

ESTTA Tracking number: **ESTTA721971**

Filing date: **01/21/2016**

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

Proceeding	91223290
Party	Defendant Nerium Biotechnology, Inc.
Correspondence Address	WILLIAM B NASH HAYNES AND BOONE LLP 112 E PECAN STREET SUITE 1200 SAN ANTONIO, TX 78205 UNITED STATES ipdocketing@haynesboone.com, bill.nash@haynesboone.com, jason.whitney@haynesboone.com, venisa.dark@haynesboone.com
Submission	Answer and Counterclaim
Filer's Name	William B. Nash
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Signature	/William Nash/
Date	01/21/2016
Attachments	NBI Answer to Notice of Opposition.pdf(83610 bytes ) Exhibit 1 - NBI Answer to Notice of Opposition.pdf(4005068 bytes )

**Registrations Subject to the filing**

Registration No	4425567	Registration date	10/29/2013
Registrant	Nerium International, LLC Suite 100 Addison, TX 75001 UNITED STATES		

**Goods/Services Subject to the filing**

<p>Class 035. First Use: 2011/08/29 First Use In Commerce: 2011/08/30 All goods and services in the class are requested, namely: Multilevel marketing business 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; phone and mail order retail services, catalog retail services, and online retail store services, in the field of 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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Registration No	4469321	Registration date	01/21/2014
Registrant	Nerium International, LLC Suite 100 Addison, TX 75001 UNITED STATES		

**Goods/Services Subject to the filing**

<p>Class 003. First Use: 2011/08/29 First Use In Commerce: 2011/08/30</p>
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All goods and services in the class are requested, namely: 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

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

In Re:	§	
Application No.: 85/303510	§	
Filed: April 25, 2011	§	
Mark: NERIUM	§	
IC: 05	§	
<hr/>		
NERIUM INTERNATIONAL, LLC	§	Opposition No.:
Opposer	§	91223290
	§	
v.	§	
	§	
NERIUM BIOTECHNOLOGY, INC.	§	
Applicant	§	
<hr/>		
	§	

**APPLICANT NERIUM BIOTECHNOLOGY, INC.’S ANSWER AND AFFIRMATIVE  
DEFENSES TO NOTICE OF OPPOSITION OF NERIUM INTERNATIONAL, LLC  
AND CANCELLATION COUNTERCLAIMS**

Nerium Biotechnology, Inc. (“NBI”) hereby files this answer and affirmative defenses to the Notice of Opposition filed August 12, 2015 by Nerium International, LLC (“Opposer”) regarding Application Serial No. 85/303510, and responds as follows:

**I.  
Answer**

The first, second, and third unnumbered paragraphs of the Notice of Opposition contain no allegations requiring a response from NBI. However, to the extent that a response is deemed necessary, the first, second, and third unnumbered paragraphs are denied.

1. NBI admits that on April 25, 2011, it filed Application Serial No. 85/303510 for the mark NERIUM for “non-medicated topical skin care preparations; medicated skin care preparations” in International Class 3 and identified the filing basis as Section 1(a). NBI admits that it amended the application’s (i) identification of goods and international classification on or

about January 18, 2012, (ii) identification of goods on or about August 19, 2014, and (iii) filing basis on or about February 13, 2015, all in accordance with the Trademark Office Rules of Practice. To the extent Paragraph 1 contains other allegations, they are denied.

2. NBI admits that Opposer is now using and in about April 2011 began using “Nerium International, LLC” as its entity name to conduct a multi-level marketing business. The allegations of Paragraph 2 are denied to the extent Opposer alleges that it has been or is now using the mark NERIUM or other derivative marks containing the term NERIUM, such as the marks NERIUMAD or NERIUM INTERNATIONAL, in interstate commerce in the United States in connection with skincare products. NBI admits that EXHIBIT A appears to contain examples of NBI’s use of the mark NERIUM or other derivative marks containing the term NERIUM in connection with skincare products, which use has been valid, continuous, and not abandoned since April 2011 and before. To the extent Paragraph 2 contains other allegations, they are denied.

