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

Proceeding	92057122
Party	Defendant New Whey Nutrition, LLC
Correspondence Address	NEW WHEY NUTRITION LLC 5707 DOT COM COURT, SUITE 1079 OVIEDO, FL 32765-3401 UNITED STATES
Submission	Answer and Counterclaim
Filer's Name	Peter M. Brody
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Signature	/p brody/
Date	06/12/2013
Attachments	20130612_106812_Answer_Pleading.pdf(1475915 bytes )

**Registrations Subject to the filing**

Registration No	2471380	Registration date	07/24/2001
Registrant	Neways, Inc. 2089 NEWAYS DRIVE SPRINGVILLE, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

**Goods/Services Subject to the filing**

Class 005. First Use: 1992/09/00 First Use In Commerce: 1992/09/00 All goods and services in the class are requested, namely: Housemark for a complete line of nutritional and herbal supplements
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Registration No	2389764	Registration date	09/26/2000
Registrant	Neways 2089 Neways Drive Springville, UT 84653 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

**Goods/Services Subject to the filing**

Class 005. First Use: 1999/08/13 First Use In Commerce: 1999/08/13 All goods and services in the class are requested, namely: nutritional supplement
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Registration No	2731042	Registration date	07/01/2003
Registrant	Neways, Inc. 150 East 400 North Salem, UT 84653 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

## Goods/Services Subject to the filing

Class 005. First Use: 2000/02/00 First Use In Commerce: 2000/02/00  
All goods and services in the class are requested, namely: Herbal and Nutritional Supplement

Registration No	2492629	Registration date	09/25/2001
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

## Goods/Services Subject to the filing

Class 005. First Use: 2000/11/14 First Use In Commerce: 2000/11/14  
All goods and services in the class are requested, namely: Herbal and Nutritional Supplement

Registration No	2799001	Registration date	12/23/2003
Registrant	Neways, Inc. 150 East 400 North Salem, UT 84653 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

## Goods/Services Subject to the filing

Class 003. First Use: 2003/01/17 First Use In Commerce: 2003/01/17  
All goods and services in the class are requested, namely: 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

Class 005. First Use: 2003/01/17 First Use In Commerce: 2003/01/17  
All goods and services in the class are requested, namely: Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement

Registration No	3006252	Registration date	10/11/2005
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

## Goods/Services Subject to the filing

Class 005. First Use: 2004/01/13 First Use In Commerce: 2004/01/13  
All goods and services in the class are requested, namely: Dietary Supplement

Registration No	3703119	Registration date	10/27/2009
Registrant	Neways, Inc. Legal Department 2089 Neways Drive		

Springville, UT 84663 UNITED STATES
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### Goods/Services Subject to the filing

<p>Class 003. First Use: 2008/11/28 First Use In Commerce: 2008/11/28  All goods and services in the class are requested, namely: 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: 2008/11/28 First Use In Commerce: 2008/11/28  All goods and services in the class are requested, namely: 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>

Registration No	2454358	Registration date	05/29/2001
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

<p>Class 003. First Use: 1992/08/31 First Use In Commerce: 1992/08/31  All goods and services in the class are requested, namely: 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>
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Registration No	2414219	Registration date	12/19/2000
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

<p>Class 003. First Use: 1993/00/00 First Use In Commerce: 2000/02/00  All goods and services in the class are requested, namely: Hair Care Preparation, namely, hair spray</p>
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Registration No	2779438	Registration date	11/04/2003
Registrant	Neways, Inc. 150 East 400 North Salem, UT 84653		

	UNITED STATES
Grounds for filing	The registered mark has been abandoned.

### Goods/Services Subject to the filing

Class 003. First Use: 2003/01/17 First Use In Commerce: 2003/01/17  
All goods and services in the class are requested, namely: Essential oils for personal use

Registration No	2943333	Registration date	04/26/2005
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

Class 003. First Use: 2003/01/17 First Use In Commerce: 2003/01/17  
All goods and services in the class are requested, namely: 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

Registration No	2984458	Registration date	08/16/2005
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

### Goods/Services Subject to the filing

Class 003. First Use: 2003/01/17 First Use In Commerce: 2003/01/17  
All goods and services in the class are requested, namely: 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

Registration No	3850494	Registration date	09/21/2010
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		

### Goods/Services Subject to the filing

Class 003. First Use: 2008/03/28 First Use In Commerce: 2008/03/28  
All goods and services in the class are requested, namely: 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

Class 005. First Use: 2008/03/28 First Use In Commerce: 2008/03/28  
All goods and services in the class are requested, namely: Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement; disinfectant solutions for general household use

Registration No	3709468	Registration date	11/10/2009
Registrant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		

## Goods/Services Subject to the filing

Class 003. First Use: 2008/04/30 First Use In Commerce: 2008/04/30

All goods and services in the class are requested, namely: 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

Class 005. First Use: 2008/04/30 First Use In Commerce: 2008/04/30

All goods and services in the class are requested, namely: Nutritional, dietary and herbal supplements; dietary drink mix for use as a meal replacement; disinfectant solutions for general household use

