

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TPK Pharmaceutical, L.L.C. Petitioner, vs. Clientele, Inc. Respondent.	Cancellation No. _____ Registration No.: 2,740,269 Date of Registration: July 22, 2003 Trademark: SLIMMING FACTORS
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PETITION FOR CANCELLATION

Box TTAB Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



10-09-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

Sir:

Petitioner, TPK Pharmaceutical, L.L.C., is a Utah liited liability company having a principal place of business at 1163 South 1680 West, orem, Utah 84058. Petitioner believes that it is being and will be damaged by the above-identified registration of a mark comprising the words SLIMMING FACTORS, which was improperly registered in the United States Patent and Trademark Office on July 22, 2003, as Registration No. 2,740,269 ('269) in International Class 5 for dietary and nutritional supplements.

A printout and status report concerning the '269 registration is attached as Exhibit "A."

As grounds for this Petition, Petitioner alleges:

1. Petitioner is the owner and/or at least a prior continuous user of a trademark comprising the words SLIMFACTORS. Petitioner first appropriated and used its SLIMFACTORS mark to identify the Petitioner's nutritional supplements sold and shipped in interstate commerce as early as March 26, 2002 and in intrastate commerce as early as March 26, 2002, and has continuously

10/16/2003 EPINA1 00000019 061620 2740269

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thereafter used said mark to identify Petitioner's above-mentioned goods sold and shipped in interstate commerce.

2. Petitioner has used in such commerce and otherwise since at least as early as March 26, 2002, continues to use in such commerce and otherwise, and has the ongoing right to continue to use in such commerce, and otherwise, marks comprising SLIM FACTORS to identify Petitioner's goods.

3. Petitioner has extensively advertised and promoted its SLIM FACTORS mark and has built up and maintains valuable reputation and goodwill in such commerce. The public has come to know and to recognize SLIM FACTORS when applied to Petitioner's goods as indicating that the goods emanate from and are offered and provided by the Petitioner.

4. The use of SLIMMING FACTORS by the Registrant began on May 12, 2002, after Petitioner's use. Both uses are for similar goods, namely a nutritional supplement.

5. Beginning at least as early as March 26, 2002, the Petitioner has continuously used its SLIM FACTORS mark applying to labels placed on Petitioner's goods and shipping the goods across state lines in interstate commerce. See attached Exhibit "B."

6. Petitioner has expended significant amounts of money, time and effort in advertising, promoting and popularizing its SLIM FACTORS business and the goods mentioned above including use of its SLIM FACTORS mark, resulting in substantial, favorable recognition, goodwill and reputation with the public and members thereof that Petitioner's SLIM FACTORS goods originate and the SLIM FACTORS mark is synonymous with Petitioner and Petitioner's business and Petitioner's goods as above-identified.

7. Petitioner's goodwill and reputation and its ability to capitalize on its SLIM FACTORS business and to make available to other parties its SLIM FACTORS goods has been or will be

irreparably jeopardized by the existence of Respondent's registration of SLIMMING FACTORS and the trade and purchasing public will be confused and deceived and will falsely believe that Registrant's use of SLIMMING FACTORS is in some way associated or connected with or sponsored, authorized, licensed or warranted by the Petitioner to the Registrant, because of the similarity between the Petitioner's and Respondent's marks and substantial identity of the goods of the parties in the same or similar channels of trade, all to the detriment of Petitioner, and will injure Petitioner's goodwill and reputation unless this Petition for Cancellation is granted.

8. The contemporaneous existence of the registration of SLIMMING FACTORS will dilute or impair Petitioner's trademark rights and will eventually result in lack of source designation or indication of origin and loss of distinctiveness and exclusivity of Petitioner, if Registrant is allowed to maintain the '269 registration.

9. The Registrant is not entitled to the exclusive use of the mark SLIMMING FACTORS in commerce within the control of Congress, as alleged in Registrant's application for trademark registration, because of the lawful use by the Petitioner of its SLIM FACTORS mark.