3. Denied.

4. NBI admits that Opposer was formed on or about October 25, 2010 under the entity name “Nerium International, LLC”, and that Opposer subsequently began conducting a multi-level marketing business under that entity name in about April 2011. NBI admits that EXHIBIT B appears to contain a copy of Opposer’s Certificate of Formation filed with the Texas Secretary of State. NBI is without knowledge or information sufficient to form a belief about the truth of the alleged validity and continuity of Opposer’s operations, in part because of Opposer’s unlawful refusal to allow NBI access to the books, records of accounts, and other information regarding Opposer’s business affairs and financial condition; NBI therefore denies such allegations. To the extent Paragraph 4 contains other allegations, they are denied.

5. Opposer is not the rightful owner of the mark NERIUM or other NERIUM-derived marks, such as NERIUMAD; therefore, the allegations of Paragraph 5 that such marks symbolize goodwill and consumer recognition of Opposer are denied. NBI is without knowledge or information sufficient to form a belief about the truth of Opposer's alleged marketing and advertising, in part because of Opposer's unlawful refusal to allow NBI access to the books, records of accounts, and other information regarding Opposer's business affairs and financial condition; NBI therefore denies such allegations. NBI admits that EXHIBIT C appears to contain examples of NBI's use of the mark NERIUMAD on skincare product packaging. To the extent Paragraph 5 contains other allegations, they are denied.

6. Opposer is not the rightful owner of the mark NERIUM or other NERIUM-derived marks; therefore, the allegations of Paragraph 6 that such marks symbolize goodwill and consumer recognition of Opposer are denied. NBI is without knowledge or information sufficient to form a belief about the truth of (i) Opposer's alleged marketing, advertising, and promotion expenditures and (ii) the alleged attendance at Opposer's "national sales conferences," in part because of Opposer's unlawful refusal to allow NBI access to the books, records of accounts, and other information regarding Opposer's business affairs and financial condition; NBI therefore denies such allegations. To the extent Paragraph 6 contains other allegations, they are denied.

7. In view of the December 22, 2015 TTAB order granting NBI's motion to dismiss Opposer's dilution claim, NBI has no obligation to respond to the allegations of Paragraph 7, which support the dismissed dilution claim.

8. Denied.

9. NBI admits that it owns a minority interest in Opposer, but denies that it is “well acquainted with Opposer’s business activities,” in part because of Opposer’s unlawful refusal to allow NBI access to the books, records of accounts, and other information regarding Opposer’s business affairs and financial condition. The remaining allegations of Paragraph 9 are denied.

10. Denied.

11. NBI admits that Opposer sells NBI’s NERIUM branded products, which products are similar and related to those covered by Application Serial No. 85/303510. Denied otherwise.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. In view of the December 22, 2015 TTAB order granting NBI’s motion to dismiss Opposer’s dilution claim, NBI has no obligation to respond to the allegations of Paragraph 16, which support the dismissed dilution claim.

The last unnumbered paragraph of the Notice of Opposition prays for relief and therefore requires no response by NBI.

## **II. Defenses and Affirmative Defenses**

### **A. Lack of Ownership**

1. Opposer is not the rightful owner of the marks asserted in the Notice of Opposition, such as NERIUM, NERIUMAD, or NERIUM INTERNATIONAL for “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.”

**B. Lack of Priority**

2. To the extent that Opposer is found to own, in whole or in part, the marks asserted in the Notice of Opposition, NBI is the prior user of the mark NERIUM and other similar NERIUM marks, and Opposer is the junior user.

**C. Morehouse Defense**

3. Opposer’s claims are barred in whole or in part by the affirmative defense of prior registration pursuant to *Morehouse Manufacturing Corp. v. J. Strickland and Co.*, 407 F.2d 881, 160 USPQ 715, 717 (CCPA 1969).