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

**Neways, Inc.,  
Petitioner,**

**v.**

**New Whey Nutrition, LLC, f/k/a  
Topspin-IDS Acquisition, LLC,  
Respondent**

Cancellation # 92057122

**RESPONDENT NEW WHEY NUTRITION, LLC'S ANSWER,  
AFFIRMATIVE DEFENSES AND COUNTERCLAIMS TO PETITIONER  
NEWAYS, INC.'S PETITION TO CANCEL**

Respondent New Whey Nutrition, LLC f/k/a Topspin-IDS Acquisition, LLC (“New Whey Nutrition”), by and through its attorneys, Ropes & Gray LLP, hereby answers the Petition to Cancel (“the Petition”) of Petitioner, Neways, Inc. (“Neways”).

New Whey Nutrition is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first unnumbered paragraph of the Petition.

1. New Whey Nutrition admits the allegations of paragraph 1 of the Petition.
2. New Whey Nutrition admits the allegations of the first sentence of paragraph 2 of the Petition, and otherwise denies the allegations of paragraph 2.
3. New Whey Nutrition admits the allegations of paragraph 3 of the Petition.
4. New Whey Nutrition admits the allegations of paragraph 4 of the Petition.
5. New Whey Nutrition admits the allegations of paragraph 5 of the Petition.
6. The statement in paragraph 6 of the Petition is not an allegation of fact to which a response is required.
7. New Whey Nutrition admits that the TESS database identifies Neways as the owner of the marks identified in paragraph 7 of the Petition. Otherwise, New Whey Nutrition

lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 and therefore denies same.

8. New Whey Nutrition admits that the TESS database identifies Newways as the owner of the marks identified in paragraph 8 of the Petition. Otherwise, New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 and therefore denies same. New Whey Nutrition further states that Registration Nos. 2656486 and 2656490 are now expired and therefore denies that they are valid registrations to the extent they are alleged to be in paragraph 8.

9. New Whey Nutrition admits that the TESS database indicates that the word portion of Newways's registered marks consist of standard characters. Otherwise, New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 and therefore denies same.

10. New Whey Nutrition admits that the TESS database does not indicate a limitation on the sale of the specific goods to any particular channel or channels of trade. Otherwise, New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 and therefore denies same.

11. New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 11 of the Petition and therefore denies same.

12. New Whey Nutrition admits that the TESS database indicates that declarations under Section 15 of the Trademark Act were filed in connection with the registrations referenced in paragraph 12. Otherwise, New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 and therefore denies same. New Whey Nutrition also states that Registration Nos. 2656486 and 2656490 are now

expired and therefore denies that they are valid registrations to the extent they are alleged to be in paragraph 12.

13. New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 13 of the Petition and therefore denies same.

14. New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 14 of the Petition and therefore denies same.

15. New Whey Nutrition lacks knowledge or information sufficient to form a belief as to the truth of the facts alleged in paragraph 15 of the Petition and therefore denies same.

16. New Whey Nutrition denies the allegations of paragraph 16 of the Petition.

17. New Whey Nutrition admits that the TESS database does not indicate a limitation on the sale of the specific goods to any particular channel or channels of trade in Neways's registration. New Whey Nutrition otherwise denies the allegations of paragraph 17 of the Petition.

18. New Whey Nutrition denies the allegations of paragraph 18 of the Petition.

19. New Whey Nutrition denies the allegations of paragraph 19 (a), (b), and (c) of the Petition.

20. New Whey Nutrition denies the allegations of paragraph 20 of the Petition.

#### **AFFIRMATIVE DEFENSES**

1. Neways is barred by the doctrines of waiver, acquiescence and estoppel from obtaining the relief sought in the Petition.

2. Neways has failed to state a claim upon which relief may be granted.

3. New Whey Nutrition reserves the right to amend or supplement its answers and defenses as more information becomes available during discovery in this matter.

## COUNTERCLAIM FOR PARTIAL CANCELLATION OF NEWAYS' REGISTRATIONS

Respondent, New Whey Nutrition, LLC, believes that it is and will continue to be damaged by Petitioner Neways Inc.'s pleaded Registration Nos. 2471380, 2389764, 2731042, 2492629, 279001, 3006252, 3850494, 3709468, 3703119, 2454358, 2414219, 2779438, 2943333, 2984458 ("Neways' Registrations"). New Whey Nutrition hereby petitions for partial cancellation of each of Neways' Registrations pursuant to Sections 14, 18 and 45 of the Lanham Act (15 U.S.C. § 1067-68, §1064, § 1127), TBMP 309.03(d), and 37 C.F.R. § 2.111(b).

As grounds for this counterclaim, New Whey Nutrition alleges as follows:

1. New Whey Nutrition is the maker of a range of nutritional products that provide particular specific nutritional benefits and ingredients. New Whey Nutrition's products are purchased and consumed by athletes, body builders, health and fitness enthusiasts, individuals recovering from adverse health conditions or medical procedures, and ordinary consumers.

