

ESTTA Tracking number: **ESTTA105497**

Filing date: **10/23/2006**

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

Proceeding	91169654
Party	Plaintiff Visual Changes Skin Care International, Inc. Visual Changes Skin Care International, Inc. ,
Correspondence Address	Mark D. Miller Kimble, MacMichael & Upton 5260 N. Palm Ave., Ste. 221 Fresno, CA 93704 UNITED STATES mmiller@kmulaw.com
Submission	Opposition/Response to Motion
Filer's Name	Mark D. Miller
Filer's e-mail	mmiller@kmulaw.com, dturner@kmulaw.com
Signature	/Mark D. Miller/
Date	10/23/2006
Attachments	Opp.to.Neways.Motion.Amend.pdf (17 pages)(619122 bytes)

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

* * *

In the matter of Trademark Application No. 78/490,974
Published in the "Official Gazette" of September 13, 2005
Filing Date: September 28, 2004
For the Mark: **RESURRECTION BIOMIST**

-and-

In the matter of Trademark Application No. 78/490,954
Published in the "Official Gazette" of September 13, 2005
Filing Date: September 28, 2004
For the Mark: **NEWAYS RESURRECTION BIOMIST**

VISUAL CHANGES SKIN CARE INTERNATIONAL, INC.	}	
	}	
Opposer	}	
	}	
v.	}	
	}	
NEWAYS, INC.	}	
	}	
Applicant	}	

OPPOSER’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO NEWAYS’ MOTION FOR LEAVE TO AMEND ANSWER

Opposition No. 91169654

- consolidated with -

Opposition No. 91169655

Opposer, Visual Changes Skin Care International, Inc. (“Visual Changes”) submits this memorandum in opposition to the Motion for Leave to Amend Answer by Neways, Inc. (“Neways”).

I. THE MOTION TO AMEND IS MOOT

By its motion, Neways seeks leave to amend its Answer to add a counterclaim seeking cancellation of opposer’s Registration No. 3,064,428. On October 13, 2006, opposer voluntarily surrendered said registration and requested cancellation thereof. A copy of said surrender is attached as exhibit A to the declaration of Mark D. Miller submitted herewith. Surrender of the original certificate was accomplished on October 18, 2006 (see exhibit B to Miller Dec.).

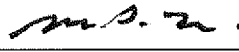
1 Accordingly, the relief sought in the proposed counterclaim has already been obtained, rendering
2 the request for leave to amend moot.

3 In light of the above, it is respectfully requested that Neways' Motion for Leave to
4 Amend Answer be denied as moot.

5 Dated: October 23, 2006

Respectfully Submitted,

KIMBLE, MacMICHAEL & UPTON
A Professional Corporation

8 By  _____

9 MARK D. MILLER
10 5260 North Palm Ave., Suite 221
11 Fresno, California 93704
12 Telephone: (559) 435-5500
13 Facsimile: (559) 435-1500
14 Attorneys for Opposer
15 Visual Changes Skin Care International, Inc.


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Certificate of Mailing 37 CFR § 2.197

I hereby certify that that a true copy of the foregoing Opposer's Memorandum of Points and Authorities in Opposition to Neways' Motion for Leave to Amend Answer is being served on the Applicant by being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to:

John C. Stringham
Robyn L. Phillips, Esq.
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, Utah 84111

on October 23, 2006.

Signed: 
Deniece Turner

10683.10.opp..motion.to.amend.1

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

3 * * *

4 In the matter of Trademark Application No. 78/490,974
5 Published in the "Official Gazette" of September 13, 2005
6 Filing Date: September 28, 2004
7 For the Mark: **RESURRECTION BIOMIST**

8 -and-

9 In the matter of Trademark Application No. 78/490,954
10 Published in the "Official Gazette" of September 13, 2005
11 Filing Date: September 28, 2004
12 For the Mark: **NEWAYS RESURRECTION BIOMIST**

13 VISUAL CHANGES SKIN CARE
14 INTERNATIONAL, INC.)

15 Opposer)

16 v.)

17 NEWAYS, INC.)

18 Applicant)

**DECLARATION OF MARK
D. MILLER IN SUPPORT OF
OPPOSITION TO NEWAYS'
MOTION FOR LEAVE TO
AMEND ANSWER**

Opposition No. 91169654

- consolidated with -

Opposition No. 91169655

19 I, Mark D. Miller, hereby state:

20 1. I am a member of the law firm of Kimble, MacMichael & Upton, counsel for
21 opposer Visual Changes Skin Care International, Inc.

22 2. Attached hereto as Exhibit A and incorporated herein by this reference is a copy
23 of the Voluntary Surrender of Trademark Registration submitted on October 13, 2006.

24 3. Attached hereto as Exhibit B and incorporated herein by this reference is a copy
25 of the Submission of Voluntary Surrendered Trademark Registration Certificate submitted on
26 October 18, 2006.

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the United States of America that the
2 statements set for the hereinabove are true and correct to the best of my knowledge and
3 understanding.

4 Dated this 23rd day of October, 2006.



5 _____
6 Mark D. Miller
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John C. Stringham
Robyn L. Phillips, Esq.
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on October 23, 2006.