4. NBI owns the following U.S. federal trademark registrations containing “NERIUM” (collectively, the “NBI Registrations”):

- a. Reg. No. 4768865 for NERIUMRX for “Medicated skin care preparations, namely, creams, lotions, all containing nerium” (registered July 7, 2015);

- b. Reg. No. 4219079 for NERIUMAD for “non-medicated skin care preparations; non-medicated topical skin care preparations” (registered Oct. 2, 2012);
- c. Reg. No. 4069528 for NERIUM SKINCARE for “Non-medicated topical skin care preparations, namely, creams” (registered December 13, 2011);
- d. Reg. No. 4069525 for NERIUMDERM for “Non-medicated topical skin care preparations, namely, creams” (registered December 13, 2011);
- e. Reg. No. 4062274 for NERIUMCS for “Non-medicated topical skin care preparations, namely, creams; non-medicated topical cold sore preparations” (registered November 29, 2011);



- f. Reg. No. for 3921447 for  for “Non-medicated lip care preparations” (registered February 22, 2011);



- g. Reg. No. 3921446 for  for “Non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners, and peels” (registered February 22, 2011); and



- h. Reg. No. 3921445 for  for “Non-medicated skin creams” (registered February 22, 2011).

5. Each of the NBI Registrations is an active, existing federal registration on the Principal Register. Copies of the registration certificates for the NBI Registrations are attached as Exhibit 1.

6. Each of the NBI Registrations identifies a trademark that is essentially the same as the NERIUM mark in NBI’s Application Serial No. 85/303510.

7. Each of the NBI Registrations identifies goods and/or services that are substantially similar to the “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" in NBI's Application Serial No. 85/303510.

8. Opposer cannot be damaged by registration of NBI's Application Serial No. 85/303510 because NBI also owns the NBI Registrations for substantially similar marks and substantially similar goods, which Opposer has not sought to cancel.

**D. Laches**

9. NBI realleges and incorporates by reference the allegations contained in the previous paragraphs.

10. Opposer's claims are barred in whole or in part by the affirmative defense of laches.

11. Upon information and belief, Opposer has possessed actual or constructive knowledge of the NBI Registrations since at least their respective dates of registration.

12. Each of the NBI Registrations identifies a trademark that is essentially the same as the NERIUM mark in NBI's Application Serial No. 85/303510.

13. Each of the NBI Registrations identifies goods and/or services that are substantially similar to the "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" in NBI's Application Serial No. 85/303510.

14. Opposer unreasonably delayed by failing to object to the earlier NBI Registrations for substantially similar marks and substantially similar goods as NBI's Application Serial No. 85/303510.

15. Opposer's unreasonable delay has materially prejudiced NBI.

**E. Contractual Estoppel**

16. NBI realleges and incorporates by reference the allegations contained in the previous paragraphs.

17. Opposer's claims are barred in whole or in part by the affirmative defense of contractual estoppel by reason of an agreement between the parties.

18. Opposer, NBI, and NBI's wholly-owned subsidiary, Nerium SkinCare, Inc. ("SkinCare"), entered into a confidential "Company Agreement" effective as of October 25, 2010.

19. Under the Company Agreement, Opposer acknowledged and agreed that NBI and/or SkinCare own all marks used in the production or packaging of NERIUM skincare products.

20. The Company Agreement does not allocate to, assign to, or recognize ownership by Opposer of any marks used in the production or packaging of NERIUM skincare products.

21. Therefore, Opposer is contractually estopped from opposing Application Serial No. 85/303510, including opposing based on allegations that Opposer owns marks used by NBI or SkinCare in the production or packaging of NERIUM skincare products.

**F. Equitable and Promissory Estoppel**

22. NBI realleges and incorporates by reference the allegations contained in the previous paragraphs.

23. Opposer's claims are barred in whole or in part by the affirmative defense of equitable estoppel because Opposer engaged in misleading conduct, NBI relied on such conduct, and NBI will suffer material prejudice if this opposition is permitted.