10. In view of the foregoing, the '269 registration should be cancelled because, to Petitioner's injury, it would interfere with Petitioner's lawful use in interstate commerce of its SLIM FACTORS mark, and would cause confusion and deception as well as irreparable harm to Petitioner.

11. If the owner of the '269 registration is permitted to retain the registration sought to be cancelled, such registration would be a source of damage and injury to Petitioner and its established goodwill and reputation.

12. If the owner of the '269 registration is permitted to retain the registration sought to be cancelled, a cloud will be placed on Petitioner's title in and to its SLIM FACTORS mark, and on its

right to enjoy the free and exclusive use thereof in connection with the sale of its goods, all to great injury of Petitioner.

13. Petitioner asks that the '269 registration be cancelled and that this Petition of Cancellation be sustained in favor of Petitioner.

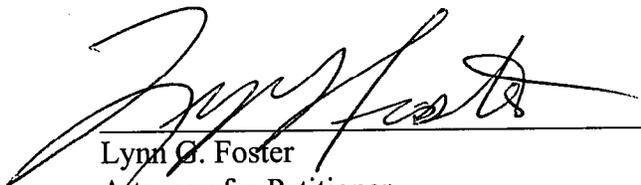
14. Petitioner hereby appoints Lynn G. Foster, a member of the bar of the State of Utah, practicing in the firm of Lynn G. Foster, L.C., 602 East 300 South, Salt Lake City, Utah 84102, as its attorney with full power to prosecute this cancellation proceeding and transact all business in the Patent and Trademark Office in connection therewith.

Lynn G. Foster is hereby designated as Petitioner's domestic representative upon whom notices or process in these proceedings may be served.

WHEREFORE, Petitioner believes that it will be damaged by Registration No. 2,740,269 and prays that it be cancelled.

DATED this 9th day of October, 2003.

LYNN G. FOSTER, L.C.



Lynn G. Foster
Attorney for Petitioner
602 East 300 South
Salt Lake City, Utah 84102
Telephone: (801) 364-5633
Facsimile: (801) 355-8938

EXHIBIT A

Print: Jun 10, 2003

76459995

Issue: Jul 22, 2003

SLIMMING FACTORS

Serial Number

76459995

Status

PUBLISHED FOR OPPOSITION

Word Mark

SLIMMING FACTORS

Type of Mark

TRADEMARK

Register

PRINCIPAL

Mark Drawing Code

(1) TYPED DRAWING

Owner

Clientele, Inc. CORPORATION FLORIDA 14101 NW 4th Street Sunrise
FLORIDA 33325

Goods/Services

Class Status -- ACTIVE. IC 005. US 006 018 044 046 051 052. G & S:
Pharmaceuticals, namely, Dietary and Nutritional Supplements as a
beverage additive in the form of an effervescent tablet. First Use:
2002/05/12. First Use In Commerce: 2002/05/12.

Disclaimer Statement

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FACTORS" APART FROM
THE MARK AS SHOWN.

Filing Date

2002/10/21

Examining Attorney

DEFORD, JEFF

Attorney of Record

Jason K. Psaltides

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2003-10-06 12:50:32 ET

Serial Number: 76459995

Registration Number: 2740269

Mark (words only): SLIMMING FACTORS

Current Status: Registered.

Date of Status: 2003-07-22

Filing Date: 2002-10-21

Registration Date: 2003-07-22

Law Office Assigned: LAW OFFICE 115

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2003-07-28

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Clientele, Inc.

Address:

Clientele, Inc.
14101 NW 4th Street
Sunrise, FL 33325
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Florida

GOODS AND/OR SERVICES

Pharmaceuticals, namely, Dietary and Nutritional Supplements as a beverage additive in the form of an effervescent tablet

International Class: 005

First Use Date: 2002-05-12

First Use in Commerce Date: 2002-05-12

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: "FACTORS"

PROSECUTION HISTORY

2003-07-22 - Registered - Principal Register

2003-04-29 - Published for opposition

2003-04-09 - Notice of publication

2003-02-24 - Approved for Pub - Principal Register (Initial exam)

