

ESTTA Tracking number: **ESTTA562082**

Filing date: **09/30/2013**

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

Proceeding	92055426
Party	Defendant Leander Lodi
Correspondence Address	SCOTT W KELLEY KELLEY & KELLEY LLP 6320 CANOGA AVENUE, SUITE 1650 WOODLAND HILLS, CA 91367 UNITED STATES scott@KelleyLegal.com
Submission	Testimony For Defendant
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Date	09/30/2013
Attachments	LodiTrialDepoTrans_Non-Conf.pdf(2561239 bytes )

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

In the matter of: )  
Run It Consulting, LLC, ) Cancellation No. 92055426  
Petitioner, )  
vs. )  
Leander Lodi, by Assignment )  
From Augusto Lodi dba )  
American Muscle, )  
Registrant. )  
\_\_\_\_\_ )

DEPOSITION OF: LEANDER LODI  
TAKEN ON: May 7, 2013  
REPORTED BY: Claudia P. Marsh,  
CSR No. 6353

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DEPOSITION OF LEANDER LODI,  
taken on behalf of Registrant, at  
6320 Canoga Avenue, Suite 1650,  
Woodland Hills, California, on Tuesday,  
May 7, 2013, commencing at 10:19 a.m.  
before Claudia Marsh, CSR No. 6353.

APPEARANCES OF COUNSEL:

For the Petitioner:

MATTHEW H. SWYERS, ESQ.  
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Vienna, Virginia 22180  
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For the Registrant:

KELLY & KELLEY, LLP  
BY: MICHAEL A. DiNARDO, ESQ.  
6320 Canoga Avenue  
Suite 1650  
Woodland Hills, California 91367  
(818) 347-7900

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I N D E X

THE WITNESS	EXAMINATION	PAGE
LEANDER LODI	By Mr. DiNardo	5
(Further examination by all counsel was held under separate sealed cover.)		

EXHIBITS

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Number M - Invoices (Bound under separate cover)	

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I N D E X (CONTINUED)

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DEFENDANT'S	PAGE
Number N - Invoices (Bound under separate cover)	
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Number P - Invoices (Bound under separate cover)	

PETITIONER'S	PAGE
Number 1 - Invoices (Bound under separate cover)	

INSTRUCTION NOT TO ANSWER:

None

INFORMATION REQUESTED:

None

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WOODLAND HILLS, CALIFORNIA, TUESDAY, MAY 7, 2013

AT 10:19 a.m.

---oOo---

LEANDER LODI,

a witness herein, called as a witness by the Registrant,  
having been first duly sworn, was examined and testified  
as follows:

EXAMINATION

BY MR. DiNARDO:

Q Good morning. Would you please state your name  
for the record.

A Leander Lodi.

Q Would you spell "Leander."

A L-E-A-N-D-E-R, L-O-D-I.

Q Please describe for me -- strike that.

I am going to mark this as Defendant's A.

(Whereupon the document referred to was  
marked by the Certified Shorthand Reporter as  
Defendant's Exhibit A for identification and  
is hereto annexed.)

BY MR. DiNARDO:

Q I have presented you with Defendant's Exhibit

1 A.

2 Do you recognize this document?

3 A Yes, I do.

4 Q What is this document?

5 A This is my mark, my registered trademark for  
6 American Muscle.

7 Q And what is -- you use your mark in connection  
8 with the business?

9 A Yes, I do. Supplements, clothing.

10 Q Please describe how you got into that business.

11 A I had been bodybuilding ever since I was a  
12 teenager. So in the -- about 1987 or actually mid '80s,  
13 I always wanted to start my own supplement company and  
14 have a full line: supplements, clothing.

15 So in 1986, I started, you know, firming up my  
16 idea and coming up with product. 1987, I came up with a  
17 name and filed for registration. That's how I started,  
18 with clothing, wrist straps, knee wraps, belts, full  
19 line of supplements, and grew the company from there.

20 Q Okay. Were you the only individual involved in  
21 that company in the beginning?

22 A No. My mom and dad were also.

23 Q What was your mom and dad's involvement?

24 A My mom was a physician, so she gave me insight  
25 as far as formulations as far as what supplements to

1 come up with. Her and I formulated and came up with  
2 ideas. My dad was an architect, had an art gallery. He  
3 was pretty much our money guy.

4 Q What's your dad's name?

5 A Augusto Lodi.

6 Q In the beginning was the trademark registered  
7 in whose name?

8 A Augusto Lodi's.

9 Q So the trademark was registered in your  
10 father's name?

11 A Yes.

12 Q And at some point it was transferred to you?

13 A Yes, it was.

14 Q Do you recall when that was?

15 A It would have been in the last year it was  
16 transferred to me. Oh, I'm sorry. When you say -- he  
17 passed away.

18 Q When did your father pass away?

19 A I'm bad at -- I would say '06.

20 Q And are you the sole heir?

21 A Yes, I am. So -- okay. I get it, okay.

22 Q Okay. So at that point, you assumed ownership  
23 of the trademark registration?

24 A Yes. I thought -- the reason I said last year  
25 is that's when everything was finalized and -- okay.

1 Q But the business was yours?

2 A Yes, it was.

3 Q And were any other people involved in the early  
4 part of the business?

5 A No.

6 Q And when was that? When did you first start  
7 selling products under the American Muscle mark?

8 A 1987.

9 Q And, again, for the record, please state what  
10 those products were.

11 A Full line of supplements, T-shirts, pants, tank  
12 tops, wrist straps, knee wraps, belts, gloves. I even  
13 had a tan accelerator.

14 Q When you say a "full line of supplements" --

15 A Meaning -- for example, I had protein powder.  
16 It was a milk and egg protein powder. I had a  
17 B-complex, I had a C, I had a multivitamin. There was a  
18 sport pack. It's a been so long, but I had various  
19 other products at that time.

20 Q I want to back up a bit. I need to explain how  
21 a deposition works. I'm sure you have seen this woman  
22 sitting to your right. She is taking down every word we  
23 are saying. When we are talking, it's difficult, if not  
24 impossible, for her to take down the words of two people  
25 speaking at the same time. So please let me finish

1 speaking and when Mr. Swyers has his turn, please let  
2 him finish before answering any question.

3 A Yes. It's my first deposition.

4 Q Understood.

5 Another preliminary matter: Have you taken any  
6 medication or anything else into your body this morning  
7 that you feel might inhibit your ability to give your  
8 best testimony here today?

9 A No.

10 Q So you started selling product in 1987 under  
11 the American Muscle mark. Please describe for me how  
12 your business continued from that point.

13 A I spread the word through all my contacts at  
14 the gym. I was a competitive bodybuilder. I had a lot  
15 of friends. I started going to the bodybuilding  
16 contests, setting up booths, running ads in magazines.  
17 Business grew rather rapidly. I had a good product.

18 Q When you say you went to the bodybuilding  
19 competitions and set up a booths, were you the person  
20 manning the booth?

21 A Yes.

22 Q So you were not participating in the  
23 competitions at that time?

24 A No, I wasn't.

25 Q Had you previously participated in

1 competitions?

2 A Yes, I had.

3 Q But when you started this business, you no  
4 longer were competitively bodybuilding?

5 A I worked out and also liked to think I was  
6 going to compete again, but I was too busy with the  
7 business.

8 Q How much -- to your best recollection, how much  
9 time per day or week would you spend on this business,  
10 in the 1987-'88 time frame?

