

ESTTA Tracking number: **ESTTA76207**

Filing date: **04/13/2006**

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

Proceeding	91169654
Party	Defendant Neways, Inc. Neways, Inc. 2089 Neways Drive Springville, UT 84663
Correspondence Address	CHRISTOPHER S. CRUMP NEWAYS, INC. LEGAL DEPARTMENT 2089 NEWAYS DR SPRINGVILLE, UT 84663-6020
Submission	Answer
Filer's Name	John C. Stringham
Filer's e-mail	jstringham@wnlaw.com
Signature	/John C. Stringham 40,831/
Date	04/13/2006
Attachments	14564.62 Answer.pdf (5 pages)

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

In the matter of application Serial No. **78/490,974**
For the mark **RESURRECTION BIOMIST**
Published in the "Official Gazette" of September 13, 2005

VISUAL CHANGES SKIN CARE, INTERNATIONAL, INC.)	
)	
Opposer,)	
)	Opposition No. 91169654
vs.)	
)	
NEWAYS, INC.)	
)	
Applicant.)	
)	

In response to the Notice of Opposition, dated March 9, 2006, Applicant NEWAYS, INC. ("NEWAYS" or "Applicant"), answers the Notice of Opposition filed by Opposer VISUAL CHANGES SKIN CARE INTERNATIONAL, INC. ("Opposer") as follows:

ANSWER TO NOTICE OF OPPOSITION

Applicant denies that Opposer will be damaged by the issuance of a registration for the mark RESURRECTION BIOMIST, as applied for in application Serial No. 78/490,974 filed on September 28, 2004, by Applicant.

Applicant hereby answers Opposer's grounds for opposition as follows:

1. Applicant admits that according to the available records of the United States Patent and Trademark Office, Opposer appears to be the owner of United States Trademark Registration No. 3,064,428 ("the '428 registration") for the mark RESURRECTION for use on soaps, perfumery, essential oils, cosmetics and hair lotions; and that the filing date of the

application culminating in the '428 registration appears to be April 13, 2003. Applicant further admits that the filing date of Application Serial No. 78/490,974 was September 28, 2004. Applicant lacks sufficient knowledge or information to form a basis to admit or deny the remaining allegations set forth in paragraph 1 of the Notice of Opposition and, therefore, denies such allegations.

2. Applicant lacks knowledge or information sufficient to form a basis to admit or deny the allegations set forth in paragraph 2 of the Notice of Opposition and, therefore, denies such allegations.

AFFIRMATIVE DEFENSES

By way of defense to the allegations set forth in the Notice of Opposition, Applicant asserts the following:

FIRST AFFIRMATIVE DEFENSE

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer is not likely to be damaged by registration of Applicant's mark and, therefore, lacks standing to oppose registration of the same.

THIRD AFFIRMATIVE DEFENSE

Any rights Opposer may have in its asserted marks are limited and narrow in scope of protection and, therefore, no likelihood of confusion exists between Opposer's marks as applied to Opposer's goods and Applicant's RESURRECTION BIOMIST mark as applied to Applicant's goods.

FOURTH AFFIRMATIVE DEFENSE

Applicant's use of its RESURRECTION BIOMIST mark will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

FIFTH AFFIRMATIVE DEFENSE

Applicant's goods are sufficiently distinctively different from Opposer's goods to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's services with Opposer.

SIXTH AFFIRMATIVE DEFENSE

Applicant's mark, when used in connection with Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

SEVENTH AFFIRMATIVE DEFENSE

To the extent Opposer uses the resurrection plant as an ingredient in its formulations for products sold in association with its RESURRECTION mark, Opposer's mark is generic or at least descriptive and should be cancelled.

RELIEF REQUESTED

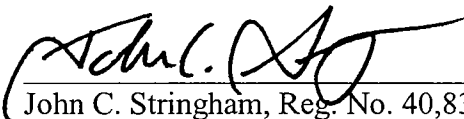
In view of the foregoing, Applicant respectfully requests that the relief requested by Opposer be denied, that the Opposition be dismissed with prejudice, and that registration of Applicant's Trademark Application Serial No. 78/490,974 be granted.

All correspondence and telephonic communications should be directed to:

John C. Stringham, Reg. No. 40,831
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
jstringham@wnlaw.com

SIGNED on this the 13 day of April 2006.

Respectfully submitted,
WORKMAN NYDEGGER



John C. Stringham, Reg. No. 40,831

WORKMAN NYDEGGER
Customer No. 022913
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707
jstringham@wnlaw.com

Attorney for Applicant
NEWAYS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on Opposer by mailing a true copy thereof to its counsel, by First Class Mail, postage prepaid, on this the 13 day of April, 2006, in an envelope addressed as follows:

Mark D. Miller
KIMBLE, MACMICHAEL & UPTON
5260 N. Palm Ave., Suite 221
Fresno, CA 93704