2003-02-21 - Examiner's amendment mailed

2003-02-12 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Jason K. Psaltides (Attorney of record)

JASON K. PSALTIDES
JASON PSALTIDES & ASSOCIATES
SAWGRASS INTERNATIONAL CORPORATE PARK
14101 NW 4TH STREET
SUNRISE, FLORIDA 33325
Phone Number: 954 845-9500, Ext 5772#

EXHIBIT B

IgF-1 – Directs metabolic processes to help the body:

- Burn fat
- Balance blood sugar
- Build lean muscle
- Work with Leptin to inhibit fat synthesis

Leptin (from the Greek word, Leptos – meaning thin) Orchestrates the use of fats to help the body:

- Accelerate fat breakdown
- Control appetite and sweet cravings
- Promote fat loss
- Regulate pituitary and thyroid functions
- Influence fat cell size

Co-factors – Several co-factors work with IgF-1 and Leptin to help the body:

- Stimulate fat burning thermogenesis
- Curb excessive appetite and cravings
- Reduce insulin resistance
- Inhibit caloric storage as fat
- Neutralize starch and carbs

MORE MUSCLE - LESS FAT - LEANER BODY

* These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease.

Suggested use: 3 capsules twice daily on an empty stomach with 8 oz. of water. **Advanced use:** 4 Capsules twice daily. **Maintenance equals 1/2** *Dr. [Signature]* dosage.



Supplement Facts

Serving size: 6 Capsules
Servings per container: 30

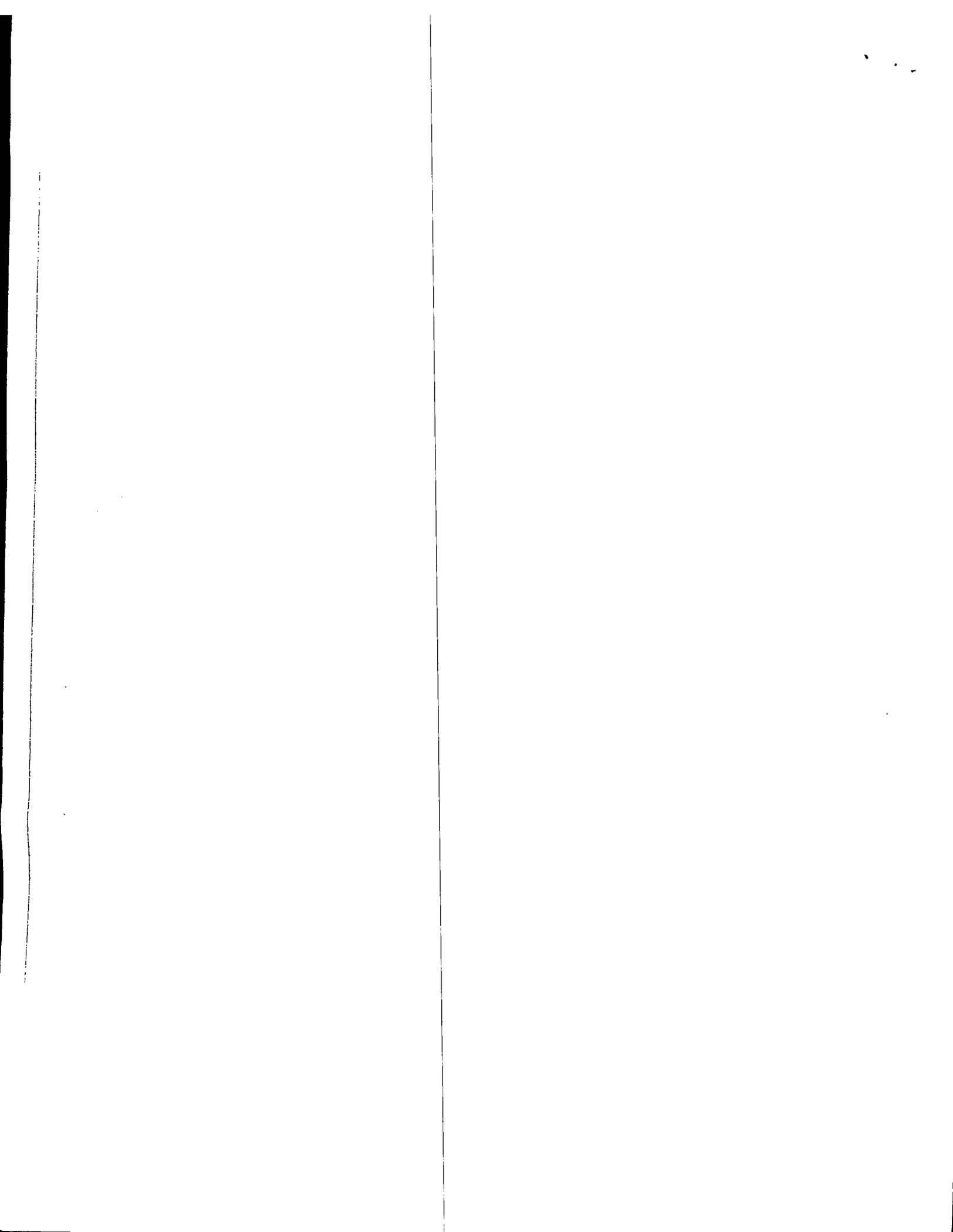
Amount per serving	% Daily Value
Leptin & IgF-1 rich Colostrum	2750 mg **
Garcinia Cambogia (standardized for 60% HCA)(fruit)	750mg **
Citrus Aurantium L.	250mg **
Phaseolus vulgaris	205mg **
Chromium (as Chromium Polynicotinate)	400mcg **
Green Tea Extract (standardized for 20% polyphenols)(leaf)	600mg **

