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Filing date: 08/04/2017

08/04/20

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

Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

Petitioner Information

Name	McCord Research, Inc.		
Entity	Corporation	Citizenship	Nevada
Address	Suite 300 2769 Heartland Drive Coralville, IA 52241 UNITED STATES		

Attorney informa- tion	Christine Lebron-Dykeman McKee, Voorhees & Sease, PLC 801 Grand Ave. Ste. 3200 Des Moines, IA 50309
	UNITED STATES Email: christine.lebron-dykeman@ipmvs.com, brandon.clark@ipmvs.com, mvs- lit@ipmvs.com Phone: 515-288-3667

Registration Subject to Cancellation

Registration No.	1115901	Registration date	04/03/1979
Registrant	TUPPERWARE PRODUCTS ROUTE DU JURA 37 FRIBOURG, CH-1700 SWITZERLAND	S.A.	

Goods/Services Subject to Cancellation

Class 003. First Use: 1964/10/00 First Use In Commerce: 1964/10/00 All goods and services in the class are subject to cancellation, namely: MOISTURIZING CREAM

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	Cancellation Petition.pdf(2830751 bytes)
Signature	/Christine Lebron-Dykeman/
Name	Christine Lebron-Dykeman
Date	08/04/2017

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

MCCORD RESEARCH, INC., Petitioner, v. TUPPERWARE PRODUCTS, S.A., Registrant.	Cancellation No: In the matter of: Registration No: 1115901 Mark: NUTRI-MOIST

PETITON TO CANCEL

Trademark Trial and Appeal Board U.S. Patent and Trademark Office P.O. Box 1451 Alexandria, VA 22313-1451

McCord Research, Inc., a corporation of the State of Nevada, believes that it will be damaged by the continued registration of the above-identified registration, and hereby petitions to cancel the same.

The grounds for cancellation are as follows:

1. Petitioner filed a trademark application under 15 U.S.C. § 1051(a) to register

"NUTRAMOIST", Serial No. 87268106, on December 14, 2016. Attached hereto, as Exhibit A,

is a true and correct copy of Application Serial No. 87268106.

2. Its application has been rejected based on Registration No. 1115901, currently shown to be owned by Tupperware Products, S.A., a Switzerland Corporation with a principal

place of business at Route Du Jura 37 Fribourg Switzerland CH-1700, email:

trademarks@tupperware.com. Attached hereto, as Exhibit B, is a true and correct copy of the office action issued against Application Serial No. 87268106, and attached as Exhibit C is a true and correct copy of Registration No. 1115901.

3. The last specimen filed on October 10, 2008 appears to be a catalog from a Texasbased company, AVALLA, LLC, showing the mark as used on lotion products. Attached hereto, as Exhibit D, is a true and correct copy of the Specimen filed on October 10, 2008 in connection with Registration No. 1115901.

4. Upon information and belief Avalla, LLC is no longer in business.

5. To investigate this, the undersigned counsel contacted both phone numbers listed on page 4 of Exhibit D: USA 1-800-267-7546 and Canada 1-800-267-8468.

6. Upon dialing the USA number, the undersigned was informed that the number had been disconnected or is no longer in service.

7. Upon dialing the Canadian number, the undersigned was likewise informed that the number had been disconnected or is no longer in service.

8. The undersigned thereafter went to <u>www.tupperware.com</u> and engaged in an online chat with a Tupperware representative. Upon asking whether Tupperware currently sells lotion products, the undersigned was informed that Tupperware no longer sells any lotion products. Attached hereto, as Exhibit E, is a true and correct copy of the "Chat" printout engaged in by the undersigned and a Tupperware representative.

9. The undersigned also engaged in an online chat with a Tupperware representative and specifically asked the question "do you know where I can purchase Tupperware's Nutri-Moist lotion" and was advised that Tupperware does not sell lotions. Attached hereto, as Exhibit

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F, is a true and correct copy of the second "Chat" printout engaged in by the undersigned and a Tupperware representative.

10. The undersigned also entered the terms "Tupperware Nutri-Moist" into the Google search engine. Attached hereto, as Exhibit G, is a true and correct copy of the first two pages of that search result.

11. As shown in the attached Exhibits H-O, Nutri-Moist lotion is only sold in Malaysia, and Singapore. Exhibits H-O are true and correct copies of printouts of the websites shown the google.com search performed by the undersigned:

http://www.tupperware.net.my/nutrimetics-nutri-moist-moisturising-creme-125ml-p-318.html

(Exhibit H), https://www.tupperwarebrands.com.my/nutricare.php (Exhibit I),

https://www.tupperwareplus.com/nutrimetics/nutri-moist-moisturising-cr%C3%A8me-125ml

(Exhibit J), http://www.11street.my/productdetail/tupperware-nutrimetics-nutri-moist-

moisturising-cr-14818167 (Exhibit K), http://www.usetupperware.com/nutri-moist/ (Exhibit L),

https://www.lelong.com.my/tupperware-nutrimetics-nutri-moist-mosturising-creme-125m-

styleboutique-148355645-2016-04-Sale-P.htm (Exhibit M),

http://tupperwaresingapore.com.sg/product/nutri-moist-moisturising-creme-125ml/ (Exhibit N), https://www.tupperhome.com/index.php/tupperware-promotion/nutrimetics/nutri-moist-extralight-moisturising-cr%C3%A8me-1-125ml-detail (Exhibit O).

12. Upon information and belief, Tupperware no longer uses the Nutri-Moist mark in the United States in connection with moisturizing cream products.

13. Petitioner believes that Registration No. 1115901 should be cancelled based on abandonment and non-use.

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14. Petitioner has been damaged by the rejection of its application on the basis of Registration No. 1115901, and hereby seeks its cancellation.

15. Petitioner hereby appoints McKee, Voorhees & Sease, PLC, 801 Grand Avenue,

Suite 3200, Des Moines, Iowa 50309, as its attorney, to act on its behalf and to receive all correspondence related to this opposition.