24. Opposer executed the Company Agreement acknowledging and agreeing that NBI and/or SkinCare own all marks used in the production or packaging of NERIUM skincare

products. The Company Agreement does not allocate to, assign to, or recognize ownership by Opposer of any marks used in the production or packaging of NERIUM skincare products.

25. NBI reasonably relied on the Company Agreement, including the representations, acknowledgements, and promises contained therein, and Opposer's execution of the Company Agreement. For example, in reliance on the Company Agreement and Opposer's execution of the Company Agreement, NBI has performed in good faith its obligations under the Company Agreement. Likewise, NBI has not sought a declaratory judgment that it is the rightful owner of the NERIUM marks. Additionally, NBI has filed and prosecuted numerous trademark applications claiming ownership of marks used by NBI or SkinCare in the production or packaging of NERIUM skincare products, including applications filed in the United States and foreign countries.

26. Contrary to the Company Agreement, Opposer now alleges that it owns the marks used by NBI or SkinCare in the production or packaging of skincare products, including NERIUM and NERIUM-derived marks. Because Opposer claims ownership of marks used by NBI or SkinCare in the production or packaging of skincare products, Opposer's prior execution of the Company Agreement was false and misleading.

27. NBI relied on Opposer's misleading execution of the Company Agreement and will suffer material prejudice if this opposition is allowed, including the possibility of delayed enforcement, lost trademark rights, and significant wasted expenditures.

#### **G. Acquiescence**

28. NBI realleges and incorporates by reference the allegations contained in the previous paragraphs.

29. Opposer's claims are barred in whole or in part by the affirmative defense of acquiescence based on (i) Opposer's failure to object to NBI's earlier registrations of the NBI

Registrations for substantially similar marks and substantially similar goods as NBI's Application Serial No. 85/303510 and (ii) Opposer's execution of the Company Agreement, wherein Opposer acknowledge and agreed that NBI or SkinCare owned all marks used in the production or packaging of skincare products.

#### **H. Unclean Hands**

30. NBI realleges and incorporates by reference the allegations contained in the previous paragraphs.

31. Opposer's claims are barred in whole or in part by the affirmative defense of unclean hands based on Opposer's wrongful and misleading conduct.

32. Specifically, Opposer misled NBI and SkinCare by executing the Company Agreement and then subsequently claiming ownership of marks used by NBI or SkinCare in the production or packaging of skincare products.

33. In addition, Opposer misled the Trademark Office by filing multiple trademark applications for marks used by NBI or SkinCare in the production or packaging of skincare products, despite the Company Agreement acknowledging and agreeing that NBI or SkinCare owned such marks.

34. Upon information and belief, the foregoing wrongful and misleading activities were intended to and did mislead NBI, SkinCare, and the Trademark Office.

35. Therefore, Opposer's claims opposing Application Serial No. 85/303510 are barred by its own wrongful conduct.

### **III. Cancellation Counterclaims**

NBI hereby files the following cancellation counterclaims against Opposer, and in support thereof alleges:

**A. Background**

36. NBI is a corporation duly formed and existing under the laws of Canada, having its principal place of business in the State of Texas. SkinCare is a wholly-owned subsidiary of NBI.

37. NBI is being damaged by the continued registration of Opposer’s U.S. Registration Nos. 4,425,567 and 4,469,321 (collectively, “Opposer’s Registrations”).

**B. Opposer’s Federal Trademark Registrations**

38. Opposer is identified as the owner of record for U.S. Registration No. 4,469,321



(registered on January 21, 2014). For the mark for the following goods: “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” in International Class 3.

39. Opposer is identified as the owner of record for U.S. Registration No. 4,425,567



(registered on October 29, 2013) for the mark for the following services: “Multilevel marketing business 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; phone and mail order retail services, catalog retail services, and online retail store services, in the field of 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” in International Class 35.