11 A Seven days a week and pretty much 10 to 14  
12 hours. I mean, it was a continual thing.

13 Q And then the business continued on into the  
14 '90s, correct?

15 A Yes.

16 Q What was your -- strike that.

17 Please describe for me what your average sales  
18 would be in the early to mid '90s.

19 A On a monthly basis, I would say anywhere  
20 between 40 to \$60,000 a month. Maybe 70. I mean, it's  
21 been so long. I mean, I'm just -- roughly around there.  
22 I can't give you an exact number.

23 Q What types of persons or companies were you  
24 selling your products to?

25 A Mainly gyms across the country. I had accounts

1 in Germany, Japan, Italy. I mean, we were worldwide. I  
2 also sold to GNC, General Nutrition Center. I had at  
3 the time a -- kiosks were real popular in the malls. So  
4 we had distributors that had kiosks.

5 Q So you sold to distributors --

6 A Yes.

7 Q -- who then took it to retail?

8 A Yes. Gold's, World, Powerhouse.

9 Q Those are all gyms?

10 A Yes.

11 Q Did you do direct retail sales yourself?

12 A Very little. Very little.

13 Q At this time, were you advertising your  
14 product?

15 A Yes, I was.

16 Q And how were you advertising your product?

17 A Through the magazines: Muscle Fitness, Flex,  
18 Muscle Mag International, Ironman, Muscular Development.

19 Q And these are all bodybuilding magazines?

20 A Yes.

21 Q And so was your target customer bodybuilders?

22 A Yes.

23 Q Anybody else?

24 A Basically just bodybuilders. That was who we  
25 were targeting.

1 Q At that time?

2 A Yes.

3 Q Did you have product catalogs that you printed  
4 up?

5 A Yes, I did.

6 Q And what did you do with those product  
7 catalogs?

8 A We sent them out. We used to do mailers and we  
9 got them to my distributors.

10 Q What about inventory, where did you get your  
11 products from? How did you obtain your products?

12 A With the supplements, a manufacturer. And we  
13 would talk about formulas. I talked to my mom about it  
14 and get the okay from her. They would formulate for me.  
15 Some of them were pretty basic standard formulas like B  
16 or C vitamins. There were some more privy to our -- to  
17 us, like our 19-norandrodiol, which I had somebody  
18 formulate for me.

19 With the clothing, I had artists that designed  
20 prints for us. I designed all the cuts. I had a  
21 patternmaker. I had a designer. I picked out the  
22 fabric, I had fabric even knit for us, silk screened and  
23 dyed. Just the whole nine yards.

24 Q I want to move to the mid to late '90s now,  
25 '96, '97, '98.

1           At some point, did your sales drop off from the  
2 numbers that you previously testified to?

3           A     Yes.

4           Q     You have to let me finish talking.

5           A     I'm sorry.

6           Q     Please describe for me that drop off in sales.

7           A     What happened is we had a product, acetabolan  
8 that it was supposed to contain acetyl-l-carnitine. My  
9 manufacturer, unbeknownst to me put just put,  
10 l-carnitine and not the acetyl-l-carnitine. My  
11 competitor had the product analyzed and my competitor  
12 actually was in partnership with a magazine. So they  
13 presented the results and my business -- I mean, it  
14 just -- it pretty much killed my business, the bad  
15 publicity.

16           I made it right. I had my manufacturer  
17 resupply me with everything I had ordered. He replaced  
18 for me, free of charge, and I, in turn, replaced it to  
19 all my customers.

20           Q     And --

21           A     But the damage was done.

22           Q     You took back the mislabeled product?

23           A     No, I told the people to keep it. There was  
24 nothing -- it wasn't that it was a bad product. It just  
25 wasn't what it was supposed to be and l-carnitine is a

1 great product.

2 I advertised it on the label. It said  
3 acetyl-l-carnitine. Since it didn't have that in there,  
4 we replaced everything, every single model. It took  
5 about six or eight months. It cost my manufacturer tens  
6 of thousands of dollars.

7 Q You say that publicity affected your business.  
8 What publicity?

9 A The publicity was Muscle Mag International, Bob  
10 Kennedy who owned the magazine, he was getting a  
11 commission -- actually a percentage of all the sales of  
12 my competitor.

13 So since he owned the magazine, they had -- in  
14 various parts the magazine, they had question and  
15 answers. So they would ask, for example -- they were  
16 fake questions. Somebody would ask, "What do you think  
17 about American Muscle products?" The gentleman at the  
18 time, I believe his name was Greg Zulag, they took a  
19 picture of American Muscle on a toilet and said, "Here  
20 is where it belongs."

21 They hammered me for six or eight months. I  
22 tried to reason with Bob Kennedy. I tried to tell him I  
23 had proof I replaced the product. He didn't want to  
24 hear it. Because he was making so much money with my  
25 competitor that it didn't behoove him to tell my side of

1 the story.

2 At the time, I went to TV and it was Hard Copy.  
3 They did a feature on it. They exposed my competitor  
4 and told my story, which was really -- I mean, it was a  
5 good deal, but unfortunately, not too many bodybuilders  
6 were watching Hard Copy, so it didn't do me much good.

7 MR. DiNARDO: Matthew, I want to make sure you are  
8 still on the phone.

9 MR. SWYERS: Thank you. I'm here. I put it on  
10 mute so you guys -- off the record.

11 (Whereupon a brief discussion was had  
12 off the record.)

13 MR. DiNARDO: Back on the record.

14 BY MR. DiNARDO:

15 Q So after this negative publicity, your sales  
16 dropped off significantly?

17 A Yes. I had to change my business model.

18 Q How did you change your business model?

19 A Well, in the beginning, I tried to fight the  
20 negative publicity, which was pretty much impossible  
21 because we didn't have really, you know, we couldn't set  
22 up websites and things like that. I was fighting a  
23 magazine. My primary concern was to replace all the  
24 product, which took months to reformulate and get it  
25 right.

1           In the interim, I pretty much started dealing  
2 just a few distributors and hoping to turn things  
3 around.

4           Q     So then so you were only dealing with a few  
5 distributors at that point?

6           A     Yes.

7           Q     The other distributors that you had been  
8 dealing with, were they not willing to sell your  
9 product?

10          A     Some of them were willing, but, unfortunately,  
11 their customers weren't willing to buy.

12          Q     But the few distributors that you decided to  
13 continue dealing with, they were able to continue  
14 selling your products?

15          A     Yes, but, unfortunately, only on a small basis.

16          Q     I'm sorry. That time -- when you adjusted your  
17 business model, only deal with a few distributors, that  
18 was about when?

19          A     Late '90s, '98, '99.

20          Q     Do you know who those few distributors are?

21          A     Yes.

22          Q     Please tell me.

23          A     Magic Kayhan. He is Total Fitness Outlet. He  
24 also has health clubs. Ed Holmes, All Star Boxing. I  
25 have Ray Land. He is in Arizona. He has Land Attack;

1 he is a personal trainer also. I have Richard Coote, RC  
2 Nutrition in Ontario, Canada.

