

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: May 2, 2013

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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*In re Country Life, LLC*

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Serial No. 85340192

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Peter J. Vranum of Gordon Herlands Randolph & Cox LLP,  
for Country Life, LLC.

Kim Teresa Moninghoff, Trademark Examining Attorney, Law Office 113,  
Odette Bonnet, Managing Attorney).

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Before Bucher, Mermelstein and Lykos,  
Administrative Trademark Judges.

Opinion by Bucher, Administrative Trademark Judge:

Country Life, LLC (“applicant”) seeks registration on the Principal Register of the mark **IRON-TEK CLEAN PERFORMANCE** (*in standard character format*) for “dietary and nutritional supplements” in International Class 5.<sup>1</sup>

The examining attorney has refused registration of applicant’s mark on the ground that the mark includes deceptive matter in relation to the identified goods pursuant to Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a).

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<sup>1</sup> Application Serial No. 85340192 was filed on June 7, 2011, pursuant to Section 1(a) of the Trademark Act, based upon applicant’s claim of use anywhere and use in commerce since at least as early as June 30, 2010.

When the refusal was made final, applicant appealed and requested reconsideration. After the examining attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Applicant argues that the applied-for mark is not likely to deceive the relevant consumers because the word “IRON” in its mark is combined with the term TEK by a hyphen to form a compound term, and will be understood as referring to the body building concept of “pumping iron.” Hence, applicant argues that this mark is, at worst, suggestive of some of the intended users of applicant’s products, namely weightlifters and other athletes or of the purpose of the products, i.e., as a nutritional supplement for serious athletes training with weights. By contrast, the examining attorney takes the position that because applicant’s dietary and nutritional supplements do not contain the element iron, the applied-for term includes deceptive matter.

The Court of Appeals for the Federal Circuit has enunciated the test for determining whether a mark contains deceptive matter under Trademark Act § 2(a):

- 1) Is the term misdescriptive of the character, quality, function, composition or use of the goods?
- 2) Are prospective purchasers likely to believe that the misdescription actually describes the goods? and
- 3) Is the misdescription likely to affect the decision to purchase?

*In re Budge Manufacturing Co., Inc.*, 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir. 1988).

The examining attorney has submitted dictionary entries and copies of web pages in support of her refusal to register:

**i·ron** *n.* -

1. Symbol Fe A silvery-white, lustrous, malleable, ductile, magnetic or magnetizable, metallic element occurring abundantly in combined forms, notably in hematite, limonite, magnetite, and taconite, and used alloyed in a wide range of important structural materials. Atomic number 26; atomic weight 55.845; melting point 1,535°C; boiling point 2,750°C; specific gravity 7.874 (at 20°C); valence 2, 3, 4, 6. See Table at element.

...

8. A tonic, pill, or other medication containing iron and taken as a dietary supplement. <sup>2</sup>



## Health Benefits of Iron

**Muscle function:** Iron is a vital element for muscle health. It is present in the muscle tissues and helps in supply of oxygen required for contraction of muscles. <sup>3</sup>



### About Iron

Iron is a mineral essential for life. It is present in every living cell and is necessary for the production of hemoglobin (primary component of red blood cells), myoglobin (major protein of muscle cells), ...

### Health Benefits of Iron in Human Nutrition

- For protein metabolism

<sup>4</sup>

## Benefits of IRON

...[Iron] is also important for muscle protein...

- It boosts the body's energy level and as a result will improve physical performance.”

<sup>5</sup>

<sup>2</sup> The American Heritage Dictionary of the English Language (2007). Retrieved from <http://www.credoreference.com/entry/hmdictenglang/iron>.

<sup>3</sup> <http://www.organicfacts.net/health-benefits/minerals/health-benefits-of-iron.html>, as viewed by the examining attorney on September 21, 2011, attached to Priority Office action dated September 26, 2011.

<sup>4</sup> *Health and Wellness Library: Iron*, <http://www.nutriherb.net/iron.html>, as viewed by the examining attorney on September 26, attached to Priority Office action dated September 26, 2011.

<sup>5</sup> [http://www.oohoi.com/healthy\\_living/vitamin-info/benefits-of-iron.htm](http://www.oohoi.com/healthy_living/vitamin-info/benefits-of-iron.htm), as viewed by the examining attorney on September 26, 2011, attached to Priority Office action dated September 26, 2011.

**CVS/pharmacy**



Feosol Bifera HIP & PIC Iron Caplets



CVS Slow Release Iron Supplement Tablets



Ferretts Ips Liquid Iron Supplement



CVS Slow Release Iron Supplement

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**amazon.com**



Solgar - Gentle Iron



Nature's Plus - Chewable Iron w/ Vit C



New Chapter Every Woman's Iron Support




Floradix Iron and Herbs




Enzymatic Therapy Ultimate Iron, Softgels

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**SUNWARRIOR**  
Transforming the Planet One Warrior at a Time

\* Increases metabolism to burn fat while building muscle  
5.6 mg, 6% DV iron



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**amazon.com**



Navitas Naturals Hemp Protein Powder having 40 % DV Iron



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<sup>6</sup> <http://www.cvs.com/>, attached to Priority Office action dated September 26, 2011, TICRS at 5.