WHEREFORE, Petitioner believes it will be damaged by the continued registration of Registration No. 1115901, and prays that the registration be cancelled.

Respectfully submitted,

/s/ Christine Lebrón-Dykeman Christine Lebrón-Dykeman Brandon W. Clark McKEE, VOORHEES & SEASE, P.L.C. 801 Grand Avenue, Suite 3200 Des Moines, IA 50309-2721 Phone: 515-288-3667 Fax: 515-288-1338 Email: christine.lebron-dykeman@ipmvs.com Email: brandon.clark@ipmvs.com

ATTORNEYS FOR PETITONER, MCCORD RESEARCH INC.

CERTIFICATE OF FILING

I hereby declare that the foregoing document has been filed via the Electronic System for Trademark Trial and Appeals (ESTTA) this 4th day of August, 2017.

/s/ Christine Lebrón-Dykeman

Under the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless it displays a valid OMB control number. PTO Form 1478 (Rev 09/2008) OMB No. 0651-0009 (Exp 02/28/2018)

Trademark/Service Mark Application, Principal Register

Serial Number: 87268106 Filing Date: 12/14/2016

To the Commissioner for Trademarks:

MARK: NUTRAMOIST (Standard Characters, see below)

The literal element of the mark consists of NUTRAMOIST. The mark consists of standard characters, without claim to any particular font, style, size, or color

The applicant, McCord Research, Inc., a corporation of Nevada, having an address of

Suite 300 2769 Heartland Drive Coralville, Iowa 52241 United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 005: Medicated skin and skin wound care preparations; botanical extracts sold as ingredients of medicated skin and skin wound preparations, medicated wound healing skin creams

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

The applicant's current Attorney Information:

Christine Lebron-Dykeman and Bruce W. McKee, Edmund J. Sease, Mark D. Hansing, Kirk M. Hartung, Heidi s. Nebel, Michael C. Gilchrist, R. Scott Johnson, Jill N. Link, Luke T. Mohrhauser, Brandon W. Clark, Jonathan L. Kennedy, Marcus A. Smetka, Xiaohong Liu of McKee, Voorhees & Sease, PLC

Suite 3200 801 Grand Avenue Des Moines, Iowa 50309 United States 515-288-3667(phone) 515-288-1338(fax) patatty@ipmvs.com (authorized) The attorney docket/reference number is T58129US00. The applicant's current Correspondence Information: Christine Lebron-Dykeman McKee, Voorhees & Sease, PLC Suite 3200

801 Grand Avenue Des Moines, Iowa 50309

515-288-3667(phone) 515-288-1338(fax)

patatty@ipmvs.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).



Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: Not Provided Date: Not Provided Signatory's Name: Dr. Darlene McCord Signatory's Position: Owner/CEO RAM Sale Number: 87268106 RAM Accounting Date: 12/14/2016

Serial Number: 87268106 Internet Transmission Date: Wed Dec 14 11:24:20 EST 2016 TEAS Stamp: USPTO/BAS-XXX.XXX.XXX.2016121411242023 9584-87268106-570de8dc0658ddf18de2f17a45 b4bf2647afa78d642ab5a73b292e88529db6ce6d -DA-10094-20161214112156539459

NUTRAMOIST

Trademark/Service Mark Application, Principal Register

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Signature Section:

NOTE: The same person may sign the declaration on behalf of the other joint applicant(s), by merely making identical entries. The USPTO will presume that the one person who has signed was, in fact, authorized to sign on behalf of the other person(s).

Dalme NE Card del Signature: < Signatory's Name: Dr. Darlene McCord

Signatory's Position: Owner/CEO Signatory's Phone Number: 319-351-3201

Date Signed: 12/12/16

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

https://teas.uspto.gov/forms/xslt.service?xsl=hsign&stamp=USPTO/BAS-216.81.175.52-2... 12/6/2016

Generated on: This page was generated by TSDR on 2017-08-03 14:30:37 EDT Mark: NUTRAMOIST

NUTRAMOIST

US Serial Number:	87268106	Application Filing Date:	
Filed as TEAS RF:	Yes	Currently TEAS RF:	Yes
Register:	Principal		
Mark Type:	Trademark		
TM5 Common S Descri			Jnder Examination ation has been accepted by the Office (has met the ments) and that this application has been assigned to
Status:	A non-final Office action has been sent (issued) to the information and/or making an initial refusal. The appli the Trademark Document Retrieval link at the top of t	cant must respond to th	ter from the examining attorney requiring additional is Office action. To view all documents in this file, click on
Status Date:	Feb. 06, 2017		
	Mark	Information	
Mark Literal Elements:	NUTRAMOIST		
Standard Character Claim:	Yes. The mark consists of standard characters without	ut claim to any particula	r font style, size, or color.
Mark Drawing Type:	4 - STANDARD CHARACTER MARK		
	Goods	and Service	s
lote: The following syr	nbols indicate that the registrant/owner has amended	the goods/services:	
 Double ; 	s [] indicate deleted goods/services; parenthesis (()) identify any goods/services not claime s * *** identify additional (new) wording in the goods/ser	ed in a Section 15 affida vices	avit of incontestability; and

For: Medicated skin and skin wound care preparations; botanical extracts sold as ingredients of medicated skin and skin wound preparations, medicated wound healing skin creams

International 005 - Primary Class Class(es):

U.S Class(es): 006, 018, 044, 046, 051, 052

Class Status: ACTIVE

N

Basis: 1(b)

Basis Information (Case Level)

Filed Use:	No	Currently Use:	No	Amended Use: No
Filed ITU:	Yes	Currently ITU:	Yes	Amended ITU: No
Filed 44D:	No	Currently 44D:	No	Amended 44D: No
Filed 44E:	No	Currently 44E:	No	Amended 44E: No
Filed 66A:	No	Currently 66A:	No	
Filed No Basis:	No Cu	rrently No Basis:	No	

Current Owner(s) Information

Owner Name: McCord Research, Inc.