3 Q And have you continued to sell to these few  
4 distributors since the late '90s, '98, '99?

5 A Yes, I have.

6 Q The product that you were selling to them, what  
7 product was that, to the best of your recollection?

8 A Late '90s. I mean, when I started -- I still  
9 had a lot of inventory. A lot of inventory. I pretty  
10 much sold the existing inventory and started to -- the  
11 strongest selling items for them were Creatine  
12 Monohydrate and protein powder.

13 So I chose to continue manufacturing those --  
14 or supply them with that, continue buying that product  
15 and supply them with those products, and over the course  
16 of time, sold out any inventory I had.

17 Q On the other products?

18 A On the other products, yes. Always looking to  
19 come up with something new, something that's a homerun,  
20 a fantastic product with something that, what we call,  
21 has legs.

22 I have been working on a product for a few  
23 years that we believe is going to be fantastic.

24 Q So back in the '98, '99 time frame, you stopped  
25 ordering replacement inventory for most of your

1 products?

2 A That would be correct, yes.

3 Q The only replacement inventory you were  
4 ordering was the whey powder and the creatine?

5 A That would be correct, yes.

6 Q As well as the weightlifting straps?

7 A Oh, yes. Weightlifting straps, T-shirts, tank  
8 tops, things like that. Some of the clothing, yes.

9 Q You continued selling those few products in  
10 2000, yes?

11 A Yes.

12 Q Did you sell those same products in 2001?

13 A Yes, I did.

14 Q And 2002?

15 A Yes, I did.

16 Q And 2003?

17 A Yes, I did.

18 Q And 2004?

19 A Yes, I did.

20 Q And 2005?

21 A Yes, I did.

22 Q And every year to the present?

23 A That would be correct, yes.

24 Q Do you know why this cancellation proceeding  
25 has been brought?

1           A     Yes, I do.

2           Q     What is your understanding as to why it's been  
3 brought?

4           A     That another party is trying to take my name.

5           Q     Well, do you understand what the other party is  
6 alleging in this cancellation proceeding?

7           A     Yes.

8           Q     What is your understanding of that?

9           A     My understanding is they are alleging that I  
10 stopped using the name and stopped selling products.

11          Q     Since your first use of the American Muscle  
12 mark in 1987, has there been any period that you have  
13 not sold product under the American Muscle mark?

14          A     No. Never.

15          Q     So from 1987 to the present, you have always  
16 sold some form of vitamin supplement under the American  
17 Muscle mark?

18          A     Yes.

19          Q     And from 1987 to the present, you have always  
20 sold some type of weightlifting equipment?

21          A     Yes.

22          Q     And from 1987 to the present, you have always  
23 sold some form of sportswear or clothing under the  
24 American Muscle mark?

25          A     Yes.

1 Q Just to clarify for the record, have there been  
2 any periods of three or more years that you have not  
3 sold products of any of the types I just listed under  
4 the American Muscle mark?

5 A No.

6 Q And at any point, have you ever had the intent  
7 not to continue using the American Muscle mark?

8 A No, never.

9 Q Exhibit A is not the only trademark  
10 registration you owned for American Muscle, is that  
11 correct?

12 A That's correct.

13 Q Do you recall what those other registrations  
14 were?

15 A Yes. I had one for a suntan accelerator. I  
16 had one for entertainment industries, such as --  
17 specifically a TV show. Then I had one that encompassed  
18 my actual logo, which was a triangle with a flexed arm.

19 Q Do you still have those other registrations?

20 A No, I do not.

21 Q What happened to the registration regarding the  
22 entertainment services?

23 A I was no longer involved, so I dropped it. I  
24 discontinued it since I was no longer using it.

25 Q So that -- you cancelled that registration?

1 A Yes, that's right.

2 Q What about the registration regarding the tan  
3 accelerator?

4 A I stopped selling the tan accelerator, so I  
5 cancelled that also.

6 Q And the registration involving or having the  
7 triangle logo, what happened to that one?

8 A I was no longer using the triangle logo, so I  
9 cancelled that also.

10 Q But you were still using the words "American  
11 Muscle"?

12 A That's correct. Just not with the triangle --  
13 not in a logo, per se, a specific logo.

14 Q So that specific registration dealt with a  
15 particular logo that you were no longer using?

16 A That's correct.

17 Q And you cancelled that registration?

18 A Yes, I did.

19 MR. DiNARDO: I am going to mark Defendants'  
20 Exhibit B.

21 (Whereupon the document referred to was  
22 marked by the Certified Shorthand Reporter as  
23 Defendant's Exhibit B for identification and  
24 is hereto annexed.)

25 ///

1 BY MR. DiNARDO:

2 Q I am presenting to you what has been marked as  
3 Defendants' Exhibit B.

4 And -- do you recognize this document?

5 A Yes, I do.

6 Q Would you please read the title of the  
7 document.

8 A "Combined Declaration of Use and Contestability  
9 Under 8 and 15 of the Trademark Act of 1946 as Amended."

10 Q Would you turn to page 2 of that exhibit.

11 A (Witness complies.)

12 Q Do you recognize that signature at the bottom  
13 of the page?

14 A Yes, I do.

15 Q Whose signature that?

16 A My father's, Augusto Lodi.

17 Q Do you understand what this document is?

18 A Yes.

19 Q Do you see the photographs attached -- sorry.  
20 Please describe for me your understanding of  
21 what this document is.

22 A It's a sworn statement regarding the use of the  
23 name and the product it applies to.

24 Q Would you look at the photographs on pages 3, 4  
25 and 5 of Exhibit B?

1 A Yes.

2 Q Do you recognize those products?

3 A Yes, I do.

4 Q Please describe for me what those are.

5 A One is supplement, 19-norandrodiol. Two would  
6 be leather weightlifting gloves. Three would be a pair  
7 of American Muscle pants, baggy pants.

8 Q These were all products you were selling under  
9 the American Muscle trademark?

10 A Yes.

11 Q Do you remember -- strike that.

12 Did you consult with your dad at the time that  
13 this was filed?

14 A Yes.

15 Q And, to your understanding, the goods that were  
16 identified in this as being used with the American  
17 Muscle mark in this Exhibit B were in use at the time,  
18 correct?

19 A Correct. Yes, they were.

20 Q And this was -- your father's declaration is  
21 dated March 2002. So this is after the negative  
22 publicity that we talked about?

23 A Yes.

24 Q And these products that you were selling, where  
25 would these products have come from?

1           A     From my manufacturer and the -- and old  
2 inventory.

3           MR. DiNARDO:   So now I am going to mark Defendant's  
4 Exhibit C.

5                     (Whereupon the document referred to was  
6 marked by the Certified Shorthand Reporter as  
7 Defendant's Exhibit C for identification and  
8 is hereto annexed.)

9 BY MR. DiNARDO:

10          Q     I present you with that.

11                     Please review that document.

12                     Do you recognize this document?

13          A     Yes, I do.

14          Q     What do you recognize this document to be?

15          A     Application for renewal.

16          Q     If you would look at page 2 of Exhibit C, the  
17 title at the top of the page.

18          A     Combined Declaration of Use in Commerce and  
19 Application for Renewal of Registration of a Mark Under  
20 Sections 8 and 9, 15 USC and 1058 and 1059.

21          Q     If you will look at page 3 of Exhibit C, do you  
22 recognize the signatures at the bottom of the page?

