

UNITED STATES DISTRICT COURT

Southern District of Florida

Case Number: \_\_\_\_\_

05-23328

CIV - COOKE

MAGISTRATE JUDGE  
BROWN

Jose Aguila (d.b.a. Newcell-Technologies)

Plaintiff(s)

v. Attair Instruments

Skin Care Specialty Systems; ~~Attair Instruments~~; Rutan & Tucker; Newapeel Skin Care; Medical Esthetics; Aesthetic Consulting Group; Koppel, Jacobs, Patrick, & Heybl; Lewis Brisbois Bisgaard & Smith.

Defendant(s)

NIGHT BOX  
FILED

DEC 27 2005 JC

COMPLAINT

CLARENCE MADDOX  
CLERK, USDC / SDFL / MIA

I, Jose Aguila plaintiff, in the above styled cause, sues  
defendant(s); Skin Care Specialty Systems; Attair Instruments; Rutan & Tucker; Newapeel Skin Care; Medical Esthetics, Aesthetic Consulting Group; Koppel, Jacobs, Patrick, & Heybl; and Lewis Brisbois Bisgaard & Smith LLP  
(Allegation of jurisdiction, i.e., under which federal law or section of the U.S. Constitution this action is being filed - refer to Appendix B for a list)

This action is filed under: 15 U.S.C. § 1125(a)  
Unfair Competition, and for Unfair Business Practices  
under Florida state laws, and 28 USC § 2201 (a) the Declaratory  
Judgment Act, and Intentional Infliction of Mental Distress.

- The Court has original subject matter jurisdiction over  
this action pursuant to 28 USC § 1331 and 28 U.S.C.  
§ 1338(a). The Court has supplemental jurisdiction  
over the state law claim pursuant to 28 U.S.C. § 1367.

- The Court has personal jurisdiction over all the  
defendants because the above named defendants have  
purposefully availed themselves of the opportunity to  
conduct commercial activities in this forum, and this  
Complaint arises out of these activities.

(Statement of Facts)

Newcell-Technologies is a sole-proprietorship owned by myself, Jose Aguila. I am currently being sued by Altair Instruments in California for patent infringement.

Newcell sells the DiamondSkin microdermabrasion machine which Altair alleges that the DiamondSkin violates its USPTO 6,241,739 patent.

Altair mainly sells its products through a national network of distributors. These distributors, along with Altair, have made several disparaging remarks against Newcell and myself. Their allegations are meant to scare off potential buyers of ~~my~~ the DiamondSkin machines that I am selling.

Altair, along with its distributors and legal counsel, have attempted to harass me in order for me to stop selling the diamondskin. This has caused me to suffer severe mental distress.

Newcell-Technologies is based in Miami, Florida

(Relief request, i.e., State what you want the Court to do or award)

Wherefore, plaintiff respectfully prays that this Court:

① Issue a preliminary and permanent injunction, enjoining Altair Instruments and its distributors and legal counsel, or agents, servants, employees, successors from:

Using Unfair business competition to prevent me from selling the DiamondSkin

Stop interfering with my contracts with customers

making libelous remarks against myself or Newcell

② Declare Altair's patent invalid, unenforceable

③ Compensation for the mental distress caused by Defendants.

④ Order an award of damages in an amount to be determined at trial

⑤ Any other or further relief that the Court deems appropriate.

- Jury trial demanded

Signed this 23<sup>rd</sup> day of December, 2005.

Jose Aguila

Printed or typed name of Filer

Pro-Se ~~Plaintiff~~ Plaintiff.

Florida Bar Number

866-766-0639

Phone Number

2860 SW 35 Ave

Street Address

Miami, FL. 33133-3408

City, State, Zip Code

Jose Aguila

Signature of Filer

E-mail address

support@diamondskin.com

Facsimile Number

305-503-6649

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law. It is the responsibility of the filer to comply with the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of the Court in the processing of filings in the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below:**

05-23328

I. (a) PLAINTIFFS Jose Aguilar (dba Noncell-Technologies)

(b) County of Residence of First Listed Plaintiff DADE  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
305-926-8522 pro-se Plaintiff  
2860 SW 35 Ave  
Miami, FL 33133

DEFENDANTS Altair Instruments, Rytan & Tucker, Aesthetic Consultancy, Nonapool Medical Esthetics, Kappel, Jacobs, Lewis, Bribos, MAGUIRE JUDGE, BROWN

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

(d) Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE  FLORIDA ISLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

DADE 05-23328-CV-COOKE/BROWN

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated or Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

Original Proceeding  2 Removed from State Court  3 Re-filed- (see VI below)  4 Reinstated or Reopened  5 Transferred from another district (specify) \_\_\_\_\_  6 Remanded from Appellate Court  7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):

a) Re-filed Case  YES  NO

b) Related Cases  YES  NO

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 28 USC § 2201 (c) Declaratory Judgment Act

LENGTH OF TRIAL via 8 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: Jon Aguiar - pro-se DATE: 12-23-05

FOR OFFICE USE ONLY

AMOUNT: 2000 RECEIPT #: 932583FP 12/28/05

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

(d) Choose one County where Action Arose.

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled Copy of Order of Dismissal. (3)

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Remanded from Appellate Court. (6) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.