<sup>7</sup> <http://www.amazon.com>, attached to Priority Office action dated September 26, 2011, TICRS at 6.

<sup>8</sup> <http://www.sunwarrior.com/>, as viewed by the examining attorney on March 22, 2012, attached to Office action dated March 26, 2012, TICRS at 2-6.

<sup>9</sup> <http://www.amazon.com/>, viewed by the examining attorney on March 22, 2012, attached to Office action dated March 26, 2012, TICRS at 7-8.



NATURALLY RICH IN GLUTAMINE  
Muscle Milk is naturally rich in Glutamine and Glutamine Peptides which supports muscle recovery.\*

Iron 35%

Applicant has provided for the record copies of screen prints from its own website:

<sup>10</sup> <http://www.bodybuilding.com/> as viewed by the examining attorney on March 22, 2012, attached to Office action dated March 26, 2012, TICRS at 10-11.



## Iron-Tek® essentials



The Iron-Tek research and development team strives to produce only the highest quality, cutting edge sports supplements available. These essentials were created for the sports nutrition consumer who is price conscious but is seeking a top-quality supplement. Iron-Tek offers a wide variety of effective formulas for "every body." Whether your goal is weight gain, weight management, or muscle recovery, Iron-Tek has what you need to achieve it.

- [Essential CLA 1140](#)
- [ESSENTIAL CREATINE](#)
- [ESSENTIAL LIQUID AMINO COMPLEX](#)
- [ESSENTIAL GLUTAMINE](#)
- [Essential CLA - Pure Tonain® CLA Complex™](#)
- [Essential Natural High Protein](#)

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**Iron-Tek Micell Edge™  
Double Chocolate Fudge**



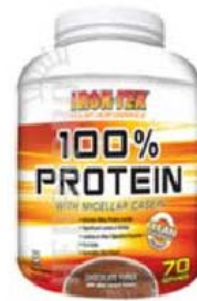
**Iron-Tek. Glutamine Powder**



**Iron-Tek, Liquid  
Amino Complex**



**IRON-TEK Essential Creatine  
Monohydrate (micronized powder)**



**Iron-Tek Essential  
Natural High Protein**

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<sup>11</sup> <http://www.country-life.com/category.cfm?Category=22>, as accessed by applicant on March 20, 2012; Exhibit A, applicant's request for reconsideration of September 24, 2012.

<sup>12</sup> *Id.*

Applicant also provided a copy of the following entry from Wikipedia, the free encyclopedia:

***Pumping Iron*** is a 1977 docufiction about the world of bodybuilding, focusing on the 1975 IFBB Mr. Universe and Mr. Olympia competitions. Inspired by a book of the same name by Charles Gaines and George Butler, the film nominally focuses on the competition between Arnold Schwarzenegger and one of his primary competitors for the title of Mr. Olympia, Lou Ferrigno. The film also features brief segments focusing on bodybuilders Franco Columbu and Mike Katz, in addition to appearances by Ken Waller, Ed Corney, Serge Nubret, and other famous bodybuilders of the era.

Shot during the 100 days leading up to the Mr. Universe and Mr. Olympia competitions and during the competitions themselves, the filmmakers ran out of funds to finish production, and it entered development hell for two years. Ultimately, Schwarzenegger and other bodybuilders featured in the film helped to raise funds to complete production, and it was released in 1977. The film became a box office success, making Schwarzenegger a household name. The film also served to popularize the then somewhat niche culture of bodybuilding, helping to inspire the fitness craze of the 1980s; following the film's release, there was a marked increase in the number of commercial gyms in the United States.<sup>[1][2]</sup> The film was released on CED, VHS, and then re-released on DVD in 2003 for the 25th Anniversary of the theatrical debut. The film inspired two sequels: George Butler's *Pumping Iron II: The Women* in 1985, a documentary about the world of female bodybuilding; and David and Scott McVeigh's *Raw Iron* in 2002, a documentary about the making of *Pumping Iron* and how the film affected the lives of those who appeared in it.<sup>13</sup>



## ***pump***

...

### ***Phrasal Verb:***

#### ***pump iron*** *Sports*

To lift weights.

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## ***pump iron***

*Vb*

(Individual Sports & Recreations / Weightlifting) (*intr*) *Slang* to exercise with weights; do body-building exercises<sup>15</sup>

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<sup>13</sup> [http://en.wikipedia.org/wiki/Pumping\\_Iron](http://en.wikipedia.org/wiki/Pumping_Iron), as accessed by applicant on March 20, 2012; Exhibit B, applicant's request for reconsideration of September 24, 2012.