Signed: 
Deniece Turner

10683.10.dcc..motion.to.amend.1

Exhibit "A"

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK DIVISION

In Re Registration of:)
)
Visual Changes Skin Care)
International, Inc.)
)
Registration No. 3,064,428)
)
Serial No.: 78/401,339)
)
For: RESURRECTION)
_____)

EV869152197US

Express Mail Certificate

I hereby certify that this correspondence, including listed enclosures, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" label number EV869152197US in an envelope addressed to: Commissioner for Trademarks, Attn: Post Registration Section, P.O. Box 1451, Alexandria, Virginia 22313-1451 on October 13, 2006.

Signed: Deniece Turner
Deniece Turner

VOLUNTARY SURRENDER OF TRADEMARK REGISTRATION

Commissioner for Trademarks:
Alexandria, VA 22313

Dear Sir:

Attached hereto please find the voluntary surrender of the above trademark registration. No fee is required pursuant to TMEP § 1608.

Dated: October 13, 2006.

By Mark D. Miller
MARK D. MILLER
KIMBLE, MacMICHAEL & UPTON
A Professional Corporation
5260 N. Palm Ave., Ste. 221
Fresno, California 93704
(559) 435-5500

VOLUNTARY SURRENDER OF TRADEMARK REGISTRATION
15 U.S.C. § 1057(e)

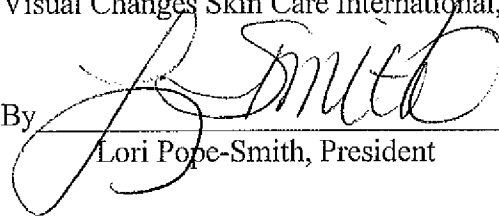
Mark: RESURRECTION
Reg. No. 3,064,428
Serial No.: 78/401,339
Reg. Date: Feb. 28, 2006
Owner: Visual Changes Skin Care International, Inc.

Visual Changes Skin Care International, Inc., Owner of the above-identified Registration No. 3,064,428 for the mark RESURRECTION, hereby voluntarily surrenders said registration in its entirety without prejudice and requests cancellation thereof pursuant to 15 U.S.C. § 1057(e). The original certificate of registration has been lost. If it is found, it will be submitted pursuant to 37 C.F.R. § 2.172. A copy of the certificate is attached hereto.

Visual Changes Skin Care International, Inc.

Dated: October ~~12~~ 2006

By



Lori Pope-Smith, President

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,064,428

Registered Feb. 28, 2006

**TRADEMARK
PRINCIPAL REGISTER**

RESURRECTION

VISUAL CHANGES SKIN CARE INTERNATIONAL, INC. (CALIFORNIA CORPORATION)
SUITE 110
2491 WEST SHAW AVENUE
FRESNO, CA 93711

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

FOR: SOAPS; PERFUMERY, ESSENTIAL OILS, COSMETICS AND HAIR LOTIONS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

SN 78-401,339, FILED 4-13-2004.

FIRST USE 5-31-2003; IN COMMERCE 5-31-2003.

JIM RINGLE, EXAMINING ATTORNEY

Exhibit “B”

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK DIVISION

In Re Registration of:)
Visual Changes Skin Care International, Inc.)
Registration No. 3,064,428)
Serial No.: 78/401,339)
For: RESURRECTION)

EV869152206US

Express Mail Certificate

I hereby certify that this correspondence, including listed enclosures, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" label number EV869152206US in an envelope addressed to: Commissioner for Trademarks, Attn: Post Registration Section, P.O. Box 1451, Alexandria, Virginia 22313-1451 on October 18, 2006.

Signed: *Deniece Turner*
Deniece Turner

**SUBMISSION OF VOLUNTARY SURRENDERED TRADEMARK
REGISTRATION CERTIFICATE**

Commissioner for Trademarks:
Alexandria, VA 22313

Dear Sir:

Attached hereto please find the original certificate of registration of the above trademark, the voluntary surrender of which was submitted on October 13, 2006. A copy of said voluntary surrender is also attached.

Dated: October 18, 2006.

By *Mark D. Miller*
MARK D. MILLER
KIMBLE, MacMICHAEL & UPTON
A Professional Corporation
5260 N. Palm Ave., Ste. 221
Fresno, California 93704
(559) 435-5500

The United States of America



CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

To avoid CANCELLATION of the registration, the owner of the registration must submit a declaration of continued use or excusable non-use between the fifth and sixth years after the registration date. (See next page for more information.) Assuming such a declaration is properly filed, the registration will remain in force for ten (10) years, unless terminated by an order of the Commissioner for Trademarks or a federal court. (See next page for information on maintenance requirements for successive ten-year periods.)



Director of the United States Patent and Trademark Office

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 3,064,428

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JIM RINGLE, EXAMINING ATTORNEY

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Signed: *Deniece Turner*
Deniece Turner

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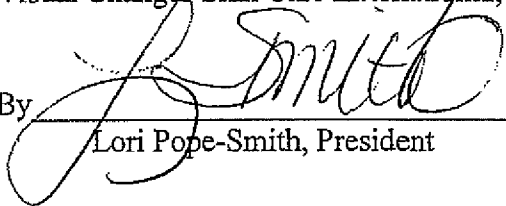
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