23          A     Yes, I do.

24          Q     Whose signatures do you see first?

25          A     My father's, Augusto Lodi.

1 Q Whose signature appears below that?

2 A Curtis Harrington.

3 Q Who was that?

4 A Our trademark attorney at the time.

5 Q It looks like this was dated March 2006.

6 If you will look at the pictures on the  
7 subsequent pages, do you recognize those products?

8 A Yes, I do.

9 Q What are those products?

10 A Creatine, my creatine, my enhanced formula and  
11 a pair of American Muscle shorts.

12 Q Do you recognize the pictures on the second  
13 page?

14 A Yes, a pair of gloves, pants. A pair of pants.

15 Q Those were all products that you were selling  
16 under the American Muscle mark in 2006?

17 A Yes.

18 Q Did you consult with your father or do you  
19 recall consulting with your father and/or Curtis  
20 Harrington at the time this was filed?

21 A Yes.

22 MR. DiNARDO: Now, I am going to mark Defendant's  
23 Exhibit D.

24 ///

25 ///

1 (Whereupon the document referred to was  
2 marked by the Certified Shorthand Reporter as  
3 Defendant's Exhibit D for identification and  
4 is hereto annexed.)

5 BY MR. DiNARDO:

6 Q I have presented you with Defendant's Exhibit  
7 D.

8 Do you recognize the products in those  
9 pictures?

10 A Yes, I do.

11 Q Please describe for me those products.

12 A American Muscle whey protein powder, vanilla,  
13 chocolate, strawberry and Creatine Monohydrate, American  
14 Muscle.

15 Q The different pages are different sides of the  
16 label on the product, correct?

17 A Yes.

18 Q Are these products that you are currently  
19 selling under the American Muscle mark?

20 A Yes, I am.

21 Q And do you know how long you have been selling  
22 these particular products?

23 A Creatine Monohydrate, the whey protein powder,  
24 started selling them in 1997, something like that.

25 This particular, the whey protein and this

1 particular creatine.

2 Q So were you selling a different protein powder  
3 prior to --

4 A Yes, milk and egg.

5 Q So in '97, you changed --

6 A Yes, the whey is a much better protein. I'm  
7 not exact the dates, the years, it's been so long. I'm  
8 doing the best I can.

9 Q I understand. Absolutely. It's a long time.

10 A Yes.

11 MR. DiNARDO: I am now marking Defendant's Exhibit  
12 E.

13 (Whereupon the document referred to was  
14 marked by the Certified Shorthand Reporter as  
15 Defendant's Exhibit E for identification and  
16 is hereto annexed.)

17 BY MR. DiNARDO:

18 Q I have presented you with Defendant's Exhibit  
19 E.

20 Do you recognize the products in these photos?

21 A Yes, I do.

22 Q What are those products?

23 A T-shirts, American Muscle T-shirts.

24 Q And it looks like you have got the American  
25 Muscle logo on the front and the back?

1 A Front pocket and rear logo, yes.

2 Q And you have been selling these -- you are  
3 currently selling these products?

4 A Yes. I have been selling them since 1987.

5 MR. DiNARDO: Now, I am marking Defendant's Exhibit  
6 F.

7 (Whereupon the document referred to was  
8 marked by the Certified Shorthand Reporter as  
9 Defendant's Exhibit F for identification and  
10 is hereto annexed.)

11 BY MR. DiNARDO:

12 Q I have presented you with Defendant's Exhibit  
13 F.

14 Do you recognize the product in these photos?

15 A Yes.

16 Q What Are these?

17 A American Muscle wrist straps.

18 Q These are weightlifting tools?

19 A Yes. To help so you can hold on to the bar,  
20 whether you are doing pull-ups or bent-over rows. It  
21 helps you grip on to the weight better.

22 Q These have the American Muscle name on a  
23 stitched-on label?

24 A Yes. I have been selling those since 1987.

25 MR. DiNARDO: I am now going to present you with

1 Defendant's Exhibit G.

2 (Whereupon the document referred to was  
3 marked by the Certified Shorthand Reporter as  
4 Defendant's Exhibit G for identification and  
5 is annexed under separate sealed cover.)

6 MR. DiNARDO: At this point, we are going to have  
7 to mark the transcript confidential pursuant to a  
8 protective order.

9 MR. SWYERS: No objection from me.

10 (Whereupon the remainder of these proceedings,  
11 pages 32-105, along with Defendant's Exhibit G  
12 through Defendant's Exhibit P and Petitioner's  
13 Exhibit 1, were deemed confidential and are under  
14 separate sealed cover pursuant to the protective  
15 order.)

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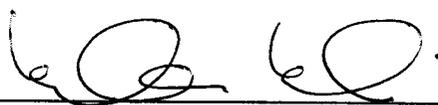
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DECLARATION UNDER PENALTY OF PERJURY

-000-

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed at Woodland Hills, CA on 27<sup>th</sup> day of September, 2013.

  
\_\_\_\_\_  
SIGNATURE OF THE WITNESS

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

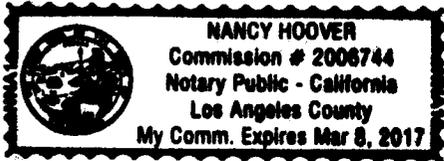
State of California

County of LOS ANGELES

On 9/27/2013 before me, Nancy Hoover, Notary Public

personally appeared LEANDER LODI

who proved to me on the basis of satisfactory evidence to be the person ~~(s)~~ whose name ~~(s)~~ is ~~or~~ subscribed to the within instrument and acknowledged to me that he ~~or she~~ executed the same in his ~~or her~~ authorized capacity ~~(ies)~~, and that by his ~~or her~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Nancy Hoover  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Original Deposition Transcript of Leander Lodi

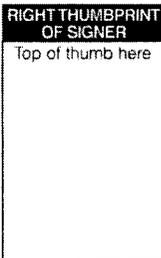
Document Date: May 7, 2013 Number of Pages: 31 (not including Exhibits)

Signer(s) Other Than Named Above: Claudia P. Marsh, CSR

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Leander Lodi

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

1 STATE OF CALIFORNIA )  
2 ) SS.  
3 COUNTY OF LOS ANGELES )  
4

5 I, Claudia P. Marsh, a Certified Shorthand  
6 Reporter, CSR No. 6353, hereby certify:

7 I am the deposition officer that stenographically  
8 recorded the testimony in the foregoing deposition;

9 Prior to being examined, the deponent was by me  
10 first duly sworn;

11 That the foregoing deposition is a true record of  
12 the testimony given.

13 Before completion of the deposition, review of the  
14 transcript \_\_\_was/\_X\_was not requested. If requested,  
15 any changes made by the deponent (and provided to the  
16 reporter) during the period allowed are appended hereto.

17  
18  
19 Dated: May 21<sup>ST</sup>, 2013.

20  
21 Claudia Marsh  
22 CLAUDIA P. MARSH, CSR No. 6353  
23  
24  
25

# The United States of America



## CERTIFICATE OF REGISTRATION

This is to certify that the records of the Patent and Trademark Office show that an application was filed in said Office for registration of the Mark shown herein, a copy of said Mark and pertinent data from the Application being annexed hereto and made a part hereof,

And there having been due compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks,

Upon examination, it appeared that the applicant was entitled to have said Mark registered under the Trademark Act of 1946, as amended, and the said Mark has been duly registered this day in the Patent and Trademark Office on the

## PRINCIPAL REGISTER

to the registrant named herein.