2. New Whey Nutrition is a leader in innovative health and fitness drinks which are used to improve health and physical performance. In 2005, New Whey Nutrition developed a liquid protein product to meet the protein requirements of post-surgery bariatric patients and for use by consumers in the fitness, bodybuilding and sports markets. New Whey Nutrition was a key player in creating a market for protein shots and remains a leading brand in the sports nutrition industry.

3. New Whey Nutrition distributes and sells its products through the normal and ordinary channels of trade for the types of products it makes. Specifically, New Whey Nutrition's products are sold to wholesalers for resale to retailers (such as Lone Star Distribution); to retailers, including Internet-based retailers (such as Amazon.com and Drugstore.com), mass retail outlets (such as Walmart, K Mart, and Meijer), club stores (such as

Costco), specialty stores offering nutritional supplements (such as GNC and Vitamin Shoppe), drug stores (such as CVS and Rite Aid), supermarkets (such as Wegmans, Price Chopper, Kroger, Ahold, and Ralphs), convenience stores (such as 7 Eleven), sport and health clubs, and weight-loss centers, for resale to consumers; and directly to consumers and others through its Internet website (at newwheynutrition.com).

4. In 2006, New Whey Nutrition filed an application for federal trademark registration of the mark NEW-WHEY based on actual use of that mark beginning early that year for “nutritionally fortified beverages containing whey protein,” in Class 5. This application matured into Registration No. 3448249 on August 14, 2007, and claims use as least as early as February 28, 2006 and use in commerce at least as early as March 31, 2006. New Whey Nutrition later obtained registrations for variants of this mark, including NEW WHEY NUTRITION, for “nutritional supplements containing whey protein” (Reg. No. 4214663), and NEW WHEY NUTRITION (plus design), also for “nutritional supplements containing whey protein” (Reg. No. 4172454), both based on actual use. The above referenced marks are collectively referred to as the “New Whey Nutrition Registrations.”

5. During prosecution of each of the New Whey Nutrition Registrations, the examining attorney did not cite any of Neways’ Registrations as a potential bar, nor did Neways oppose New Whey Nutrition’s applications or otherwise contact New Whey Nutrition to object to use of any of these marks.

6. In 2010, New Whey Nutrition filed an application for registration of another variant, namely the mark NEW WHEY, for “nutritionally fortified beverages containing whey protein” (Serial No. 85/174,256), based on actual use beginning in early 2006. This application

likewise did not draw a refusal based on Neways' Registrations, and the mark was published for opposition.

7. On August 17, 2011, Neways filed an opposition to this application (referred to as the "Opposed Application"), which is currently pending before the Trademark Trial and Appeal Board (Opp. No. 91201238). Neways did not petition to cancel any of the New Whey Nutrition Registrations at that time. (New Whey Nutrition's above-referenced registrations and application shall be collectively referred to as "New Whey Nutrition's Marks.")

8. On information and belief, Petitioner Neways is a privately held "multi-level marketing" enterprise that manufactures and distributes a wide range of personal care products, health and wellness products, and household cleaning products. See Wikipedia page at <http://en.wikipedia.org/wiki/Neways>, attached as Exhibit A. According to its website, Neways products in the health and wellness field sold under the NEWAYS house mark include nutritional supplements such as Cleansing Tea®, Feelin Good®, and Digestamin®. Other products sold under the NEWAYS house mark include personal care items (including cosmetics, skin care, hair care, dental care, and aromatherapy products), and household supplies (including household, laundry, and automotive products).

9. A "multi-level marketing" or "MLM" based business model (also known as "pyramid selling," "network marketing" or "referral marketing") refers to a marketing strategy in which products are sold only through a network of participating independent individual salespersons, and those salespersons are compensated for sales they generate as well as for the sales of other salespersons whom they recruit (or "sponsor") into the network. See Wikipedia page at [http://en.wikipedia.org/wiki/Multi-level\\_marketing](http://en.wikipedia.org/wiki/Multi-level_marketing), attached as Exhibit B. Generally, the sales of products in an MLM system are accomplished through face-to-face or other

personalized contacts between a salesperson at one level in the chain and a salesperson below him or her, and on down the chain.

10. Upon information and belief, Neways exclusively uses the specialized MLM channel of trade to sell its products; Neways does not sell its products through normal and ordinary wholesale or retail channels of trade typical for the types of products it sells. Thus, the general public cannot find a Neways product at a retail store or through an on-line retailer such as Amazon.com. Indeed, individuals cannot even purchase a product directly through Neways' website without logging into the network and identifying themselves with the specific upstream salesperson (called a "distributor") who is to receive the "credit" for that individual's purchases. See screenshot of Neways' website point of sale, attached as Exhibit C. Moreover, to become a Neways distributor, an individual must be sponsored into the company by one of Neways' existing distributors. See Wikipedia page attached as Exhibit B. Neways's website explicitly discloses the narrow and highly specialized channel of trade through which Neways's products are distributed:

- "Q. How can I buy Neways products? A. Neways products are sold through a network of independent distributors and are not available [sic] in stores."
- "When you and your friends shop at your local store, you don't get any of that money back, but when you shop through Neways, the money flows back to you."

