that judgment be entered in this opposition in favor of Opposer.

Respectfully submitted,

Date: August 12, 2015

/Robert J. Ward/

ROBERT J. WARD
PAUL V. STORM
LISA R. HEMPHILL
Gardere Wynne Sewell, LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Tel: 214-999-3000
Fax: 214-999-3623

**ATTORNEYS FOR OPPOSER
NERIUM INTERNATIONAL, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition and Exhibits A- C were served on Applicant's counsel of record, William B. Nash, Haynes and Boone, via email and First Class Mail, postage prepaid and correctly addressed, on this 12th day of August, 2015, at the correspondence address of record:

William B. Nash, Esq.
HAYNES & BOONE
2323 Victory Ave., Suite 700
Dallas, TX 75219
Email: ipdocketing@haynesboone.com
bill.nash@haynesboone.com
vensia.dark@haynesboone.com

/Robert J. Ward/

EXHIBIT A



[REQUEST MORE INFORMATION](#)

NERIUM'S INNOVATIVE PRODUCTS

Formulated with exclusive and patented ingredients, Nerium provides true breakthroughs in anti-aging.

[LEARN MORE](#)

LIVE THE Nerium Lifestyle

Nerium changes lives. This is an opportunity you don't want to miss!

[LEARN MORE](#)



NERIUM IN THE NEWS

Exhibit A

REQUEST MORE INFORMATION >



- SCIENCE | PRODUCTS | REAL RESULTS | OPPORTUNITY | TESTIMONIALS | AS SEEN IN

Home > Products > ProductStory

- NERIUM PRODUCTS
- PRODUCT PROMISE
- PRODUCT STORY
- WHY SKIN AGES
- EXCLUSIVE INGREDIENTS
- REAL RESULTS

OUR PRODUCT STORY
How does Nerium blend nature and science? Learn what sets our products apart.



Exhibit A



TRY OUR BEST-SELLING PRODUCTS!

Nerium is rooted in science. Our promise is to provide proven, age-fighting products powered by the most advanced ingredients available. Utilizing the best of nature coupled with the advances in technology, Nerium products offer both a short-term and long-term approach that address the signs of aging, as well as the causes.

3UR FREE

As a Preferred Customer, simply refer three people to our Auto-Delivery Option and receive your Nerium products for free!

[LEARN MORE >](#)

30-day **Money**

Exhibit A

EXHIBIT B

Form 205
(Revised 07/10)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$300



Certificate of Formation
Limited Liability Company

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas
OCT 25 2010
Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Nerium International, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Jeff	Branch
<i>First Name</i>	<i>M.I.</i> <i>Last Name</i>

C. The business address of the registered agent and the registered office address is:

4004 Beltline Dr, Suite 112	Addison	TX	75001
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3—Governing Authority

(Select and complete either A or B and provide the name and address of each governing person.)

A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

GOVERNING PERSON 1			
NAME (Enter the name of either an individual or an organization, but not both.)			
IF INDIVIDUAL			
Jeff	Branch		
<i>First Name</i>	<i>M.I.</i> <i>Last Name</i>	<i>Suffix</i>	
OR			
IF ORGANIZATION			
<i>Organization Name</i>			
ADDRESS			
4004 Beltline Dr, Suite 112	Addison	TX	USA 75001
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i> <i>Zip Code</i>

RECEIVED

GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

Article 4 – Purpose

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Jeff Branch

Name

4004 Beltline Dr, Suite 112

Street or Mailing Address

Addison

City

TX 75001

State Zip Code

Effectiveness of Filing (Select either A, B, or C.)

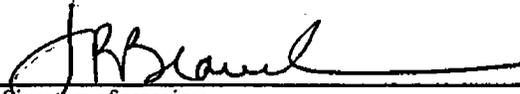
- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: October 21, 2010



Signature of organizer

Jeff Branch

Printed or typed name of organizer

EXHIBIT C



NeriumAD[®]
AGE-DEFYING TREATMENT



Night Cream

30 ml/1 fl.oz.



NeriumAD[®]
AGE-DEFYING TREATMENT



30 ml/1 fl.oz.

Exhibit C

The best y
is the

REAL SCIENCE • REAL RESULTS

NeriumAD® Age-Defying Treatment
was formulated to improve the
appearance of:

Fine lines and wrinkles • Discoloration
Uneven skin texture • Enlarged pores
Aging or loose skin

Ideal for all skin types:

Non-Comedogenic • Paraben Free
Gluten Free • Cruelty Free
Dermatologist Tested

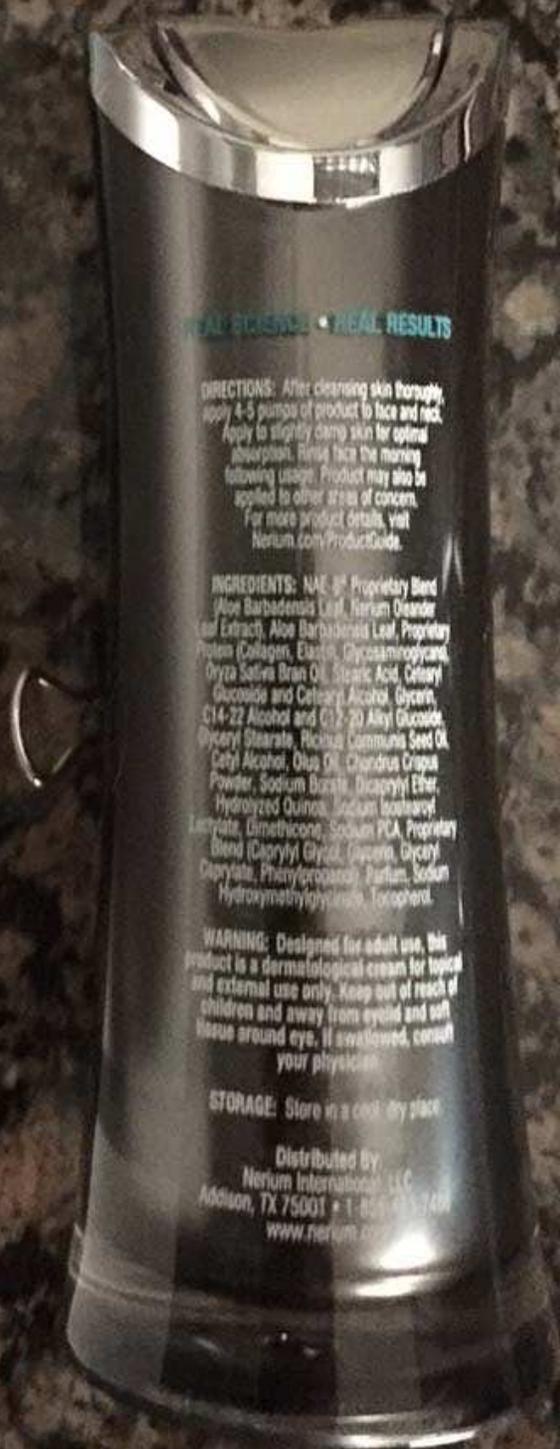
DIRECTIONS: After cleansing skin thoroughly, apply 4-5 pumps of product to face and neck. Apply to slightly damp skin for optimal absorption. Rinse face the morning following usage.

INGREDIENTS: NAE-8® Proprietary Blend (Aloe Barbadensis Leaf, Nerium Oleander Leaf Extract), Aloe Barbadensis Leaf, Proprietary Protein (Collagen, Elastin, Glycosaminoglycans), Oryza Sativa Bran Oil, Stearic Acid, Cetearyl Glucoside and Cetearyl Alcohol, Glycerin, C14-22 Alcohol and C12-20 Alkyl Glucoside, Glyceryl Stearate, Ricinus Communis Seed Oil, Cetyl Alcohol, Oils Oil, Chondrus Crispus Powder, Sodium Borate, Dicaprylyl Ether, Hydrolyzed Quinoa, Sodium lauroyl Lactylate, Dimethicone, Sodium PCA, Proprietary Blend (Caprylyl Glycol, Glycerin, Glyceryl Caprylate, Phenylpropanol), Parfum, Sodium Hydroxymethylglycinate, Tocopherol.

WARNING: Designed for adult use, this product is a dermatological cream for topical and external use only. Keep out of reach of children and away from eyelid and soft tissue around eye. If swallowed, consult your physician.

STORAGE: Store in a cool, dry place.

Distributed By:
Nerium International, LLC
Addison, TX 75001 • 1-855-463-7486
www.nerium.com



REAL SCIENCE • REAL RESULTS

DIRECTIONS: After cleansing skin thoroughly, apply 4-5 pumps of product to face and neck. Apply to slightly damp skin for optimal absorption. Rinse face the morning following usage. Product may also be applied to other areas of concern. For more product details, visit Nerium.com/ProductGuide.

INGREDIENTS: NAE-8® Proprietary Blend (Aloe Barbadensis Leaf, Nerium Oleander Leaf Extract), Aloe Barbadensis Leaf, Proprietary Protein (Collagen, Elastin, Glycosaminoglycans), Oryza Sativa Bran Oil, Stearic Acid, Cetearyl Glucoside and Cetearyl Alcohol, Glycerin, C14-22 Alcohol and C12-20 Alkyl Glucoside, Glyceryl Stearate, Ricinus Communis Seed Oil, Cetyl Alcohol, Oils Oil, Chondrus Crispus Powder, Sodium Borate, Dicaprylyl Ether, Hydrolyzed Quinoa, Sodium lauroyl Lactylate, Dimethicone, Sodium PCA, Proprietary Blend (Caprylyl Glycol, Glycerin, Glyceryl Caprylate, Phenylpropanol), Parfum, Sodium Hydroxymethylglycinate, Tocopherol.

WARNING: Designed for adult use, this product is a dermatological cream for topical and external use only. Keep out of reach of children and away from eyelid and soft tissue around eye. If swallowed, consult your physician.

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Exhibit C