* Percent daily values are based on 2000 calorie diet
** Daily Value not established

Distributed by ITG, Inc
Orem, Utah 84058
www.slimfactors.com

1-888-484-8671





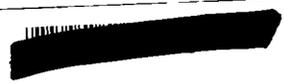
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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TRANSMITTAL OF PETITION FOR CANCELLATION

Box TTAB Fee
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514



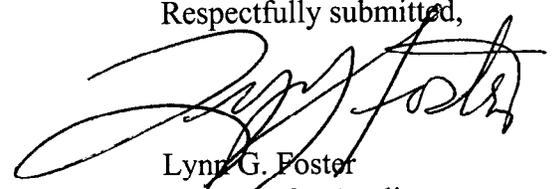
10-09-2003
U.S. Patent & TMOt/TM Mail Rcpt Dt. #22

Sir:

Transmitted herewith for filing is the original and two copies of a Petition for Cancellation in the above-identified matter together with a return receipt postcard.

Please charge Deposit Account 06-1620 of the undersigned for the cancellation fee, for one class, in the amount of \$300.00. Please charge any additional fees and credit any overpayments to the same deposit account.

Respectfully submitted,



Lynn G. Foster
Attorney for Applicant

602 East 300 South
Salt Lake City, Utah 84102
Telephone: (801) 364-5633

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

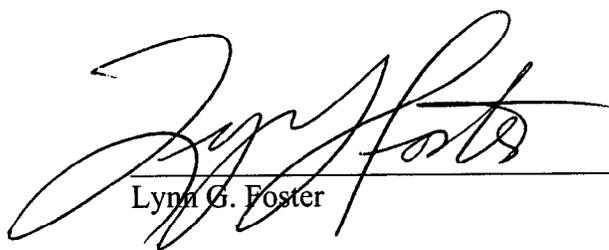
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CERTIFICATION OF FILING BY EXPRESS MAIL

“Express Mail” Mailing Label Number: EO 901 738 389 US

Date of Deposit: October 9, 2003

I hereby certify that the attached Petition for Cancellation is being deposited with the United States Postal Service “Express Mail Post Office to Addressee” service under 37 CFR 1.10 on the date indicated above and is addressed to Box TTAB Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514.



Lynn G. Foster

602 East 300 South
Salt Lake City, Utah 84102
Telephone: (801) 364-5633