11. Neways alleges that it has used its NEWAYS mark on "a complete line of nutritional and herbal supplements" since 1992. Given that New Whey Nutrition has sold its products under the NEW WHEY Marks since as early as 2006, the parties have co-existed for more than six years without any apparent instances of confusion. Yet it was only at this late date, nearly two years after filing its opposition, after more than six years' co-existence, and on

the eve of the incontestability period for the New Whey Nutrition Registrations, that Neways has instituted this proceeding. Neways has offered no explanation for this lengthy delay.

12. Neways identifies two sets of its own registrations in its Petition to Cancel. The first set consists of various registrations for marks for use on goods consisting of, or including, various vaguely described nutritional products in Class 5, as follows:

<b>Registration</b>	<b>Mark</b>	<b>Goods and Services</b>
2471380	NEWAYS	<b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class 05) Housemark for a complete line of nutritional and herbal supplements <b>Basis:</b> 1(a) <b>First Use Date:</b> 1992-09-00 <b>First Use in Commerce Date:</b> 1992-09-00
2389764	NEWAYS AUTHENTIC HAWAIIAN NONI	<b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class: 005) Nutritional supplement <b>Basis:</b> 1(a) <b>First Use Date:</b> 1999-08-13 <b>First Use in Commerce Date:</b> 1999-08-13
2731042	NEWAYS CASCADING REVENOL	<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
2492629	NEWAYS INGENIOUS	<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
2799001		<b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005) <b>Class Status:</b> Active 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;

Registration	Mark	Goods and Services
		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; 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 <b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17
3006252	NEWAYS GREEN QI	<b>U.S. Class:</b> 006, 018, 044, 046, 051, 052 (International Class: 005) Dietary Supplement <b>Basis:</b> 1(a) <b>First Use Date:</b> 2004-01-13 <b>First Use in Commerce Date:</b> 2004-01-13
3850494	NEWAYS HEALTHY HOMES	<b>U.S. Class:</b> 001, 004, 006, 018, 044, 046, 050, 051, 052 (International Class 003 and 005) <b>Class Status:</b> Active 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; Nutritional, dietary, and herbal supplements; dietary drink mix for use as a meal replacement; disinfectants for general household use <b>Basis:</b> 1(a) <b>First Use Date:</b> 2008-03-28

Registration	Mark	Goods and Services
		<b>First Use in Commerce Date:</b> 2008-03-28
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; Nutritional, dietary, and herbal supplements; dietary drink mix for use as a meal replacement; all purpose disinfectants for</p>

Registration	Mark	Goods and Services
		general household use; disinfectants for hygiene purposes <b>Basis:</b> 1(a) <b>First Use Date:</b> 2008-11-28 <b>First Use in Commerce Date:</b> 2008-11-28

The second set of registrations consists of various marks for use on goods that do not consist of, or include, any nutritional products and which are in classes other than Class 5. Notably, at least two of these registrations have been cancelled, however, namely Registration Nos. 2656486 and 2656490. In addition, none of the second set is listed in the electronic cover sheet in the section entitled "Marks Cited by Petitioner as Basis for Cancellation." In any event, the live registrations are as follows:

Registration	Mark	Goods and Services
2454358	NEWAYS	<b>U.S. Class:</b> 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 <b>Basis:</b> 1(a) <b>First Use Date:</b> 1992-08-31 <b>First Use in Commerce Date:</b> 1992-08-31
2414219	NEWAYS SASSY	<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

Registration	Mark	Goods and Services
		<b>Basis:</b> 1(a) <b>First Use Date:</b> 1993-00-00 <b>First Use in Commerce Date:</b> 1993-00-00
2779438	NEWAYS LAVENDER-CHAMOMILE	<b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 03) Essential oils for personal use <b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17
2943333	NEWAYS GENERATIONS	<b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 03) <b>Class Status:</b> Active 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 <b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17
2984458		<b>U.S. Class:</b> 001, 004, 006, 050, 051, 052 (International Class 03) <b>Class Status:</b> Active 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 <b>Basis:</b> 1(a) <b>First Use Date:</b> 2003-01-17 <b>First Use in Commerce Date:</b> 2003-01-17

13. Neways alleges in paragraphs 10 and 17 of its Petition to Cancel that Neways' Registrations "do not limit the sale of the specified goods identified to any particular channel or channels of trade." Neways contends that, because the New Whey Nutrition Registrations also are not limited to the sale of the specified goods in any particular channel or channels of trade, "for purposes of this cancellation proceeding the goods and channels of trade of the Neways and

New Whey are considered to be the same.” Newways bases its claim of likelihood of confusion, at least in part, on this contention that, because the parties’ respective registrations do not indicate restrictions on the channels of trade, both parties’ goods are presumed to travel in the same normal and ordinary channels of trade typical for such goods.

14. As set forth above upon information and belief, however, Newways is not using, nor has it ever used, the marks in the Newways Registrations in the normal and ordinary channels of trade used by New Whey Nutrition. To the contrary, Newways has adopted a policy of avoiding all such channels of trade. Instead, Newways exclusively uses the MLM trade channel to sell all its goods.

