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

Proceeding	91255586
Party	Plaintiff Neolife International, LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Atty Docket: K375G-US903.26N

NEOLIFE INTERNATIONAL, LLC,

Opposer,

v.

NIO CO. LTD.

Applicant.

OPPOSITION NO. 91255586

Application Serial No. 88/179,333

MARK: NIO

Publication Date: March 31, 2020

**FIRST AMENDED NOTICE OF OPPOSITION**

Opposer, NeoLife International, LLC, a Nevada Limited Liability company (hereinafter “Opposer”), with its principal offices at 3500 Gateway Blvd, Fremont, California, 94538, believes it will be damaged by, and hereby opposes, the registration on the Principal Register of Application Serial No. 88/179,333 for the mark NIO in Class 26 (hereinafter “the ‘333 Application”), filed by Nio Co., Ltd., a limited liability company of China (hereinafter “Applicant”), located at Suite 115, No. 569, Anchi Road, Anting Town, Jiading District, Shanghai, China 201800. As grounds for this opposition, Opposer alleges:

1. Applicant seeks to register NIO as a trademark in Class 26 for “(Based on Intent to Use) hair bands; (Based on 44(e)) brooches in the nature of decorative clothing accessories; (Based on Intent to Use) hair grips; bobby pins; artificial flowers” as evidenced by the publication of said mark in the Official Gazette on March 31, 2020.

2. Since long before the ‘333 Application’s filing date, Opposer has continuously used and is using the NEOLIFE mark in connection with cosmetics, oils, lotions, soaps, shampoos, conditioners, detergents, cleaning preparations, health food, drinks, and nutritional

supplements, as well as the provision of multimedia content, classes, workshops, seminars, lectures, blogs, newsletters, and electronic articles related to beauty, nutrition, health, and wellness, and related goods and services.

3. Through its substantial and continuous use of the mark NEOLIFE (the “NEOLIFE mark”) in association with its goods and services, Opposer has registered and established common law rights in the NEOLIFE mark throughout the United States long before the ‘333 Application’s filing date.

4. Opposer’s uses its NEOLIFE mark on and in association with its Nutriance line of personal care products. Opposer’s NEOLIFE mark is affixed to containers and packaging for Nutriance products, and Nutriance goods are featured in Opposer’s NEOLIFE product catalogs and are sold directly through Opposer’s NEOLIFE online retail site.

5. Opposer has invested considerable time and money establishing exclusive proprietary rights in the NEOLIFE mark for use in connection with the above-referenced goods, services, and related goods and services. As a result of the sales, advertising, and promotion of said goods and services bearing or offered in connection with Opposer’s NEOLIFE Mark, Opposer has built up highly valuable goodwill in its NEOLIFE mark and said goodwill has become closely identified and associated with Opposer.

6. Opposer is the owner of the following United States Trademark Registrations: Registration No. 1,220,495 in Class 3 for the mark NUTRIANCE, Registration Nos. 4,621,364 and 4,846,868 in Classes 5, 29, 30, 32 for the NEOLIFE mark, Registration No. 5,828,556 in Class 5 for the mark NEOLIFE PRO VITALITY, and Registration No. 5,907,766 in Classes 5 and 29 for the mark NEOLIFESHAKE. True and correct copies of the Certificates of Registration and records from the Trademark Status and Document Retrieval (TSDR) database of the USPTO showing current status and title for the above-listed registrations owned by

Opposer are attached hereto as **Exhibits 1 through 5**. The above-listed trademark registrations are valid and subsisting.

### **FIRST GROUND FOR OPPOSITION**

#### **PRIORITY AND LIKELY TO CAUSE CONFUSION, OR MISTAKE, OR TO DECEIVE**

7. Opposer repeats and incorporates the allegations in the preceding paragraphs.

8. Upon information and belief, the November 2, 2018 filing date of the ‘333 Application is the earliest date upon which Applicant can rely to establish rights in the NIO mark for the goods listed under the ‘333 Application.