Owner Address: Suite 300

1	EXHIBIT
bies	B
tab —	

2769 Heartland Drive Coralville, IOWA UNITED STATES 52241

Legal Entity Type: CORPORATION

State or Country NEVADA Where Organized:

Attorney/Correspondence Information

Attorney of Record

Docket Number: T58129US00

Attorney Email Yes Authorized:

Attorney Primary patatty@ipmvs.com Email Address:

Attorney Name: Christine Lebron-Dykeman

Correspondent

	CHRISTINE LEBRON-DYKEMAN MCKEE, VOORHEES & SEASE, PLC 801 GRAND AVENUE SUITE 3200 DES MOINES, IOWA UNITED STATES 50309
Phone:	515-288-3667
Correspondent o	natath/@inmus.com

Correspondent e- patatty@ipmvs.com mail: Fax: 515-288-1338

Correspondent e- Yes mail Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Feb. 06, 2017	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Feb. 06, 2017	NON-FINAL ACTION E-MAILED	6325
Feb. 06, 2017	NON-FINAL ACTION WRITTEN	76505
Feb. 02, 2017	ASSIGNED TO EXAMINER	76505
Dec. 20, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

Dec. 17, 2016 NEW APPLICATION ENTERED IN TRAM

TM Staff and Location Information

TM Staff Information

TM Attorney: KEATING, MICHAEL P

Law Office LAW OFFICE 101 Assigned:

File Location

Current Location: TMEG LAW OFFICE 101 - EXAMINING ATTORNEY ASSIGNED

Date in Location: Feb. 06, 2017

To:	McCord Research, Inc. (patatty@ipmvs.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 87268106 - NUTRAMOIST - T58129US00
Sent:	2/6/2017 4:43:27 PM
Sent As:	ECOM101@USPTO.GOV
Attachments:	Attachment - 1Attachment - 2Attachment - 3Attachment - 4Attachment - 5Attachment - 6Attachment - 7Attachment - 8Attachment - 9Attachment - 10Attachment - 11Attachment - 12Attachment - 13Attachment - 15Attachment - 16Attachment - 17Attachment - 18Attachment - 19Attachment - 20Attachment - 21

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO) OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 87268106

MARK: NUTRAMOIST

CORRESPONDENT ADDRESS:

CHRISTINE LEBRON-DYKEMAN MCKEE, VOORHEES & SEASE, PLC 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309

87268106

CLICK HERE TO RESPOND TO THIS LETTER: http://www.uspto.gov/trademarks/teas/response_forms.jsp

VIEW YOUR APPLICATION FILE

APPLICANT: McCord Research, Inc.

CORRESPONDENT'S REFERENCE/DOCKET NO : T58129US00 CORRESPONDENT E-MAIL ADDRESS: patatty@ipmvs.com

OFFICE ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW. A RESPONSE TRANSMITTED THROUGH THE TRADEMARK ELECTRONIC APPLICATION SYSTEM (TEAS) MUST BE RECEIVED BEFORE

MIDNIGHT EASTERN TIME OF THE LAST DAY OF THE RESPONSE PERIOD.

ISSUE/MAILING DATE: 2/6/2017

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

Refusal -- Likelihood of Confusion

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 1115901. Trademark Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 et seq. See the attached registration.

In any likelihood of confusion determination, two key considerations are similarity of the marks and similarity or relatedness of the goods and/or services. *In re Fat Boys Water Sports LLC*, 118 USPQ2d 1511, 1516 (TTAB 2016) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976)); *see* TMEP §1207.01. That is, the marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973)); TMEP §1207.01(b)-(b)(v). Additionally, the goods and/or services are compared to determine whether they are similar or commercially related or travel in the same trade channels. *See Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §1207.01, (a)(vi).

In this case, the applicant seeks registration of NUTRAMOIST for "Medicated skin and skin wound care preparations; botanical extracts sold as ingredients of medicated skin and skin wound preparations, medicated wound healing skin creams," in International Class 5. The mark in U.S. Registration No. 1115901 is NUTRI-MOIST for "moisturizing cream," in International Class 3.

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). "Similarity in any one of these elements may be sufficient to find the marks confusingly similar." *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014) (citing *In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007)); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988)); TMEP §1207.01(b).

When comparing marks, the test is not whether the marks can be distinguished in a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 685 F.3d 1046, 1053, 103 USPQ2d 1435, 1440 (Fed. Cir. 2012); *In re Bay State Brewing Co.*, 117 USPQ2d 1958, 1960 (TTAB 2016) (quoting *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1368, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)); TMEP §1207.01(b). The proper focus is on the recollection of the average purchaser, who retains a general rather than specific impression of trademarks. *In re Bay State Brewing Co.*, 117 USPQ2d 1735, 1741 (TTAB 1991), *aff'd per curiam*, 972 F.2d 1353 (Fed. Cir. 1992)); *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *Joel Gott Wines LLC v. Rehoboth Von Gott Inc.*, 107 USPQ2d 1424, 1430 (TTAB 2013)); TMEP §1207.01(b).

In this case, the marks share a very similar sound, meaning, appearance and overall commercial impression. The marks are essentially phonetic equivalents and thus sound similar. Similarity in sound alone may be sufficient to support a finding that the marks are confusingly similar. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988); *see In re 1st USA Realty Prof'ls, Inc.*, 84 USPQ2d 1581, 1586 (TTAB 2007); TMEP §1207.01(b)(iv). In addition, the marks are very similar visually. The mark in the cited registration is hyphenated, but because of the overall similarity, this very minor difference is insufficient to distinguish the marks. The marks also are spelled in an almost identical fashion; the only difference between the marks is the use of a letter "a" in "nutra" in the applied-for mark versus the letter "I" in "nutri" in the cited registration. Again, the minor differences are not sufficient to distinguish the marks.