15. Pursuant to Section 18 of the Lanham Act, the live Newways Registrations may and should be partially cancelled and modified to restrict the channel of trade for each of the identified goods to the specialized MLM channel of trade for all identified goods. Such a restriction will ensure that the likelihood of confusion in this proceeding will be determined based upon marketplace realities, including the actual trade channels used by the parties, not upon the hypothetical trade channels that Newways misleadingly contends its Newways Registrations implicitly identify. While, as set forth in the foregoing Answer, New Whey Nutrition denies that confusion is likely in this case, in the alternative, New Whey Nutrition submits that such a restriction, together with all other relevant confusion factors, will further avoid that likelihood of confusion.

WHEREFORE, in consideration of New Whey Nutrition’s Answer, Affirmative Defenses and Counterclaims, New Whey Nutrition prays that Newways’ Petition To Cancel be dismissed and judgment in favor of New Whey Nutrition and against Newways be entered. If necessary to avoid a likelihood of confusion, New Whey Nutrition prays that its Counterclaim

for Partial Cancellation of Neways' Registrations be granted, and that each of the following Neways Registrations be modified by adding to the identification of goods the restriction "sold exclusively through a multi-level marketing network:" Registration Nos. 2471380, 2389764, 2731042, 2492629, 279001, 3006252, 3850494, 3709468, 3703119, 2454358, 2414219, 2779438, 2943333, 2984458. Such a restriction is also appropriate and should be entered due to Neways' non-use of its marks in any trade channel other than the specialized MLM channel of trade. New Whey Nutrition has paid all necessary fees for its counterclaim, and authorizes the USPTO to withdraw any additional fees necessary from Deposit Acct. No. 181945.

Dated: June 12, 2013

Respectfully submitted,

/s/ Peter M. Brody

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# **Exhibit A**



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# Neways

From Wikipedia, the free encyclopedia



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**Neways International** is a privately held American multi-level marketing organization that manufactures and distributes personal care products, nutritional supplements, and household cleaning products and has a presence in more than 23 countries.<sup>[1]</sup> Neways is headquartered in Springville, Utah. The company claims that its products are chemically safer than other brands.

## Contents [hide]

- Company history
- Controversies
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## Neways International

<b>Type</b>	Public
<b>Industry</b>	Multi-level marketing
<b>Predecessor(s)</b>	Images and Attitudes
<b>Founded</b>	1992
<b>Founder(s)</b>	Thomas and Leslie D. Mower
<b>Headquarters</b>	Springville, Utah
<b>Key people</b>	Robert S. Conlee, CEO Chris Crump, CAO and General Counsel Kevin Givan, CIO Will Burgess, VP, Operations
<b>Website</b>	www.neways.com 

## Company history [edit]

Neways, originally named "Images and Attitudes", was founded on June 9, 1987 by founders Thomas and Leslie D. Mower. The company was renamed to Neways in 1992 with its original manufacturing facilities in Salem, Utah. Neways corporate headquarters was moved to Springville, Utah in 2003, with the main manufacturing facility remaining in Salem. Neways was acquired November 8, 2006, by Golden Gate Capital, a private equity firm headquartered in San Francisco, CA.<sup>[2]</sup> Golden Gate Capital also owned Herbalife before taking it public.<sup>[3]</sup> In November 2011, Neways was forced to refinance the company's capital structure; restructuring was completed in January 2012. The company's primary owners are now private equity firm Z Capital Partners, L.L.C. and funds affiliated with S.A.C. Capital Advisors, L.P.<sup>[4]</sup> In July 2012, the Neways board of directors named Robert Conlee as Chief Executive Officer and Chairman of the Board.<sup>[5]</sup>

## Controversies [edit]

In 1993 Neways was forced to recall a weight loss product as it was found to contain a dose at medical levels of the prescription diuretic furosemide.<sup>[6]</sup>

In 2004 Neways was convicted on criminal charges relating to the distribution of a pharmaceutical product containing human growth hormone, which is illegal to distribute without a prescription.<sup>[7]</sup>

In 2005, the founders Thomas and Leslie Mower were convicted of tax fraud for concealing over four million US dollars of revenue. They also presented false loan documents and lied to an IRS special agent.<sup>[8]</sup> In 2006, Thomas was sentenced to 33 months in prison to be followed by 3 years

supervised release and ordered to pay a \$75,000 fine in addition to paying prosecution costs. Leslie was sentenced to 27 months in prison to be followed by 3 years supervised release and ordered to pay a \$60,000 fine.<sup>[9]</sup>

In 2008, Neways Japan Ltd. was forced to suspend signup of new distributors by the Japanese government during a three month period (February 21 to May 20) for deceptive conduct occurring in 2006, after distributors lied about competitors products, claiming they would cause cancer.<sup>[10]</sup>

