

ESTTA Tracking number: **ESTTA70113**

Filing date: **03/09/2006**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Visual Changes Skin Care International, Inc.
Granted to Date of previous extension	03/12/2006
Address	2491 W. Shaw Ave., Ste. 110 Fresno, CA 93711 UNITED STATES

Attorney information	Mark D. Miller Kimble, MacMichael & Upton 5260 N. Palm Ave., Ste. 221 Fresno, CA 93704 UNITED STATES mmiller@kmlaw.com Phone:(559) 435-5500
----------------------	--

**Applicant Information**

Application No	78490974	Publication date	09/13/2005
Opposition Filing Date	03/09/2006	Opposition Period Ends	03/12/2006
Applicant	Neways, Inc. 2089 Neways Drive Springville, UT 84663 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 003. All goods and services in the class are opposed, namely: Personal care preparation; namely, skin moisturizer made from the Resurrection Plant
---

Related Proceedings	Serial No. 78/490,954
---------------------	-----------------------

Attachments	Opposition.pdf ( 3 pages )
-------------	----------------------------

Signature	/Mark D. Miller/
Name	Mark D. Miller
Date	03/09/2006

1 MARK D. MILLER 116349  
ROBERT W. BRANCH 154963  
2 JEREMY D. CLAR 234238  
KIMBLE, MacMICHAEL & UPTON  
3 A Professional Corporation  
5260 North Palm Ave., Suite 221  
4 Post Office Box 9489  
Fresno, California 93792-9489  
5 Telephone: (559) 435-5500  
Facsimile: (559) 435-1500  
6

Attorneys for Opposer  
7 VISUAL CHANGES SKIN CARE INTERNATIONAL, INC.

8  
9 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
10 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

11 \* \* \*

12 VISUAL CHANGES SKIN CARE )  
INTERNATIONAL, INC., a California )  
13 corporation, )

14 Opposer, )

15 v. )

16 NEWAYS, INC., a Utah corporation, )

17 Respondent. )

Opposition No. \_\_\_\_\_

**OPPOSITION TO REGISTRATION**

Serial No. 78/490,974  
Filing Date: September 28, 2004  
Mark: RESURRECTON BIOMIST

18 )  
19 )  
20 Opposer Visual Changes Skin Care International, Inc., a California corporation located  
21 and doing business at 2491 W. Shaw Ave., Ste. 110, Fresno, California 93711 ("Opposer"),  
22 believes that it will be damaged by registration of the mark shown in Serial No. 78/490,974  
23 (RESURRECTON BIOMIST), and hereby opposes same.

24 Description of Applicant's Application:

25 Filed on September 28, 2004.  
26 Published for opposition on September 13, 2005.  
Mark: RESURRECTON BIOMIST in class 003 for personal care preparation; skin  
27 moisturizer made from the Resurrection Plant.  
Extension of time to oppose until March 10, 2006.

28 As grounds of opposition it is alleged that:

1           1.       Opposer is the owner of U.S. Trademark Registration No. 3,064,428 for the mark  
2 RESURRECTION for use on perfumery, essential oils, cosmetics and hair lotions that was  
3 registered on the Principal Register on February 28, 2006. Said registration was based on an  
4 application filed in the U.S. Patent and Trademark Office on April 13, 2004, which is a date prior  
5 to the date of filing of applicant's application for registration of RESURRECTON BIOMIST.  
6 Said registered mark of opposer is valid and subsisting and is conclusive evidence of opposer's  
7 exclusive right to use said mark in commerce on the goods specified in said registration. In view  
8 of the similarity of the respective marks and the related nature of the goods of the respective  
9 parties, it is alleged that applicant's mark so resembles opposer's registered mark, as to be likely  
10 to cause confusion or to cause mistake or to deceive.

11           2.       Opposer, since May 31, 2003, has been, and is now, using the mark  
12 RESURRECTION in connection with the sale of skin care products including perfumery,  
13 essential oils, cosmetics and hair lotions. Said use has been valid and continuous since said date  
14 of first use, and has not been abandoned. Said mark RESURRECTION of Opposer is symbolic  
15 of extensive good will and consumer recognition built up by Opposer through substantial  
16 amounts of time and effort in advertising and promotion. In view of the similarity of the  
17 respective marks and the related nature of the goods and services of the respective parties, it is  
18 alleged that Applicant's mark RESURRECTON BIOMIST so resembles Opposer's mark  
19 RESURRECTION, previously used in the United States and not abandoned, as to be likely to  
20 cause confusion, or to cause mistake or to deceive.

21 ///  
22 ///  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1 WHEREFORE, Opposer prays that registration be refused for application serial number  
2 78/490,974 for the mark RESURRECTON BIOMIST, that no registration thereon be issued to  
3 Applicant, and that this opposition be sustained in favor of Opposer.

4  
5 Dated: March 9, 2006

Respectfully Submitted,  
KIMBLE, MacMICHAEL & UPTON  
A Professional Corporation

7  
8 By   
MARK D. MILLER

9 5260 North Palm Ave., Suite 221  
10 Fresno, California 93704  
11 Telephone: (559) 435-5500  
12 Facsimile: (559) 435-1500

13 Attorneys for Opposer  
14 Visual Changes Skin Care International, Inc.

15 i0683 10 opposition 1  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27