Thus, the marks themselves are confusingly similar.

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. See On-line Careline Inc. v. Am. Online Inc., 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); Recot, Inc. v. Becton, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods."); TMEP §1207.01(a)(i). Rather, they need only be "related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source." Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting 7-Eleven Inc. v. Wechsler, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Here, the goods are related. The applicant seeks registration for, among other items, medicated skin care preparations and medicated wound healing skin creams. The registered mark is for moisturizing cream. It is clear from the attached evidence obtained from a Google® search that skin moisturizing cream and medicated skin care preparations are related products and that they are of a type that commonly originate from a common source.

Further, generally, the greater degree of similarity between the applied-for mark and the registered mark, the lesser the degree of similarity between the goods and/or services of the parties is required to support a finding of likelihood of confusion. *In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1353 (TTAB 2015) (citing *In re Opus One Inc.*, 60 USPQ2d 1812, 1815 (TTAB 2001)); *In re Thor Tech, Inc.*, 90 USPQ2d 1634, 1636 (TTAB 2009). Here, the marks are very similar or virtually identical and therefore the relatedness of the goods need not be as close. However, as the evidence of record establishes, the goods are clearly related.

Thus, because the marks are very similar and the goods related, registration is refused under Section 2(d) of the Trademark Act.

Although applicant's mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration.

TEAS RF Requirements

TEAS PLUS OR TEAS REDUCED FEE (TEAS RF) APPLICANTS - TO MAINTAIN LOWER FEE, ADDITIONAL

REQUIREMENTS MUST BE MET, INCLUDING SUBMITTING DOCUMENTS ONLINE: Applicants who filed their application online using the lower-fee TEAS Plus or TEAS RF application form must (1) file certain documents online using TEAS, including responses to Office actions (see TMEP §§819.02(b), 820.02(b) for a complete list of these documents); (2) maintain a valid e-mail correspondence address; and (3) agree to receive correspondence from the USPTO by e-mail throughout the prosecution of the application. *See* 37 C.F.R. §§2.22(b), 2.23(b); TMEP §§819, 820. TEAS Plus or TEAS RF applicants who do not meet these requirements must submit an additional processing fee of \$125 per class of goods and/or services. 37 C.F.R. §§2.6(a)(1)(v), 2.22(c), 2.23(c); TMEP §§819.04, 820.04. However, in certain situations, TEAS Plus or TEAS RF applicants may respond to an Office action by authorizing an examiner's amendment by telephone or e-mail without incurring this additional fee.

If applicant has questions regarding this Office action, please telephone or e-mail the assigned trademark examining attorney. All relevant email communications will be placed in the official application record; however, an e-mail communication will not be accepted as a response to this Office action and will not extend the deadline for filing a proper response. See 37 C.F.R. $\S2.62(c)$, 2.191; TMEP $\S304.01-.02$, 709.04-.05. Further, although the trademark examining attorney may provide additional explanation pertaining to the refusal(s) and/or requirement(s) in this Office action, the trademark examining attorney may not provide legal advice or statements about applicant's rights. See TMEP $\S705.02$, 709.06.

> /Michael P. Keating/ Trademark Attorney Law Office 101 571-272-9177 Michael.Keating@uspto.gov (informal inquiries only)

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All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at Trademark Assistance Center @uspto.gov or call 1-800-786-9199. For more information on checking

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Word Mark NUTRI-MOIST

Standard Character Mark $_{\rm N\odot}$

Registration Number 1115901

Date Registered

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

TUPPERWARE PRODUCTS S.A. CORPORATION SWITZERLAND ROUTE DU JURA 37 FRIBOURG SWITZERLAND CH-1700

Goods/Services

Class Status -- ACTIVE. IC 003. US 051. G & S: MOISTURIZING CREAM. First Use: 1964/10/00. First Use In Commerce: 1964/10/00.