## References [edit]

- ↑ Neways  Investing Activity - Golden Gate Capital
- ↑ Press Release > Golden Gate Capital Acquires Neways International  SPRINGVILLE, Utah (November 8, 2006) News - Golden Gate Capital
- ↑ Herbalife  Investing Activity - Golden Gate Capital
- ↑ NEWAYS COMPLETES REFINANCING: New Capital Structure Positions Company for Future Growth  Accessed 30 Aug 2012
- ↑ [1]  Neways Enterprises Appoints Robert S. Conlee as Chief Executive Officer, and Chairman of the Board
- ↑ [2]  "The Food and Drug Administration today announced that Neways Inc., of Salem, Utah, is recalling its "Quickly" weight-loss product"
- ↑ [3]  - "Guilty plea for Neways on hormone"(OCTOBER 2003)
- ↑ #131: 3-18-05 UTAH CORPORATE EXECUTIVES AND LEGAL COUNSEL CONVICTED OF TAX FRAUD  FRIDAY, MARCH 18, 2005 - WWW.USDOJ.GOV
- ↑ Corporate Executives and Legal Counsel Sentenced for Tax Fraud  - FY2006 Examples of General Tax Fraud Investigations - Internal Revenue Service United States Department of the Treasury<sup>[*dead link*]</sup>(Wayback [4] )
- ↑ DPJ vice leader received donations from multi-level marketing firms+  October 18, 2008 (Japan Economic Newswire Via Acquire Media NewsEdge) TOKYO, Oct. 18\_(Kyodo) - Technology Marketing Corporation

## External links [edit]

- Official website

Categories: Multi-level marketing companies based in Utah | Companies established in 1992 | Manufacturing companies based in Utah

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# Multi-level marketing

From Wikipedia, the free encyclopedia

**Multi-level marketing (MLM)** is a marketing strategy in which the sales force is compensated not only for sales they personally generate, but also for the sales of the other salespeople that they recruit. This recruited sales force is referred to as the participant's "downline", and can provide multiple levels of compensation.<sup>[1]</sup> Other terms for MLM include **pyramid selling**,<sup>[2][3][4][5][6]</sup> **network marketing**,<sup>[7][8][9]</sup> and **referral marketing**.<sup>[10]</sup>

Most commonly, the salespeople are expected to sell products directly to consumers by means of relationship referrals and word of mouth marketing.<sup>[1]</sup> Some people use *direct selling* as a synonym for MLM, although MLM is only one type of direct selling, which started centuries ago with peddling.<sup>[1][7][11]</sup>

MLM companies have been a frequent subject of criticism as well as the target of lawsuits. Criticism has focused on their similarity to illegal pyramid schemes, price fixing of products, high initial entry costs (for marketing kit and first products), emphasis on recruitment of others over actual sales, encouraging if not requiring members to purchase and use the company's products, exploitation of personal relationships as both sales and recruiting targets, complex and sometimes exaggerated compensation schemes, the company making major money off its training events and materials, and cult-like techniques which some groups use to enhance their members' enthusiasm and devotion.<sup>[10][12]</sup>

In contrast to MLM is single-level marketing, where the salesperson is rewarded for selling the product directly to the consumer.<sup>[13]</sup>

## Marketing

**Key concepts**

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**Promotional media**

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## Direct selling, network marketing, and multi-level marketing [edit]

Network marketing and Multi-level marketing have been described by author Dominique Xardel as being synonymous, and as methods of direct selling.<sup>[1]</sup> According to Xardel, direct selling and network marketing refer to the distribution system, while the term "multi-level marketing" describes the compensation plan.<sup>[1]</sup> Other terms that are sometimes used to describe multi-level marketing include "word-of-mouth marketing", "interactive distribution", and "relationship marketing". Critics have argued that the use of different terms and "buzzwords" is an effort to distinguish multi-level marketing from illegal Ponzi schemes, chain letters, and consumer fraud scams.<sup>[14]</sup> Some sources classify multi-level marketing as a form of direct selling rather than *being* direct selling.<sup>[13][15][16]</sup>

The Direct Selling Association, a lobbying group for the multi-level marketing industry, reported that in 1990 twenty-five percent of members used MLM, growing to 77.3 percent in 1999.<sup>[17]</sup> Companies such as Avon, Electrolux, Tupperware,<sup>[18]</sup> and Kirby all originally used single level marketing to sell their goods and later introduced multi-level compensation plans.<sup>[19]</sup> By 2009, 94.2% of members were using MLM, accounting for 99.6% of sellers, and 97.1% of sales.<sup>[20]</sup> The DSA has approximately 200 members <sup>[21]</sup> while it is estimated there are over 1,000 firms using multi-level marketing in the United States alone.<sup>[22]</sup>

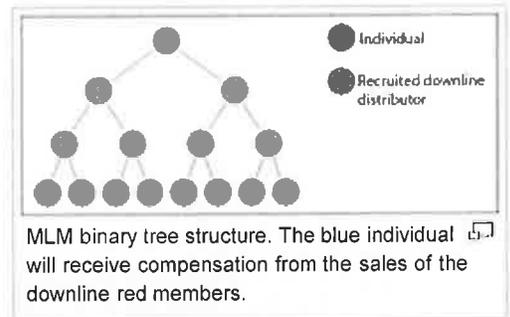
## History [edit]

There is a large amount of debate as to when multi-level marketing started; some say it started in the 1920s,<sup>[23]</sup> 1930s with Nutrilite, 1940s with the *California Vitamin Company*,<sup>[24]</sup> 1960s,<sup>[25]</sup> and even as late as the 1970s<sup>[26]</sup>

## Setup [edit]

Independent, non-salaried salespeople of multi-level marketing, referred to as distributors (or associates, independent business owners, dealers, franchise owners, independent agents, etc.), represent the company that produces the products or provides the services they sell. They are awarded a commission based upon the volume of product sold through their own sales efforts as well as that of their downline organization.