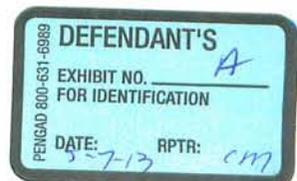
This registration shall remain in force for TEN years unless sooner terminated as provided by law.



In Testimony whereof I have hereunto set my hand and caused the seal of the Patent and Trademark Office to be affixed this nineteenth day of March 1996.

*Bruce Lehman*

Commissioner of Patents and Trademarks



Int. Cls.: 5, 25 and 28



Prior U.S. Cls.: 6, 18, 22, 23, 38, 39, 44, 46, 50, 51  
and 52

Reg. No. 1,962,898

**United States Patent and Trademark Office** Registered Mar. 19, 1996

**TRADEMARK  
PRINCIPAL REGISTER**

**AMERICAN MUSCLE**

LODI, AUGUSTO (ITALY CITIZEN), DBA  
AMERICAN MUSCLE  
P.O. BOX 2611  
PASADENA, CA 911022611

FOR: VITAMIN SUPPLEMENTS, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 5-22-1987; IN COMMERCE  
5-28-1987.

FOR: SPORTSWEAR, NAMELY SWEAT  
PANTS, SWEAT SHIRTS, SHORTS, T-SHIRTS,  
TANK TOPS AND JACKETS, IN CLASS 25 (U.S.  
CLS. 22 AND 39).

FIRST USE 5-22-1987; IN COMMERCE  
5-28-1987.

FOR: WEIGHT LIFTING GLOVES, BELTS  
AND STRAPS; KNEE AND WRIST WRAPS, IN  
CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 5-22-1987; IN COMMERCE  
5-28-1987.

OWNER OF U.S. REG. NOS. 1,505,243 AND  
1,549,729.

SER. NO. 74-584,611, FILED 10-12-1994.

CHARLES L. JENKINS, EXAMINING ATTOR-  
NEY



03-12-2002

U.S. Patent & TMO/TM Mail Rcpt. Dt. #40

PRU

Docket No. AUGUSTO-3

6

UNITED STATES DEPARTMENT OF COMMERCE

PATENT AND TRADEMARK OFFICE

Mark: AMERICAN MUSCLE )  
 )  
 Registration No.: 1,962,898 )  
 )  
 Registered: March 19, 1996 )  
 )  
 Registrant: AUGUSTO LODI )  
 (U.S. Citizen) )  
 Address: 3012 North Grandeur Avenue )  
 Altadena, CA 91001 )  
 )

COMBINED DECLARATION OF USE AND INCONTESTABILITY

UNDER §8 & §15 OF THE TRADEMARK ACT OF 1946,

AS AMENDED

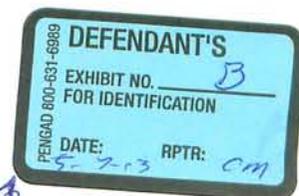
The mark shown in Registration No. 1,962,898, owned by the above-identified registrant, has been in continuous use in interstate commerce for five consecutive years from the date of registration , on or in connection with all of the goods and or services identified in the registration as evidenced by the attached specimens showing the mark as currently used in each classification. There has been no final decision

03/25/2002 TSMITH 00000137 1962898

01 FC:372  
02 FC:373

300.00 OP  
600.00 OP

1

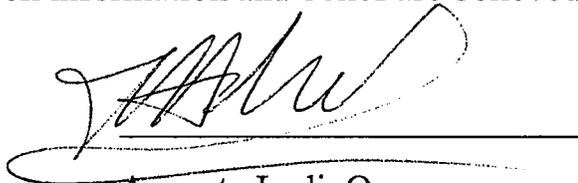


adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and there is no proceeding involving said rights pending and not disposed of either in the Patent and Trademark Office or in the courts.

### DECLARATION

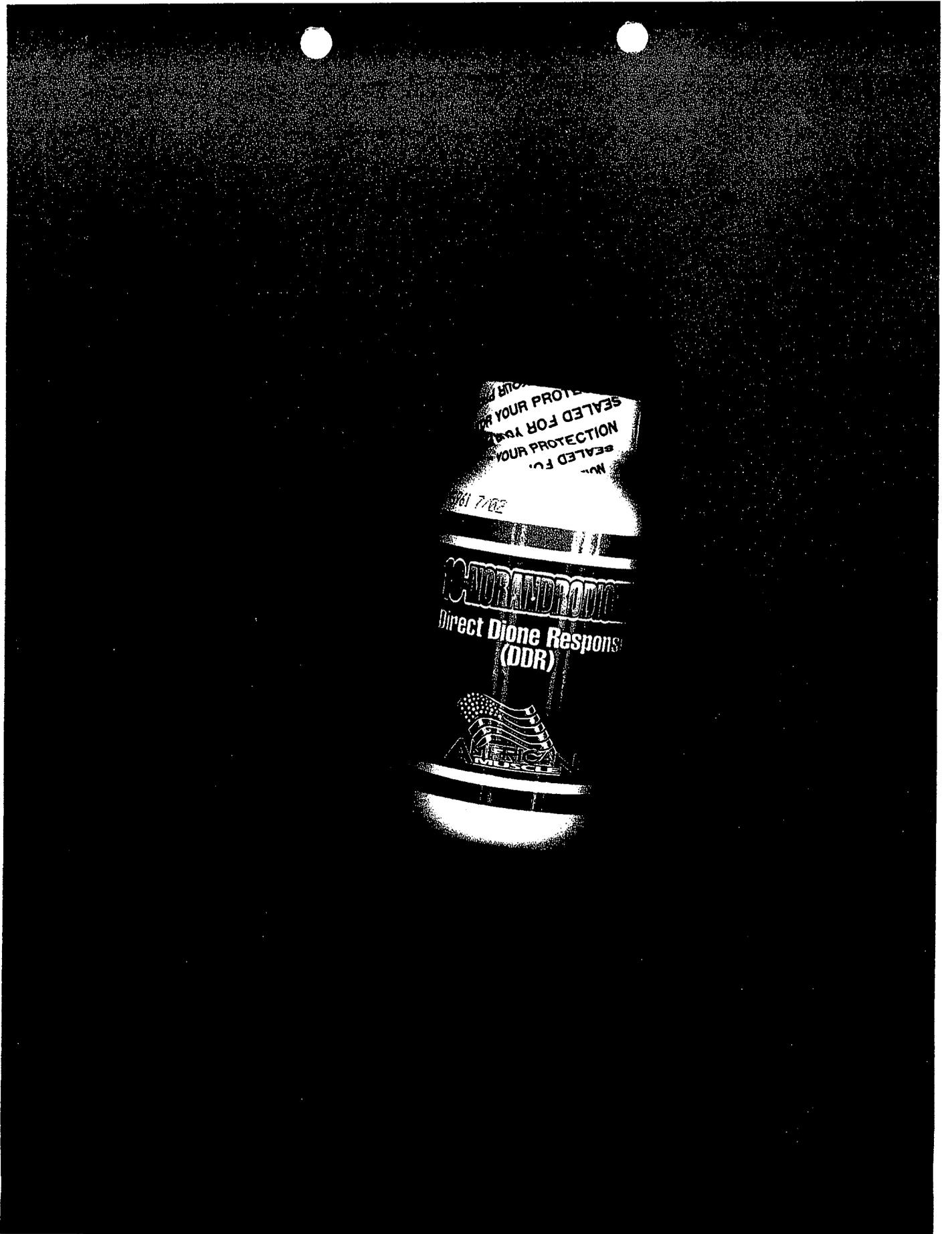
The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this document, declares that he is properly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