Prior Registration(s) 0672295:0914311; AND OTHERS

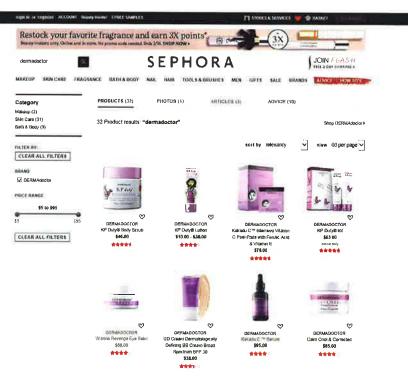
Filing Date

1978/04/27

Examining Attorney UNKNOWN

Attorney of Record Kimberly K. Weate

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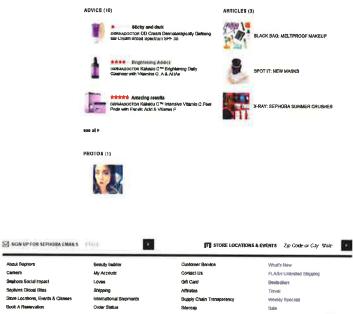
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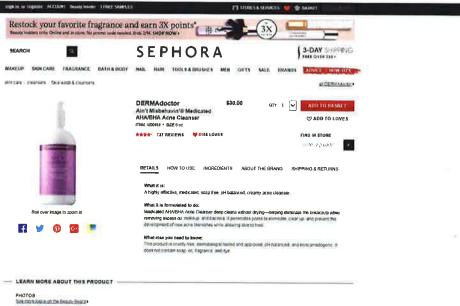
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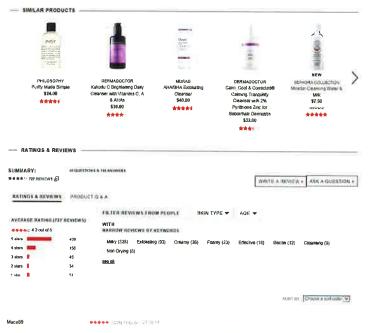
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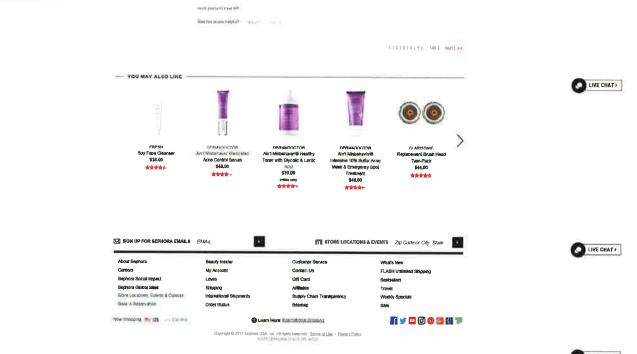
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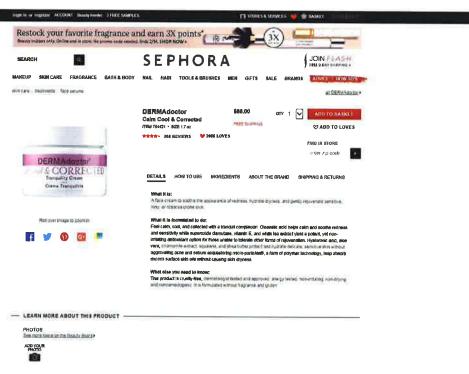
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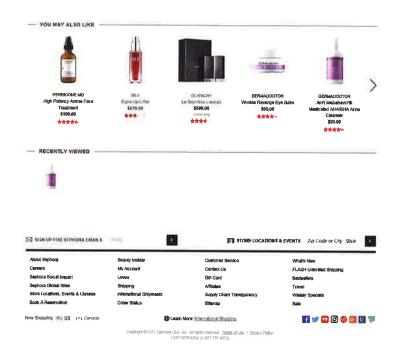
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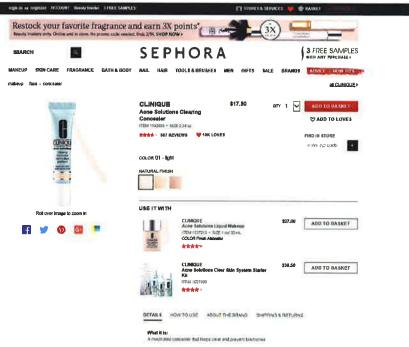
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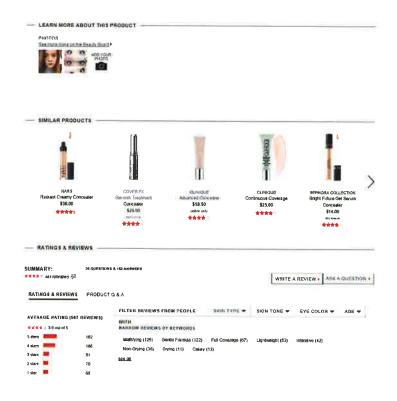


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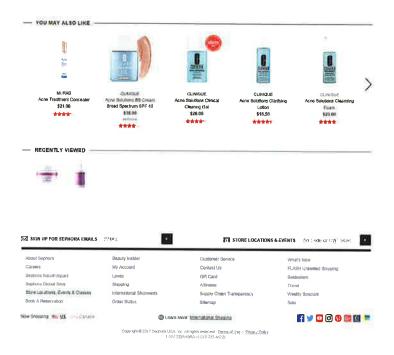
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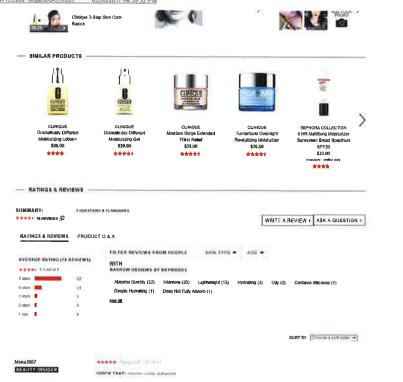








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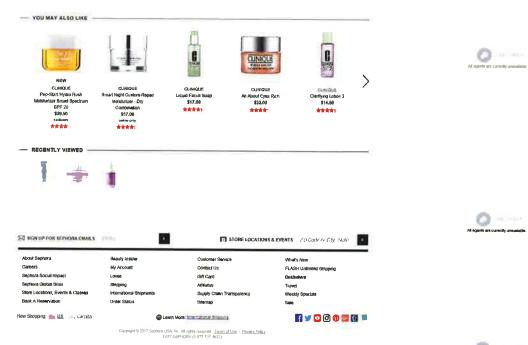
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Int. Cl.: 3

Prior U.S. Cl.: 51

United States Patent and Trademark Office Regis

Reg. No. 1,115,901 Registered Apr. 3, 1979

TRADEMARK

Principal Register

NUTRI-MOIST

Con-Stan Industries, Inc. (California corporation) 19501 E. Walnut Drive City of Industry, Calif. 91749

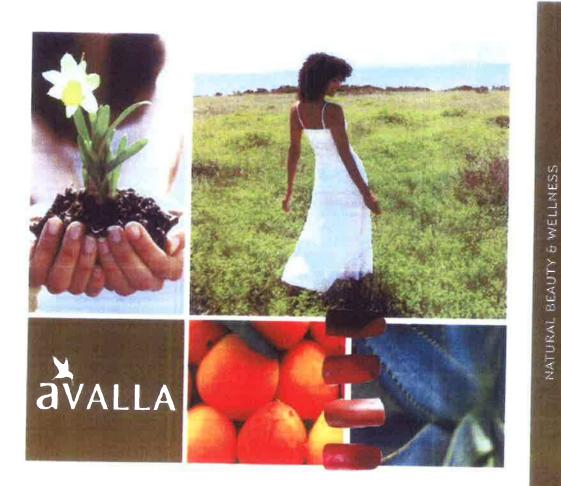
For: MOISTURIZING CREAM, in CLASS 3 (U.S. CL, 51).