Independent distributors develop their organizations by either building an active customer base, who buy direct from the company, or by recruiting a *downline* of independent distributors who also build a customer base, thereby expanding the overall organization. Additionally, distributors can also earn a profit by retailing products they purchased from the company at wholesale price.



## Income levels [edit]

Several sources have commented on the income level of specific MLMs or MLMs in general:

- *The Times*: "The Government investigation claims to have revealed that just 10% of Amway's agents in Britain make any profit, with less than one in ten selling a single item of the group's products."<sup>[27]</sup>
- Scheibeler, a high level "Emerald" Amway member: "UK Justice Norris found in 2008 that out of an IBO [Independent Business Owners] population of 33,000, 'only about 90 made sufficient incomes to cover the costs of actively building their business.' That's a 99.7 percent loss rate for

investors."<sup>[28]</sup>

- *Newsweek*: based on Mona Vie's own 2007 income disclosure statement "fewer than 1 percent qualified for commissions and of those, only 10 percent made more than \$100 a week."<sup>[29]</sup>
- Business Students Focus on Ethics: "In the USA, the average annual income from MLM for 90% MLM members is no more than US \$5,000, which is far from being a sufficient means of making a living (San Lian Life Weekly 1998)"<sup>[30]</sup>
- *USA Today* has had several articles:
  - "While earning potential varies by company and sales ability, DSA says the median annual income for those in direct sales is \$2,400."<sup>[31]</sup>
  - In an October 15, 2010 article, it was stated that documents of a MLM called Fortune reveal that 30 percent of its representatives make no money and that 54 percent of the remaining 70 percent only make \$93 a month. The article also states Fortune is under investigation by the Attorneys General of Texas, Kentucky, North Dakota, and North Carolina with Missouri, South Carolina, Illinois, and Florida following up complaints against the company.<sup>[32]</sup>
  - A February 10, 2011 article stated "It can be very difficult, if not impossible, for most individuals to make a lot of money through the direct sale of products to consumers. And big money is what recruiters often allude to in their pitches." <sup>[33]</sup>
  - "Roland Whitsell, a former business professor who spent 40 years researching and teaching the pitfalls of multilevel marketing": "You'd be hard-pressed to find anyone making over \$1.50 an hour, (t)he primary product is opportunity. The strongest, most powerful motivational force today is false hope."<sup>[33]</sup>

## Legality and legitimacy [edit]

### United States of America [edit]

MLM businesses are known to operate in all 50 U.S. states of the United States of America.<sup>[*citation needed*]</sup> New businesses may use terms such as "affiliate marketing" or "home-based business franchising". Many pyramid schemes try to present themselves as legitimate MLM businesses.<sup>[11]</sup> However, there are many people as well as courts who maintain that *all* MLMs are essentially pyramid schemes even if they are legal.<sup>[10][34][35][36]</sup>

The U.S. Federal Trade Commission (FTC) states "Steer clear of multilevel marketing plans that pay commissions for recruiting new distributors. They're actually illegal pyramid schemes. Why is *pyramiding* dangerous? Because plans that pay commissions for recruiting new distributors inevitably collapse when no new distributors can be recruited. And when a plan collapses, most people - except perhaps those at the very top of the pyramid - end up empty-handed."<sup>[37]</sup>

In a 2004 Staff Advisory letter to the Direct Selling Association, the FTC states:

Much has been made of the personal, or internal, consumption issue in recent years. In fact, the amount of internal consumption in any multi-level compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme. The critical question for the FTC is whether the revenues that primarily support the commissions paid to all participants are generated from purchases of goods and services that are not simply incidental to the purchase of the right to participate in a money-making venture.<sup>[38]</sup>

The Federal Trade Commission warns "Not all multilevel marketing plans are legitimate. Some are pyramid schemes. It's best not to get involved in plans where the money you make is based primarily on the number of distributors you recruit and your sales to them, rather than on your sales to people outside the plan who intend to use the products."<sup>[39]</sup> and states that research is your best

<sup>[39]</sup>

tool, giving eight steps to follow:

1. Find — and study — the company's track record
2. Learn about the product
3. Ask questions
4. Understand any restrictions
5. Talk to other distributors (beware of shills)
6. Consider using a friend or adviser as a neutral sounding board or for a gut check
7. Take your time
8. Think about whether this plan suits your talents and goals

