

ESTTA Tracking number: **ESTTA166542**

Filing date: **10/03/2007**

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.
Correspondence Address	Mark D. Miller Kimble, MacMichael & Upton 5260 N. Palm Ave., Ste. 221 Fresno, CA 93704 UNITED STATES mmiller@kmulaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Mark D. Miller
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Signature	/Mark D. Miller/
Date	10/03/2007
Attachments	Motion.to.amend.10.3.07('654).pdf ( 7 pages )(389374 bytes )



1 Visual Changes and Neways stipulate as follows:

2 1. Visual Changes shall be permitted to file a Second Amended Notice of  
3 Opposition to registration of RESURRECTION BIOMIST in Opposition No. 91169654 (Serial  
4 No. 78/490,974) of these consolidated proceedings in the form attached hereto as Exhibit A and  
5 the same to be deemed filed as of the date of approval of this stipulation by the Trademark Trial  
6 and Appeal Board; and

7 2. Neways shall have 30 days from the deemed filing of the Second Amended  
8 Notice of Opposition to file a response thereto.

9 Dated: October 3, 2007

Respectfully Submitted,

10 By Robert W. Branch

11 Mark D. Miller  
12 Robert W. Branch  
13 Kimble, MacMichael & Upton  
14 A Professional Corporation  
15 5260 North Palm Ave., Suite 221  
16 Fresno, California 93704  
17 Telephone: (559) 435-5500  
Facsimile: (559) 435-1500  
Attorneys for Opposer  
Visual Changes Skin Care International, Inc.

18 Dated: October 3<sup>rd</sup>, 2007

Respectfully Submitted,

19 By Robyn L. Phillips

20 John C. Stringham  
21 Robyn L. Phillips, Esq.  
22 WORKMAN NYDEGGER  
23 1000 Eagle Gate Tower  
24 60 East South Temple Street  
25 Salt Lake City, Utah 84111  
26 Attorneys for Applicant  
27 Neways, Inc.

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**Certificate of Mailing 37 CFR § 2.197**

I hereby certify that that a true copy of the foregoing Stipulated Motion to File Second Amended Notice of Opposition in Opposition No. 91169654 to Registration of RESURRECTION BIOMIST (Serial No. 78/490,974) 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 10.3, 2007.

Signed:   
Deniece Turner

10683.10..motion.to.amend#54cns1(stipulated).4

EXHIBIT "A"



1 As grounds of opposition it is alleged that:

2 1. Opposer, since May 31, 2003, has been, and is now, using the mark  
3 RESURRECTION in connection with the sale of skin care products in the form of a non-  
4 medicated skin care agent, emulsion, lotion, cream, and moisturizer for personal use; namely:  
5 topical skin treatment for skin lightening, tyrosinase inhibiting, skin toning, environmentally  
6 damaged repair, environmental protection, anti-aging, age retarding, firming, tightening, wrinkle  
7 reducing, collagen and elastin synthesizing, increasing skin elasticity, increasing cell respiration,  
8 stimulating growth for aged keratinocytes, stimulating multiplication of fibroblasts, synthesizing  
9 glycosaminoglycans, accelerating cell turn over, preventing glycation, anti collagenase,  
10 elastinase and hyaluronidase activity, reducing epidermal water loss, rejuvenating dull, rough or  
11 tired skin, holding oxygen in cell membranes, assisting with cell growth, stabilizing the lipids in  
12 the skin, inhibiting matrix metalloproteinase, stimulating growth factors, reducing redness,  
13 assisting in calcium and iron absorption, energizing, hydrating, moisturizing, lubricating,  
14 softening, nourishing, reducing inflammation, healing, protecting, barrier assistance, vitamin  
15 supplement, free radical prevention; Non-medicated plant, fruit, and flower based cream and  
16 lotion, natural cream and lotion, herbal cream and lotion, mineral cream and lotion, penetrating  
17 agent, facial cream and lotion, night cream and lotion, herbal cream and lotion, cream and lotion,  
18 anti-aging cream and lotion, eye cream and lotion, vanishing cream and lotion, emollient cream  
19 and lotion, peptide cream and lotion, and skin conditioner. Said use has been valid and  
20 continuous since said date of first use, and has not been abandoned. Said mark  
21 RESURRECTION of Opposer is symbolic of extensive good will and consumer recognition built  
22 up by Opposer through substantial amounts of time and effort in advertising and promotion. In  
23 view of the similarity of the respective marks and the related nature of the goods and services of  
24 the respective parties, it is alleged that Applicant's mark RESURRECTON BIOMIST so  
25 resembles Opposer's mark RESURRECTION, previously used in the United States and not  
26 abandoned, as to be likely to cause confusion, or to cause mistake or to deceive.  
27

28  
LAW OFFICES  
Kimble, MacMichael  
& Upton  
A PROFESSIONAL CORPORATION  
5260 NORTH PALM AVENUE  
SUITE 221  
P. O. Box 9489  
FRESNO, CA 93792-9489

1           2.       Applicant's mark RESURRECTION BIOMIST should be denied registration in  
2 accordance with Section 2(e)(1) of the Lanham Act in that it is generic as registration is sought  
3 for use on products made from extract of the Resurrection Plant and applied by misting the  
4 product onto the skin.

5           3.       Applicant's mark RESURRECTION BIOMIST should be denied registration in  
6 accordance with Section 2(e)(1) of the Lanham Act in that it is merely descriptive as registration  
7 is sought for use on products made from extract of the Resurrection Plant and applied by misting  
8 the product onto the skin.

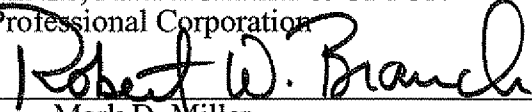
9           WHEREFORE, Opposer prays that registration be refused for application serial number  
10 78/490,974 for the mark RESURRECTON BIOMIST and that no registrations thereon be issued  
11 to Applicant, and that this opposition be sustained in favor of Opposer.

12           The Office is authorized to charge any fees required by this paper to deposit account  
13 502429.

14 Dated: October 3, 2007

Respectfully Submitted,

KIMBLE, MacMICHAEL & UPTON  
A Professional Corporation

By 

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