First use October 1964; in commerce October 1964. Owner of Reg. Nos. 672,295, 914,311 and others.

Ser. No. 168,143, filed Apr. 27, 1978.

DEBORAH L. KRAMM, Examiner

	EXHIBIT	
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7039_Rev3_Thin_Scale | Magenta

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EXHIBIT D



1 Skin Clean

A sich creamy cleanser that works deep in the pores to lift out dort ind make up residue leaving the skin silks clean Enriched with April of the Sesame Seed Oil and Coxamber 200 ml whoi

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4 Honey and Almond Scrub

Formulated with golden honey, natural almond meal and peppermint this gentle scrub will polish away dry, dead skin cells leaving your skie smooth refreshed and sounger looking (25 ml \$1103

5 Minural Musque

A deep cleansing China Clay Masque that gently drives out and absorbs imbedded oils and impaof ex A weekly facatment for a lean skin. 125 mil Prico F

A concentrated group tomatic characteristics. strict to soop and water losers. Periotrates legils to desplay make up and important with not stupping skin of excision noiseture Length of April 10 Linear Of Real Within Columber and Chemistration 106 (11) 1111

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7 Nutri-Rich Apricot Facial Cake

A blend of Apricot Kernel Oil, Palm Oil and moisturising ingredients, Nutri-Rich Ap con-Facial Cake fathers like soap to lide due and growfrom pores bearing skin clean, but never the Refull Only 75 g outso

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ENHANCED COLLECTION basic collection plus

exfoliator masque

DELUXE COLLECTION enhanced callection plus

nutri rich oil

9. Nutri-Moist Extra Light

This light moisturiser containing Apricot Kernet Oil_Rose Water, Peach Kernel Oil, and is enriched with extra light emollients and Vitamin E to revitalize dehydrateil skin-125 ml - 21125

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101 Nutri Moist Invense

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Encoulated with a higher concentration of Apricot Keinel Oil and Shea Butter to protect from musture loss enriched with listicities of Silk to protect the kin and Whi it Protect Chomomic and Sage to Sine and condition 125 ml (105)

Higdroting Masque

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A rich, vitamin infused masque formulated with Shea Butter and Apricon Kernel Oil to costate dry dehydrated skin. 25 ml 31112

 Nutri Equis Equi Cremi,
 Bydrating Acocado Od, soothing Aloc Vera, and a damey Chamorade help redsice the appear inceal builtimes and winkles around your eyes Aist-oxidant Vitamins A and E primer and and well Mild. Fragram a tree and optimations Figurally Tester 15 mF 6161945

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() Nutri Rich Intensive Up Treatment this intense lip haln is 42 pure nourishing Apricot Kernel Od blended with introxidant Vitamin E and moisturie trapping Palm Oil Sweep in a thir layer to protect against writer weather and keep your ups halt smooth init southed 4.3.9, 01079



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE COMBINED DECLARATION OF USE IN COMMERCE/ APPLICATION FOR RENEWAL OF REGISTRATION UNDER §§ 8 AND 9

MARK:	NUTRI-MOIST
REG. NO.:	1115901
REG. DATE:	April 3, 1979
CLASS:	3
OWNER:	Tupperware Products S.A.
ENTITY:	a corporation organized and existing under the laws of Switzerland
ADDRESS:	Route du Jura 37 Fribourg, CH-1700 Switzerland

The above identified owner is using the mark in commerce on or in connection with all

goods listed in the existing registration, namely,

Class	Goods	
3	Moisturizing cream	and the second

as evidenced by the attached specimen showing the mark as currently used in commerce.

The owner requests that the registration be renewed for the goods identified above.

The mark is used by the owner's related company.

ADDRESS FOR CORRESPONDENCE

Applicant requests that all correspondence in connection with this application be directed to its attorneys, Kimberly K. Weate, John A. Doninger and Taylor J. Ross of Dart Industries Inc., 14901 S. Orange Blossom Trail, Orlando, Florida 32837, Attention: Kimberly K. Weate (Telephone 407-826-8290)

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements and the like may jeopardize the validity of this document, declares that he is authorized to execute this document on behalf of the owner; that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true.

Tupperware Products S.A.