9. Opposer has priority of use of the mark NEOLIFE. Opposer or its successors in interest began using the NEOLIFE mark in U.S. commerce prior to the filing date of Applicant’s ‘333 Application.

10. Applicant’s mark NIO is substantially similar to Opposer’s NEOLIFE mark. The terms “NIO” and “NEO” sound identical when spoken. “NIO” and “NEO” are nearly identical in sight and overall commercial impression.

11. Upon information and belief, Applicant’s NIO mark is a phonetic spelling or “typo” for the term “NEO” and thus Applicant intends that the term “NIO” convey the same meaning as the term “NEO” in Opposer’s NEOLIFE mark.

12. Upon information and belief, Applicant’s NIO mark means NEO or “new.”

13. Relevant consumers will likely understand Applicant’s NIO mark to mean “new” and to convey the same meaning and overall commercial impression as the term “NEO” in Opposer’s NEOLIFE mark.

14. The goods identified in the ‘333 Application are identical to or closely related to or are within the natural zone of expansion of the goods and services offered by Opposer in association with Opposer’s NEOLIFE mark.

15. Upon information and belief, the goods under the ‘333 Application are or will be offered in the same channels of trade as the goods and services offered by Opposer in association with Opposer’s NEOLIFE mark.

16. Applicant’s NIO mark so resembles Opposer’s NEOLIFE mark that, when used in connection with the goods recited the ‘333 application, it is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Lanham Act.

17. Use of Applicant’s mark on the goods recited in the ‘333 application is likely to confuse the purchasing public into mistakenly believing that Opposer is the source of Applicant’s goods or that Applicant’s goods are affiliated with, or sponsored, endorsed or otherwise approved by Opposer.

18. Applicant’s registration and use of NIO for the goods recited in the ‘333 Application, and the likelihood of confusion caused thereby, is likely to damage and destroy the distinctiveness, goodwill, and reputation of Opposer’s NEOLIFE mark.

19. Upon information and belief, the ‘333 Application for the term NIO would likely block or prevent later-filed applications for marks containing the prefix or term “NIO” or “NEO” from registration in Class 26 or for related goods and services in other trademark classes due to a likelihood of confusion between the marks.

## **SECOND GROUND FOR OPPOSITION**

### **NO BONA FIDE INTENT TO USE MARK IN COMMERCE FOR IDENTIFIED GOODS**

20. Opposer repeats and incorporates the allegations in the preceding paragraphs.

21. Upon information and belief, Applicant is an electric vehicle company currently selling vehicles in the Chinese automotive market.

22. The goods identified in the ‘333 Application are not related to electric vehicles, the automotive market, or associated markets and industries.

23. Upon information and belief, Applicant did not have a bona fide intent to use the NIO mark in United States commerce on or in connection with the goods identified in the '333 Application at the time Applicant signed and at the time Applicant filed the '333 Application.

24. Upon information and belief, Applicant does not have a bona fide intent to use the NIO mark in commerce in association with the goods identified in the '333 Application.

WHEREFORE, by reason of the foregoing, Opposer will be damaged by, and Applicant is not entitled to, registration of the mark NIO under Application Serial No. 88/179,333, and Opposer prays that the mark shown in Application Serial No. 88/179,333 be refused registration, and that this opposition be sustained.

This First Amended Notice of Opposition is being filed electronically through ESTTA, pursuant to the Board's rules. Applicant believes no fee is due for an Amended Notice of Opposition.

Respectfully submitted,

NEOLIFE INTERNATIONAL, LLC

Dated: May 20, 2020

By: /Stewart R. Kellar/  
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Attorneys for Opposer

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this FIRST AMENDED NOTICE OF OPPOSITION has been served upon all parties by Email at their address of record on this date.

Respectfully submitted,

Dated: May 20, 2020

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