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Column: Here's an odd wrinkle

## **Here's an odd wrinkle Skin Game; Rival wrinkle creams quarrel over names**

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### Article Text:

When it comes to beauty products, the fight for customers can get ugly.

Take the war of the wrinkle reducers.

The Salt Lake City company that distributes StriVectin-SD, marketed as "Better than Botox?" is urging a Utah federal judge to halt sales nationwide of a rival anti-wrinkle cream.

Klein-Becker accuses its competitor of "immoral, unethical, oppressive, and/or unscrupulous" tactics: using a similar name -- Strive-V.C.N. -- to cause confusion.

"Each time a customer purchases an anti-wrinkle product based on false or unfair advertising or competition, the sale of a competing anti-wrinkle/stretch mark product is lost," Klein-Becker objects in its trademark violation lawsuit.

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StriVectin-SD was first sold in 2002 as a stretch-mark reducer, but soon was discovered to diminish the appearance of fine lines, wrinkles and crow's feet, according to Klein-Becker.

The makers of new Strive-V.C.N., NDS Nutrition in Omaha, Neb., deny copying StriVectin-SD and argue customers know what they are buying.

The high price of the anti-wrinkle creams -- \$134.99 for 7 ounces of Strive-V.C.N. and \$135 for 6 ounces of StriVectin-SD -- makes buyers carefully examine the products, NDS Nutrition reasons.

On Friday, Klein-Becker asked U.S. District Judge Tena Campbell to issue an injunction rubbing Strive-V.C.N. off the market while the lawsuit, filed in August, is resolved. It seeks damages from NDS for allegedly violating Klein-Becker's trademark and making false claims about the effectiveness of Strive-V.C.N.

Campbell is considering the request. The judge said she has not made up her mind, but was inclined to issue the injunction based on similarities in the names of the creams.

StriVectin-SD (for Striae Distensae) is a "fanciful" name, meaning it does not describe the product, its maker asserts. That lack of a link means Strive-V.C.N. is an unfair copy -- both names include "strive" and a hyphen followed by letters, its suit says.

But NDS argues "StriVectin-SD" is descriptive -- it incorporates the clinical term for stretch marks, "stria" or "striae," which connects the name to the cream's function. Besides, NDS argues, another company has been marketing a stretch mark removal cream under the name Striae since 1998.

Cory Wiedel, NDS president and owner, testified before Campbell on Friday that he came up with Strive a few years ago, along with other potential names. He debated using Renew but settled on Strive for the anti-wrinkle cream because it "sounded younger," he said.

"We had Strive in the database way back," Wiedel said.

NDS lines -- mostly weight loss, muscle building and life enhancement products -- are sold under the names Release, Renew, Rejuvenate, Alive, Amplify, Natural Woman and Natural Man, generally followed by letters standing for their function.

The VCN after Strive stands for Visible Collagen Nutrients. The cream also is touted as a tanning lotion.

StriVectin-SD and Strive-V.C.N. are both sold through GNC stores and on the Internet; StriVectin-SD also is sold at department stores.

Klein-Becker's lawsuit also lists what it sees as similarities between the packaging of the two creams. NDS disagrees: "It would appear that the only similarity between the product packages is the fact that they are rectangular and made of paper."

Its lawyers also ask why Klein-Becker waited more than two months after Strive-V.C.N. hit the store shelves this past June to file suit.

In another legal wrinkle, Klein-Becker is still facing a legal challenge to its own advertising by Allergan, the California maker of Botox.

After Allergan threatened to sue over StriVectin-SD advertisements that tease, "Anti-Aging Breakthrough Better than Botox?," Klein-Becker asked U.S. District Judge Dee Benson in Salt Lake City to approve the ads. That lawsuit, which includes Allergan's counterclaims, is pending.

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Caption:

Jump page A6: Wrinkle wrangle (comparison of name and packaging) The Salt Lake Tribune

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