By: Munny

Name: Daniel Haering Title: Vice President & CFO Date: 3/40/2008

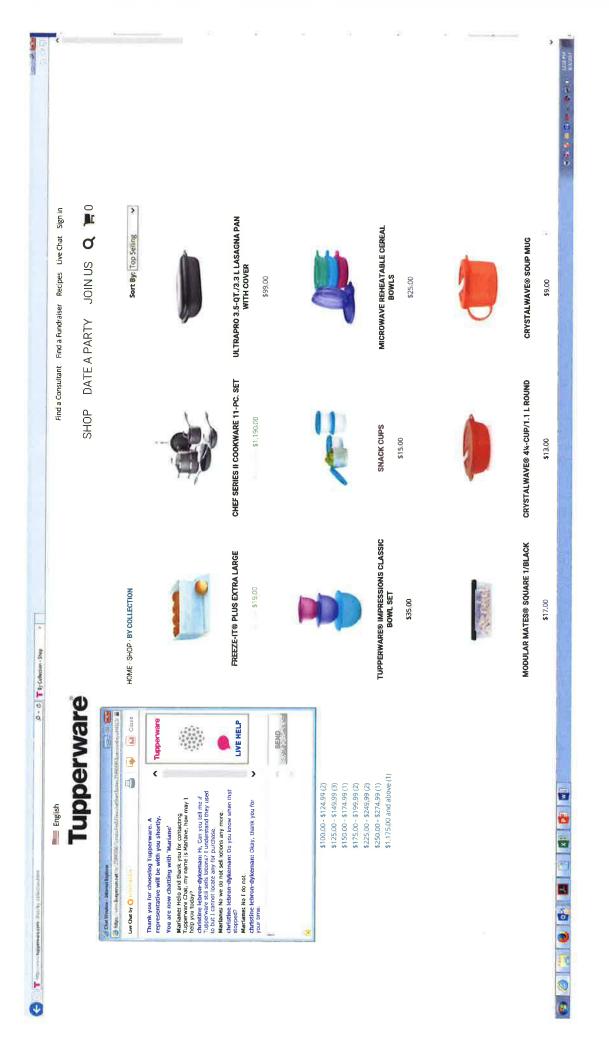


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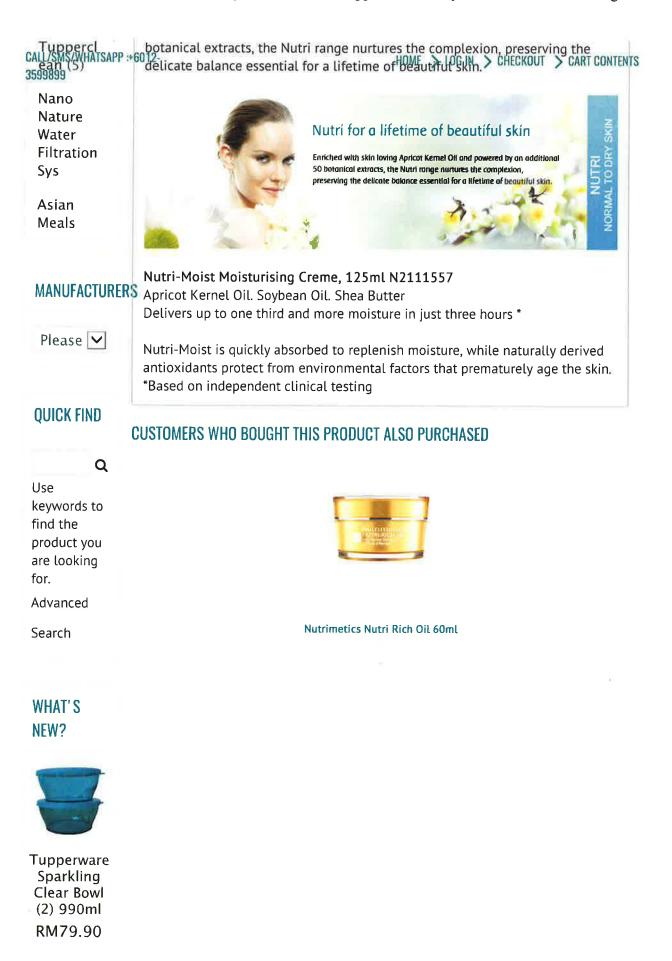
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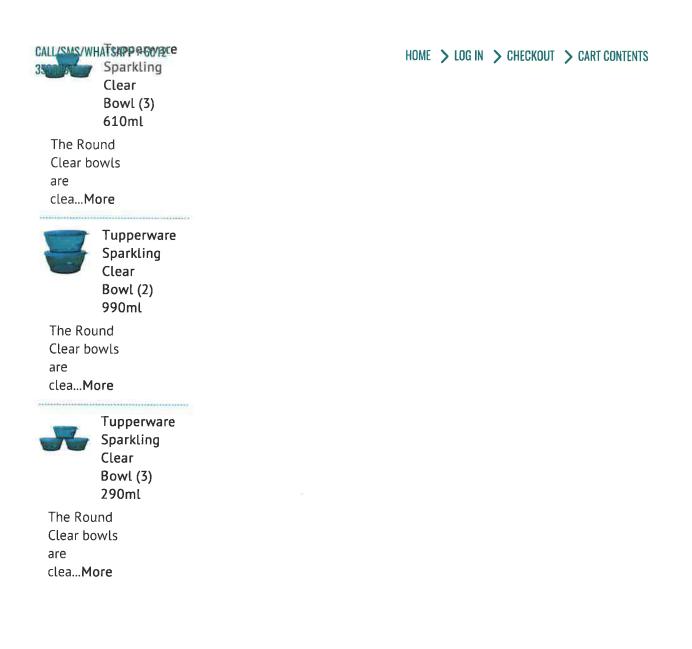


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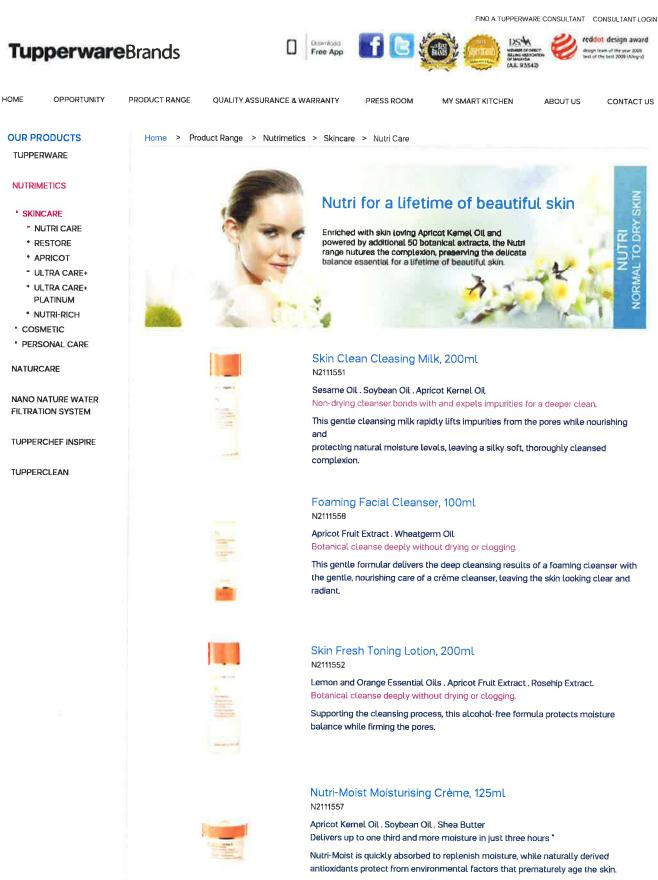
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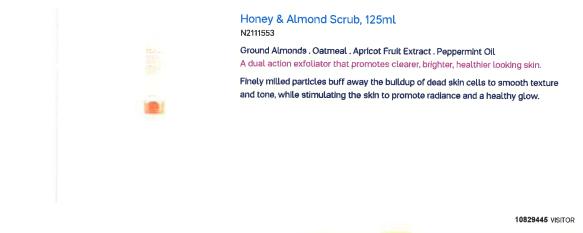