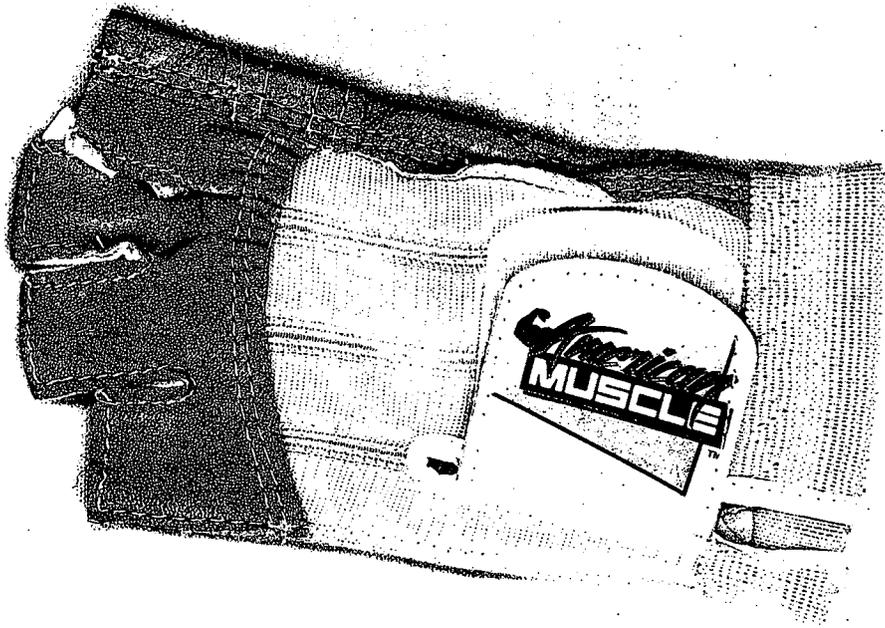
March 11, 2002



Augusto Lodi, Owner

(U.S. Citizen)









03-12-2002

U.S. Patent & TMOfo/TM Mail Ropt Dt. #40

**Curtis L. Harrington**  
& Associates  
6300 State University Drive, Suite 250  
Long Beach, California 90815  
(562)594-9784; (714)374-9549; Fax(562)594-4414  
PATENTAX®

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

Date: March 12, 2002

Docket No. AUGUSTO-3

## **§8 & §15 Combined Declaration Transmittal**

Transmitted herewith for filing is:

Trademark: AMERICAN MUSCLE

Goods: As enumerated in classes 5, 25, & 28.

Specimens: Class 05: Bottle of vitamin supplement

Class 25: Athletic Shorts

Class 28: Weight Lifting Gloves

Declarant: Augusto Lodi -A U.S. Citizen

Dated: March 11, 2002

Registration No.: 1,962,898

Registration Date: 3/19/1996

Payment by Check No 3476 in the amount of \$900 to be applied as a fee for a combined §8 & §15 affidavit for the three classes above.

Commissioner of Patents and Trademarks  
March 12, 2002  
Page No. 2

Should any additional fee be required or should any excess fee be paid, please charge or credit such amounts to charge account no. 08-0765.

If there are any problems, please contact me at the telephone numbers on this letter. Please send the notice of acceptance to me at the letterhead address.

Respectfully,



Curtis L. Harrington

Enclosures

Registration No. 31,456

<b>"EXPRESS MAIL" MAILING LABEL No.: EL832056569US</b>	
DATE OF DEPOSIT: <b>March 12, 2002</b>	
I HEREBY CERTIFY THAT THIS PAPER OR FEE 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:	
	Assistant Commissioner for Trademarks 2900 Crystal Drive Arlington, VA 22202-3513
Curtis L. Harrington Reg. No. 31,456	

Docket No. AUGUSTO-3

UNITED STATES DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

Mark: AMERICAN MUSCLE )  
)  
Registration No.: 1,962,898 )  
)  
Registered: March 19, 1996 )  
)  
Registrant: AUGUSTO LODI )  
(U.S. Citizen) )  
Address: 3012 North Grandeur Avenue )  
Altadena, CA 91001 )  
\_\_\_\_\_)

**CHANGE OF ADDRESS**

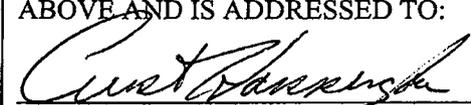
Dear Sir:

Please note the following change of address. All future correspondence concerning this case is to be directed to Curt Harrington at the below indicated address:

Curtis L. Harrington  
Suite 250  
6300 State University Drive      Fax (562) 594-4414  
Long Beach, CA 90815      Phone (562)594-9784  
Fax (562) 594-4414

Respectfully submitted:

  
Curt Harrington; Reg. No. 31,456

“EXPRESS MAIL” MAILING LABEL No.: **EL832056569US**  
DATE OF DEPOSIT: **March 12, 2002**; I HEREBY CERTIFY THAT THIS PAPER OR FEE 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:  
 Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513  
Curtis L. Harrington Reg. No. 31,456

Side - 1

**NOTICE OF ACCEPTANCE OF §8  
DECLARATION AND §9 RENEWAL  
MAILING DATE: Jul 7, 2006**

The declaration and renewal application filed in connection with the registration identified below meets the requirements of Sections 8 and 9 of the Trademark Act, 15 U.S.C. §§1058 and 1059. The declaration is accepted and renewal is granted. The registration remains in force.

For further information about this notice, visit our website at: <http://www.uspto.gov>. To review information regarding the referenced registration, go to <http://tarr.uspto.gov>.

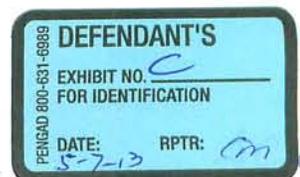
**REG NUMBER: 1962898**  
**MARK: AMERICAN MUSCLE**  
**OWNER: LODI, AUGUSTO**

Side - 2

UNITED STATES PATENT AND TRADEMARK OFFICE  
COMMISSIONER FOR TRADEMARKS  
P.O. BOX 1451  
ALEXANDRIA, VA 22313-1451

FIRST-CLASS  
MAIL  
U.S. POSTAGE  
PAID

CURTIS L HARRINGTON  
6300 STATE UNIVERSITY DR  
STE 250  
LONG BEACH, CA 90815



COMBINED DECLARATION OF USE IN COMMERCE &  
APPLICATION FOR RENEWAL OF REGISTRATION OF A  
MARK UNDER SECTIONS 8 & 9 (15 U.S.C. §§ 1058 & 1059)

Mark: AMERICAN MUSCLE )  
)  
Registration No.: 1,962,898 )  
)  
Registered: March 19, 1996 )  
)  
Registrant: Lodi, Augusto, (U.S. Cit.) )  
DBA American Muscle )  
Address: 3012 North Grandeur Avenue )  
Altadena, CA 91001 )  
)

BOX PostReg FEE  
Commissioner for Trademarks  
2900 Crystal Drive ( Suite 3B-30 )  
Arlington, Virginia 22202-3513

Dear Sir,

The owner of the above is using the mark in commerce on or in connection with all goods and/or services listed in the existing registration.