**C. Cancellation Based on Improper Ownership**

40. Opposer is not and never has been the rightful owner of the marks identified in Opposer’s Registrations.

41. NBI, or alternatively Skincare, is and always has been the rightful owner of the marks identified in Opposer’s Registrations.

42. Opposer filed applications for Opposer’s Registrations although it did not own the marks identified therein.

43. Opposer did not own the marks identified in Opposer’s Registrations as of March 27, 2013.

44. On March 27, 2013, Opposer was not the owner (as “owner” is used in 15 U.S.C. § 1051) of the marks identified in Opposer’s Registrations.

45. Because Opposer was not the rightful owner of the marks identified in Opposer’s Registrations as of March 27, 2013, Opposer’s Registrations are void ab initio and should be cancelled.

**PRAYER**

Applicant Nerium Biotechnology, Inc. respectfully requests that the relief sought by Opposer Nerium International, LLC be denied and the Notice of Opposition be dismissed with prejudice. Additionally, Applicant Nerium Biotechnology, Inc. believes it is being damaged by

the continued registration of U.S. Registration Nos. 4,425,567 and 4,469,321 and respectfully prays that the Cancellation Counterclaims be granted and those registrations be cancelled.

Dated: January 21, 2016.

Respectfully submitted,

HAYNES AND BOONE, LLP

/s/ William B. Nash /s/

William B. Nash, Reg. No. 33,743  
Jason W. Whitney, Reg. No. 67,405  
112 E. Pecan Street, Suite 1200  
San Antonio, TX 78205  
Telephone: (210) 978-7000  
Facsimile: (210) 978-7450

**ATTORNEYS FOR APPLICANT AND  
COUNTER-PETITIONER NERIUM  
BIOTECHNOLOGY, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing *Applicant Nerium Biotechnology, Inc.'s Answer And Affirmative Defenses To Notice Of Opposition Of Nerium International, LLC And Cancellation Counterclaims* and all exhibits and other attachments thereto has been served on Opposer Nerium International, LLC by mailing said copy on January 21, 2016 by U.S. First Class Mail to the following counsel of record for Opposer:

Robert J. Ward  
Paul V. Storm  
Lisa R. Hemphill  
Gardere Wynne Sewell, LLP  
3000 Thanksgiving Tower  
1601 Elm Street  
Dallas, TX 75201  
ip@gardere.com, rward@gardere.com, jjones@gardere.com, lhemphill@gardere.com

/s/ William B. Nash /s/  
William B. Nash

# Exhibit 1

**United States of America**  
United States Patent and Trademark Office

# NERIUMRX

**Reg. No. 4,768,865**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered July 7, 2015**

**Int. Cl.: 5**

FOR: MEDICATED SKIN CARE PREPARATIONS, NAMELY, CREAMS, LOTIONS, ALL  
CONTAINING NERIUM, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

**TRADEMARK**

FIRST USE 4-29-2015; IN COMMERCE 4-29-2015.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 4,062,274, 4,069,528, AND OTHERS.

SN 85-144,447, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

**United States of America**  
United States Patent and Trademark Office

# NERIUMAD

**Reg. No. 4,219,079**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered Oct. 2, 2012**

**Int. Cl.: 3**

FOR: NON-MEDICATED SKIN CARE PREPARATIONS; NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 4-0-2011; IN COMMERCE 8-0-2011.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 3,526,064, 3,921,447, AND OTHERS.

SN 85-368,685, FILED 7-12-2011.

MICHAEL TANNER, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

# United States of America

United States Patent and Trademark Office

## NERIUM SKINCARE

**Reg. No. 4,069,528**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered Dec. 13, 2011**

**Int. Cl.: 3**

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKINCARE", APART FROM THE MARK AS SHOWN.