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You can request for cancellation after completing payment and if product has not been dispatched by then, cancellation request is approved and you can receive refund ,

But, in case seller has already dispatched product, cancellation request can be rejected.

You can request for return after obtaining product, you should send the product in question to seller

After seller checks if returned product is flawed, and approves your request, return is completed and payment is refunded.

You can request for exchange if wrong product is shipped, you should send the product in question to seller. After seller checks if returned product is flawed, seller approves your request, and re-sends new product.

Criteria for Return/Exchange

You can request for return/exchange within 7 calendar days following delivery date, But return/exchange request cannot be made in following cases:

When request due to change of mind is made after 7 calendar days following delivery date

When product is used, destroyed or damaged

When tag attached to product is removed or package of product is opened and product value is damaged

When sealed package is opened or packaging materials are lost

When too much time has passed and product value has so decreased that its re-sale is not possible

When return/exchange request is made for customized product such as hand-made shoes or accessories

When components of product (including free gift) have been used or lost

When buyer did not follow instructions included in product

As e-voucher products are immediately sent to your e-mail, returns/exchanges are not available. Please take note of this before purchase, and input your e-mail address correctly.

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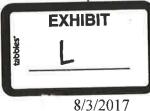
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Nutri-Moist

Posted on January 18, 2012 (http://www.usetupperware.com/nutri-moist/) by Admin (http://www.usetupperware.com/author/admin/)



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Condilions : New

Product Description

Last Updated : 4/13/2014 5:3



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Apricot Kernel Oil. Soybean Oil. Shea Butter



Maintain the youthful balance of skin, with the Nutri range enriched Apricot Kernel Oil and 50 botanical extracts to nourish, moisturize and protect for soft, smooth and supple skin.Beautiful today & everyday

Naturally derived oxidants replenishes moisture and protect skin from premature aging, delivering up to one third more moisture in just three hours.

Apply morning and night after cleansing and toning

Nutrimetics

The world-class leader of beauty and Innovation

Products formulated from almost exclusively natural ingredients

Against animal testing

Dermatological tested

Apricot Kernel Oil Soybean Oil . Shea Butter

Delivers up to one third and more moisture in just three hours *Nutri-Moist is quickly absorbed to replenish molsture, while naturally derived antioxidants protect from environmental factors that prematurely age the skin.*Based on independent clinical testing

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\$41.00

Apricot Kernel Oil . Soybean Oil . Shea Butter



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PRODUCT DESCRIPTION

Nutri-Moist is quickly absorbed to replenish moisture, while naturally derived antioxidants protect from environmental factors that prematurely age the skin.

*Based on independent clinical testing

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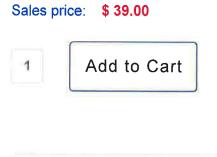
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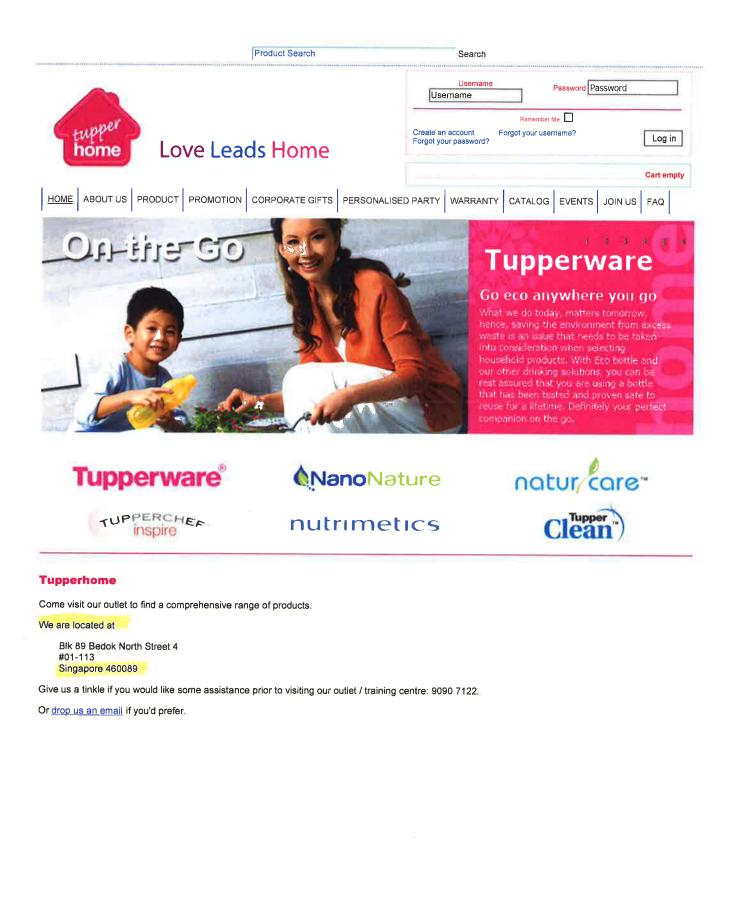
This light moisturizer with botanical oils boost hydration and nourishes the complexion, while regulating oil production to reduce clogged pores and excess shine, so skin looks radiant and healthy.



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