<sup>14</sup> <http://www.thefreedictionary.com/pump+iron>, as accessed by applicant on March 20, 2012; Exhibit C, applicant's request for reconsideration of September 24, 2012.

Finally, applicant also claims ownership of the following registration:

<b>IRON-TEK</b> for “vitamins and nutritional supplements” in Int. Class 5. <sup>16</sup>
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### Legal Analysis

#### **A. Is IRON-TEK CLEAN PERFORMANCE Misdescriptive?**

At the outset, we note applicant’s argument that the word “Iron” appearing within the context of Iron-[hyphen]-Tek detracts from a commercial impression of the element/mineral “iron.” More significantly, applicant takes the position that the word “Iron” in its mark suggests “pumping iron.” According to the record, most of the products in Country Life’s Iron-Tek product line are indeed marketed and sold primarily to body builders, but applicant’s identification of goods does not limit its dietary and nutritional supplements to products for weightlifters.

Accordingly, we agree with the examining attorney that ordinary consumers seeing the term “Iron” in applicant’s mark for dietary and nutritional supplements are going to assume that the supplements contain iron. The dictionary definition and website evidence submitted by the examining attorney support the determination that “iron” is a common mineral in dietary and nutritional supplements. However, as confirmed by applicant during *ex parte* prosecution, applicant’s goods do not contain “iron.” Hence, there is no doubt but that applicant’s mark is misdescriptive.

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<sup>15</sup> Collins English Dictionary – Complete and Unabridged HarperCollins Publishers (2003); also drawn from <http://www.thefreedictionary.com/pump+iron>, as accessed by applicant on March 20, 2012; Exhibit C, applicant’s request for reconsideration of September 24, 2012.

<sup>16</sup> Registration No. 2442665 issued on April 10, 2001; renewed.



**B. Are Prospective Purchasers Likely to Believe the Misdescription?**

Applicant's identification of goods lists very broadly "dietary and nutritional supplements," and we must construe these words to include all such items. The examining attorney has put together a fairly compelling case that the process of building muscles requires iron. Products like Navitas hemp powder and Muscle Milk supplements have thirty-five to forty percent of the average adult's daily value of iron. Hence, we find that iron is a common ingredient in dietary and nutritional supplements, and that ordinary consumers viewing applicant's mark on nutritional and dietary supplements will assume that the goods by their very nature contain iron. Like other active adults, the record shows that weightlifters need iron for building muscles. Accordingly, in response to applicant's arguments, we cannot be sure why body builders would assume that an IRON-formative mark on a bottle of dietary and nutritional supplements would point toward the connotation of barbells rather than dietary iron. Hence, we conclude that weightlifters, like other prospective purchasers of these sports supplements, will believe that this product is rich in iron. On the other hand, even if weightlifters would *not* be deceived, we would still affirm because the mark would still be deceptive to all other ordinary consumers of dietary and nutritional supplements, who also must be construed to be included in the relevant class of consumers.

**C. Is the Misdescription Likely to Affect the Decision to Purchase?**

As the third prong of the deceptiveness test, we consider whether the misdescriptiveness of the mark would be a factor in a decision to purchase the goods. The examining attorney submitted dictionary entries and copies of screen-prints from various

websites to show that iron is a common ingredient of dietary and nutritional supplements and also a desirable material for building muscles. This evidence is sufficient to establish that iron is perceived by prospective purchasers of supplements as a most desirable ingredient in such products, and hence we find that this would materially affect the purchasing decisions.

Incontestible **IRON-TEK** registration

Finally, applicant asserts ownership of an incontestible registration for **IRON-TEK** for vitamins and nutritional supplements, arguing that “the trademark office has previously found that the term **IRON-TEK** ... is not deceptive when used with supplements.” To the extent that applicant is attempting to argue under *In re American Sail Training Association*, 230 USPQ 879 (TTAB 1986), that its ownership of an incontestable registration of **IRON-TEK** for substantially the same goods precludes the Office from refusing registration of applicant's present mark, we find that the reasoning of *American Sail* (the “TALL SHIPS” decision) is inapposite to a later determination of deceptiveness. *See* 15 U.S.C. §§ 1064(3), 1052(a). Rather, consistent with the statutory structure of the Trademark Act, each application for registration of a mark for particular goods must be separately evaluated based on its own set of facts and in view of whatever marketplace evidence is available in the record. Nothing in the statute provides a right *ipso facto* to register a new mark for additional goods, and we are not bound by prior determinations made by examining attorneys. While uniform treatment under the Trademark Act is highly desirable, our task here is to determine, based on the record before us, whether applicant's mark is registrable. *See In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001).

***Decision:*** The refusal to register applicant's mark **IRON-TEK CLEAN PERFORMANCE** as deceptive under Section 2(a) of the Lanham Act is hereby affirmed.