SER. NO. 85-144,658, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY



*David J. Kyfos*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

# United States of America

United States Patent and Trademark Office

# NERIUMDERM

**Reg. No. 4,069,525**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered Dec. 13, 2011**

**Int. Cl.: 3**

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-144,403, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY



*David J. Kyfos*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**United States of America**  
United States Patent and Trademark Office

# NERIUMCS

**Reg. No. 4,062,274**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175

**Registered Nov. 29, 2011**

SAN ANTONIO, TX 78230

**Int. Cl.: 3**

FOR: NON-MEDICATED TOPICAL SKIN CARE PREPARATIONS, NAMELY, CREAMS;  
NON-MEDICATED TOPICAL COLD SORE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4,  
6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-144,355, FILED 10-4-2010.

JOHN DALIER, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

# United States of America

United States Patent and Trademark Office



**Reg. No. 3,921,447**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered Feb. 22, 2011**

**Int. Cl.: 3**

FOR: NON-MEDICATED LIP CARE PREPARATIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**PRINCIPAL REGISTER**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "A NATURAL COLD SORE RELIEF SERUM", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK, RED, AND GREEN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUM CS," WHICH APPEARS IN RED ABOVE THE WORDING "A NATURAL COLD SORE RELIEF SERUM", WHICH APPEARS IN BLACK. A GREEN LEAF AND A RED FLOWER APPEAR ABOVE THE WORDING.

SER. NO. 76-701,351, FILED 1-25-2010.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

**Nerium SkinCare**  
A DIVISION OF NERIUM BIOTECHNOLOGY, INC.



**Reg. No. 3,921,446**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175

**Registered Feb. 22, 2011**

SAN ANTONIO, TX 78230

**Corrected Aug. 27, 2013**

FOR: NON-MEDICATED SKIN CARE PREPARATIONS, NAMELY, CREAMS, LOTIONS, GELS, TONERS, CLEANERS, AND PEELS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**Int. Cl.: 3**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**TRADEMARK**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SKINCARE", "DIVISION", AND "BIOTECHNOLOGY, INC.", APART FROM THE MARK AS SHOWN.

**PRINCIPAL REGISTER**

THE COLOR(S) GRAYISH BLACK, RED, GREEN, AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUM SKINCARE", WHICH APPEARS IN RED ABOVE THE WORDING "A DIVISION OF NERIUM BIOTECHNOLOGY, INC.", WHICH APPEARS IN GRAYISH BLACK. TO THE RIGHT OF THE WORDING IS A CIRCLE OUTLINED IN GREEN WITH BLUE SHADING AROUND A RED FLOWER AND GREEN LEAVES.

SER. NO. 76-701,350, FILED 1-25-2010.



*Lisa Street Lee*

Acting Director of the United States Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***  
**What and When to File:**

**First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

**Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\*  
*See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***  
**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**The United States Patent and Trademark Office (USPTO) will NOT send you any future notice or reminder of these filing requirements.**

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the USPTO. The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

# United States of America

United States Patent and Trademark Office



**Reg. No. 3,921,445**

NERIUM BIOTECHNOLOGY, INC. (CANADA CORPORATION)  
11467 HUEBNER ROAD, SUITE 175  
SAN ANTONIO, TX 78230

**Registered Feb. 22, 2011**

**Int. Cl.: 3**

FOR: NON-MEDICATED SKIN CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

**TRADEMARK**

FIRST USE 6-1-2009; IN COMMERCE 6-1-2009.

**PRINCIPAL REGISTER**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "A NATURAL SKIN REPAIR CREAM", APART FROM THE MARK AS SHOWN.

THE COLOR(S) BLACK, RED, AND GREEN IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORDING "NERIUMDERM," WHICH APPEARS IN RED ABOVE THE WORDING "A NATURAL SKIN REPAIR CREAM", WHICH APPEARS IN BLACK. A GREEN LEAF APPEARS ABOVE THE WORDING. TO THE RIGHT OF THE WORDING IS A RED FLOWER.

SER. NO. 76-701,349, FILED 1-25-2010.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY



*David J. Kyffers*

Director of the United States Patent and Trademark Office