Applicant's Address is within the United States and a Domestic Representative is not required.

One specimen for each class showing the mark as used in commerce on or in connection with any item in the class of listed

03/17/2006 HPHAM1 00000001 1962898

01 FC:6205  
02 FC:6201

300.00 OP  
1200.00 OP

1 of 2

goods and/or services is enclosed.

## DECLARATION

### Section 8: Declaration of Use in Commerce

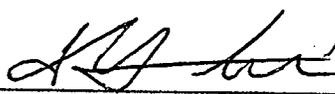
The owner is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby 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 this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

### Section 9: Application for Renewal

The registrant requests that the registration be renewed for the goods and/or services identified above.

July \_\_\_\_\_, 2005

  
\_\_\_\_\_  
Augusto Lodi, Owner  
(U.S. Citizen)

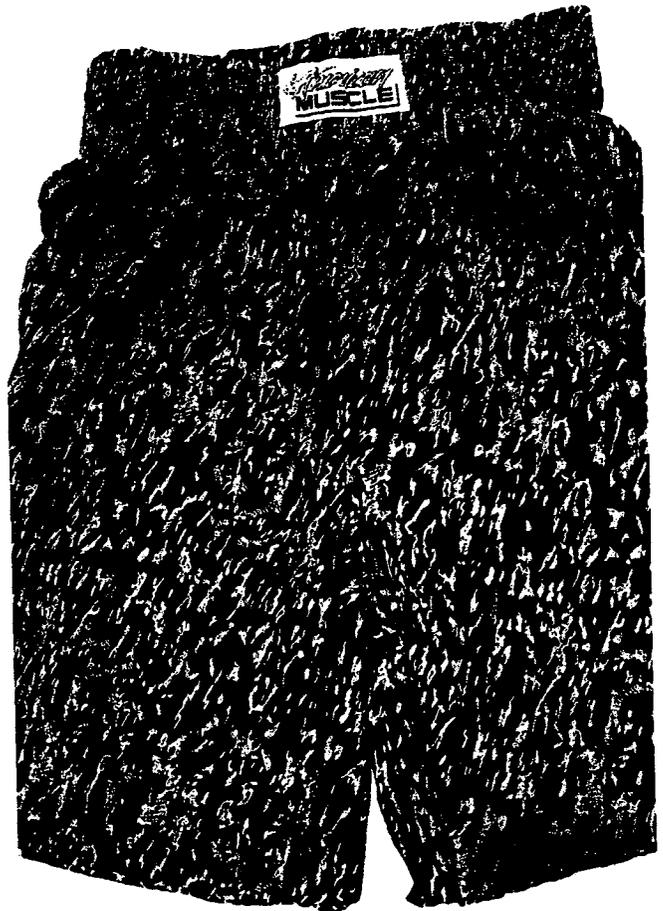
DATED: March 9, 2006

  
\_\_\_\_\_  
Curt Harrington, for Augusto Lodi,  
Owner (U.S. Citizen)

2 of 2  
2 of 2



NO. 1  
SEALED FOR  
PROTECTION





**Curtis L. Harrington**  
6300 State University Drive, Suite 250  
Long Beach, California 90815  
(562)594-9784; (714)374-9549; Fax(562)594-4414  
PATENTAX®

Assistant Commissioner for Trademarks  
P.O. Box 1451  
Arlington, VA 22313-1451

Date: March 9, 2006  
Docket No. AUGUSTO-3

**§8 & §9 Combined Declaration Transmittal  
for Renewal and Continued Use**

Transmitted herewith for filing is:

Trademark: AMERICAN MUSCLE

Goods: as identified in the registration

Declarant: Augusto Lodi -A U.S. Citizen

Dated: March 9, 2006 by Attorney for applicant and also signed by  
applicant (undated)

Registration No.: 1,962,898

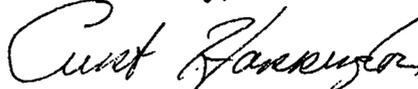
Registration Date: March 19, 1996

Specimens: B&W photographs of three classes of goods bearing the mark.

Payment by Check No 4461 in the amount of \$1500 to be applied as a fee for a  
combined §8 & §9 affidavit in THIS CASE for ALL THREE CLASSES.

Should any additional fee be required or should any excess fee be paid,  
please charge or credit such amounts to charge account no. 08-0765.

Respectfully,



Curtis L. Harrington

Registration No. 31,456



Enclosures

03-13-2006

U.S. Patent & TMO/TM Mail Rept Dt. #34

“EXPRESS MAIL” MAILING LABEL No.: **EV 636 083 025 US**

DATE OF DEPOSIT: **March 09, 2006**

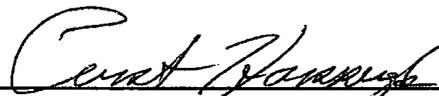
I HEREBY CERTIFY THAT THIS PAPER OR FEE IS BEING DEPOSITED WITH THE  
UNITED STATES POSTAL SERVICE “EXPRESS MAIL POST OFFICE TO ADDRESSEE”  
SERVICE UNDER 37 CFR 1.10 ON THE DATE INDICATED ABOVE AND IS

ADDRESSED TO:

Assistant Commissioner for Trademarks

P.O. Box 1451

Arlington, VA 22313-1451



Curtis L. Harrington Reg. No. 31,456



Run It Consulting v. Leander Lodi  
 Cancellation No. 92055426

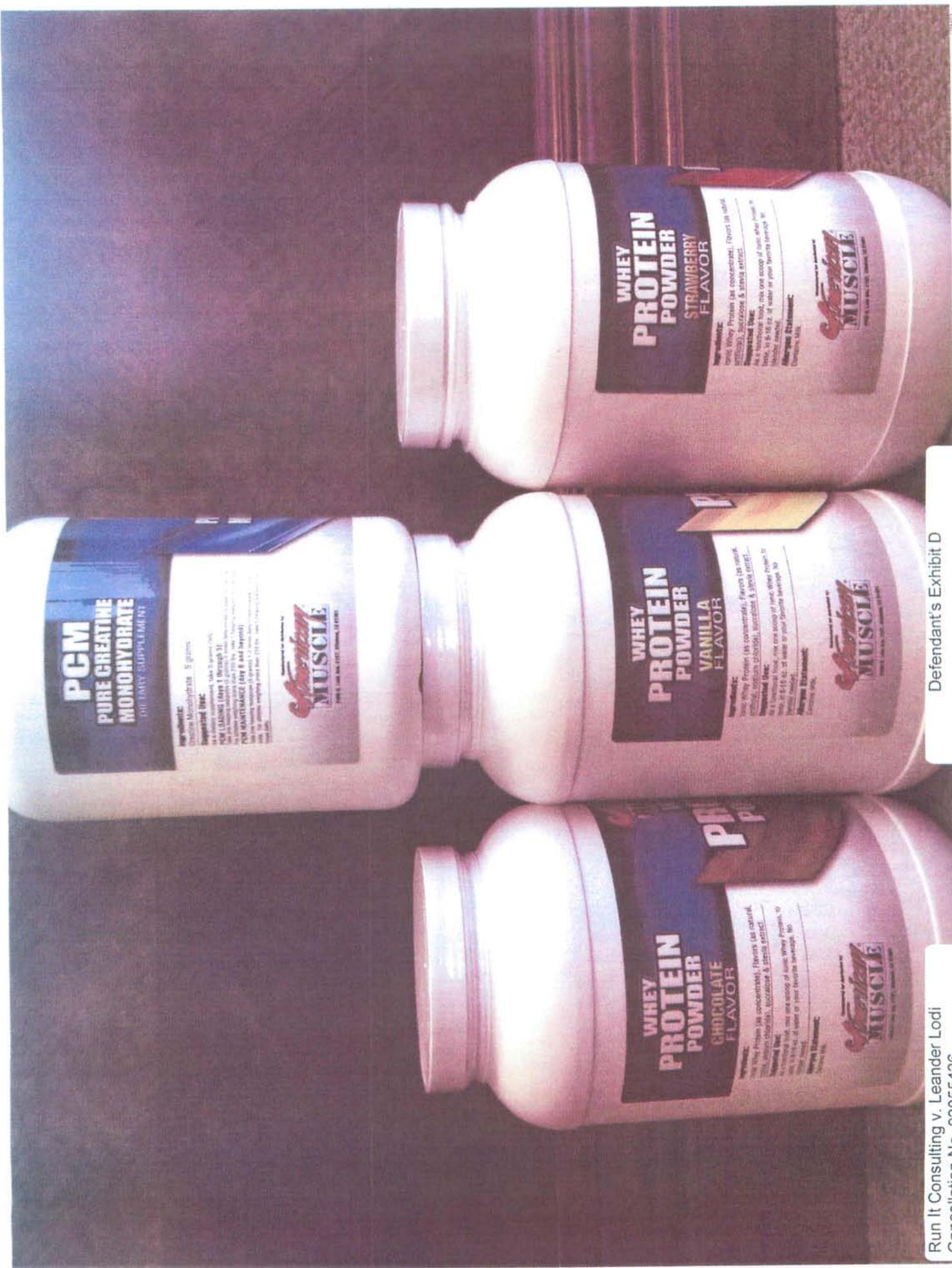
Defendant's Exhibit D

DEFENDANT'S D  
 EXHIBIT NO. \_\_\_\_\_  
 FOR IDENTIFICATION  
 DATE: 3-7-13 RPTR: CM  
 PENGAD 800-631-6989



Defendant's Exhibit D

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426



Defendant's Exhibit D

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

E-1



DEFENDANT'S  
 EXHIBIT NO. \_\_\_\_\_  
 FOR IDENTIFICATION  
 DATE: \_\_\_\_\_ RPT: CMJ  
 PENGAD 800-631-6989

Defendant's Exhibit E

Run It Consulting v. Leander Lodi  
 Cancellation No. 92055426

2-2



Defendant's Exhibit E

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

2-2

3-2



Defendant's Exhibit E

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

3-2



Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

Defendant's Exhibit E

4-2

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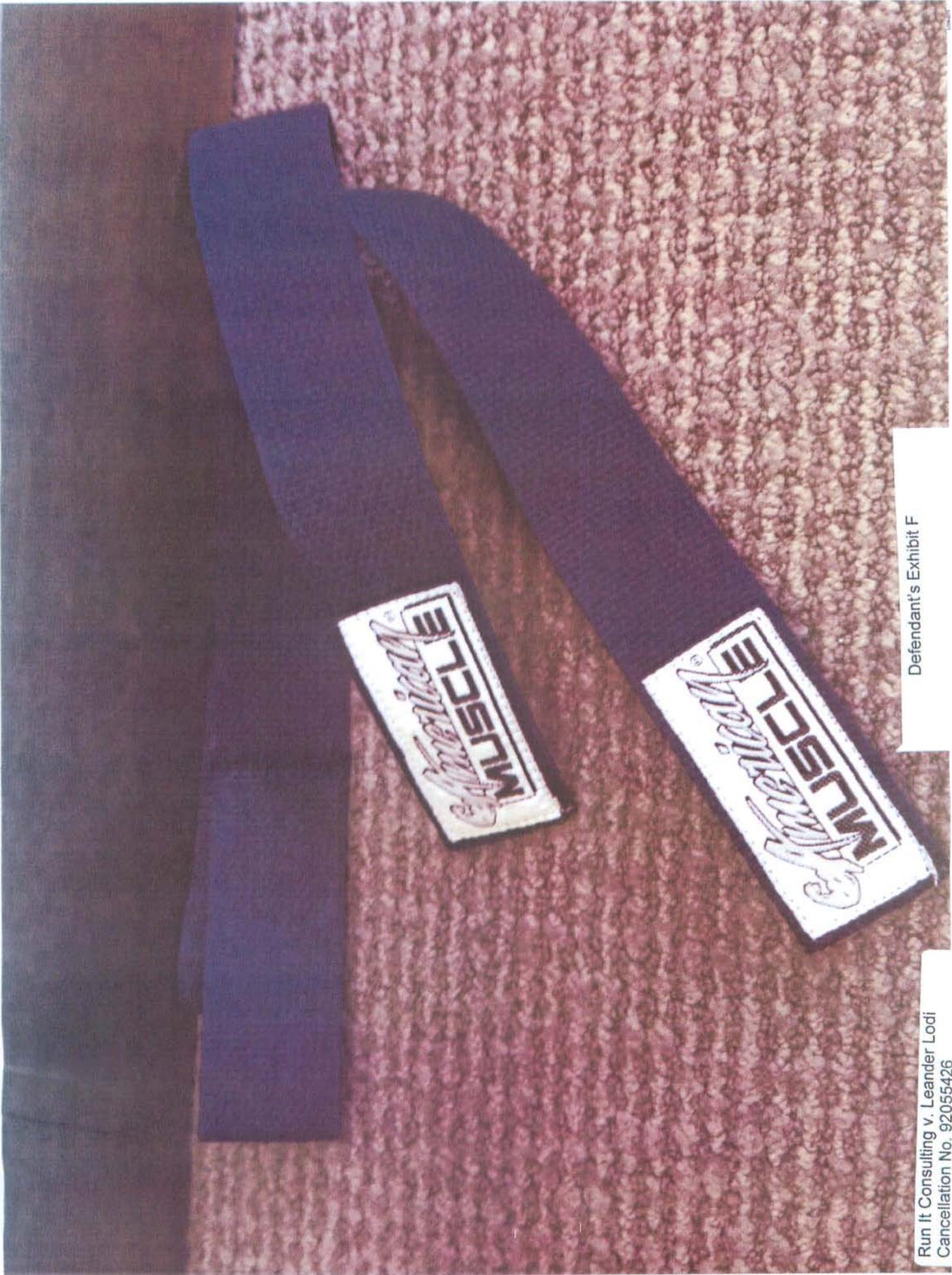


Defendant's Exhibit F

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

DEFENDANT'S  
 EXHIBIT NO. F  
 FOR IDENTIFICATION  
 DATE: 5-7-13 RPTR: CM  
 PENGAD 800-631-6989

23



Defendant's Exhibit F

Run It Consulting v. Leander Lodi  
Cancellation No. 92055426

F-2