### Criticism [edit]

The Federal Trade Commission issued a decision, *In re Amway Corp.*, in 1979 in which it indicated that multi-level marketing was not illegal *per se* in the United States. However, Amway was found guilty of price fixing (by effectively requiring "independent" distributors to sell at the same fixed price) and making exaggerated income claims.<sup>[40][41]</sup>

The FTC advises that multi-level marketing organizations with greater incentives for recruitment than product sales are to be viewed skeptically. The FTC also warns that the practice of getting commissions from recruiting new members is outlawed in most states as "pyramiding".<sup>[42]</sup> In April 2006, it proposed a Business Opportunity Rule intended to require all sellers of business opportunities—including MLMs—to provide enough information to enable prospective buyers to make an informed decision about their probability of earning money. In March 2008, the FTC removed Network Marketing (MLM) companies from the proposed Business Opportunity Rule:

The revised proposal, however, would not reach multi-level marketing companies or certain companies that may have been swept inadvertently into scope of the April 2006 proposal.<sup>[43]</sup>

Walter J. Carl stated in a 2004 *Western Journal of Communication* article that "MLM organizations have been described by some as cults (Butterfield, 1985), pyramid schemes (Fitzpatrick & Reynolds, 1997),<sup>[44]</sup> or organizations rife with misleading, deceptive, and unethical behavior (Carter, 1999), such as the questionable use of evangelical discourse to promote the business (Hopfl & Maddrell, 1996), and the exploitation of personal relationships for financial gain (Fitzpatrick & Reynolds, 1997)".<sup>[44][45]</sup> In China, volunteers working to rescue people from the schemes have been physically attacked.<sup>[46]</sup>

MLM's are also criticized for being unable to fulfill their promises for the majority of participants due to basic conflicts with Western cultural norms.<sup>[47]</sup> There are even claims that the success rate for breaking even or even making money are far worse than other types of businesses.<sup>[48][49][50]</sup> "The vast majority of MLM's are recruiting MLM's, in which participants must recruit aggressively to profit. Based on available data from the companies themselves, the loss rate for recruiting MLM's is approximately 99.9%; i.e., 99.9% of participants lose money after subtracting all expenses, including purchases from the company."<sup>[48]</sup> In part, this is because encouraging recruits to further "recruit people to compete with [them]"<sup>[10]</sup> leads to "market saturation."<sup>[12]</sup> It has also been claimed "(b)y its very nature, MLM is completely devoid of any scientific foundations."<sup>[51]</sup>

Another criticism is that MLM has effectively outlived its usefulness as a legitimate business practice. The argument is that, in the time when America was a series of relatively small, isolated towns and rural areas not easily accessible to small companies, MLM was a useful way to let people know of and buy products or services. But the advent of internet commerce, with its ability to advertise and sell directly to consumers, has rendered that model obsolete. Thus, today, nearly all modern MLMs ostensibly sell vastly overpriced goods and services (if there even is a real product or service involved at all) as a thin cloak of legitimacy, while their members are driven to recruit even more

people into the MLM, effectively turning these programs into pyramid schemes.<sup>[35]</sup>

Because of the encouraging of recruits to further recruit their competitors, some people have even gone so far as to say at best modern MLMs are nothing more than legalized pyramid schemes<sup>[10][34][35][36]</sup> with one stating "Multi-level marketing companies have become an accepted and legally sanctioned form of pyramid scheme in the United States"<sup>[34]</sup> while another states "Multi-Level Marketing, a form of Pyramid Scheme, is not necessarily fraudulent."<sup>[36]</sup>

In October 2010 it was reported that multilevel marketing companies were being investigated by a number of state attorneys general amid allegations that salespeople were primarily paid for recruiting and that more recent recruits cannot earn anything near what early entrants do.<sup>[52]</sup>

## See also [edit]

- List of multi-level marketing companies

## Notes [edit]

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- Federal Trade Commission article 

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## **Exhibit C**

Join Now

1 Items In Cart

Checkout

My Cart

Login



Visit a regional site

Home Products Opportunity Neways TV About Us Events Contact

### Neways US Website Login

Distributor ID:   
Password:

Login

Can't remember your password? [Click here](#)



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

Neways, Inc.,  
Petitioner,

v.

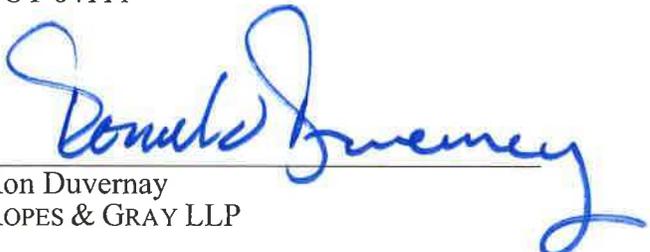
New Whey Nutrition, LLC, f/k/a  
Topspin-IDS Acquisition, LLC,  
Respondent

Cancellation # 92057122

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer, Affirmative Defenses and Counterclaims has been served on Thomas R. Vuksinick, counsel for Neways, Inc., by mailing said copy on June 12, 2013, via First Class Mail, postage prepaid to:

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